



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on September 13, 2022, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 517 [Online agenda updated as needed](#)

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

Title		Chapter	Regulation
806	KAR	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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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, September 13, 2022 at 1 p.m.
Annex Room 149



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

EDUCATION AND LABOR CABINET
Education Professional Standards Board
Alternative Routes to Certification

016 KAR 009:110E. Expedited route to certification. (Filed with Ordinary) ("E" expires 04-09-2023)

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) (Deferred from August)

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) (Deferred from August)

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) (Deferred from August)

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) (Deferred from August)

031 KAR 004:170. Exceptions to prohibition on electioneering. (Deferred from August)

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) (Deferred from August)

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) (Deferred from August)

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) (Deferred from August)

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) (Deferred from August)

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) (Deferred from August)

FINANCE AND ADMINISTRATION CABINET

Kentucky Retirement Systems

General Rules

105 KAR 001:415E. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer. (Filed with Ordinary) ("E" expires 03-25-2023)

GENERAL GOVERNMENT CABINET

Department of Military Affairs

Disaster and Emergency Services

106 KAR 001:141. Emergency management funding.

106 KAR 001:171. Local emergency management agency program quarterly report.

106 KAR 001:181. Project application.

106 KAR 001:191. Project application reimbursement.

106 KAR 001:201. Local plan.

106 KAR 001:211. Local emergency management training.

106 KAR 001:221. Local exercise.

106 KAR 001:231. Local emergency management agency ordinance requirement.

106 KAR 001:241. Local emergency management director appointment process.

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106 KAR 001:251. Workers' Compensation Enrollment Form.
106 KAR 001:261. Supplementary state fund expense reimbursement eligibility list.
106 KAR 001:291. Specialized rescue squad alternative affiliation agreement process.
106 KAR 001:341. Rescue aid fund allocation.
106 KAR 001:371. Rescue aid fund expenditure documentation.

Military Assistance Trust Funds

106 KAR 002:021. Military Family Assistance Trust Fund.
106 KAR 002:031. National Guard Adoption Benefits Program.

FINANCE AND ADMINISTRATION CABINET

Commonwealth Office of Technology

General Administration

200 KAR 001:016. Data Breach Notification Forms.

Kentucky Infrastructure Authority

200 KAR 017:111E. Guidelines for Kentucky Infrastructure Authority drinking water and wastewater grant program. (Filed with Ordinary) ("E" expires 03-18-2023)

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:015. Continuing education. (Not Amended After Comments)
201 KAR 002:413E. Ordering and administering vaccinations. (Emergency Only) ("E" expires 03-24-2023)

Board of Dentistry

201 KAR 008:520. Fees and fines. (Deferred from July)
201 KAR 008:550. Anesthesia and sedation related to dentistry. (Amended After Comments)

Board of Cosmetology

201 KAR 012:030E. Licensing and examinations. (Filed with Ordinary) ("E" expires 04-08-2023)
201 KAR 012:060E. Inspections. (Filed with Ordinary) ("E" expires 04-08-2023)
201 KAR 012:082E. Education requirements and school administration. (Filed with Ordinary) ("E" expires 04-08-2023)
201 KAR 012:190E. Complaint and disciplinary process. (Filed with Ordinary) ("E" expires 04-08-2023)
201 KAR 012:230E. Code of ethics. (Filed with Ordinary) ("E" expires 04-08-2023)
201 KAR 012:260E. Fees. (Filed with Ordinary) ("E" expires 04-08-2023)
201 KAR 012:290E. Permits. (Filed with Ordinary) ("E" expires 04-08-2023)

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Board of Emergency Medical Services

202 KAR 007:701E. Scope of practice matters. (Filed with Ordinary) ("E" expires 04-08-2023)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 002:090. Means by which migratory game birds may be taken.
301 KAR 002:095. Importation, possession, and transportation of wildlife meat carcasses, and parts.
301 KAR 002:142. Spring turkey hunting.
301 KAR 002:300. Black bear seasons and requirements.

GENERAL GOVERNMENT CABINET

Department of Agriculture

Pesticides

302 KAR 026:010. Definitions.
302 KAR 026:020. Pesticide certification and licensing.
302 KAR 026:030. Recordkeeping.
302 KAR 026:040. Storage and handling of pesticides.
302 KAR 026:050. Trainee registration and supervision requirements.
302 KAR 026:060. Identification of service vehicles.
302 KAR 026: 070. Non-certified applicator training and supervision.
302 KAR 026:080. Lawn, turf, ornamental and interior plantscape notice posting.
302 KAR 026:090. Wood destroying organism treatments an integrated pest management in schools.
302 KAR 026:100. Structural pest control settlement proceedings.
302 KAR 026:150. Penalties.

Regulation and Inspection; Motor Fuel

302 KAR 079:009. Repeal of 302 KAR 079:010.

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)

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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)

Kentucky Law Enforcement Council

503 KAR 001:140E. Peace officer, telecommunicator, and court security officer professional standards. (Filed with Ordinary) ("E" expires 04-09-2023)

TRANSPORTATION CABINET

Department of Highways

Traffic

603 KAR 005:155. Vegetation management.

EDUCATION AND LABOR CABINET

Department of Education

Office of Instruction

704 KAR 003:305. Minimum requirements for high school graduation.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Fire Commission

Commission on Fire Protection Personnel Standards and Education

739 KAR 002:070. Volunteer fire department loan fund.

EDUCATION AND LABOR CABINET

Department of Workforce Investment

Employment Services

787 KAR 002:040. Local workforce development area governance. (Deferred from July)

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)

Department of Workplace Standards

Labor Standards; Wages and Hours

803 KAR 001:005. Employer-employee relationship. (Deferred from September)

803 KAR 001:025. Equal pay provisions, meaning and application. (Deferred from September)

803 KAR 001:060. Overtime pay requirements. (Deferred from September)

803 KAR 001:063. Trading time. (Deferred from September)

803 KAR 001:065. Hours worked. (Deferred from September)

803 KAR 001:066. Recordkeeping requirements. (Deferred from September)

803 KAR 001:070. Executive, administrative, supervisory or professional employees; salesmen. (Deferred from September)

803 KAR 001:075. Exclusions from minimum wage and overtime. (Deferred from September)

803 KAR 001:080. Board, lodging, gratuities and other allowances. (Deferred from September)

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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 025:089E. Workers' compensation medical fee schedule for physicians. (Filed with Ordinary) ("E" expires 03-21-2023)

803 KAR 025:195. Utilization review, appeal of utilization review decisions and medical bill audit. (Filed with Emergency) (Amended After Comments)

PUBLIC PROTECTION CABINET

Department of Insurance

Agents, Consultants, Solicitors and Adjusters

806 KAR 009: 025. Licensing process.

Health Insurance Contracts

806 KAR 017:585. Annual report mental health parity nonquantitative treatment limitation compliance. (Amended After Comments)

Insurance Holding Company Systems

806 KAR 037:010. Insurance holding company systems.

Department of Housing, Buildings and Construction

Kentucky Building Code

815 KAR 007:120. Kentucky Building Code. (Amended After Comments)

Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 008:010. Licensing requirements for master HVAC contractors and journeyman HVAC mechanics. (Deferred from August)

Standards of Safety

815 KAR 010:060. Kentucky standards of safety. (Amended After Comments)

Department of Charitable Gaming

Charitable Gaming

820 KAR 001:001. Definitions.

820 KAR 001:032. Pulltabs.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Human Resource Management

Administration

900 KAR 001:050. Child and adult protection employees subject to state and national criminal background checks. (Deferred from August)

Office of Health Data and Analytics

Kentucky Health Benefit Exchange

900 KAR 010:120. KHBE eligibility and enrollment in qualified health plan, SHOP, and SHOP formal resolution process.

Department for Public Health

Vital Statistics

901 KAR 005:120E. Abortion reporting. (Filed with Ordinary) ("E" expires 03-27-2023)

Department for Public Health

Local Health Departments

902 KAR 008:120. Leave provisions applicable to employees of local health departments. (Not Amended After Comments)

Department for Medicaid Services

Medicaid Services

907 KAR 001:008. Ambulatory surgical center services and reimbursement.

907 KAR 001:044. Coverage provisions and requirements regarding community mental health center behavioral health services.

907 KAR 001:065E. Payments for price-based nursing facility services. (Filed with Ordinary) ("E" expires 03-28-2023)

Outpatient Pharmacy Program

907 KAR 023:020. Reimbursement for outpatient drugs. (Filed with Emergency)

Department for Community Based Services

Child Support

921 KAR 001:380. Child support enforcement program application and intergovernmental process.

Child Welfare

922 KAR 001:300. Standards for child-caring facilities.

Daycare

922 KAR 002:160E. Child Care Assistance Program. (Filed with Ordinary) ("E" expires 03-28-2023)

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3. REGULATIONS REMOVED FROM SEPTEMBER'S AGENDA

FINANCE AND ADMINISTRATION CABINET

Kentucky Retirement Systems

General Rules

105 KAR 001:450. Quasi-governmental employer reports on independent contractors and leased employees. (Filed with Emergency) (Withdrawn-SOC not filed by deadline, 08-15-2022)

BOARDS AND COMMISSIONS

Board of Licensure for Long-Term Care Administrators

201 KAR 006:060. Fees. (Deferred from August)

Real Estate Commission

201 KAR 011:121. Standards of professional conduct. (Amended After Comments) (Deferred from September)

TOURISM, ARTS AND HERITAGE CABINET

Heritage Council

300 KAR 006:011. Historic rehabilitation tax credit certifications. (Filed with Emergency) (Comments Received; SOC ext., due 09-15-2022)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Communicable Diseases

902 KAR 002:020. Reportable disease surveillance. (Filed with Emergency) (Comments Received; SOC ext., due 09-15-2022)

Department for Medicaid Services

Medicaid Services

907 KAR 001:082. Coverage provisions and requirements regarding rural health clinic services. (Comments Received; SOC ext., due 09-15-2022)

907 KAR 001:104. Reimbursement for advanced practice registered nurse services. (Comments Received; SOC ext., due 09-15-2022)

Department for Community Based Services

Child Welfare

922 KAR 001:290. Background checks for private child-caring or child-placing staff members. (Comments Received; SOC ext., due 09-15-2022)

**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
201 KAR 2:380E

The Department for Medicaid Services has requested the Board of Pharmacy promulgate this emergency regulation to ensure Medicaid patients have access to Paxlovid, the COVID-19 therapeutic drug, from pharmacies without a prescription drug order. Currently there is no mechanism for Kentucky Medicaid to compensate pharmacists for their prescribing services, despite the PREP Act, 85 Fed. Reg. 51160, allowing for pharmacists to prescribe and administer COVID-19 therapeutics. Without this emergency amendment, Medicaid patients cannot access Paxlovid from a pharmacist without a prescription drug order issued by another prescriber since the Department for Medicaid Services does not recognize pharmacists as providers. This emergency amendment will allow for a prescriber approved protocol to be reviewed for approval by the Board of Pharmacy. Once approved, the physician Director of Medicaid Services can sign a prescriber approved protocol for any pharmacist to initiate the dispensing of Paxlovid for Medicaid patients. An ordinary amendment is not a sufficient way to address this issue since COVID-19 case numbers are rising, and Medicaid patients are in need of Paxlovid now. This emergency amendment provides the Board with discretion to respond to public health emergencies rapidly without the need to go through the rulemaking process to add a specific condition to the protocol. An amendment to the current regulation is being simultaneously filed and will replace the emergency regulation. The emergency amendment is identical to the ordinary amendment.

ANDY BESHEAR, Governor
 CHRISTOPHER HARLOW, Executive Director

BOARDS AND COMMISSIONS
Board of Pharmacy
(Emergency Amendment)

201 KAR 2:380E. Board authorized protocols.

EFFECTIVE: August 8, 2022

RELATES TO: KRS 315.010(25), 315.191(1)(a), (f)

STATUTORY AUTHORITY: KRS 315.010(25), 315.191(1)(a),

(f) **NECESSITY, FUNCTION, AND CONFORMITY:** KRS 315.010(25) defines a prescription drug order, which includes orders issued through protocols authorized by the board. KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters pertaining to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. KRS 315.191(1)(f) authorizes the board to promulgate administrative regulations that are necessary to control the dispensing of prescription drug orders. This administrative regulation establishes procedures for board authorized protocols by which pharmacists may initiate the dispensing of noncontrolled medications or other professional services.

Section 1. Definition. "Prescriber" means any individual authorized to prescribe a legend drug.

Section 2. Procedures. A pharmacist or pharmacists may initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services under the following conditions:

(1) A prescriber-approved protocol that meets the minimum requirements in Section 3 of this administrative regulation is in place, and is dated and signed by the prescriber and pharmacist(s) authorized to initiate the dispensing of noncontrolled medications,

over-the-counter medications, or other professional services. A pharmacist not party to the executed protocol has no authority to utilize the protocol for medication dispensing or other professional service provision;

(2) The protocol directs the care, based on current clinical guidelines, for acute self-limiting conditions and other minor ailments, preventative health services, and disease state monitoring and management as deemed appropriate by the board ~~conditions listed in Section 5 of this administrative regulation;~~

(3) The protocol has been approved by the board, who provides notice to the prescriber's licensure board within ten (10) business days of approval by the board;

(4) The pharmacist or pharmacists documents the dispensing event in the pharmacy management system, including:

(a) Documentation as required by 201 KAR 2:171~~[470]~~ for the dispensing of prescription medication; and

(b) Documentation that the individual receiving the medication or other professional service was provided with education pursuant to Section 3(4)~~[4]~~ of this administrative regulation; and

(5) A pharmacist shall request the individual's primary care provider's information, provided one exists, and shall provide notification to the primary care provider within two (2) business days.

Section 3. Minimum Requirements of Protocol. Protocols shall contain the following elements:

(1) Criteria for identifying persons eligible to receive medication therapies or other professional services under the protocol, and referral to an appropriate prescriber if the patient is high-risk or treatment is contraindicated;

(2) A list of the medications, including name, dose, route, frequency of administration, and refills authorized to be dispensed under the protocol;

(3) Procedures for how the medications are to be initiated and monitored, including a care plan implemented in accordance with clinical guidelines;

(4) Education to be provided to the person receiving the dispensed medications, including aftercare instructions, if appropriate;

(5) Procedures for documenting in the pharmacy management system all medications dispensed, including notification of the prescriber signing the protocol, if requested;

(6) Length of time protocol is in effect;

(7) Date and signature of prescriber approving the protocol;

(8) Dates and signatures of the pharmacist(s) authorized to initiate dispensing of medications or other professional services under the protocol~~;~~ and

~~(9) The date, and education or training of the pharmacist as referenced in Section 4 of this administrative regulation.~~

~~Section 4. Pharmacist Education and Training Required. A pharmacist who dispenses medication pursuant to a prescriber-approved protocol shall first receive education and training in the subject matter of the protocol from a provider accredited by the Accreditation Council for Pharmacy Education or by a comparable provider approved by the board. Documentation of education shall be provided to the board upon request. Education shall be obtained prior to initiating care under the protocol.~~

Section 5. Authorized Conditions. Board-authorized protocols may be established for the following conditions:

(1) Acute influenza infection pursuant to recommendations by the Centers for Disease Control and Prevention (CDC);

(2) Acute streptococcal pharyngitis infection;

(3) Acute, uncomplicated urinary tract infection;

(4) Acute cutaneous or mucocutaneous fungal infection;

(5) Alcohol use disorder utilizing naltrexone-based therapy

pursuant to recommendations from the American Psychiatric Association;

- (6) Allergic rhinitis;
- (7) Anaphylaxis;
- (8) Colorectal cancer prevention and screening;
- (9) HCV infection screening;
- (10) HIV infection prophylaxis, pre-exposure and post-exposure pursuant to recommendations by the CDC;
- (11) HIV infection screening pursuant to recommendations by the CDC;
- (12) Nutritional supplementation with vitamins and minerals;
- (13) Opioid use disorder pursuant to recommendations by the American Society of Addiction Medicine;
- (14) Tobacco use disorder;
- (15) Traveler's health pursuant to recommendations by the CDC;
- (16) Tuberculosis prevention and control through skin testing, and referral as necessary, pursuant to recommendations by the CDC; and
- (17) Self-care conditions appropriately treated with over-the-counter medications and products.]

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: August 8, 2022

FILED WITH LRC: August 8, 2022 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2022 at 9:00 a.m. Eastern Time via zoom teleconference. 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: 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 establishes procedures for board authorized protocols by which pharmacists may initiate the dispensing of noncontrolled medications or offer other professional services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for pharmacists to provide a high level of care to their patients, in accordance with protocols that have been provided from the prescriber and approved by the Board of Pharmacy. This will allow for discretion by the Board of Pharmacy to approve board authorized protocols as the public health need arises.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations to regulate and control all matters pertaining to pharmacists and pharmacies. KRS 315.191(1)(f) authorizes the Board to promulgate administrative regulations pertaining to prescription drug orders. KRS 315.010(25) defines a prescription drug order to include protocols authorized by the Board. This administrative regulation establishes criteria for protocols to be authorized by the Board.

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

pharmacists, pharmacies, patients and the public will be able to ascertain what is required for pharmacist to utilize a prescriber approved protocol.

(2) If 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 provide the board with discretion to review protocols as public health needs arise. The Cabinet for Health and Family Services has alerted the Board of Pharmacy of the need for pharmacists to be able to bill Medicaid for Paxlovid, a therapeutic drug to treat COVID-19. Without an amendment to this regulation allowing for a prescriber approved protocol for the ordering of Paxlovid by a pharmacist, Paxlovid will not be accessible to patients from pharmacies. The Department for Medicaid Services does not recognize pharmacists as prescribers despite the language in the federal PREP Act.

(b) The necessity of the amendment to this administrative regulation: This emergency amendment will allow pharmacists to respond immediately to public health needs without the delay of going through the rulemaking process. The emergency amendment is required to ensure access to Paxlovid, the COVID-19 therapeutic drug, for Medicaid patients. Despite the federal PREP ACT, without this emergency amendment, Medicaid patients will not be able to acquire Paxlovid from a pharmacy without a prescription.

(c) How this amendment conforms to the content of the authorizing statutes: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by providing the board with discretion to determine what prescriber approved protocols are appropriate as the public health need arises without going through the regulatory process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency amendment will serve the patient population that is on Medicaid by allowing them to access Paxlovid, the COVID-19 therapeutic, from pharmacies without a physician's order. Without this emergency amendment, Medicaid patients cannot be served, despite the PREP Act because the Department for Medicaid Services does not have the ability to bill Medicaid for a pharmacist's prescription.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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: Pharmacies and pharmacists will have to familiarize themselves with new amended language in the regulation. The board will help to educate pharmacists and pharmacies in these changes.

(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 expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Patients on Medicaid will have access to Paxlovid, the COVID-19 therapeutic drug, from pharmacies without a drug order from a health care practitioner.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required because of this new regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists 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 Kentucky Board of Pharmacy 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 315.191(a)

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs are required 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 this administrative regulation. Not applicable.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: none

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings from this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no cost to regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to regulated entities for subsequent years.

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

Cost savings (+/-): 0

Expenditures (+/-): 0

Other Explanation: none

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative

regulation does not have major economic impact.

STATEMENT OF EMERGENCY 300 KAR 1:020E

This emergency administrative regulation is necessary to immediately establish and implement the requirements for the distribution of the tourism recovery and investment funds appropriated by the General Assembly from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021. The Tourism, Arts and Heritage Cabinet, through the Department of Tourism, will distribute the federal funds to eligible recipients. The emergency administrative regulation sets forth the process, including eligibility, applications, approvals, and reporting obligations. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

MICHAEL E. BERRY, Secretary

TOURISM, ARTS AND HERITAGE CABINET Department of Tourism (New Emergency Administrative Regulation)

300 KAR 1:020E. Process for the distribution of tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

EFFECTIVE: July 25, 2022

RELATES TO: KRS 91A.350, 148.522, 148.525, Acts Chapter 199 (RS 2022 HB 1)

STATUTORY AUTHORITY: KRS 148.525(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Executive Branch Budget for the 2022-2024 biennium appropriates to the Tourism, Arts and Heritage Cabinet under the budget unit Office of the Secretary a total of \$75,000,000 in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021. KRS 148.522 provides that the Kentucky Department of Tourism, within the Tourism, Arts and Heritage Cabinet, shall have the authority and responsibility for the promotion, development, and support services for the tourism industry within the Commonwealth. KRS 148.525(3) authorizes the Commissioner of the Department of Tourism to promulgate administrative regulations to carry out the provisions of KRS 148.522. This administrative regulation establishes a uniform and consistent process for the distribution of the tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

Section 1. As soon as the funding is available pursuant to the American Rescue Plan Act of 2021, the Kentucky Department of Tourism shall develop and administer the process for distributing tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 to eligible recipients.

Section 2. Definitions.

(1) The "Cabinet" refers to the Kentucky Tourism, Arts and Heritage Cabinet.

(2) The "Department" refers to the Kentucky Department of Tourism.

(3) A "tourism commission" means an organization defined as tourism and convention commission under KRS 91A.350, et. seq., and defined as a designated marketing organization or tourism region committee pursuant to 300 KAR 1:010.

(4) The "State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 (SLFRF)" means the federal funding available as part of the Coronavirus State and Local Fiscal Recovery Fund

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established under the American Rescue Plan Act (ARPA), Public Law 117-2 (March 11, 2021), as implemented by the Final Rule issued by the U.S. Department of Treasury in 31 C.F.R. Part 35.

(5) "Tourism Marketing Incentive Program" means the Regional Marketing and Matching Funds Program referred to in KRS 91A.390 and 300 KAR 1:010.

(6) "Recipient" means a grantee, tourism commission as defined herein, or other entity eligible to receive funds from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021, as appropriated by the General Assembly in the 2022 Regular Session.

(7) "Program Year" means fiscal year 2022-2023 and fiscal year 2023-2024. Funding allocations will be split between the two fiscal years unless a recipient requests and receives approval to receive the allocation all in one fiscal year.

(8) "Tranche 1 funding" means the \$15,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(a) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing and promoting tourism in Kentucky.

(9) "Tranche 2 funding" means the \$25,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(b) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing communities in Kentucky.

(10) "Tranche 3 funding" means the \$25,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(c) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for attracting meetings and conventions in Kentucky.

(11) "Tranche 4 funding" means the \$10,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(d) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for multi-jurisdiction collaborative destination marketing in Kentucky.

(12) "Matching funds" means monies received from a funding source other than federal funds.

Section 3. Eligibility. Eligibility for allocations of federal funds available as part of the Coronavirus State and Local Fiscal Recovery Fund established under the American Rescue Plan Act will depend upon which tranche of money a recipient qualifies for in accordance with the parameters set forth in this regulation.

(1) To qualify for Tranche 1 funding, a grant recipient will be eligible for consideration if it markets and promotes Kentucky as a travel destination.

(2) To qualify for Tranche 2 funding, a grant recipient will be eligible for consideration if it is a tourism commission, as defined herein, who markets communities and provides ten (10) percent or more in Matching funds per application and amount awarded.

(3) To qualify for Tranche 3 funding, a grant recipient will be eligible for consideration if it is a tourism commission, as defined herein, whose counties include arenas, conference centers, or other meeting venues with a minimum of 5000 square feet, and if it provides a plan for recruiting and attracting meetings and conventions.

(4) To qualify for Tranche 4 funding for the competitive grant program, a grant recipient will be eligible for consideration if at least five (5) tourism commissions, through a designated primary grantee, submit a marketing plan and budget for multi-jurisdiction collaborative destination marketing and can provide at least ten (10) percent in Matching funds per project.

Section 4. Applications.

(1) Applications submitted by tourism commissions as defined herein are subject to the following schedule for submission:

(a) Tranche 2 funding applications open on August 1, 2022, and must be received by August 26, 2022;

(b) Tranche 3 funding applications open on August 8, 2022, and must be received by September 2, 2022;

(c) Tranche 4 funding applications open September 12, 2022, and must be received by October 7, 2022.

(d) If additional funding remains following this first round of

funding, then a second round of applications will issue in FY 2023-2024 pursuant to a schedule that will be posted on the Department's website.

(2) Applications for funds appropriated in Tranches 2, 3 and 4 must include documentation of the following at a minimum:

(a) Establish the entity qualifies as a "tourism commission" as defined herein (i.e., proof of non-profit status, letter from fiscal court that organization is part of city or county government, ordinance establishing commission);

(b) Provide a W-9 (showing Federal ID number and entity name);

(c) Demonstrate that the tourism commission was in business before the COVID-19 pandemic on March 6, 2020, and show the economic impact of the COVID-19 pandemic to be eligible to receive recovery and investment funds;

(d) Evidence that applicant is a Kentucky based organization such as proof of registration with the Kentucky Secretary of State or as a Special Purpose Governmental Entity through the Department of Local Government; and

(e) Complete Affidavit for Bidders, Offerors and Contractors.

(3) Applications for Tranche 2 and 4 funding must also include a notarized copy of each applicant's most recent fiscal year budget approved by the applicable governing body identifying the funds being used for the ten (10) percent or more in Matching funds.

(4) Applications for Tranche 2 funding shall describe how the funds will be used to market communities.

(a) Eligible expenses for Tranche 2 funding include:

1. Tourism publications and videos;

2. Media advertisements if fifty (50) miles from destination;

3. Press kits;

4. New billboards and signage if twenty (20) miles from destination;

5. Brochure distribution services;

6. Meeting and convention advertising expenses;

7. Group tour marketplace, meeting and conventions, and consumer travel show expenses;

8. Sponsorship or a bid fee of tourism trade shows, conventions, sporting events and other events;

9. Web site design excluding hosting;

10. Research studies and analysis;

11. Photography;

12. Content that is paid to a business for advertising purposes;

13. Influencers' assistance with social media; and

14. Other expenses if consistent with the purpose of the Regional Marketing and Matching Funds Program.

(b) Ineligible expenses for Tranche 2 funding include:

1. Billboards and Signage that does not consist solely of language welcoming a visitor to a community or region;

2. Costs associated with construction of any permanent signage structure;

3. Previously existing signs or maintenance of signs;

4. Postage and freight;

5. Booth space or expenses for county fair or festivals;

6. Booth space or registration expenses at industrial solicitation events;

7. Expenses to attend a conference or meeting without promoting your destination unless expenses are for professional development or hospitality training;

8. Web sites that contain paid advertisements;

9. Sponsorship or bid fees of tourism trade shows, conventions, and other events;

10. Expenditures for in-kind amenities or hospitality events that include alcohol, gratuities, service charges, and tips;

11. Tourism industry events involving Kentucky Tourism Industry Association, Kentucky Association of Convention & Visitor Bureaus, in-state or local events and conferences, and Kentucky association meetings and conferences;

12. Research related to future capital projects;

13. Industrial incentive brochures;

14. General community relocation and development brochures;

15. City or county maps or directories that list businesses and services;

16. Programs, playbills, posters, table tents;
17. Membership and subscription solicitations;
18. Registration and entry forms;
19. Event and contest category or regulation material;
20. Quick print materials such as flyers, handbills, and circulars;
21. Entertainment;
22. Bumper stickers, banners, flags, postcards, lapel pins, or bags;
23. Prizes, trophies, plaques, decorations, paint supplies, and poster board;
24. Items for resale;
25. Amounts paid for Kentucky sales tax;
26. Stationery, letterhead, envelopes, general office supplies and materials;
27. Salaries or other compensation for the staff or personnel of a tourism commission;
28. General operating and administrative costs;
29. Finance charges or late payment fees;
30. In-kind contributions, which also shall not be included as part of an applicant's match;
31. Expenditures in violation of law; and
32. Other expenses deemed ineligible by the Department if inconsistent with the Regional Marketing and Matching Funds Program.

(5) Applications for Tranche 3 funding shall specify:

- (a) the counties within the tourism commission's jurisdictions that include arenas, conference centers, or other meeting venues with a minimum of 5,000 square feet; and
- (b) how the funds will be used to attract professionally organized meetings, conventions, conferences, exhibitions, expositions, and trade shows that involve:

1. New events not held in the destination or venue for at least three years;
2. Multi-day events contracted on or after July 1, 2022;
3. Competitive bidding of events; and
4. Attendees from outside the area (100 miles or more).
- (c) How the funds will be used to attract amateur and professional competitive sporting events or tournaments that involve:

1. New events not held in the destination or venue for at least three years;
2. Multi-day events contracted on or after July 1, 2022;
3. Competitive bidding of the event;
4. Athletes from outside the area (100 miles or more); and
5. A minimum size of the event of 100+ athletes and coaches.

(d) Local festivals, in-state association meetings that rotate on an annual basis, weddings, fraternal events (unless a national conference), social events, and motor coach/group tours (unless a national conference) are not eligible for Tranche 3 funding.

(e) Eligible expenses for the Tranche 3 funding include:

1. Marketing and advertising such as video, print, digital, sponsorships, on-site events and other expenses related to promoting the destination as a meeting/conference destination;
2. Underwriting incentives for offsetting event expenses such as venue or room rental, transportation costs during events, audio visual rental and services, discount on food and beverage, pipe, drape, tables, and chairs;
3. Per room night confirmed incentives for selection;
4. New research and consultants to build sales strategies;
5. Familiarization trips for meeting planners or board meetings with intent to host larger event;
6. Sales missions for recruiting meetings or conventions;
7. New third party lead generation fees;
8. Refundable bid or RFP fees tied to hosting industry events and conferences;
9. Retention incentives due to increased costs (specifically six (6) percent sales tax on meeting room rentals) for events already contracted but occurring after July 1, 2022; and
10. Other expenses deemed eligible by the Department if consistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(f) Ineligible expenses for the Tranche 3 funding include:

1. Funds used to replace an organization's tourism funding commitment for existing budgets, marketing and/or staffing;
2. Non-refundable bid or RFP fees;
3. Renovations or building permanent structures at facility for event;
4. Expenses from an event that was contracted prior to December 7, 2021;
5. General operating or administrative expenses such as travel reimbursement and salaries;
6. Purchase of permanent equipment;
7. Purchase of alcohol for meetings, events, sponsorships or related functions;
8. Hiring of permanent or temporary staff;
9. Purchase or production of promotional items; and
10. Other expenses deemed ineligible by the Department if inconsistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(6) Applications for Tranche 4 funding shall specify:

(a) The identity of the designated primary grantee, who will be the point of contact for plan and post-plan reporting, and at least four tourist commissions applying for the grants;

(b) A multi-county marketing plan and budget that shows how the plan will assist in recovery from the pandemic, with priority given to initiatives that have the potential for long-term transformational impacts;

(c) The requested dollar amount up to the maximum of \$500,000;

(d) Eligible expenses for the Tranche 4 funding include:

1. Tourism publications and videos;
2. Media advertisements if fifty (50) miles from destination;
3. Press kits;
4. New billboards and signage if twenty (20) miles from destination;
5. Brochure distribution services;
6. Meeting and convention advertising expenses;
7. Group tour marketplace, meeting and conventions, and consumer travel show expenses;
8. Sponsorship or a bid fee of tourism trade shows, conventions, sporting events and other events;
9. Web site design excluding hosting;
10. Research studies and analysis;
11. Photography;
12. Content that is paid to a business for advertising purposes;
13. Influencers' assistance with social media; and
14. Other expenses deemed eligible by the Department if consistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(e) Ineligible expenses for the Tranche 4 funding include:

1. Billboards and Signage that does not consist solely of language welcoming a visitor to a community or region;
2. Costs associated with construction of any permanent signage structure;
3. Previously existing signs or maintenance of signs;
4. Postage and freight;
5. Booth space or expenses for county fair or festivals;
6. Booth space or registration expenses at industrial solicitation events;
7. Expenses to attend a conference or meeting without promoting your destination unless expenses are for professional development or hospitality training;
8. Web sites that contain paid advertisements;
9. Sponsorship or bid fees of tourism trade shows, conventions, and other events;
10. Expenditures for in-kind amenities or hospitality events that include alcohol, gratuities, service charges, and tips;
11. Tourism industry events involving Kentucky Tourism Industry Association, Kentucky Association of Convention & Visitor Bureaus, in-state or local events and conferences and Kentucky association meetings and conferences;
12. Research related to future capital projects;
13. Industrial incentive brochures;
14. General community relocation and development brochures;

15. City or county maps or directories that list businesses and services;
16. Programs, playbills, posters, table tents;
17. Membership and subscription solicitations;
18. Registration and entry forms;
19. Event and contest category or regulation material;
20. Quick print materials such as flyers, handbills, and circulars;
21. Entertainment;
22. Bumper stickers, banners, flags, postcards, lapel pins, or bags;
23. Prizes, trophies, plaques, decorations, paint supplies, and poster board;
24. Items for resale;
25. Amounts paid for Kentucky sales tax;
26. Stationery, letterhead, envelopes, general office supplies and materials;
27. Salaries or other compensation for the staff or personnel of a tourism commission;
28. General operating and administrative costs;
29. Finance charges or late payment fees;
30. In-kind contributions, which also shall not be included as part of an applicant's match;
31. Expenditures in violation of law; and
32. Other expenses deemed ineligible by the Department if inconsistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

Section 5. Approval of Applications.

(1) With respect to the Tranche 2 funding, the Commissioner of Tourism shall administer the grant program by reviewing each application and determining the applicant's eligibility for funding. Applicant's funding amount will be determined by the formula for each county's share of economic impact based on the Department's 2019 Economic Impact of Tourism in Kentucky study conducted by Tourism Economics.

(2) With respect to Tranche 3 funding, the Commissioner of Tourism shall administer the grant program by reviewing each application and determining the applicant's eligibility for funding. Eligible tourism commissions will be awarded grants up to a maximum amount tiered according to the following:

- (a) 125,000 square feet and above up to a maximum \$5 million;
- (b) 75,000 to 124,999 square feet up to a maximum \$3 million;
- (c) 35,000 to 74,999 square feet up to a maximum \$1.5 million;
- (d) 15,000 to 34,999 square feet up to a maximum \$500,000;
- (e) 10,000 to 14,999 square feet up to a maximum \$200,000;
- (f) 5,000 to 9,999 square feet up to a maximum of \$100,000.

(3) With respect to Tranche 4 funding, the Commissioner of Tourism shall develop and administer a competitive grant program that oversees a review committee comprised of state employees within the cabinet. The review committee will utilize a categorical scoring method that considers the following:

- (a) The plan's ability to attract new visitors to Kentucky;
- (b) The plan's ability to assist in recovery from the COVID-19 pandemic;
- (c) The plan's potential for long-term transformational impacts and priority will be given to these initiatives;
- (d) The measurable economic impact to Kentucky;
- (e) The Applicants' ability to execute and provide required reporting; and
- (f) New projects that demonstrate a level of creativity.

(4) Notification of all grant awards will be provided to each grantee or applicant by letter and then memorialized by a "Memorandum of Agreement" stating the amount and terms of the funding grant, which the grantee or applicant shall sign and return to the Kentucky Department of Tourism; or by a letter stating why an applicant's projects have been denied funding.

(5) All projects must be completed on or before December 31, 2024.

Section 6. Reporting. Recipients shall provide a report to the Department of Tourism and the Legislative Research Commission detailing expenditures and outcomes including return on investment

for affected areas by September 1 of each year. Such reports shall be in a format designed to allow the Commonwealth of Kentucky to comply with the U.S. Treasury's SLFRF Compliance and Reporting Guidance ([treasury.gov](https://www.treasury.gov)), incorporated by reference herein.

Section 7. Forfeited and Unused Funds.

- (1) Funds allocated to an approved project shall be forfeited if:
 - (a) Documentation required by the provisions of this administrative regulation is not submitted timely;
 - (b) An approved project does not materialize; or
 - (c) A completed project did not remain in compliance with program requirement.

(2) Funds used in violation of the Program may be subject to remediation and recoupment. The Department of Tourism may identify funds used in violation through reporting or other sources. Recipients will be provided with an initial written notice of recoupment and an opportunity to submit a request for reconsideration before the Department of Tourism provides a final notice of recoupment. If the Recipient receives an initial notice of recoupment and does not submit a request for reconsideration, the initial notice will be deemed the final notice. The Department of Tourism may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.

(3) At the end of a Program year, funds that are forfeited, subject to recoupment, or unused shall be available for additional rounds of application funding until exhausted or until December 31, 2024.

Section 8. Audits. The department may request the State Auditor to audit a tourism project governed by this administrative regulation.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) U.S. Department of Treasury Final Rule for Coronavirus State and Local Fiscal Recovery Funds, 31 C.F.R. Part 35 (effective April 1, 2022);

(b) U.S. Department of Treasury Compliance and Reporting Guidance for the SLFRF Program (June 17, 2022);

(c) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application -Tranche 2 Application – tourism commissions (July 2022);

(d) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application -Tranche 3 Application – Meetings and Conventions (July 2022);

(e) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application -Tranche 4 Application – Multi-County (July 2022);

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Tourism, 500 Mero Street, 5th Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Department of Tourism's Web site at www.kytourism.com/industry/Programs; or For Tranche 2 Grant (DMO) 502/892-3217 or TAH KDTARPADMO; Tranche 3 Grant (Meetings & Conventions) 502/892-3229 or TAH KDTARPAMEET; Tranche 4 Grant (Multi County) 502/892-3231 or TAH KDTARPAMULTICO.

MICHAEL MANGEOT, Commissioner

MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: July 25, 2022

FILED WITH LRC: July 25, 2022 at 3:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on September 30, 2022, at Kentucky Department of Travel at 500 Mero Street, 5th Floor Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing

will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through 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.

CONTACT PERSON: Michael Mangeot, Commissioner, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-4270, fax (502) 564-1079, email Michael.mangeot@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael A. Mangeot

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a uniform and consistent process for the distribution of the tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(b) The necessity of this administrative regulation: This regulation is necessary so that those promotional projects within the tourism regional and local nonprofit organizations will be aware of the process for participation in the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 148.522 authorizes the department to promulgate administrative regulations to implement or carry out the purposes of KRS Chapter 148.525(2).

(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 budget appropriation by establishing a process to implement the distribution of tourism recovery and investment 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: n/a

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Tourism anticipates more than one-hundred (100) applicants to participate in this program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulation provides clarification about the process for distributing tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 to eligible recipients.

(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 application cost each of the entities to apply for the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As recognized by the federal government in the American Rescue Plan, the tourism, travel, and hospitality industry was one of the most severely impacted as a result of the COVID-19 pandemic. This regulation provides much needed funding to eligible entities that will market and promote tourism in Kentucky, which will benefit all of the citizens of the Commonwealth.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: The Executive Branch Budget for the 2022-2024 biennium appropriates to the Tourism, Arts and Heritage Cabinet under the budget unit Office of the Secretary a total of \$75,000,000 in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the

American Rescue Plan Act of 2021.

(a) Initially: No expenses or an unknown amount will be incurred.

(b) On a continuing basis: No expenses or an unknown amount will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding available as part of the Coronavirus State and Local Fiscal Recovery Fund established under the American Rescue Plan Act as implemented by the Final Rule issued by the U.S. Department of Treasury in 31 C.F.R. Part 35.

(7) Provide an assessment of whether an 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 new regulation does not establish or create a fee or increase funding.

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

(9) TIERING: Is tiering applied? Yes. The only tiering applicable in this regulation is in the Tranche 3 funds for meetings and conventions. The maximum grant amounts are tiered according to the square footage of arenas, conference centers, or other meeting venues located within the tourism commissions. All applicants who apply for any other incentives are eligible for general funding.

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 Tourism and local cities and counties located within tourism commissions will be positively 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. The appropriation by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(a) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing and promoting tourism in Kentucky.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures and revenues for the Kentucky Department of Tourism will not change. The current budget of the Department of Tourism funds the administrative costs of the Program. Staff within the Department of Tourism administer the program. The monies that the Program distributes within the tourism regions are for tourism projects and are not used to administer the program. The monies distributed, however, may contribute to the revenues of the tourism commissions.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? No revenue will be generated from the administration of this administrative regulation. However, the Program itself is expected to generate revenue in the tourism industry itself and throughout the Commonwealth in terms of increase tourism dollars. If necessary, estimates can be provided based upon the most recent Compass Longwoods International Travel USA Visitor Profile.

(c) How much will it cost to administer this program for the first year? The Department of Tourism staff will administer the program.

(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 (+/-): \$0 change

Expenditures (+/-): \$0 change

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? unknown

(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? No additional costs.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: 0

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. Not applicable. There is no additional cost to charge and/or process the fees.

STATEMENT OF EMERGENCY 900 KAR 12:005E

This emergency administrative regulation is necessary to update the glossary of telehealth terminology to include a definition of "temporarily located" as required by Section 2 of HB 188 codified as KRS 211.335(1) in order to provide guidance to licensing boards regarding the delivery of telehealth services to individuals temporarily located outside of their home state. This emergency administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)3. in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. Section 2 of HB 188 enacted during the 2022 legislative session, codified as KRS 211.335, requires the Cabinet for Health and Family Services to promulgate an administrative regulation to add a definition of "temporarily located" within 30 days of the bill's effective date, which is July 14, 2022. Section 2(2) of the bill states that the cabinet may promulgate emergency administrative regulations in order to comply with the deadline. This emergency administrative regulation will be replaced by an ordinary administrative regulation to provide guidance to licensing boards regarding the delivery of telehealth services to individuals temporarily located outside of their home state. The companion ordinary administrative regulation is not identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Telehealth Services (Emergency Amendment)

900 KAR 12:005E. Telehealth terminology and requirements.

EFFECTIVE: August 8, 2022

RELATES TO: KRS 205.510, 205.559, 205.5591, 211.332(2) - (5), 304.17A-005(23), 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. 3729-3733, 42 U.S.C. 1320a-7b(b), 42 U.S.C. 1320d to 1320d-9, 42 U.S.C. 1395nn

STATUTORY AUTHORITY: KRS 194A.105, 211.334(1)(d), 211.335, 211.336(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.334 and 211.336 require the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary

under applicable state laws to establish a telehealth terminology glossary to provide standard definitions for all health care providers who deliver health care services via telehealth, all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors; establish minimum requirements for the proper use and security of telehealth including requirements for confidentiality and data integrity, privacy, and security, informed consent, privileging and credentialing, reimbursement, and technology; and establish minimum requirements to prevent waste, fraud, and abuse related to telehealth. This administrative regulation establishes a telehealth terminology glossary and minimum requirements for the proper use and security of telehealth.

Section 1. Definitions. (1) ["Department" means Department for Medicaid Services.

(2) ["Division" means Division of Telehealth Services.

(2) [(3)] "Health care provider" is defined by KRS 304.17A-005(23), unless the provider or service is otherwise regulated by KRS 205.8451(7).

(3) [(4)] "Health care service" is defined by KRS 211.332(2).

(4) [(5)] "Professional licensure board" is defined by KRS 211.332(3).

(5) [(6)] "State agency authorized or required to promulgate administrative regulations relating to telehealth" is defined by KRS 211.332(4).

(6) [(7)] "Telehealth" or "digital health" is defined by KRS 211.332(5).

Section 2. Compliance. Health care providers performing a telehealth or digital health service shall:

(1) Maintain confidentiality of patient medical information in accordance with KRS 311.5975;

(2) Maintain patient privacy and security in accordance with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d through 1320d-9, unless waived by the applicable federal authority;

(3) Obtain patient informed consent in accordance with KRS 311.5975 and 304.40-320;

(4) Secure credentialing if required by a third party or insurer or other payor;

(5)(a) Utilize the appropriate current procedural terminology (CPT) or health care common procedure coding (HCPCS) code and place of service (POS) code to secure reimbursement for a professional telehealth service; or

(b) Utilize appropriate telehealth service code, if a CPT or HCPCS code is not available or not used for that service, according to customary practices for that health care profession, including the use of any telehealth modifiers or alternate codes;

(6) Utilize non-public facing technology products that are HIPAA compliant;

(7) As appropriate for the service, provider, and recipient, utilize the following modalities of communication delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. secs. 1320d to 1320d-9:

(a) Live or real-time audio and video synchronous telehealth technology;

(b) Asynchronous store-and-forward telehealth technology;

(c) Remote patient monitoring using wireless devices, wearable sensors, or implanted health monitors;

(d) Audio-only telecommunications systems; or

(e) Clinical text chat technology if:

1. Utilized within a secure, HIPAA compliant application or electronic health record system; and

2. Meeting:

a. The scope of the provider's professional licensure; and

b. The scope of practice of the provider; and

(8) Comply with the following federal laws to prevent waste, fraud, and abuse relating to telehealth:

(a) False Claims Act, 31 U.S.C. § 3729-3733;

(b) Anti-Kickback Statute, 42 U.S.C. 1320a-7b(b); and

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(c) Physician Self-Referral, Section 1877 of the Social Security Act (42 U.S.C. 1395nn).

Section 3. Incorporation by Reference.

(1) "Telehealth Terminology Glossary", August 2022[July 2024], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Telehealth Services, 275 East Main Street[4WE], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at <https://telehealth.ky.gov>.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 26, 2022

FILED WITH LRC: August 8, 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 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, and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a telehealth terminology glossary and minimum requirements for the proper use and security of telehealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 211.334 – 211.336.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 211.334 – 211.336 by establishing a telehealth terminology glossary and minimum requirements for the proper use and security of telehealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing a telehealth terminology glossary and minimum requirements for the proper use and security of telehealth as required by KRS 211.334 to 211.336.

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

(a) How the amendment will change this existing administrative regulation: This amendment is required by KRS 211.335, a new

statute created by the passage of HB 188 during the 2022 session of the Kentucky General Assembly. KRS 211.335(1) directs the cabinet to promulgate administrative regulations to add a definition of "temporarily located" to the glossary of telehealth terminology required by KRS 211.334, in order to clarify when telehealth providers may provide services to patients in other states.

(b) The necessity of the amendment to this administrative regulation: This amendment is required by KRS 211.335.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 211.335 by adding a definition of "temporarily located" to the glossary of telehealth terminology required by KRS 211.334.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by adding a definition of "temporarily located" pursuant to KRS 211.335 in order to clarify when telehealth providers may provide services to patients in other states.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects telehealth providers. There are approximately 13,000 professionally active physicians and 72,000 active nurses in Kentucky, as well as an unknown number of psychologists, counselors, clinical social workers, and other healthcare providers who may provide telehealth services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this regulation defines telehealth terms but does not create any additional requirements to be met by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this regulation defines telehealth terms but does not create any additional requirements to be met by regulated entities, so there will be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this regulation clarifies when telehealth providers may provide services to patients in other states.

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

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation is Federal Centers for Medicare and Medicaid Services (CMS) funding, state restricted funding, and MCO capitation fees.

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

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

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applicable as compliance with this administrative regulation applies equally to all telehealth providers and state agencies 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 healthcare providers who use telehealth 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 211.334, 211.335, and 211.336

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This amendment will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This amendment imposes no additional costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This amendment imposes no additional costs on regulated entities during subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will not have a major economic impact on providers who use telehealth.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

(2) State compliance standards. KRS 211.334 to 211.336

(3) Minimum or uniform standards contained in the federal mandate. 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose requirements that are stricter than federal laws or regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

STATEMENT OF EMERGENCY 907 KAR 4:020E

This emergency administrative regulation is being promulgated to incorporate and fully implement multiple state plan amendments to the Medicaid state plan and Kentucky Children's Insurance Program (KCHIP). This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to comply with an administrative regulation restructuring made pursuant to the legislative mandate established in SB 178 of the 2022 General Session. 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 expanded postpartum population and modify the KCHIP program to reflect additional federal approvals 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. The received federal approvals will meaningfully expand healthcare access for thousands of postpartum pregnant women within the 138-218% income bracket, and the modification to the KCHIP program will ensure that no gaps in healthcare coverage can occur for the 80,000-105,000 children served by the KCHIP program. 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 Policy and Operations (Emergency Amendment)

907 KAR 4:020E. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act.

EFFECTIVE: July 19, 2022

RELATES TO: KRS 205.510-205.647, 205.6481-205.6497, [211.461—211.466,]304.5-040, 304.17A-005(8), (14), 42 C.F.R. 432, 433, 435, 436, 440.230, 457, 42 U.S.C. 1396, 1396a, 1397aa-jj, 9902

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3) 205.6485, 42 U.S.C. 1397aa-jj

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(2) requires the Cabinet for Health and Family Services, Department for Medicaid Services, to administer Title XIX of the Federal Social Security Act, 42 U.S.C. 1396 to 1396v. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the 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 205.6485 authorizes the cabinet to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated health care services to children of the commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the KCHIP eligibility criteria, covered services,

application requirements, grievance and appeal rights for recipients, and the requirements for providers who wish to participate with the commonwealth to provide health care coverage to KCHIP members through an expansion of the Title XIX Medicaid Program.

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services or its designee.

(2) "Child" means an individual under the age of nineteen (19) years.

(3) "Creditable coverage" is defined by KRS 304.17A-005(8)(a)1-3 and 5-10.

(4) "Department" means the Department for Medicaid Services or its designee.

(5) "Excepted benefits" is defined by KRS 304.17A-005(14).

(6) "Health insurance" is defined by KRS 304.5-040.

(7) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

Section 2. Eligibility Criteria. (1) A child shall be eligible for KCHIP if the child:

(a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;

(b) Is a noncitizen~~[an alien]~~ who meets the requirement established in 907 KAR 20:005;

(c) Meets the technical requirements of 907 KAR 20:005;

(d) Provides to the department the information required in Section 4 of this administrative regulation;

(e) Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2;

(f) Meets the relative responsibility requirements established in 907 KAR 20:040;

(g) Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100; and

(h) Is an optional targeted low-income child as defined in 42 U.S.C. 1397j(b) who:

1. Has family income that does not exceed 213~~159~~ percent of the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2); ~~and~~

2. Does not have creditable coverage and may be covered by excepted benefits; and

3.a. If an eligibility determination indicates that an individual's income exceeds 213 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall apply an additional cushion of five (5) percent of the federal poverty level toward the eligibility determination for the individual as described pursuant to 42 U.S.C. 1396a(e)(14)(I)(i).

b. If after the five (5) percent adjustment, the individual's income is under the adjusted income threshold, the individual shall meet the modified adjusted gross income standard.

(2) Eligibility for KCHIP shall be determined by the department. Upon receipt of eligibility information defined in subsection (1) of this section, the department shall determine if a child is eligible for benefits pursuant to 42 U.S.C. 1396 or 1397aa to jj.

Section 3. Covered Services. (1) Health services shall be considered medically necessary in accordance with:

(a) 907 KAR 3:130; and

(b) 42 C.F.R. 440.230.

(2) Amount and duration of benefits covered by KCHIP shall be as established in Title 907 KAR.

(3) A medical service shall be covered through KCHIP Phase II if an individual is determined eligible for KCHIP benefits in accordance with Section 2 of this administrative regulation.

(4) Preventive and remedial public health services shall be provided to KCHIP Phase II members in accordance with 907 KAR 1:360.

(5) KCHIP Phase II shall be the payor of last resort.

Section 4. KCHIP Application Requirements. The following information shall be required from a child or responsible party for

KCHIP enrollment:

(1) A child's demographics that shall include:

(a) Name;

(b) Address;

(c) Sex;

(d) Date of birth;

(e) Race; and

(f) Social Security number;

(2) Monthly gross earned income, if any, of a parent and a recipient~~child~~ for whom information is being submitted;

(3) An employer type and address, if any;

(4) Frequency of income;

(5) Name and address of a health insurance provider who currently provides creditable coverage;

(6) Creditable coverage policy number, policy holder's name, Social Security number, and individuals covered by the plan;

(7) Unearned income, if any, received weekly, biweekly, bimonthly, quarterly, or annually;

(8) Name and age of a child or disabled adult for whom care is purchased in order for a parent or responsible person to work; and

(9) Signature, date, and telephone number of a person submitting the information for a child.

Section 5. Provider Participation Requirements. A provider's enrollment, disclosure, and documentation for participation in KCHIP shall meet the requirements of:

(1) 907 KAR 1:671; and

(2) 907 KAR 1:672.

Section 6. Grievance, Hearing, and Appeal Rights. (1) If dissatisfied with an action taken by the department as to the application of Sections 1 through 5 of this administrative regulation, a child, the child's parent, or the child's guardian shall be entitled to a grievance, hearing, or appeal with the department, to be conducted in accordance with:

(a) 907 KAR 1:560, if pertaining to initial eligibility; or

(b) 907 KAR 1:563, if pertaining to a covered service.

(2) If a service is provided by a managed care organization, a dispute resolution between a provider and a child, the child's parent, or the child's guardian shall be in accordance with[:

~~(a) KRS 211.461 through 211.466; and~~

~~(b) 907 KAR 17:010.~~

(3) A KCHIP Phase II eligible child or a responsible party shall be informed in writing of the right to and procedures for due process by the cabinet:

(a) At the time information to obtain KCHIP Phase II approval is submitted;

(b) If there is a change in eligibility status; or

(c) As required by federal and state laws.

Section 7. Quality Assurance and Utilization Review. The department shall evaluate the following on a continuing basis:

(1) Access to services;

(2) Continuity of care;

(3) Health outcomes; and

(4) Services arranged or provided as established in 907 KAR Chapter 17.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2022

FILED WITH LRC: July 19, 2022 at noon

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 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Children's Health Insurance Program (KCHIP) eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights. KCHIP offers health care coverage to children whose parents' income exceeds the income thresholds for the Medicaid Program but is under 218 percent of the federal poverty level.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(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 KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation moves all KCHIP children under the requirements of this administrative regulation, clarifies how a five (5) percent income disregard is to be calculated, and deletes references to certain repealed legislation.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to move all children under one income standard. This will allow for the program to ensure fund availability throughout each fiscal year.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing a state plan amendment to KCHIP and ensuring the availability of KCHIP for children.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing a state plan amendment to KCHIP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS estimates that between 80,000-105,000 children will participate in the KCHIP program over the course of the year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment. Recipients who could be eligible will need to apply for KCHIP services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). DMS does not anticipate any expenses for this population.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This technical change is a best practice nationwide and will allow for full coverage to be assured all year for all KCHIP income levels.

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

(a) Initially: DMS does not anticipate additional expenses to the KCHIP program in implementing this change.

(b) On a continuing basis: DMS does not anticipate additional expenses to the KCHIP program in implementing this change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendments.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2), 42 U.S.C. 1396a(gg), and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 457 establishes requirements relating to state Children's Health Insurance Programs.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

(2) Identify each state or federal statute or regulation that

requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

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

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

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

(c) How much will it cost to administer this program for the first year? DMS does not anticipate additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate additional costs in administering this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

STATEMENT OF EMERGENCY 907 KAR 4:030E

This emergency administrative regulation is being promulgated to incorporate and fully implement multiple state plan amendments to the Medicaid state plan and Kentucky Children's Insurance Program (KCHIP). This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to comply with an administrative regulation restructuring made pursuant to the

legislative mandate established in SB 178 of the 2022 General Session. 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 expanded postpartum population and modify the KCHIP program to reflect additional federal approvals 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. The received federal approvals will meaningfully expand healthcare access for thousands of postpartum pregnant women within the 138-218% income bracket and the modification to the KCHIP program will ensure that no gaps in healthcare coverage can occur for the 80,000-105,000 children served by the KCHIP program. 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 Policy and Operations (Emergency Amendment)

907 KAR 4:030E. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

EFFECTIVE: July 19, 2022

RELATES TO: KRS 205.6481 – 205.6497, 211.461 – 211.466, 281.010(25), 304.5-040, 304.17A-005(8), (14), 42 C.F.R. 435.403, 440.230, Part 457, 42 U.S.C. 1396, 1397aa

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6481-205.6497, 42 U.S.C. 1397aa

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.6485 authorizes the cabinet, by administrative regulations, to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated health care services to participant children of the Commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, grievance and appeal rights, and the requirements for delivery of health services for providers who wish to participate with the Commonwealth to provide health care coverage for KCHIP Phase III members through the provision of a separate health insurance program under Title XXI.

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services or its designee.

(2) [~~"Child" means an individual under the age of nineteen (19) years.~~]

(3) [~~"Creditable coverage" is defined by KRS 304.17A-005(8)(a)1-3 and 5-10.~~]

(3) [(4)] "Department" means the Department for Medicaid Services or its designee.

(4) [(5)] "Excepted benefits" is defined by KRS 304.17A-005(14).

(5) [(6)] "Health insurance" is defined by KRS 304.5-040.

(6) [(7)] "KCHIP" means the Kentucky Children's Health Insurance Program in accordance with 42 U.S.C. 1397aa through 42 U.S.C. 1397jj.

Section 2. Eligibility Criteria. (1) An individual shall be eligible for KCHIP Phase III if the individual is a pregnant person who:

(a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;

(b) Is an immigrant who is lawfully present;

(c) Is not an inmate of a public institution or a patient in an institution for mental diseases;

(d) Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100;

(e)1. Has family income that does not exceed 213 percent of the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), a five (5) percent income disregard is available consistent with the following:

a. If an eligibility determination indicates that an individual's income exceeds 213 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall apply an additional cushion of five (5) percent of the federal poverty level toward the eligibility determination for the individual as described pursuant to 42 U.S.C. 1396a(e)(14)(I)(i); and

b. If after the five (5) percent adjustment, the individual's income is under the adjusted income threshold, the individual shall meet the modified adjusted gross income standard;

2. Does not have creditable coverage and may be covered by excepted benefits;

3. Provides to the department the information required in Section 4(4) of this administrative regulation; and

4. Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2; and

(f) A pregnant person's federal poverty level calculation pursuant to 42 U.S.C. 9902(2) shall be at least two (2) and shall include the pregnant person and any unborn children of the pregnant person. Other members of the household shall be calculated and included consistent with KAR Title 907. [A child shall be eligible for KCHIP Phase III if the child:

(a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;

(b) Is an alien who meets the requirements established in 907 KAR 20:005;

(c) Is not an inmate of a public institution or a patient in an institution for mental diseases;

(d) Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100; and

(e) Is a targeted low-income child as defined in 42 U.S.C. 1397j(b) who:

1. Has family income that does not exceed 213 percent of the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2);

2. Does not have creditable coverage and may be covered by excepted benefits;

3. Provides to the department the information required in Section 4(4) of this administrative regulation;

4. Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2; and

5. Meets the relative responsibility requirements established in 907 KAR 20:040.]

(2)(a) Eligibility for KCHIP Phase III shall be determined by the department.

(b) Upon receipt of the eligibility information established in subsection (1) of this section, the department shall determine if a participant[child] is eligible for benefits pursuant to 42 U.S.C. 1396 or 1397bb.

Section 3. Covered Services. (1) Health services shall be considered as medically necessary in accordance with:

(a) 907 KAR 3:130; and

(b) 42 C.F.R. 440.230.

(2) [Covered services shall exclude:

(a) EPSDT special services as established in 907 KAR 11:034, Section 7;

(b) Human service transportation delivery as defined by KRS 281.010(25) and as required by 603 KAR 7:080; and

(c) Locally authorized medical transportation as established in 907 KAR 1:060, Section 4.

(3) The amount and duration of benefits covered by KCHIP Phase III shall be as established in Title 907 KAR excluding the services identified in subsection (2) of this section.

(3)(4) A medical service shall be covered through KCHIP Phase III if the individual is determined eligible for KCHIP benefits in

accordance with Section 2 of this administrative regulation.

(4)(5) Preventive and remedial public health services shall be provided to KCHIP Phase III members in accordance with 907 KAR 1:360.

(5)(6) KCHIP Phase III shall be the payer of last resort.

Section 4. KCHIP Phase III Approval Process. The following information shall be required from a participant[child] or responsible party for KCHIP Phase III enrollment:

(1) A participant's[child's] demographics that shall include:

(a) Name;

(b) Address;

(c) Sex;

(d) Date of birth;

(e) Race; and

(f) Social Security number;

(2) Monthly gross earned income, if any, of a parent and a participant[child], for whom information is being submitted, an employer type and address, if any, and frequency of income;

(3) The name and address of a health insurance provider who currently provides creditable coverage;

(4) The creditable coverage policy number, policy holder's name, Social Security number, and individuals covered by the plan;

(5) Unearned income, if any, received weekly, biweekly, bimonthly, quarterly, or annually;

(6) The name and age of a participant[child] or disabled adult for whom care is purchased in order for a parent or responsible person to work; and

(7) The signature, date, and telephone number of the person submitting the information for a participant[child].

Section 5. Provider Participation Requirements. A provider's enrollment, disclosure, and documentation for participation in KCHIP Phase III shall meet the requirements established in:

(1) 907 KAR 1:671; and

(2) 907 KAR 1:672.

Section 6. Complaint, Grievance and Appeal Rights. (1) If dissatisfied with an action taken by the cabinet, the participant[child], the participant's[child's] parent, or the participant's[child's] guardian shall be entitled to a complaint, grievance, or appeal with the cabinet to be conducted in accordance with:

(a) 907 KAR 1:560; or

(b) 907 KAR 1:563.

(2) If a service is provided by a managed care organization, a dispute resolution between a provider and a participant[child], the participant's[child's] parent, or the participant's[child's] guardian shall be in accordance with:

(a) KRS 211.461 through 211.466; and

(b) 907 KAR 17:010.

(3) A KCHIP Phase III eligible participant[child] or a responsible party shall be informed in writing of the right to and procedures for due process by the cabinet:

(a) At the time information to obtain KCHIP Phase III approval is submitted;

(b) If there is a change in eligibility status; or

(c) As required by federal and state laws.

Section 7. Quality Assurance and Utilization Review. The department shall evaluate the following on a continuing basis:

(1) Access to services;

(2) Continuity of care;

(3) Health outcomes; and

(4) Services arranged or provided as established in 907 KAR Chapter 17.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2022

FILED WITH LRC: July 19, 2022 at noon

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 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Children's Health Insurance Program (KCHIP) Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights. The KCHIP Phase III program offers health care coverage to participants whose income exceeds the income thresholds for the Medicaid Program but is under 213 percent of the federal poverty level.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(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 KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation introduces an option for pregnant recipients to receive KCHIP services up to the limits of KCHIP Phase III eligibility. The amendment also reflects the current program by expanding the KCHIP Phase III program to 218 percent of the federal poverty level. An amendment is also made to delete a subsection addressing exceptions to covered services.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to reflect an updated state plan amendment to KCHIP Phase III that extends coverage to pregnant recipients.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing a state plan amendment to KCHIP Phase III.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective

administration of the statutes by implementing a state plan amendment to KCHIP Phase III.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS provides coverage for about 24,000 pregnancies each year. DMS anticipates that up to 1,000 additional pregnancies and pregnant recipients could be served by this expansion. This segment of the population often has multiple coverage options, such as employer coverage or coverage via a parent, therefore, DMS does not anticipate a large population of individuals relative to the size of other income levels served by Medicaid will seek to participate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Recipients who could be eligible will need to apply for KCHIP Phase III services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DMS does not anticipate any expenses for this population.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). DMS anticipates that another avenue of coverage will be provided to pregnant individuals within the KCHIP eligibility population.

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

(a) Initially: The department anticipates that providing KCHIP coverage to 1000 pregnant individuals for 1 year will cost \$1.4 million in state funds.

(b) On a continuing basis: The department anticipates that providing KCHIP coverage to 1000 pregnant individuals for 1 year will cost \$1.4 million in state funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendments.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2), 42 U.S.C. 1396a(gg), and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The

secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 457 establishes requirements relating to state Participant[children's Health Insurance Programs.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1315.

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

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

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

(c) How much will it cost to administer this program for the first year? The department anticipates that providing KCHIP coverage to 1000 pregnant individuals for 1 year will cost \$1.4 million in state funds.

(d) How much will it cost to administer this program for subsequent years? The department anticipates that providing KCHIP coverage to 1000 pregnant individuals for 1 year will cost \$1.4 million in state funds.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

STATEMENT OF EMERGENCY 907 KAR 20:020E

This emergency administrative regulation is being promulgated to incorporate and fully implement multiple state plan amendments to the Medicaid state plan and Kentucky Children's Insurance Program (KCHIP). This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to comply with an administrative regulation restructuring made pursuant to the legislative mandate established in SB 178 of the 2022 General Session. 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 expanded postpartum population and modify the KCHIP program to reflect additional federal approvals 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. The received federal approvals will meaningfully expand healthcare access for thousands of postpartum pregnant women within the 138-185% income bracket and the modification to the KCHIP program will ensure that no gaps in healthcare coverage can occur for the 80,000-105,000 children served by the KCHIP program. 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 Policy and Operations (Emergency Amendment)

907 KAR 20:020E. Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals.

EFFECTIVE: July 19, 2022

RELATES TO: KRS 205.520, 42 C.F.R. Part 130, Section 4735 of Pub.L. 105-33, 42 U.S.C. 1382a, 1383c(b), 1396-1396v, 1396p(d)(4), 1397jj(b)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435, 42 U.S.C. 1396a, 1396b, 1396d, 1397aa, 1382a(b)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program in accordance with 42 U.S.C. 1396 through 1396v. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the income standards by which Medicaid eligibility is determined, except

for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1. Income Limitations. (1)(a) Income shall be determined by comparing adjusted income as required by Section 2 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse, and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	\$2,820	\$235
2	3,492	291
3	4,056	338
4	5,028	419
5	5,904	492
6	6,672	556
7	7,452	621

(b) For each additional family member, \$720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) For a pregnant woman or child eligible pursuant to 42 U.S.C. 1396a(e), a change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period, which ends at the end of the month containing the 365th(60th) day of a period beginning on the last day of her pregnancy.

(3) The special income limits and provisions established in this subsection shall apply for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1).

(a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) A Medicare qualified individual group 1 (QI-1) shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

(d) A qualified disabled and working individual shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) Income shall be limited to the allowable amounts for the SSI program for a:

(a) Child who lost eligibility for SSI benefits due to the change in the definition of childhood disability as established in 42 U.S.C. 1396a(a)(10); or

(b) Person with hemophilia who received a class action settlement as established in 42 C.F.R. Part 130.

(5) Income shall be limited to the allowable amounts for the mandatory or optional state supplement program for an individual established in 42 C.F.R. 435.135.

Section 2. Income Disregards. In comparing income with the scale established in Section 1 of this administrative regulation, gross income shall be adjusted as established in this section.

(1) In a TANF or family related Medicaid case:

(a) The standard work expense of an adult member or out-of-school child shall be deducted from gross earnings;

(b) For a person with either full-time or part-time employment, the standard work expense deduction shall be ninety (90) dollars per month; and

(c) Earnings of an individual attending school who is a child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.

(2) For an ABD Medicaid case, the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b) shall apply.

(3) For an individual in a Medicaid eligibility group subject to 42 U.S.C. 1396a(a)(10)(E)(i), (ii), or (iv) or 42 U.S.C. 1396d(p), if an annual Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-

of-living adjustment causes an individual to be ineligible for Medicaid benefits:

(a) The individual's most recent Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment shall be disregarded; and

(b) The disregard established in paragraph (a) of this subsection shall continue until the individual loses Medicaid eligibility for any other reason for three (3) consecutive months.

(4) An ABD Medicaid case shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).

Section 3. Lump Sum Income. Except as established in Section 8 of this administrative regulation, for a Medicaid case, lump sum income shall be considered as income in the month received.

Section 4. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill a plan approved by the United States Social Security Administration to achieve self support, IRWE deduction, or BWE deduction shall be excluded from consideration.

(2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration as income if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparation payment shall not be considered available in the eligibility or post eligibility treatment of income of an individual in a nursing facility or hospital or who is receiving home and community based services under a waiver program.

(5) A Social Security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1) until after the month following the month in which the official poverty income guidelines promulgated by the United States Department of Health and Human Services are published.

(6) Any amount received from a victim's compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran or the spouse of a veteran residing in a nursing facility who is receiving a Veterans Administration (VA) pension benefit shall have ninety (90) dollars excluded as income in the:

- (a) Medicaid eligibility determination; and
- (b) Post eligibility determination process.

(8) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.

(a) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in the post eligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility.

(b) Veterans Administration payments for unmet medical expenses and aid and attendance shall not be excluded in the post eligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.

(9) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(10) An individual retirement account, KEOGH plan, or other tax deferred asset shall be excluded as income until withdrawn.

(11) Disaster relief assistance shall be excluded as income.

(12) Income that is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC or SSI) shall be excluded.

(13) In accordance with 42 C.F.R. 435.122 and Section 4735 of Pub.L. 105-33, a payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or

payment made for release of claims in this action shall be excluded as income.

(14) In accordance with 42 C.F.R. Part 130, any payment received by a person with hemophilia from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.

(15) Family alternatives diversion payments shall be excluded as income.

(16) All monies received by an individual from the Tobacco Master Settlement Agreement shall be excluded.

(17) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall be excluded.

Section 5. Consideration of Mandatory or Optional State Supplements. For an individual receiving a mandatory or optional state supplement, that portion of the individual's income that is in excess of the basic maintenance standard, established in Section 1(1) of this administrative regulation, shall be applied to the special need that results in the supplement.

Section 6. Pass-through Cases.

(1)(a) An increase in a Social Security payment shall be disregarded in determining eligibility for Medicaid benefits if:

1. The increase is a cost of living increase; and

2. The individual would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement.

(b) An individual who would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement shall remain eligible for the full scope of program benefits with no spend-down requirements, as established in Section 7 of this administrative regulation.

(2) For an individual who applied by July 1, 1988, the additional amount established in 42 U.S.C. 1383c(b) shall be disregarded, meaning that amount of Social Security benefits to which a specified widow or widower was entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) an individual would be eligible for federal SSI benefits.

Section 7. Spend-down Provisions.

(1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2)(a) An individual with income in excess of the basic maintenance scale established in Section 1(1) of this administrative regulation shall qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(b) Medical expenses incurred in a period prior to the quarter for which spend-down eligibility is being determined shall be used to offset excess income if the medical expenses:

1. Remain unpaid at the beginning of the quarter; and

2. Have not previously been used as spend-down expenses.

Section 8. Individual Retirement Account.

(1)(a) If an individual reaches the point at which the individual is eligible to begin withdrawing from an IRA without suffering a penalty, the individual shall begin withdrawing from the IRA at least the minimum amount determined by the financial institution holding the IRA.

(b) If an individual does not begin withdrawing from an IRA pursuant to paragraph (a) of this subsection, the individual shall be ineligible for Medicaid benefits.

(2) If an individual withdraws funds from an IRA prior to reaching the point at which the individual would suffer no penalty for withdrawing funds, the withdrawal shall be considered non-recurring lump sum income.

(3) If an individual withdraws income pursuant to subsection (1)(a) of this section, the income shall be prorated over the period of time the income covers (for example monthly, quarterly, or annually).

Section 9. Applicability. The provisions and requirements of this administrative regulation shall:

(1) Apply to:

(a) A child in foster care;

(b) An aged, blind, or disabled individual; and

(c) An individual who receives supplemental security income benefits; and

(2) Not apply to an individual whose Medicaid eligibility is determined:

(a) Using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or

(b) Pursuant to 907 KAR 20:075.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2022

FILED WITH LRC: July 19, 2022 at noon

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 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid eligibility income standards except for Medicaid eligibility categories for which the modified adjusted gross income standard is the income standard.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid eligibility income standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to Medicaid eligibility income standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to Medicaid eligibility income standards.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation by implementing a state plan amendment (SPA) required by 2022 Ky. Acts ch. 223 to extend Medicaid coverage to new mothers for one year following the birth of a child.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to implement

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2022 Ky. Acts ch. 223.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to implement 2022 Ky. Acts ch. 223.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation conforms to a statutory change made during the 2022 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Pregnant women will be impacted by this administrative regulation. There are approximately 24,000 pregnancies in the Medicaid program each year. DMS anticipates that up to 1,750 individuals will receive a full year of postpartum Medicaid services by implementing this legislation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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). No costs are imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Eligible individuals will be eligible for a full year of postpartum Medicaid benefits.

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

(a) Initially: The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

(b) On a continuing basis: The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendments.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2), 42 U.S.C. 1396a(gg), and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal

agencies for the proper administration of the cabinet and its programs."

(3) Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations – to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals [individuals over sixty-five (65) years of age or who receive Social Security Disability Insurance; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals. Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3).

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

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

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in the implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in the continuing operation of this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in

subsequent years.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

STATEMENT OF EMERGENCY **907 KAR 20:100E**

This emergency administrative regulation is being promulgated to incorporate and fully implement multiple state plan amendments to the Medicaid state plan and Kentucky Children's Insurance Program (KCHIP). This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to comply with an administrative regulation restructuring made pursuant to the legislative mandate established in SB 178 of the 2022 General Session. 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 expanded postpartum population and modify the KCHIP program to reflect additional federal approvals 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. The received federal approvals will meaningfully expand healthcare access for thousands of postpartum pregnant women within the 138-185% income bracket and the modification to the KCHIP program will ensure that no gaps in healthcare coverage can occur for the 80,000-105,000 children served by the KCHIP program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will differ from this emergency administrative regulation in that certain coverage provisions related to noncitizens are not contained in this emergency administrative regulation. Those provisions are being delayed for consideration via the ordinary administrative regulation promulgation process.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES **Department for Medicaid Services** **Division of Policy and Operations** **(Emergency Amendment)**

907 KAR 20:100E. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

EFFECTIVE: July 19, 2022

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(e)(14)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to

comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the provisions and requirements for individuals whose Medicaid eligibility is determined using the modified adjusted gross income as the income standard. The affected individuals include children under the age of nineteen (19) years, pregnant women [up to 365[sixty (60)]] days postpartum, caretaker relatives, and adults under age sixty-five (65) who do not have a dependent child under the age of nineteen (19) years and are not otherwise eligible for Medicaid benefits.

Section 1. Applicability. (1)(a) The provisions and requirements of this administrative regulation shall apply to individuals whose Medicaid eligibility is determined using the modified adjusted gross income as the income standard.

(b) An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be an individual who is:

1. A child under the age of nineteen (19) years, excluding a child in foster care;

2. A caretaker relative with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

3. A pregnant woman, with income up to 195 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), including the postpartum period [up to 365[sixty (60)]] days after delivery;

4. An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), who:

a. Does not have a dependent child under the age of nineteen (19) years; and

b. Is not otherwise eligible for Medicaid benefits; or

5. A targeted low income child with income up to 150 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2).

(2)(a) If an eligibility determination indicates that an individual's income exceeds 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall apply an additional cushion of five (5) percent of the federal poverty level toward the eligibility determination for the individual as described pursuant to 42 U.S.C. 1396a(e)(14)(I)(i).

(b) If after the five (5) percent adjustment, the individual's income is under the adjusted income threshold, the individual shall meet the modified adjusted gross income standard.

(c) A pregnant person's federal poverty level calculation pursuant to 42 U.S.C. 9902(2) shall be at least two (2) and shall include the pregnant person and the number of children expected to be delivered. Other members of the household shall be calculated and included consistent with KAR Title 907.

(3) The provisions and requirements of this administrative regulation shall not apply to an individual whose Medicaid eligibility is determined using an eligibility standard that is not the modified adjusted gross income.

Section 2. MAGI-based Methods. The department shall use the MAGI-based methods established in 42 C.F.R. 435.603 to determine whether an individual meets the Medicaid income eligibility requirements if the eligibility standard is the modified adjusted gross income.

Section 3. Resources Not Considered. An individual's resources shall not be considered for the purpose of determining Medicaid eligibility if the eligibility standard is the modified adjusted gross income.

Section 4. Citizenship and Residency Requirements. (1) The

citizenship requirements established in 42 C.F.R. 435.406 shall apply.

(2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid:

(a) Citizenship requirements, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;

2. A qualified noncitizen[alien] who entered the United States before August 22, 1996, and is:

a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

b. Granted asylum pursuant to 8 U.S.C. 1158;

c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

e. A noncitizen[An alien] whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

g. A noncitizen[An alien] who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

h. A battered noncitizen[alien] pursuant to 8 U.S.C. 1641(c);

i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph or the unmarried surviving spouse of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

3. A qualified noncitizen[alien] who entered the United States on or after August 22, 1996, and is:

a. Granted asylum pursuant to 8 U.S.C. 1158;

b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

c. A noncitizen[An alien] whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

d. A noncitizen[An alien] who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unmarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;

h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

(b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403.

(3) A qualified or nonqualified noncitizen[alien] shall be eligible for medical assistance as provided in this subsection.

(a) The individual shall meet the income, resource, and categorical requirements of the Medicaid Program.

(b) The individual shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition:

1. Not related to an organ transplant procedure; and

2. Which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(c)1. Approval of eligibility shall be for a time limited period which includes, except as established in subparagraph 2 of this paragraph, the month in which the medical emergency began and the next following month.

2. The eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period.

(d) The Medicaid benefits to which the individual is entitled shall be limited to the medical care and services, including limited follow-up, necessary for the treatment of the emergency medical condition of the individual.

(4)(a) The satisfactory documentary evidence of citizenship or nationality requirement in subsection (2)(a)1 of this section shall not apply to an individual who:

1. Is receiving SSI benefits;

2. Previously received SSI benefits but is no longer receiving them;

3. Is entitled to or enrolled in any part of Medicare;

4. Previously received Medicare benefits but is no longer receiving them;

5. Is receiving:

a. Disability insurance benefits under 42 U.S.C. 423; or

b. Monthly benefits under 42 U.S.C. 402 based on the individual's disability pursuant to 42 U.S.C. 423(d);

6. Is in foster care and who is assisted under Title IV-B of the Social Security Act, which is codified as 42 U.S.C. 621 through 628b; or

7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act, which is codified as 42 U.S.C. 670 through 679c.

(b) The department's documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396b(x).

(5) The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf.

(6)(a) Except as established in paragraph (b) of this subsection, an individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met.

(b) The retroactive eligibility period shall begin no earlier than January 1, 2014 for an individual who gains Medicaid eligibility solely by qualifying:

1. As a former foster care individual pursuant to 907 KAR 20:075; or

2. As an adult with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), who:

a. Does not have a dependent child under the age of nineteen (19) years; and

b. Is not otherwise eligible for Medicaid benefits.

(7) The documentation of citizenship requirements established in this administrative regulation shall not apply to a noncitizen under nineteen (19) years of age who is lawfully present in the United States of America.

(8) Except as established in subsection (9) of this section, a noncitizen shall be considered to be lawfully present in the United States of America if the individual:

(a) Is a qualified noncitizen;

(b) Is a noncitizen in a valid immigrant status;
 (c) Is a noncitizen who has been paroled into the United States of America in accordance with 8 U.S.C. 1182(d)(5) for less than one (1) year, except for an individual:

1. Paroled for:
 - a. Prosecution; or
 - b. Deferred inspection; or
2. Pending removal proceedings;
- (d) Is a noncitizen who:
 1. Has been granted:
 - a. Temporary resident status in accordance with 8 U.S.C. 1160 or 1225a;
 - b. Temporary protected status in accordance with 8 U.S.C. 1254a or is an individual with a pending application for temporary protected status who has been granted employment authorization;
 - c. Employment authorization under 8 C.F.R. 274a.12(c);
 - d. Deferred action status; or
 - e. An administrative stay of removal under 8 C.F.R. Part 241;
 2. Is a family unity beneficiary in accordance with Section 301 of Pub. L. 101-649 as amended, and 8 C.F.R. Part 236;
 3. Is under deferred enforced departure in accordance with a decision made by the President of the United States of America; or
 4. Is a beneficiary of an approved visa petition who has a pending application for an adjustment of status;
- (e) Is an individual with a pending application for asylum:
 - 1.a. Under 8 U.S.C. 1158;
 - b. For withholding of removal under 8 U.S.C. 1231; or
 - c. Under the Convention of Torture; and
2. Who:
 - a. Has been granted employment authorization; or
 - b. Is under the age of fourteen (14) years and has had an application pending for at least 180 days;
- (f) Is an individual who has been granted withholding of removal under the Convention Against Torture;
- (g) Is a child who has a pending application for special immigrant juvenile status as described in 8 U.S.C. 1101(a)(27)(J); or
- (h) Is a victim of severe trafficking in persons in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386, as amended in 22 U.S.C. 7105(b)).
- (9) An individual with deferred action under the Department of Homeland Security's deferred action for the childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, shall not be considered to be lawfully present with respect to any of the categories listed in subsection (8) of this section.

Section 5. Provision of Social Security Numbers. (1)(a) Except as provided in subsections (2) and (3) of this section, an applicant for or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(b) If a parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a Social Security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failing to meet technical eligibility requirements.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.

(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

Section 6. Institutional Status. (1) An individual shall not be eligible for Medicaid if the individual is a:

- (a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of this section;
- (b) Patient in a state tuberculosis hospital unless he or she has reached age sixty-five (65);
- (c) Patient in a mental hospital or psychiatric facility unless the individual is:
 1. Under age twenty-one (21) years of age;
 2. Under age twenty-two (22) if the individual was receiving

inpatient services on his or her 21st birthday; or

3. Sixty-five (65) years of age or over; or
- (d) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).
- (2) An inmate shall be eligible for Medicaid during the period of time the inmate is admitted to a hospital if the inmate:
 - (a) Has been admitted to a hospital;
 - (b) Has been an inpatient at the hospital for at least twenty-four (24) consecutive hours; and
 - (c) Meets the Medicaid eligibility criteria established in this administrative regulation.

Section 7. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have assigned to the Cabinet for Health and Family Services any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 8. Third-party Liability as a Condition of Eligibility. (1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;
2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or
3. May interfere with adoption considerations or proceedings.

(2) A failure of an individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman with income up to 195 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2) shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 9. Application Process, Initial and Continuing Eligibility Determination. (1) An individual may apply for Medicaid by:

- (a) Using the Web site located at www.kynect.ky.gov;
- (b) Applying over the telephone by calling:
 1. 1-855- 459-6328;[or]
 2. 1-855-306-8959 to speak to the DCBS Family Support Call Center; or
 3. 1-855-326-4654 if deaf or hearing impaired;
- (c) Faxing an application to 1-502-573-2007;
- (d) Mailing a paper application to DCBS Family Support, P.O. Box 2104, Frankfort, Kentucky 40602[~~Office of Health Benefits Exchange, 12 Mill Creek, Frankfort, Kentucky 40604~~]; or
- (e) Going to the applicant's local Department for Community Based Services Office and applying in person.

(2)(a) An application shall be processed (approved, denied, or a request for additional information sent) within forty-five (45) days of application submittal.

(b) Immediately after submittal if there is a variance of ten (10) percent or more regarding income information reported by the applicant versus information available from a trusted source or sources, a request for additional information shall be generated for the applicant requesting documentation to prove the applicant's income.

(c) If a trusted source indicates that an applicant is incarcerated, a request for additional information shall be generated requesting verification of the applicant's incarceration dates.

(d) If an applicant fails to provide information in response to a request for additional information within thirty (30) days of the receipt of the request, the application shall be denied.

(3)(a) An annual renewal of eligibility shall occur without an individual having to take action to renew eligibility, unless:

1. The individual's eligibility circumstances change resulting in the individual no longer being eligible for Medicaid; or

2. A request for additional information is generated due to a change in income or incarceration status.

(b)1. If an individual receives a request for additional information as part of the renewal process, the individual shall provide the information requested within forty-five (45) days of receiving the request.

2. If an individual fails to provide the information requested within forty-five (45) days of receiving the request, the individual's eligibility shall be terminated on the forty-fifth day from the request for additional information.

(4) An individual shall be required to report to the department any changes in circumstances or information related to Medicaid eligibility.

Section 10. Adverse Action, Notice, and Appeals. The adverse action, notice, and appeals provisions established in 907 KAR 20:060 shall apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

Section 11. Miscellaneous Special Circumstances. (1) A ~~person~~~~woman~~ during pregnancy, and as though pregnant through the end of the month containing the ~~365th~~~~sixtieth~~ day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(l)(1), shall meet the income requirements for this eligibility group in accordance with this administrative regulation.

(2) If an eligible child is receiving covered inpatient services, except for services in a long term care facility or behavioral health services in an inpatient facility on a long-term basis, on a birthday which will make the child ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age.

(3) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of the child's birth if the child has not reached his or her first birthday.

(4)(a) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(b) If a parent is not included in the case, a caretaker relative or relatives may be included to the same extent the caretaker relative would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.

(5) For an individual eligible on the basis of utilizing his or her excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.

(6) If a family member is pregnant, the unborn child shall be considered as a family member for income determination purposes.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2022

FILED WITH LRC: July 19, 2022 at noon

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 establishes the provisions and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income (or MAGI).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income. The Affordable Care Act (effective January 1, 2014) mandates that the modified adjusted gross income be used to determine Medicaid eligibility for certain populations rather than the prior Medicaid eligibility rules; thus, the administrative regulation is necessary to comply with the federal mandate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with a federal mandate to establish the modified adjusted gross income as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations of individuals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with a federal mandate to establish the modified adjusted gross income as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations 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: The amendment changes the administrative regulation by implementing a state plan amendment (SPA) required by 2022's SB 178 to extend Medicaid coverage to new mothers for one year following the birth of a child. Clarifying language is also included about the household size of the pregnant person.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to implement 2022's SB 178.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to implement 2022's SB 178.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation conforms to a statutory change made during the 2022 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Pregnant people will be impacted by this administrative regulation. There are approximately 24,000 pregnancies in the Medicaid program each year. DMS anticipates that up to 1,750 individuals will receive a full year of postpartum Medicaid services by implementing this legislation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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). No costs are imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Eligible individuals will be eligible for a full year of postpartum Medicaid benefits.

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

(a) Initially: The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

(b) On a continuing basis: The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and under the Affordable Care Act and matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendments to this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the income standard applies equally to all affected individuals.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

(3) Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations governed by the new requirements include children under nineteen (19) [excluding children in foster care]; pregnant women; caretaker relatives with income up to 133 percent of the federal poverty level; adults with no child under nineteen (19) with income up to 133 percent of the federal poverty level who are not otherwise eligible for Medicaid benefits; and targeted low-income children with income up to 150 percent of the federal poverty level. Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard. Additionally, states are prohibited from applying an asset or resource test for eligibility purposes for the aforementioned population. States are also required to create and adopt an income threshold (under the modified adjusted gross

income) that ensures that individuals who were eligible for Medicaid benefits prior to January 1, 2014 (the date that the modified adjusted gross income standard was adopted) do not lose Medicaid coverage due to the modified adjusted gross income standard taking effect.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 435.603 authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS estimates that the Medicaid expansion has brought in at least \$1.4 billion in federal funds into the state in 2021 (this number is exclusive of rate enhancement programs utilized for hospitals and emergency medical transport). In addition, DMS estimates that more than 16,700 jobs have been created within the Commonwealth as a result of the Medicaid expansion. Furthermore, in 2021, approximately \$30 million in income tax revenue, \$29.4 million in sales tax increases, and \$12 million in local occupational and payroll taxes were generated when compared to not expanding the Medicaid program.

(b) How 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 estimates that the Medicaid expansion has brought in at least \$1.4 billion in federal funds into the state in 2021 (this number is exclusive of rate enhancement programs utilized for hospitals and emergency medical transport). In addition, DMS estimates that more than 16,700 jobs have been created within the Commonwealth as a result of the Medicaid expansion. Furthermore, in 2021, approximately \$30 million in income tax revenue, \$29.4 million in sales tax increases, and \$12 million in local occupational and payroll taxes were generated when compared to not expanding the Medicaid program.

(c) How much will it cost to administer this program for the first year? The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

(d) How much will it cost to administer this program for subsequent years? The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the

first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

VOLUME 49, NUMBER 3– SEPTEMBER 1, 2022

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.

NONE

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

PERSONNEL CABINET
(As Amended at ARRS, August 9, 2022)

101 KAR 2:102. Classified leave general requirements.

RELATES TO: KRS 18A.020, 18A.030, 18A.095, 18A.110, 18A.140, 18A.145, 18A.195, 18A.990, 61.373, 61.394, 118.035, 344.030, 29 C.F.R. 825, 29 U.S.C. 8, 29 U.S.C. 201 – 219, 2601 – 2654

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.110, 29 U.S.C. 201 – 219, 2601 – 2654

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.030(2)(b) requires the Secretary of Personnel to promulgate administrative regulations, consistent with KRS Chapter 18A and federal standards, for the administration of a personnel system. KRS 18A.110(7)(g) requires the secretary, with the approval of the Governor, to promulgate administrative regulations that govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for classified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave. This shall/does not include hours worked in excess of the prescribed hours of duty.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired shall receive credit for months of prior service, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system.

(f) A part-time employee shall not be entitled to accrue annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward pursuant to this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an

absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next. If annual leave is carried from one (1) calendar year to the next, the leave shall be calculated as established in the following table:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 work-days	225 hours	240 hours
60-119 months	37 work-days	277.50 hours	296 hours
120- 179 months	45 work-days	337.50 hours	360 hours
180- 239 months	52 work-days	390 hours	416 hours
240 months and over	60 work-days	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a)1. If an employee is separated by proper resignation or retirement, or terminated from initial probation other than for cause, the employee shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which the employee is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

- Not be paid to the employee or converted to sick leave; and
- Be removed from the balance.

(b) If an employee is laid off, the employee shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or an employee who resigns one (1) day and is employed the next workday, shall retain the accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause shall not be paid for accumulated annual leave.

(e) An appointing authority may withhold payment of accumulated annual leave for an employee who has failed to give proper notice of resignation or retirement as described in 101 KAR 2:095 Section 6, or who has submitted notice of resignation or retirement after receiving an intent to dismiss letter. Annual leave withheld pursuant to this paragraph shall result in a determination that the employee resigned not in good standing.

(f) Upon the death of an employee, the employee's estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(g) An employee may request in writing that accumulated annual leave not be paid upon resignation, and that all or part of the amount of accumulated annual leave that does not exceed the amount

established by this section be waived, if:

1. The employee resigns, or is laid off, because of an approved plan of privatization of the services performed; and
2. The successor employer has agreed to credit the employee with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave. This shall[does] not include hours worked in excess of the prescribed hours of duty.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) A former employee who has been rehired shall receive credit for months of prior service, and shall be credited with the unused sick leave balance that existed at the time of the previous separation, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system.

(h) The total service shall be verified by the Personnel Cabinet before the leave is credited to the employee's record.

(i) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental, or optical examination or treatment;

2. Is disabled by illness or injury. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's inability to perform the employee's duties for the days or hours sick leave is requested. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work;

3. Is required to care for or transport a member of the employee's immediate family in need of medical attention for a reasonable period of time. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's need to care for a family member;

4. Would jeopardize the health of the employee or others at the employee's work station because of a contagious disease or communicable condition. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work;

5. Demonstrates behavior that might endanger the employee or others. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to the employee's former position.

(c) An employee eligible for state contributions for life insurance

pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff, or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay, without a change in the employee's personnel status, for the duration of an employee's impairment by injury or illness, if:

1. The leave does not exceed thirty (30) continuous calendar days; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless the employee has requested to retain up to ten (10) days of accumulated sick leave.

(b) Within an employee's first twelve (12) months of employment after initial appointment, an appointing authority shall grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family, or for the duration of the employee's impairment by illness or injury, for a period not to exceed thirty (30) working days in a calendar year.

(4) Sick leave by personnel action.

(a) If the duration of an employee's impairment by illness or injury exceeds the sick leave without pay allotment of thirty (30) continuous calendar days, including holidays, the appointing authority shall place the employee on sick leave without pay by personnel action.

(b) The appointing authority shall notify the employee in writing that the employee is being placed on sick leave by personnel action.

(c) Sick leave by personnel action shall not exceed one (1) year.

(d) If requested by the appointing authority, the employee shall provide statements during

the year from an appropriate medical health professional attesting to the employee's continued inability to perform the essential functions of the employee's duties with or without reasonable accommodation.

(e) If an employee has given notice of the employee's ability to resume duties following sick leave by personnel action, the appointing authority shall return the employee to the original position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit. The appointing authority shall notify the employee in writing of the following:

1. The effective date of the employee's return;

2. The position to which the employee is being returned;

3. The employee's salary upon return to work; and

4. The employee's new annual increment date, if applicable.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be deemed resigned if the employee:

1. Has been on one (1) year continuous sick leave by personnel action;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of leave;

3. Is unable to return to the employee's former position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which the employee is qualified and is capable of performing its

essential functions with or without reasonable accommodation; and
5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted pursuant to this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee with status who is deemed resigned pursuant to paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, the employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 – 2654, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) An employee shall use accrued paid leave concurrently with FMLA leave, except an employee may reserve up to ten (10) days of accumulated sick leave while on FMLA leave. If an employee reserves accumulated sick leave, the remaining FMLA leave ~~shall~~will be unpaid. The employee shall satisfy any procedural requirements of this administrative regulation for use of accrued paid leave only in connection with the receipt of such payment.

Section 4. Court Leave. (1) With prior notification to their supervisor, an employee shall be entitled to court leave during the employee's scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or released from subpoena during the employee's normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of the employee's assigned duties.

(5) An employee shall not be eligible for court leave to comply

with a subpoena if the employee or a member of the employee's family is a party to the proceeding.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8, the Kentucky Revised Statutes, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 through 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. An employee's~~The~~ election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of three (3) months. The employee's election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election. The employing agency shall not mandate an employee's election of compensatory leave or paid overtime.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" pursuant to the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or used in increments of one-quarter (1/4) hours.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a nonpolicy-making position; or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay upon accumulation of 240 hours of compensatory leave at the end of a pay period. ~~If [in the event]~~ a work week is split between pay periods, then the 240 hours of compensatory leave required for payment ~~shall~~must be accrued at the end of the pay period following the split pay period week. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less

than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and
2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the employee's:

1. Regular hourly rate of pay; or
2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) If requested by the appointing authority, the employee shall provide a copy of the orders requiring the attendance of the employee before military leave is granted.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty in accordance with KRS 61.373. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, leave up to four (4) hours for the purpose of voting or to appear before the county clerk to request an application for or to execute an absentee ballot. A supervisor, manager, or appointing authority may specify the hours an employee may be absent.

(2) An employee casting an absentee ballot shall record the leave on the day the employee's vote is cast by mail or in-person submission. An employee shall be regularly scheduled to work on the day the vote is cast in order to receive the leave.

(3) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(4) The absence shall not be charged against leave.

(5) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize five (5) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse, parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of a work-related incident, or pending an investigation of an allegation of employee misconduct, lack of good behavior, or unsatisfactory performance of duties.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that the employee is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files maintained in accordance with KRS 18A.020(2)(a).

(d) The appointing authority shall notify a current employee, in writing, of the completion of the investigation and the action taken.

(4) An appointing authority may place an employee on administrative leave with pay upon the employee's receipt of an intent to dismiss letter as authorized by KRS 18A.095(2)(c).

(5) Discretionary leave with pay.

(a) An appointing authority may grant, or the secretary may direct, discretionary leave with pay to an employee for a period not to exceed ten (10) working days in a calendar year when it is considered necessary for the welfare of the employee.

(b) Reasons for discretionary leave with pay are limited to work-related events.

(c) An appointing authority, with approval of the secretary, may renew discretionary leave with pay, not to exceed an additional twenty (20) working days.

(d) Leave granted pursuant to this subsection may be taken intermittently if authorized by the appointing authority.

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of five (5) working days shall be deemed resigned.

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early if there are adverse weather conditions, such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (4) [(3)] and (5) [(4)] of this section.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) An employee who is approved to telecommute shall not be

eligible for adverse weather leave unless his or her telecommuting equipment is not operational or cannot be accessed during scheduled telecommuting hours due to adverse weather conditions.

(4) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee shall be given an opportunity to make up time not worked rather than charging it to leave.

(5)[(4)] An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within 123 calendar days[four (4) months] of the occurrence of the absence. If it is not made up within 123 calendar days[four (4) months], leave shall be deducted from compensatory leave, followed by annual leave, and if no compensatory or annual leave is available, time lost shall be charged to leave without pay and deducted from an employee's wages.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(6)[(5)] If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shut-down of the place of employment, the provisions established in paragraphs (a) and (b) of this subsection shall apply.

(a) An employee who is required to evacuate or who would report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act, 29 U.S.C. Chapter 8.

Section 12. Blood Donation Leave. (1) An employee who, during scheduled work[regular working] hours, donates whole blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted pursuant to this section shall be used when the blood is donated unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

(5) A donation initiated or attempted during an employee's lunch period is outside of scheduled work hours and shall not qualify for any amount of blood donation leave.

Section 13. Incorporation by Reference. (1) "Overtime Compensation Form", May 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Personnel Cabinet's Web site on the Documents in Demand page at: <https://personnel.ky.gov/>.

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

PERSONNEL CABINET
(As Amended at ARRS, August 9, 2022)

101 KAR 3:015. Leave requirements for unclassified service.

RELATES TO: KRS 18A.020, 18A.030, 18A.110, 18A.140, 18A.145, 18A.195, 18A.990, 61.373, 61.394, 118.035, 344.030, 29 C.F.R. 825, 29 U.S.C. 8, 29 U.S.C. 201 – 219, 2601 – 2654

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.110(2), (7)(g), 18A.155, 29 U.S.C. 201 – 219, 2601 – 2654

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Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave. This shall/does not include hours worked in excess of the prescribed hours of duty.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired shall receive credit for months of prior service, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system.

(f) A part-time employee shall not be entitled to accrue annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward pursuant to this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next. If annual leave is carried from one (1) calendar year to the next, leave shall be calculated as established in the following table:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 work-days	225 hours	240 hours
60-119 months	37 work-days	277.50 hours	296 hours
120-179 months	45 work-days	337.50 hours	360 hours
180-239 months	52 work-days	390 hours	416 hours
240 months and over	60 work-days	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a)1. If an employee is separated by proper resignation or retirement, or terminated other than for cause, the employee shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which the employee is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

- Not be paid to the employee or converted to sick leave; and
- Be removed from the balance.

(b) If an employee is laid off, the employee shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or an employee who resigns one (1) day and is employed the next workday, shall retain the accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause shall not be paid for accumulated annual leave.

(e) An appointing authority may withhold payment of accumulated annual leave for an employee who has failed to give proper notice of resignation or retirement as described in 101 KAR 3:050 Section 8, or who has submitted notice of resignation or retirement after receiving an intent to dismiss letter. Annual leave withheld pursuant to this paragraph shall result in a determination that the employee resigned not in good standing.

(f) Upon the death of an employee, the employee's estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(g) An employee may request in writing that accumulated annual leave not be paid upon resignation, and that all or part of the amount of accumulated annual leave that does not exceed the amount established by this section be waived, if:

- The employee resigns, or is laid off, because of an approved plan of privatization of the services performed; and
- The successor employer has agreed to credit the employee with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other

than educational leave, for 100 or more regular hours in a month to accrue sick leave. This shall/does not include hours worked in excess of the prescribed hours of duty.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) A former employee who has been rehired shall receive credit for months of prior service, and shall be credited with the unused sick leave balance that existed at the time of the previous separation, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system.

(h) The total service shall be verified by the Personnel Cabinet before the leave is credited to the employee's record.

(i) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

- Is unable to work due to medical, dental, or optical examination or treatment;
- Is disabled by illness or injury. If requested by the appointing authority, the employee

shall provide a statement from an appropriate medical health professional certifying the employee's inability to perform the employee's duties for the days or hours sick leave is requested. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work;

3. Is required to care for or transport a member of the employee's immediate family in need of medical attention for a reasonable period of time. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's need to care for a family member;

4. Would jeopardize the health of the employee or others at the employee's work station because of a contagious disease or communicable condition. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work; or

5. Demonstrates behavior that might endanger the employee or others. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to the employee's former position.

(c) An employee eligible for state contributions for life insurance pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the

jurisdiction of one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff, or retirement.

(h) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay, without a change in the employee's personnel status, for the duration of an employee's impairment by injury or illness, if:

1. The leave does not exceed thirty (30) continuous calendar days; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless the employee has requested to retain up to ten (10) days of accumulated sick leave.

(b) Within an employee's first twelve (12) months of employment after initial appointment, an appointing authority shall grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family, or for the duration of the employee's impairment by illness or injury, for a period not to exceed thirty (30) working days in a calendar year.

(4) Sick leave by personnel action.

(a) If the duration of an employee's impairment by illness or injury exceeds the sick leave without pay allotment of thirty (30) continuous calendar days, including holidays, the appointing authority shall place the employee on sick leave without pay by personnel action.

(b) The appointing authority shall notify the employee in writing that the employee is being placed on sick leave by personnel action.

(c) Sick leave by personnel action shall not exceed one (1) year.

(d) If requested by the appointing authority, the employee shall provide statements during the year from an appropriate medical health professional attesting to the employee's continued inability to perform the essential functions of the employee's duties with or without reasonable accommodation.

(e) If an employee has given notice of the employee's ability to resume duties following sick leave by personnel action, the appointing authority shall return the employee to the original position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit. The appointing authority shall notify the employee in writing of the following:

1. The effective date of the employee's return;
2. The position to which the employee is being returned;
3. The employee's salary upon return to work; and
4. The employee's new annual increment date, if applicable.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be deemed resigned if the employee:

1. Has been on one (1) year continuous sick leave by personnel action;
2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of leave;
3. Is unable to return to the employee's former position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit;
4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which the employee is qualified and is capable of performing its essential functions with or without reasonable accommodation; and
5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted pursuant to this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who is deemed resigned pursuant to paragraph

(g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 – 2654, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) An employee shall use accrued paid leave concurrently with FMLA leave, except an employee may reserve up to ten (10) days of accumulated sick leave while on FMLA leave. If an employee reserves accumulated sick leave, the remaining FMLA leave shall/will be unpaid. The employee shall satisfy any procedural requirements of this administrative regulation for use of accrued paid leave only in connection with the receipt of such payment.

Section 4. Court Leave. (1) With prior notice to their supervisor, an employee shall be entitled to court leave during the employee's scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or released from subpoena during the employee's normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of the employee's assigned duties.

(5) An employee shall not be eligible for court leave to comply with a subpoena if the employee or a member of the employee's family is a party to the proceeding.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act

(FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8, KRS Chapter 337, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 through 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. An employee's[The] election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of three (3) months. The employee's election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election. The employing agency shall not mandate an employee's election of compensatory leave or paid overtime.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" pursuant to the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or used in increments of one-quarter (1/4) hours.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a nonpolicy-making position; or

2. 480[240] hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who is not in a policy-making position and has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay upon accumulation of 240 hours of compensatory leave at the end of a pay period. ~~If [in the event]~~ a work week is split between pay periods, then the 240 hours of compensatory leave required for payment ~~shall [must]~~ be accrued at the end of the pay period following the split pay period week. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid

overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the employee's:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) If requested by the appointing authority, the employee shall provide a copy of the orders requiring the attendance of the employee before military leave is granted.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty in accordance with KRS 61.373. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, leave up to four (4) hours for the purpose of voting or to appear before the county clerk to request an application for or to execute an absentee ballot. A supervisor, manager, or appointing authority may specify the hours an employee may be absent.

(2) An employee casting an absentee ballot shall record the leave on the day the employee's vote is cast by mail or in-person submission. An employee shall be regularly scheduled to work on the day the vote is cast in order to receive the leave.

(3) An election officer shall receive additional leave if the total leave for Election Day does not exceed a regular workday.

(4) The absence shall not be charged against leave.

(5) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize five (5) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse, parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of a work-related incident, or pending an investigation of an allegation of employee misconduct, lack of good behavior, or unsatisfactory performance of duties.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that the employee is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files maintained in accordance with KRS 18A.020(2)(a).

(d) The appointing authority shall notify a current employee, in writing, of the completion of the investigation and the action taken.

(4) An appointing authority may place a career unclassified employee on administrative leave with pay upon the employee's receipt of an intent to dismiss for cause letter.

(5) Discretionary leave with pay. (a) An appointing authority may grant, or the secretary may direct, discretionary leave with pay to an employee for a period not to exceed ten (10) working days in a calendar year when it is considered necessary for the welfare of the employee.

(b) Reasons for discretionary leave with pay are limited to work-related events.

(c) An appointing authority, with approval of the secretary, may renew discretionary leave with pay, not to exceed an additional twenty (20) working days.

(d) Leave granted pursuant to this subsection may be taken intermittently if authorized by the appointing authority.

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of five (5) working days shall be deemed resigned.

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early if there are adverse weather conditions, such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (4)[(3)] and (5)[(4)] of this section.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) An employee who is approved to telecommute shall not be eligible for adverse weather leave unless his or her telecommuting equipment is not operational or cannot be accessed during scheduled telecommuting hours due to adverse weather conditions.

(4) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable

effort to arrange schedules whereby an employee shall be given an opportunity to make up time not worked rather than charging it to leave.

(5)[(4)] An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within 123 calendar days~~four (4) months~~ of the occurrence of the absence. If it is not made up within 123 calendar days~~four (4) months~~, leave shall be deducted from compensatory leave, followed by annual leave, and if no compensatory or annual leave is available, time lost shall be charged to leave without pay and deducted from an employee's wages.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(6)[(5)] If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shut-down of the place of employment, the provisions established in paragraphs (a) and (b) of this subsection shall apply.

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act, 29 U.S.C. Chapter 8.

Section 12. Blood Donation Leave. (1) An employee who, during scheduled work~~regular working~~ hours, donates whole blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted pursuant to this section shall be used when the blood is donated, unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

(5) A donation initiated or attempted during an employee's lunch period is outside of scheduled work hours and shall not qualify for any amount of blood donation leave.

Section 13. Incorporation by Reference. (1) "Overtime Compensation Form", May 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Personnel Cabinet's Web site on the Documents in Demand page at: <https://personnel.ky.gov/>.

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

BOARDS AND COMMISSIONS
Board of Architects
(As Amended at ARRS, August 9, 2022)

201 KAR 19:035. Qualifications for examination and licensure.

RELATES TO: KRS 323.050(2), (3), 323.060, 323.120(1)(a)-(j)
STATUTORY AUTHORITY: KRS 323.050(2), 323.210(1)(b)~~f~~
(2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.050(2) authorizes the board to prescribe the qualifications and experience requirements for licensure. KRS 323.210(1)(b) requires~~and (2) require~~ the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his or her application has been filed. This administrative regulation establishes the prerequisites for taking the examination and obtaining a license.

Section 1. Eligibility to Take the Architect Registration Examination (ARE). A person who possesses the qualifications prescribed in KRS 323.050, and this administrative regulation, shall be eligible to take the examination.

Section 2. General Requirements.

(1)(a) The board may~~shall~~ verify the good moral character of an applicant for examination with employers and registered architects who have knowledge of the applicant's moral character.

(b) An applicant shall not be considered to be of good moral character if the applicant has:

1. Committed an act specified in KRS 323.120(1)(a) through (i);
2. Chronic alcoholism, persistent drug abuse, or an act of behavior that would, if the applicant were licensed, jeopardize or impair the applicant's judgment to meet professional responsibility as an architect and to act to protect the public welfare and safety; or
3. Violated a provision of KRS Chapter 323 or 201 KAR Chapter 19 either before or after admission to the examination.

(c) If an applicant has violated the registration laws of another jurisdiction, the board shall determine whether the violation adversely affected the moral character of the applicant.

(2) To be eligible for examination, an applicant shall submit to the board college transcripts and verification from the National Council of Architectural Registration Boards (NCARB) that the applicant has:

(a) Met the requirements of KRS 323.050 and this administrative regulation;

(b) Enrolled in NCARB's Architectural Experience Program (AXP)~~[Intern Development Program]~~ specified in Section 4 of this administrative regulation by establishing an NCARB record; and

(c) Enrolled and is eligible as an applicant with this board to take the ARE.

(3) The documentation that includes the college transcripts required by subsection (2) of this section shall be verified, compiled, and transmitted in bound record form by the NCARB.

Section 3. Education Requirements. An applicant who has met the requirements of Section 2 of this administrative regulation shall hold a degree in architecture from a degree program that has been accredited by the National Architectural Accrediting Board (NAAB) not later than two (2) years after termination of enrollment.

Section 4. Training Requirements for Licensure.

(1) An applicant who has passed the examination shall have successfully completed the Architectural Experience Program (AXP)~~[Intern Development Program]~~ training requirements as provided by NCARB Architectural Experience Program (AXP)~~[Intern Development Program]~~ Guidelines prior to final application for licensure.

(2) The documentation of experience obtained by the completion of the Architectural Experience Program (AXP)~~[Intern Development Program]~~ training requirements required by

subsection (1) of this section and college transcripts shall be verified, compiled, and transmitted in bound record form by the NCARB.

Section 5. Incorporation by Reference.

(1) "Architectural Experience Program Guidelines", 2020~~[Intern Development Program Guidelines 2015]~~ Edition, National Council of Architectural Registration Boards, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4:00 p.m.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 246-2431, email boa.irc@ky.gov.

BOARDS AND COMMISSIONS
Board of Architects
(Amendment)

201 KAR 19:087. Continuing education.

RELATES TO: KRS 323.110(1), 323.120(1)(g), 323.210(3)
STATUTORY AUTHORITY: KRS 323.210(2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(3) authorizes the board to establish continuing education requirements. This administrative regulation establishes continuing education requirements and establishes standards for the licensing of an architect for board licensees.

Section 1. Definitions.

(1) "Continuing education" or "CE" means post-licensure learning that enables a licensed architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public's health, safety, and welfare.

(2) "Continuing education hour" or "CEH" means a:

(a) Unit equal to sixty (60) minutes clock time for the taking of an examination; or

(b) Customary time of completion prescribed by an examination vendor, if the board finds the time to be reasonable.

(3) "Health, safety, and welfare subjects" means technical and professional subjects that the board finds appropriate to safeguard the public and that are within the following enumerated areas necessary for the proper evaluation, design, construction, and utilization of buildings and the built environment:

(a) Building Systems: Structural, Mechanical, Electrical, Plumbing, Communications, Security, Fire Protection;

(b) Construction Contract Administration: Contracts, Bidding, Contract Negotiations;

(c) Construction Documents: Drawings, Specifications, Delivery Methods;

(d) Design: Urban Planning, Master Planning, Building Design, Site Design, Interiors, Safety and Security Measures;

(e) Environmental: Energy Efficiency, Sustainability, Natural Resources, Natural Hazards, Hazardous Materials, Weatherproofing, Insulation;

(f) Legal: Laws, Codes, Zoning, Regulations, Standards, Life Safety, Accessibility, Ethics, Insurance to protect Owners and Public;

(g) Materials and Methods: Construction Systems, Products, Finishes, Furnishings, Equipment;

(h) Occupant Comfort: Air Quality, Lighting, Acoustics, Ergonomics;

(i) Pre-Design: Land Use Analysis, Programming, Site Selection, Site and Soils Analysis, Surveying; or

(j) Preservation: Historic, Reuse, Adaptation.

(4) "Relevant topic" means an area which is particularly focused on the health, safety, and welfare of the public utilizing structured educational activities intended to increase or update the

architect's knowledge and competence in health, safety, and welfare subjects.

(5) "Structured educational activities" means educational activities in which at least seventy-five (75) percent of an activity's content and instructional time is devoted to health, safety, and welfare subjects related to the practice of architecture, including courses of study or other activities under the areas identified as health, safety, and welfare subjects and provided by qualified individuals or organizations, whether delivered by direct contact or distance learning methods.

Section 2. Purpose. The purpose of this continuing education program is to ensure that all licensed architects remain informed on technical and professional subjects that the board finds appropriate to safeguard life, health, property, and welfare of the public.

Section 3. Scope and Exemptions.

(1) To annually renew a license, an architect licensed in Kentucky shall comply with this administrative regulation unless the licensee is exempted by one (1) of the following reasons:

(a) The licensee is exempted as a first-[]time registrant by:

1. Examination; or
2. Reciprocity;

(b) The licensee has applied for or is renewing as an architect emeritus who:

1. Is at least sixty-five (65) years old;
2. Has requested architect emeritus status at the beginning of the license renewal period; and
3. Has retired from practice in all jurisdictions and is not conducting an active practice in any jurisdiction;

(c) The licensee is a civilian who serves on active duty in the United States Armed Forces for a period of time exceeding ninety (90) consecutive days during the annual report period; or

(d) The licensee is a registrant of another National Council of Architectural Registration Boards' (NCARB) jurisdiction that has a required continuing education program, if:

1. It accepts Kentucky requirements to satisfy its continuing education requirements; and
2. The licensee certifies that all requirements for current continuing education compliance and registration have been met in that jurisdiction.

(2) A hardship case may be considered by the board.

Section 4. Requirements.

(1) A licensed Kentucky architect shall:

- (a) Obtain a total of at least twelve (12) CEHs per year; and
- (b) Report these credits as a condition for license renewal.

(2) Beginning with calendar year 2017, the continuing education requirement of subsection (1) of this section shall be satisfied during the period beginning January 1 and ending December 31 of the previous calendar year.

(3) CEHs shall not be carried over into the next reporting period for credit.

(4) A minimum of twelve (12) CEHs shall consist of structured educational activities on relevant topics addressing health, safety, and welfare subjects as referenced in Section 1(3) of this administrative regulation.

Section 5. Reporting and Recordkeeping.

(1) The following shall be submitted by an applicant for renewal of a license:

(a) A completed continuing education certification statement of compliance with the annual continuing education requirements portion of the completed Architect License Renewal Application;

(b) The completed Architect License Renewal Application or online renewal on the board's Web site at <http://boa.ky.gov>; and

(c) The renewal fee required by 201 KAR 19:255[19:085].

(2) The following shall be submitted by an applicant for the reinstatement of a license previously administratively revoked:

(a) A completed continuing education certification statement of compliance with the annual continuing education requirements portion of the completed and notarized Architect License

Reinstatement-Restoration Application listing the completed courses for the number of credits required. A reinstatement of a license revoked for one (1) year or less shall require reporting twelve (12) CEHs minimum. A reinstatement of a license revoked for one (1) year or more shall require reporting twenty-four (24) CEHs minimum;

(b) The completed and notarized Architect License Reinstatement-Restoration Application;

(c) The reinstatement application fee plus the applicable annual renewal fee required by 201 KAR 19:255[19:085] for each year since the date of revocation; and

(d) A two (2) inch by two (2) inch or larger passport quality color photograph of the applicant affixed to the application.

(3) The following shall be submitted by an applicant for the restoration of a license previously voluntarily surrendered:

(a) A completed continuing education certification statement of compliance with the annual continuing education requirements portion of the completed and notarized Architect License Reinstatement-Restoration Application listing the completed courses for the number of credits required. The restoration of a license voluntarily surrendered for one (1) year or less shall require reporting twelve (12) CEHs minimum. The restoration of a license voluntarily surrendered for more than one (1) year shall require reporting twenty-four (24) CEHs minimum;

(b) The completed and notarized Architect License Reinstatement-Restoration Application;

(c) The applicable restoration application fee plus the current annual renewal fee required by 201 KAR 19:255[19:085]; and

(d) A two (2) inch by two (2) inch or larger passport quality color photograph of the applicant affixed to the application.

(4) An incomplete submission shall be returned to the applicant.

(5) A random sample of annual reports of architect's continuing education certifications shall be audited to ensure accuracy and compliance. Any licensee audited shall submit a completed Architect Continuing Education Annual Report issued by the board with proof of continuing education activities attached.

(6) The licensee shall:

(a) Be responsible for retaining proof of participation in continuing education activities;

(b) Retain a record for continuing education for a period of five (5) years from the date of submission of the annual report to the board; and

(c) Furnish copies of continuing education records on the request of the board for audit purposes.

(7) Proof of participation in continuing education activities shall include:

(a) A log showing the:

1. Activity claimed;
2. Sponsoring organization;
3. Location; and
4. Duration; and

(b) One (1) of the following:

1. An attendance certificate;
2. ~~[(e)]~~ A signed attendance receipt;
3. ~~[(d)]~~ A paid receipt; ~~and~~
4. ~~[(e)]~~ A proof of participation document ~~[list of attendees]~~

signed by a person in charge of the activity; or
5. Other documentation accepted at the discretion of the Board.

(8) Disallowances. If continuing education credit is disallowed, the licensee shall have thirty (30) calendar days after notification to:

- (a) Substantiate the original claim; or
- (b) Earn other continuing education credit to meet the minimum requirements.

Section 6. Noncompliance and Sanctions.

(1) Failure to fulfill the continuing education requirements, file the required Architect License Renewal Application or the Architect License Reinstatement-Restoration Application, properly completed and signed, or file the Architect Continuing Education Annual Report as required by an audit, properly completed and signed, shall result in the board imposing any combination of the following sanctions:

- (a) Nonrenewal;
- (b) Denial of reinstatement or restoration;
- (c) Probation; or
- (d) Suspension of the license and the issuance of a reprimand.

(2) A licensee found to be deficient on CEHs following a continuing education audit shall be fined a civil penalty of \$250 for the first deficient CEH and fifty (50) dollars for each deficient CEH thereafter.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Architect Continuing Education Annual Report", 2015;
- (b) "Architect License Renewal Application", 2020[2015]; and
- (c) "Architect License Reinstatement-Restoration Application", December 2016[2015].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4:00 p.m.

STEPHANIE R MCCRERY, Board President

CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: May 3, 2022

FILED WITH LRC: May 5, 2022 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2022, at 10:30 a.m. Eastern Time at the Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 246-2431, email boa.irc@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation institutes the Board's requirements for continuing education, and outlines requirements for the licensing category of architect emeritus.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the specific requirements, exemptions, and sanctions for noncompliance, of continuing education, and to outline requirements for the licensing category of architect emeritus.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 323.210(3) that describes the function of the Board and the authority for promulgating appropriate administrative regulations requiring mandatory continuing education for licensed architects. As well as establishing the licensing category of architect emeritus and outlining the renewal and continuing education requirements for the architect emeritus license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures the Kentucky licensed architects remain informed and aware of current and changing technical and professional standards to safeguard the life, health, property, and

welfare of the public. This administrative regulation also defines the requirements for licensees to qualify as an architect emeritus.

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

(a) How the amendment will change this existing administrative regulation: The amendment will update the process for reporting continuing education courses. Allowing the regulated entities greater flexibility in providing proof of participation in continuing education activities.

(b) The necessity of the amendment to this administrative regulation: The amendment will improve efficiency in the Board's review of continuing education compliance of the regulated entities.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute allows the Board to promulgate all regulations pertaining to the requirement and ensuring compliance, of licensed architects participation in continuing education.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this regulation will provide an efficient review of the regulated entity's continuing education compliance while maintaining the comprehensive evaluation of their submission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky licensed architects, approximately 2900 annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity shall continue to obtain the following: 12 hours of continuing education during the period beginning January 1 and ending December 31 of each calendar year; hours shall be structured, and designated as Health, Safety, and Welfare, subjects; report their compliance with the regulation annually when renewing their Kentucky architect license. Each entity wishing to renew an architect emeritus license, shall meet age and employment status requirements. However, as amended, the regulated entities, will have greater flexibility in providing proof of participation in continuing education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no direct cost to the entity however some 3rd parties do charge a fee for attendance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The entities shall be better informed, and aware of current standards of practice to ensure the public's health, safety, and welfare.

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

(a) Initially: No new cost will be incurred.

(b) On a continuing basis: No new cost will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate as the regulation applies only to Kentucky licensed architects.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts Kentucky licensed architects by outlining the requirements for continuing education, and architect emeritus licensees by outlining certain qualifications for the status.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(2), (3) authorizes the action taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation does not directly affect expenditures or revenues.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. This administrative regulation will not directly affect expenditures of the regulated entities.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not produce any cost savings of the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not produce any cost savings of the regulated entities at any time.

(c) How much will it cost the regulated entities for the first year? The regulated entities have an option of taking free or paid third-party continuing education.

(d) How much will it cost the regulated entities for subsequent years? The regulated entities have an option of taking free or paid third-party continuing education.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: Because the regulated entities reside throughout the United States and therefore take continuing education throughout the United States, it is not possible to determine the cost of the multitude of third-party continuing education classes taken.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative

regulation will not have a major economic impact.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at Interim Joint Committee on Natural
Resources and Energy, August 18, 2022)

301 KAR 4:001. Selection of Fish and Wildlife Resources Commission nominees.

RELATES TO: KRS 150.022, 150.023

STATUTORY AUTHORITY: KRS 150.022, 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department of Fish and Wildlife Resources to promulgate administrative regulations to carry out the purposes of KRS Chapter 150. KRS 150.022 requires that a meeting of sportsmen in a commission[wildlife] district be held to nominate five (5) candidates for membership on the Kentucky Fish and Wildlife Commission. These five (5) candidate names shall then be submitted to the Governor for his or her selection. This administrative regulation establishes the procedures for nominating the [five-(5)] candidates for commission membership[member].

Section 1. Scheduling of Meetings and Notification of the Public.

(1) At least thirty (30) days prior to the expiration of the term of a member of the Fish and Wildlife Resources Commission, the commissioner shall select the time and place for a public meeting to select a list of five (5) nominees to submit to the governor. The meeting shall be held within a county of the commission[wildlife] district that shall be[is] centrally located and easily accessible to the majority of the sportsmen of that district.

(2) The location of the meeting shall be in a public building with facilities adequate to accommodate the expected turnout. If more participants attend than the facilities can reasonably accommodate, the commissioner (or his or her designee) may order a change in location, if a suitable site is readily available, or may take whatever steps he or she deems necessary to ensure[insure] the orderly and safe conduct of the meeting.

(3) Each meeting shall be called to order at 7:30 p.m. local prevailing time. If a change of location is called as established[provided for] in subsection (2) of this section, the commissioner shall delay the beginning of the meeting for at least one (1) hour. The commissioner[He] may also delay the beginning of the meeting for any other reason [he or she deems] necessary, but [under no circumstances may] the commissioner shall not convene the meeting earlier than the stated starting time.

(4) The facilities where the meeting is held shall be made available to the public by at least 6 p.m. local prevailing time.

(5) The commissioner shall cause to be published in each newspaper in the district a legal notice announcing the purpose, time, and place of the meeting. The commissioner[He] shall also prepare and distribute news releases announcing the meeting to all major mass media outlets in the district. In addition, the commissioner shall prepare and distribute posters about the meeting for posting at each county courthouse in the district and at those places where sportsmen are known to gather or frequent.

Section 2. Conduct of the Meeting. (1) The commissioner, or an official of the department designated by the commissioner, shall serve as chair[chairman] of the meeting[,], and [this chairman] shall be the final arbiter of any disputes or procedural questions that[which may] arise during the course of the meeting.

(2) After calling the meeting to order, the chair[chairman] shall explain the purpose of the meeting and the rules under which it shall[will] be conducted.

(3) The chair[chairman] shall then open the floor to nominations.

(4) As each name is placed in nomination, the nominee shall sign an affidavit attesting to his or her residency in the district.

(5) The chair[chairman] shall not close the nominations until he or she has called three (3) times for additional nominations and has received none. Motions to close the nominations shall not be

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recognized while there are still those waiting to place a name in nomination.

(6) ~~If [Should]~~ no more than five (5) names ~~are [be]~~ placed in nomination, the ~~chair [chairman]~~ shall declare that the purpose of the meeting has been fulfilled and shall adjourn the meeting.

Section 3. Balloting to Select Five (5) Nominees. (1) ~~If [Should]~~ more than five (5) names ~~are [be]~~ placed in nomination, the list of nominees shall be narrowed to five (5) names by secret ballots cast by the qualified sportsmen in attendance.

(2) The ~~chair [chairman]~~ shall direct each nominee to appoint at least one (1) individual to serve on a balloting committee. The ~~chair [chairman]~~ shall determine the number needed for this committee, and each nominee shall be allowed an equal number of committee members.

(3) Members of the balloting committee shall distribute ballots to the participants in the meeting. Each ballot shall consist of two (2) parts: an affidavit by which each participant shall attest to his ~~or her~~ legal right to participate in the selection process as ~~established [stipulated]~~ in KRS 150.022 and a ballot with which the participant may vote for one (1) nominee.

(4) Each eligible participant shall complete the information requested on the affidavit and ~~then all shall~~ swear an oath attesting to the veracity of that information.

(5) Each eligible participant shall then vote for the nominee of his ~~or her~~ choice on the ballot provided. Ballot boxes, overseen by personnel of the department, ~~shall [will]~~ be available at designated exits. Each eligible participant shall hand the department employee his ~~or her~~ signed affidavit and shall place his ~~or her~~ ballot in the ballot box.

(6) After depositing his ~~or her~~ ballot, each participant shall immediately leave the meeting room and shall not return until all ballots are cast and the ballot boxes are closed.

(7) The ballot boxes shall be opened in the presence of the balloting committee, who shall count the ballots in the presence of the ~~chair [chairman]~~ or his ~~or her~~ ~~designee [designee(s)]~~.

~~[(8) Immediately after the ballots are counted and the results certified by the balloting committee, the chairman shall announce the full results of the balloting and shall then adjourn the meeting.]~~

~~[(9)]~~ Each member of the balloting committee shall sign an affidavit attesting to the ballot count and to the fact that, to the best of his or her knowledge, the process of distributing and counting the ballots was conducted in a fair and impartial manner. The ~~chair [chairman]~~ shall obtain a written statement from any committee member who feels that irregularities did occur during the course of the meeting.

~~[(9) Immediately after the ballots are counted and the results certified by the balloting committee, the chair [chairman] shall announce the full results of the balloting and shall then adjourn the meeting.]~~

Section 4. Resolving Disputes. (1) In the event of a tie vote for fifth and sixth place, the ~~chair [chairman]~~ shall settle the issue by the toss of a coin. Tie votes ~~that [which]~~ do not affect the outcome of the selection of the five (5) names ~~shall [will]~~ not be resolved.

(2) Any other disputes, whether over vote counts or over procedural matters, shall be arbitrated immediately by the ~~chair [chairman]~~, whose decision shall be binding unless subsequently overturned by the commission or the courts ~~[as stipulated below]~~.

(3) Any individual who is aggrieved by a decision of the ~~chair [chairman]~~ or by any other action at the meeting may appeal in writing to the Fish and Wildlife Resources Commission. **An appeal shall be made** within ten (10) calendar days after the meeting.

(4) Upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(5) Any party aggrieved by a final order of the commission may appeal to Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 5. Submission of the List of Nominees to the Governor.

(1) The commissioner shall, within ~~thirty (30) [five (5)]~~ working days after the meeting, submit to the governor the names of the five (5) nominees chosen at the meeting.

(2) If balloting was used to limit the list to five (5) names, the commissioner shall not submit any ballot totals to the governor.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, August 9, 2022)

702 KAR 1:140. Student records; hearing procedures.

RELATES TO: KRS 160.730, 20 U.S.C. 1232g (a)(2)

STATUTORY AUTHORITY: KRS 156.070, 160.730

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.730

provides for parents or eligible students to challenge the content of a student education record on the grounds ~~[to ensure]~~ that the information contained in the record or report is not inaccurate, misleading, or otherwise in violation of privacy or other rights of the student. KRS 160.730 requires [160.370 also mandates] that the Department of Education establish by administrative regulation hearing procedures that may be utilized to challenge the content of a student education record when no agreement can be reached. The Family Educational Rights and Privacy Act (FERPA) requires [mandates] a parent or eligible student has the opportunity for a hearing to challenge the content of the student's education records on the grounds that the information is inaccurate, misleading, or in violation of privacy rights of the student. This administrative regulation establishes those hearing procedures.

Section 1. If a school district denies the [decides not to comply with a] request of a parent or eligible student [student's parent(s) or legal guardian] to amend the education record of the student, the school district shall notify the student's parent or eligible student [parent(s) or guardian] of the decision and advise them of the [their] right to a hearing to challenge the information contained in the education record and alleged [believed] to be inaccurate, misleading, inappropriate, or in violation of the student's rights.

Section 2. Hearing Procedures. (1) Upon request of a parent or eligible student, the school district shall conduct [arrange for] a hearing to be held within thirty (30) days after the request for hearing and notify the parent or eligible student [student's parent(s) or guardian], reasonably in advance, of the date, place, and time of the hearing.

(2) The hearing shall be conducted by any individual who is a disinterested party and is appointed by the superintendent to conduct the hearing [a hearing officer who is a disinterested party and is a certified official of the district appointed by the superintendent].

(3) The hearing shall be confidential [private]. Persons other than the student, parent(s), witnesses, and counsel shall not be admitted into the hearing.

(4) The hearing official appointed by the superintendent [officer] shall hear evidence from the school staff and the parent or eligible student [student's parent(s) or guardian] to determine any points of disagreement regarding the education records.

(5) The parent or eligible student [student's parent(s) or guardian] shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records. The parent or eligible student [parent(s) or guardian] may be assisted by one (1) or more individuals, including an attorney, at their expense.

(6) **After hearing the evidence,** the hearing official appointed by the superintendent [officer] shall make a determination **[after]**

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~~hearing the evidence~~ In writing within ten (10) working days following the close of the hearing. The hearing official appointed by the superintendent~~officer~~ shall make a determination based solely on the evidence presented at the hearing, and shall include a summary of the evidence and the reason for the decision. The parties to the hearing shall be provided a copy of the ~~hearing officer's~~ decision.

Section 3. Posthearing Procedures. (1) If, as a result of the hearing, the hearing official appointed by the superintendent~~officer~~ decides ~~[after the hearing]~~ the challenged information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the hearing official~~officer~~ shall inform the parent or eligible student~~student's parent(s) or guardian~~ of the right to place a statement in the education record commenting on the contested information or stating why he disagrees with the decision of the hearing official~~officer~~. The statement shall be maintained as a part of the student's education records as long as the contested portion is maintained. If the school district discloses the contested portions of the education record, it shall also disclose the statement.

(2) If, as a result of the hearing, the hearing official appointed by the superintendent~~officer~~ decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school district shall amend the education record accordingly and inform in writing the parent or eligible student~~student's parent(s) or guardian~~ of the amendment.

Section 4. Alternative Hearing Procedures. If a school district has an education record~~a records~~ hearing policy and procedure that provides a substantially equivalent level of due process protection as provided in this administrative regulation, the school district may ~~[elect to]~~ submit its policy on education records hearing procedure to the Department of Education, Office of Legal Services, for its review and approval as to compliance with this administrative regulation.

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.

LABOR CABINET
Office of Unemployment Insurance
(As Amended at ARRS, August 9, 2022)

787 KAR 1:360. Overpayment waivers.

RELATES TO: KRS 341.413, 2022 Ky. Acts ch. 199, Part 1D.7.(6)[R.S. HB 1]~~2021 Ky. Acts ch. 16, sec.2]~~

STATUTORY AUTHORITY: KRS 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. For unemployment insurance claims filed between January 27, 2020 and December 31, 2020, KRS 341.413~~2021 Ky. Acts ch. 16, sec.2]~~ authorizes the secretary to waive overpayments of unemployment insurance benefits if the secretary, upon an alleged overpayment recipient's waiver request, finds the overpayment was made without fault on the part of the recipient and ~~[if]~~ recovery ~~[of]~~ would be contrary to equity and good conscience. Notwithstanding KRS 341.413, 2022 Ky. Acts ch. 199, Part 1D.7.(6)[R.S. HB 1] authorizes the secretary to waive an overpayment of benefits for unemployment insurance claims filed between January 27, 2020 and September 6, 2021. This administrative regulation establishes definitions and procedures for waiving overpayments pursuant to KRS Chapter 341, [KRS]341.413, and 2022 Ky. Acts ch. 199, Part 1D.7.(6)[R.S. HB 1]~~[and Ky. Acts ch. 16, sec.2]~~.

Section 1. Definitions.

(1) "Benefits" means "benefits" as defined by KRS 341.020(4).

(2) "Financial hardship" means:

(a) An individual or that individual's immediate family has experienced at least a fifty (50) percent reduction in gross earned income or loss of employment; or

(b) That, as a result of the recovery of the overpayment of the benefit, the individual is unable to meet daily living expenses, including expenses for food, clothing, rent, utilities, insurance, job or job search-related transportation expenses, and medical expenses.

(3) "Office" means the Office of Unemployment Insurance within the Kentucky Labor Cabinet.

(4) "Office error" means:

(a) Errors in computing the benefit rate;

(b) Incorrect weekly payment due to a failure to consider a deductible amount that was properly reported by a claimant;

(c) Payment beyond the expiration of the benefit year;

(d) Payment in excess of the maximum benefit amount;

(e) Payment under an incorrect program;

(f) Retroactive notice of nonmonetary determinations, except that a determination that the claimant has committed fraud is not considered "office error";

(g) Monetary redeterminations;

(h) Payment during a period of disqualification;

(i) Payment to a wrong claimant; or

(j) Erroneous payments resulting from human error in the data entry process.

(5) "Secretary" means the Secretary of the Kentucky Labor Cabinet.

Section 2. Waiver Request. An individual shall make a written request for waiver of a determined overpayment within thirty (30) days of the date of the notification that the individual has been overpaid unemployment insurance benefits.

Section 3. Waivers. Upon receipt of an alleged overpayment recipient's request for an overpayment waiver, the secretary shall issue a waiver of the alleged overpayment if the secretary determines that:

(1) The overpayment was made pursuant to Section 4 of this administrative regulation without fault on the part of the recipient; and

(2) Recovery would be contrary to equity and good conscience as established in Section 5 of this administrative regulation.

Section 4. No-fault Determination. For purposes of Section 3(1) of this administrative regulation, the secretary shall make a determination that the alleged overpayment was made without fault on the part of the recipient if the overpayment of benefits resulted from:

(1) "Office error" as defined by Section 1 of this administrative regulation; or

(2) Auto-payment of benefits.

Section 5. Equity and Good Conscience Determination. For purposes of Section 3(2) of this administrative regulation, the secretary shall make a finding that a recovery of an alleged overpayment is contrary to equity and good conscience if an individual demonstrates that:

(1) Recovery would cause financial hardship to the person from whom it is sought;

(2) The alleged overpayment recipient can show, regardless of the ~~[the]~~ individual's financial circumstances, that due to the notice that the payment would be made or because of the incorrect payment, the individual has relinquished a valuable right or changed positions for the worse. This may be shown if the recipient has made substantial necessary purchases related to daily living expenses, expended substantial necessary funds on daily living expenses, or failed to seek other benefits in reliance upon the receipt of benefits; or

(3) Recovery could be unconscionable, unjust, or unfair under the circumstances.

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, August 9, 2022)**

810 KAR 8:010. Medication; testing procedures; prohibited practices.

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260(8), 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(8), and 230.320 authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions.

(1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens from horses taken under the supervision of the commission veterinarian.

(4) "Location under the jurisdiction of the commission" means a licensed race track or a training center as described in KRS 230.260(5).

(5) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, 810 KAR 8:020, 810 KAR 8:025, or 810 KAR 8:040, was present in the sample.

(a) For the drugs, medications, or substances listed in this administrative regulation, 810 KAR 8:020, or 810 KAR 8:025, for which an established concentration level is provided, it shall be necessary to have a finding in excess of the established concentration level as provided for the finding to be considered a positive finding.

(b) Positive finding also includes:

1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; and

2. Substances foreign to a horse that cause interference with testing procedures.

(6) "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

(7) "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(8) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen from horses taken under the supervision of the commission veterinarian.

(9) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining biologic specimens for testing.

Section 2. Use of Medication.

(1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as expressly permitted in 810 KAR Chapter 8, while participating in a race (betting or non-betting), qualifying race, or time trial, it shall be a violation for a horse to carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is foreign to the horse; or

(b) Might mask the presence of a prohibited drug, or obstruct testing procedures.

(3) It shall be a violation for therapeutic medications to be present in excess of established threshold concentrations established in this administrative regulation, 810 KAR 8:020, or in 810 KAR 8:025. The thresholds for permitted NSAIDs are established in Section 8 of this administrative regulation.

(4) Except as provided by paragraphs (a), (b), and (c) of this subsection, it shall be a violation for a substance to be present in a horse in excess of a concentration at which the substance could occur naturally. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(a) Gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms per milliliter in serum or plasma.

(b) Cobalt shall not be present in a concentration greater than twenty-five (25) parts per billion in serum or plasma.

(c) Free prednisolone shall not be present in a concentration greater than ten (10) nanograms per milliliter in urine.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or non-betting), qualifying race, or time trial, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) A biologic specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race (betting or non-betting), qualifying race, or time trial; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 8:020, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 810 KAR 8:030.

Section 3. Treatment Restrictions.

(1) Except as provided in Section 4 of this administrative regulation, only a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall administer by injection a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectable substance allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as established in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, only a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission may possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission has a medical condition that makes it necessary to possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards or judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The

stewards or judges may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

(7) Electronic therapeutic treatments, other than nebulization, shall not be administered to a horse within twenty-four (24) hours prior to post time of a race in which the horse is entered.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Anti-ulcer Medications. The following anti-ulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

(1) Cimetidine (Tagamet): eight (8) to twenty (20) milligrams per kilogram;

(2) Omeprazole (Gastrogard): two and two-tenths (2.2) grams;

(3) Ranitidine (Zantac): eight (8) milligrams per kilogram; and

(4) Sucralfate: two (2) to four (4) grams.

Section 6. Furosemide Use on Race Day.

(1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race, qualifying race, or time trial, except as provided in subsection (6) of this section.

(2) Furosemide shall only be administered prior to a race, qualifying race, or time trial by:

(a) The commission veterinarian; or

(b) A licensed veterinarian approved by the commission to perform the administration if the commission veterinarian is unavailable. If the furosemide is administered by an approved licensed veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.

(3) Except as provided in subsection (6) of this section, furosemide may be used if administered:

(a) At a location under the jurisdiction of the commission where the horse is scheduled to race;

(b) By a single intravenous injection, not less than four (4) hours prior to post time for the race, qualifying race, or time trial in which the horse is entered; and

(c) In a dosage not less than 150 milligrams and not more than 500 milligrams.

(4) The specific gravity of a post-race urine sample shall not be below one and one one-hundredths (1.010). If the specific gravity of the post-race urine sample is determined to be below one and one one-hundredths (1.010), a quantification of furosemide in serum or plasma shall be performed by the commission laboratory. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the serum or plasma sample. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(5) The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies. The commission shall maintain records documenting the basis for its

determination, and if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly. The cost shall be prominently posted in the racing office.

(6)

(a) A two (2) year old or stakes horse shall not be administered any drug, medication or other substance, including furosemide, within twenty-four (24) hours of the post time of the race in which the horse is entered. Participation by the horse shall not affect the status of the participating horse on the official authorized bleeder medication list.

(b) The implementation and enforcement of the prohibition in paragraph (a) of this subsection shall begin on:

1. January 1, 2020 for all two (2) year olds; and

2. January 1, 2021 for all horses entered to run in a stakes race; including the races comprising the Breeders' Cup World Championships and the races designated as graded stakes by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association.

(c) A concentration of furosemide greater than one and zero-tenths (1.0) nanograms per milliliter in serum in a post-race sample shall constitute a violation of this administrative regulation.

Section 7. Furosemide Eligibility.

(1)

(a) Except as provided in Section 6(6) of this administrative regulation, a horse shall be eligible to race with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide. Notice that a horse eligible to receive furosemide will race with or without furosemide shall be made at the time of entry to ensure public notification, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation if notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine, serum, or plasma does not show a detectable concentration of furosemide in the post-race urine, serum, or plasma.

(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interest to race with furosemide and the licensed trainer or a licensed veterinarian complies with the requirements of this section.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs).

(1) NSAIDs shall not be administered within forty-eight (48) hours prior to post time for the race in which the horse is entered. The detection in a post-race sample of blood of a detectable concentration of an NSAID, except as allowed by subsection (2) of this section, shall constitute a violation of this administrative regulation. The detection in a post-race sample of blood of more than one (1) of phenylbutazone, flunixin, and ketoprofen in excess of the concentrations permitted by subsection (2) of this section shall constitute a violation of this administrative regulation.

(2)

(a) A finding of phenylbutazone below a concentration of three-tenths (0.3) microgram per milliliter of serum or plasma shall not constitute a violation of this section.

(b) A finding of flunixin below a concentration of five (5) nanograms per milliliter of serum or plasma shall not constitute a violation of this section.

(c) A finding of ketoprofen below a concentration of two (2) nanograms per milliliter of serum or plasma shall not constitute a violation of this section.

Section 9. Anabolic Steroids.

(1) An exogenous AAS shall not be present in a horse that is racing. The detection of an exogenous AAS or metabolic derivative in a post-race sample shall constitute a violation of this administrative regulation.

(2) The detection in a post-race sample of an endogenous AAS or metabolic derivative where the concentration of the AAS or metabolic derivative exceeds naturally occurring physiological levels shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone:

1. In male horses other than geldings, free and conjugated boldenone fifteen (15) nanograms per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma; and

2. In geldings and female horses, free and conjugated boldenone one (1) nanogram per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma.

(b) Nandrolone:

1. In geldings, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone twenty-five (25) picograms per milliliter in serum or plasma;

2. In fillies and mares, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone twenty-five (25) picograms per milliliter in serum or plasma; and

3. In male horses other than geldings, forty-five (45) nanograms per milliliter of metabolite, 5 α -estrane-313, 17 α -diol in urine or a ratio in urine of 5 α -estrane-313, 17 α -diol to 5 α -estrone-313, 17 α -diol of >1:1.

(c) Testosterone:

1. In geldings, free and conjugated testosterone twenty (20) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma; and

2. In fillies and mares (unless in foal), free and conjugated testosterone fifty-five (55) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma.

(3) The gender of the horse from which a post-race biologic specimen is collected shall be identified to the commission veterinarian and the testing laboratory.

Section 10. Clenbuterol.

(1) Clenbuterol use shall be prohibited in racing and training unless the conditions established by this subsection are met.

(a) The prescription for clenbuterol shall be made for a specific horse based upon a specific diagnosis.

(b) The veterinarian shall provide a copy of the treatment sheet to the Equine Medical Director or his or her designee for review within twenty-four (24) hours of any administration of clenbuterol.

(c) A horse administered clenbuterol shall be placed on the veterinarian's list for a minimum of twenty-one (21) days after the date of last administration. The horse shall meet all conditions for removal from the list, including blood and urine sampling taken after the twenty-one (21) day period. Both samples shall have no detectable clenbuterol.

(2) A horse shall not be eligible to race until it has completed all the requirements in subsection (1)(c) of this section.

(3) If clenbuterol is detected in a horse's post-race or out of competition sample and appropriate notification as established in subsection (1)(b) of this section was not completed, the horse shall immediately be placed on the veterinarian's list pending the outcome of an investigation. The horse shall be required to meet all conditions for removal from the veterinarian's list as established in subsection (1)(c) of this section.

Section 11. Test Barn.

(1) A licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient:

(a) In size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens; and

(b) In structural design to prevent entry by unauthorized persons.

(3) The test barn shall be under the supervision and control of the Chief Racing Veterinarian or his or her designee, and no access to individuals other than commission personnel shall be permitted

unless with the permission of the Chief Racing Veterinarian or his or her designee. If association personnel require immediate access to the test barn due to fire or other emergency, the association shall report the access to commission officials as soon as possible after the emergency.

Section 12. Sample Collection, Testing and Reporting.

(1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 810 KAR 8:060, and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian, in consultation with the commission laboratory shall determine a minimum sample requirement which shall be uniform for each horse and which shall be separated into primary and split samples.

~~[(3)] [An owner or trainer may request that a split sample be tested by a split sample laboratory approved by the commission.]~~

~~[(4)] [The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.]~~

~~(3) [(5)]~~

(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer; and

2. Applied only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn only with the permission of and in the presence of the commission veterinarian or his designee.

~~[(4)] [(6)]~~ Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the stewards and judges shall notify the owner and trainer orally or in writing of the positive finding.

~~[(5)] [(7)]~~ The stewards or judges shall conduct a hearing pursuant to 810 KAR 9:010[as soon as possible] after the conclusion of an investigation of a positive finding. A person charged with a violation may request a continuance, which the stewards or the judges may grant as set forth in 810 KAR 9:010[for good cause shown].

Section 13. Storage and Shipment of Split Samples.

(1) Split samples shall be secured and made available for further testing in accordance with the procedures established in this subsection.

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as established in Section 12 of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission.

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection.

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is opened.

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log.

(f) The commission shall be considered the owner of a split sample.

(2)

(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select a laboratory solicited and approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards or judges within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory.

(c) The party requesting the split sample shall select a laboratory solicited and approved by the commission to perform the analysis within five (5) days after he or she is notified of the split sample laboratories available to test the split sample. If a trainer or owner does not select a laboratory within five (5) days after notification of the available split laboratories, then he or she shall be deemed to have waived the right to split sample analysis.

(d) A split sample so requested shall be shipped within seven (7) days of the date that the trainer or owner provides his or her laboratory selection to the stewards[as expeditiously as possible].

(3)

(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during the packaging and shipping of the split sample[split sample testing procedures].

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;
2. That the split sample laboratory has agreed to send results to the commission; and
3. That arrangements for payment satisfactory to the split sample laboratory have been made.

Section 14. Split Sample Chain of Custody.

(1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the owner, trainer, or designee thereof and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy to the owner, trainer, or designee, if requested.

Section 15. Medical Labeling.

(1) A drug or medication that, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(2) A drug or medication shall bear a prescription label that is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 16. Trainer Responsibility.

(1) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the condition of a horse in his or her care.

(2) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in a horse in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission to the stewards or judges and the commission veterinarian and ensuring compliance with Section 23 of this administrative regulation and 810 KAR 4:010, Section 14, governing postmortem examinations;

(i) Complying with the medication and recordkeeping requirements in subsection (6) of this section;

(j) Promptly notifying the stewards or judges and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as established in Section 21 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed by 810 KAR 2:010, Section 4(1)(~~k~~)(~~l~~);

(m) Ensuring proper bandages, equipment, and shoes;
(n) Ensuring the horse's presence in the paddock at the time prescribed by racing officials before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling or preparation of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the judges or stewards pursuant to 810 KAR 4:100, Section 3(2)(f); and
(p) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

(6)

(a) A trainer shall maintain a clear and accurate record of any treatment administered to a horse in his or her care.

(b) A trainer shall ensure the transfer of copies of all medical records to the subsequent owner and trainer of a horse.

(c) Failure to comply with this subsection may result in the imposition of penalties pursuant to 810 KAR 8:030.

(d) The stewards and judges may at any time require presentation of a horse's medical records.

Section 17. Licensed Veterinarians.

(1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the stewards or judges.

(2) A veterinarian shall report to the stewards, judges or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 18. Veterinary Reports.

(1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards, judges or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 810 KAR 8:030.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as established in Section 21 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the stewards or judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission.

Section 19. Veterinarian's List.

(1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a race (betting or non-betting), qualifying race, time trial, or for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a 365-day period - thirty (30) days;

(c) Third incident within a 365-day period - 180 days; and

(d) Fourth incident within a 365-day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as established in this section.

Section 20. Distribution of Purses, Barn Searches, and Retention of Samples.

(1) For all races, purse money in thoroughbred and other flat racing shall be paid or distributed pursuant to the process provided in 810 KAR 2:070, Section 27(3), and in standardbred racing, no later than twenty-four (24) hours after notice from the commission that a final laboratory report has been issued.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that a prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission laboratory issues a positive finding the executive director of the commission or the stewards or judges may authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) If the purse money has been distributed, the stewards or judges shall order the money returned immediately to the association upon notification from the commission laboratory that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(5) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 21. Other Prohibited Practices Constituting a Violation of this Administrative Regulation.

(1) A drug, medication, substance, or device shall not be possessed or used by a licensee, or his designee or agent, within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider or driver.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) The following blood-doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoietin;

(c) Oxyglobin;

(d) Hemopure; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied that may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a rider or driver.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the conditions established in this subsection are met.

(a) A treated horse shall not race for a minimum of ten (10) days following treatment.

(b) A veterinarian licensed to practice by the commission shall administer the treatment.

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds.

(d) Prior to administering the treatment, a report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy.

(6) Other than furosemide, an alkalinizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) A serum or plasma total carbon dioxide (TCO₂) level shall not exceed thirty-seven (37.0) millimoles per liter; except, a violation shall not exist if the TCO₂ level is found to be normal for the horse following the quarantine procedure established in Section 22 of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 22. TCO₂ Testing and Procedures.

(1)

(a) The stewards, judges, or commission veterinarian may order the pre-race or post-race collection of blood specimens from a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as selected by the stewards or judges, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race sampling shall be done at a reasonable time, place, and manner directed by the chief state steward in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO₂ concentration in the serum or plasma of the horse. If the commission laboratory determines that the TCO₂ level exceeds thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO₂ may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian; however, the collection and testing of a split sample for TCO₂ testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)

(a) If the level of TCO₂ is determined to exceed thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty and the licensed owner or trainer of the horse certifies in writing to the stewards or judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the steward or judges, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission veterinarian is satisfied that the horse's level of TCO₂, as registered in the original test, is physiologically normal for that horse, the stewards or judges:

1. Shall permit the horse to race; and

2. May require repetition of the quarantine procedure established in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO₂ level is physiologically normal.

Section 23. Postmortem Examination.

(1) A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as provided in 810 KAR 4:010, Section 14.

(2) The commission shall bear the cost of an autopsy that is required by the commission.

(3) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 24. Corticosteroids.

(1) A corticosteroid shall not be administered intra-articularly within fourteen (14) days before post time for the race in which the horse is entered.

(2) The presence of a detectable concentration of more than one (1) corticosteroid in a post-race sample of blood, urine, or any combination of blood and urine shall constitute a violation of this section.

Section 25. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Veterinary Report of Horses Treated to be Submitted Daily", KHRC 8-010-1, 11/2018;

(b) "Split Sample Chain of Custody Form", KHRC 8-010-2, 2016[11/2018]; and

(c) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 8-010-3, 11/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at https://khrc.ky.gov/new_docs.aspx?cat=32.

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, August 9, 2022)**

810 KAR 9:010. Hearings, reviews, and appeals.

RELATES TO: KRS Chapter 13B, 230.215(2), 230.310(2), 230.320, 230.330

STATUTORY AUTHORITY: KRS 230.215(2), 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing Commission with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.320(1) authorizes the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant an appeal and administrative hearing in accordance with KRS Chapter 13B to any person whose license is denied, suspended, or revoked or who is assessed an administrative fine or required to return a purse. KRS 230.320(5) authorizes the commission to determine that certain appeals are frivolous and requires prescription of the factors leading to such a determination. KRS 230.370 authorizes the commission to promulgate any reasonable and necessary administrative regulation for the conduct of hearings before it. This administrative regulation establishes the procedures for administrative hearings and appeals held pursuant to KRS Chapter 230 and establishes parameters for frivolous appeals.

Section 1. Public Disclosures.

(1) The commission or its executive director may publicly disclose information regarding an alleged regulatory violation, if ~~this[such]~~ information will not unduly impact any investigation, in accordance with the following provisions:-]

(a) After notice to the racing participant, the commission or its executive director may publicly disclose the identity of any racing participant who is accused of an alleged regulatory violation and the identity of the horse at issue;

(b) After both the commission and racing participant receive testing results pursuant to 810 KAR 8:010 and 810 KAR 8:060, the commission or its executive director may publicly disclose the alleged conduct or the alleged amount and type of the medication, drug, or substance that gave rise to the alleged regulatory violation:-]

(c) At any time, the commission or its executive director may publicly disclose the date of an upcoming stewards' hearing; or

(d) At any time, the commission or its executive director may publicly disclose other information in the best interests of racing.

(2) Situations giving rise to the disclosure of information by the commission or its executive director may include the following:

(a) Information pertaining to an alleged regulatory violation has been previously publicly disclosed by the racing participant or any employee or agent of the racing participant;

(b) In the case of an alleged medication violation:-]

1. ~~fff~~ The commission's laboratory has returned a positive finding and the racing participant has been notified of the results of the split sample pursuant to 810 KAR 8:010; or

2. ~~[(c) In the case of an alleged medication violation, if]~~ The commission's laboratory has returned a positive finding and the racing participant has not exercised his or her right to further laboratory testing; or

~~(c)[(d)]~~ For other reasons in the best interests of racing.

Section 2. Stewards' and Judges' Hearings.

(1) A stewards' or judge's hearing, as applicable, shall be conducted by a state steward or a state judge unless waived in writing by the party charged with the violation. A stewards' or judges' hearing shall be conducted no more than sixty (60) days after either:

(a) The racing participant is notified of an alleged violation:-]

(b) If the racing participant requests split laboratory results, the date on which the participant receives those results.

(2) The stewards or judges may extend the sixty (60) day deadline in their sole discretion, upon demonstration of exigent circumstances.

(3) ~~[(2)]~~ At least two (2) stewards or judges shall[must] be present at all times during the hearing. All three (3) stewards or judges shall review the evidence and testimony prior to issuing a ruling. A ruling shall be made by all three (3) stewards or judges sitting in the matter.

(4) ~~[(3)]~~ A party charged with a violation, other than a routine riding offense occurring in a race, shall be given written notice of the stewards' or judges' hearing, unless waived in writing by the party charged.

(5) ~~[(4)]~~ Public attendance at stewards' and judges' hearings shall be/is] allowed. This[Nothing in this] section shall not limit[limits] the authority of the presiding stewards or judges to order closure of a hearing or to make other protective orders to the extent necessary or proper to satisfy the United States Constitution, the Kentucky Constitution, federal or state statute, or other law, such as laws protecting privileged, confidential, or other protected information. ~~[Stewards' and judges' hearings shall be closed, and the stewards and judges shall make no public announcement concerning a matter under investigation until the conclusion of the hearing.]~~

(6) ~~[(5)]~~ A state steward or a state judge shall conduct the hearing [in such a manner as] to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence.

(7) ~~[(6)]~~ Testimony shall be given under oath and a record shall be kept by use of an audio recorder or by court reporter's transcript. The party charged with the violation may [-, however,]- waive the recording and the transcription of the testimony. The stewards or judges shall not be required to receive testimony if the-in-cases where their] ruling is based solely upon a review of the race replay.

(8) ~~[(7)]~~ If, after the hearing, the stewards or judges find that a statute or an administrative regulation has been violated, they shall promptly issue a written ruling setting forth the:

(a) Full name of every person charged with the violation;

(b) Identification of licensees charged with the violation;

(c) Statute or administrative regulation number and pertinent parts of the statute or administrative regulation violated;

(d) Findings; and

(e) Penalty.

(9) ~~[(8)]~~ Copies of the ruling shall be delivered to:

(a) Each party in interest;

(b) The commission; and

(c) The office of the Association of Racing Commissioners International, and in Standardbred racing, to the United States Trotting Association.

(10) ~~[(9)]~~ A party who is the subject of an order or ruling of the stewards or judges may apply for a commission hearing pursuant to KRS Chapter 13B, except as to:

(a) Determinations of whether a horse or horses in a race shall be disqualified for fouls committed during the race; or

(b) Findings of fact as to matters occurring during and incident to the running of a race.

~~(11)~~~~(40)~~ An application to the commission for review of a stewards' or judges' order or ruling shall be made within ten (10) days after the order or ruling is issued in writing on the "Notice of Appeal," KHRC 9-010-1.

~~(12)~~~~(41)~~ An application to the executive director for a stay of a stewards' or judges' order or ruling shall be made in writing within ten (10) days after the order or ruling is issued on the "Request for Stay Pending Appeal", KHRC 9-010-2.

Section 3.~~Section 2.~~ Frivolous Appeals. The commission may determine that an appeal of a stewards' or judges' order or ruling, or any other administrative appeal to the racing commission by a licensee or other person participating in Kentucky horse racing, is frivolous. An appeal shall be presumed to be frivolous if:

(1) The applicant seeks review by the commission but fails, without good cause, to appear for proceedings;

(2) The applicant attends the commission hearing but fails, without good cause, to offer evidence to support the application for review; or

(3) The appeal is totally lacking in merit and~~[such that it]~~ appears to have been taken in bad faith.

Section 4.~~Section 3.~~ Commission Hearings.

(1) Except ~~if~~~~where~~ precluded by another provision of KRS Chapter 230 or this administrative regulation, commission hearings shall be conducted in accordance with KRS Chapter 13B.

(2) Copies of final commission orders or rulings related to licensing of individuals shall be forwarded to the office of the Association of Racing Commissioners International, and, in standardbred racing, to the United States Trotting Association.

Section 5.~~Section 4.~~ Appeal from Commission Order. A person or licensee aggrieved by an order or decision of the commission may appeal to the Franklin Circuit Court in accordance with KRS 230.330.

Section 6.~~Section 5.~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) The "Notice of Appeal", KHRC 9-010-1, 11/2018; and

(b) The "Request for Stay Pending Appeal", KHRC 9-010-2, 11/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at <http://khrc.ky.gov>.

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**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(As Amended at ARRS, August 9, 2022)**

902 KAR 8:060. Salary adjustments for local health departments.

RELATES TO: KRS 211.170(1), (2), 211.1751, 211.1752, 211.1755, 212.170, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation establishes the policies and procedures regarding salary

adjustments for local health departments.

Section 1. Salary Upon Appointment. (1) The entrance salary of an employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed, unless otherwise approved by the department, based on the criteria established in subsections (2) and (3) of this section.

(2)(a) Prior to the start date of a new employee, and upon approval by the department, a new minimum entrance salary may be established by an agency if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary.

(b) If an appointment is made at the newly established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly established minimum entrance salary.

(c)1. If a new minimum entrance salary is established by an agency for a specified class, in addition to the adjustment required by subsection (3) of this section, based on documented recruitment needs, or a new entrance salary is established by a compensation plan change, the department may approve a salary adjustment for employees in the same class.

2. The adjustment shall be a fixed amount provided to each employee in the classification and shall not exceed the amount of increase applied to the newly established minimum.

3. In fixing salaries for this adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(3)(a) An appointment of an applicant who meets the minimum requirements for a position may be above minimum salary within the salary range applicable to the class, if:

1. The newly appointed employee has previous, relevant experience above the minimum requirements of the job;

2. It is necessary to attract qualified applicants; and

3. The newly appointed employee's hire rate does not exceed the salary of a present employee in the same classification with the comparable years of relevant experience, education, and training.

(b) If the individual possesses qualifications in training and experience in addition to the minimum requirements for the class, the newly appointed employee may receive a two (2) percent salary adjustment, not to exceed the midpoint, for each year of appropriate experience and education or training in excess of the minimum requirements for the respective classification.

(c) An employee possessing the same qualifications, in the same class of positions, in the same agency, and who is paid below the entrance salary level as adjusted for the newly appointed employee, shall have his or her salary adjusted to the approved entrance salary level.

Section 2. Initial Probationary Salary Adjustment. (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period as specified in 902 KAR 8:080 Section 9(2). The salary adjustment shall take effect the first pay period following completion of the probationary period.

(2) Except as provided for in 902 KAR 8:080, Section 3(2)(a), an employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

Section 3. In-Range Salary Adjustment. (1) An appointing authority may request a salary adjustment not to exceed five (5) percent if an employee is assigned permanent job duties and responsibilities ~~that~~~~which~~ are more complex and difficult than current job duties and grade level, but are less than those indicated through a reclassification.

(2) Only one (1) in-range salary adjustment shall be allowed for an employee per classification.

(3) The appointing authority may request to remove the in-range salary adjustment if the in-range duties are removed. The salary shall revert to the previous amount prior to the in-range adjustment.

Section 4. Reclassification. (1) A position shall be reclassified if the duties and responsibilities of a position have materially changed.

(2) An agency~~[, based on an evaluation of a position,]~~ may request a reclassification of a regular status employee to a different position:

(a) Within the same classification series that has more complex nonsupervisory job duties and responsibilities and has a higher grade level; or

(b) ~~[That has supervisory responsibilities and a higher grade level; or~~

(c) ~~[In a different classification series that has the same or higher grade level.~~

(3) A regular status employee to be reclassified shall:

(a) Meet the minimum requirements of the new classification; and

(b) Have not previously performed the primary duties of the new classification.

(4) An employee that is reclassified with or without probation to a position having a higher pay grade shall receive a salary increase that is the higher of:

(a) Five (5) percent of the employee's current salary;

(b) Three (3) percent for each grade increase to the new position not to exceed ten (10) percent; or

(c) The minimum salary of the grade assigned to the new position.

(5) A reclassified employee shall; and

(e) serve a probationary period of thirteen (13) pay periods if the reclassification is to a supervisory position or a different classification series within the same grade. If the employee has performed satisfactorily, as determined by the employee's supervisor, the employee shall receive a three (3) percent salary increase at the end of the probationary period.

~~[(4) An employee that is reclassified with or without probation to a position having a higher pay grade shall receive a salary increase that is the higher of:~~

~~(a) Five (5) percent of the employee's current salary;~~

~~(b) Three (3) percent for each grade increase to the new position not to exceed ten (10) percent; or~~

~~(c) The minimum salary of the grade assigned to new position.]~~

Section 5. Promotion of an Employee to a Vacant Position. (1) An employee may be promoted upon the request of an appointing authority if the employee meets the minimum requirements of the vacant position having a higher salary determined by the department to have more extensive and complex job duties and responsibilities.

(2) An employee who is advanced to a higher pay grade through a promotion shall receive a salary increase that is the higher of:

(a) Five (5) percent;

(b) Three (3) percent for each grade increase to the new position not to exceed ten (10) percent; or

(c) The minimum salary of the new position.

(3)(a) The employee shall serve a promotional probationary period of thirteen (13) pay periods and, except as provided by paragraph (b) of this subsection, shall receive a three (3) percent salary increase following satisfactory completion of the probationary period, as documented by the performance evaluation; or

(b) If the employee was promoted while serving an initial probation, the employee shall receive a five (5) percent increment in salary instead of a three (3) percent increase.

Section 6. Demotion. If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(1) If an employee requests a voluntary demotion:

(a)1. The employee's salary shall be reduced by five (5) percent for one (1) grade; or

2. For multiple grades, three (3) percent for each grade decrease not to exceed ten (10) percent; and

(b) The employee's salary shall be reduced by an additional three (3) percent if the voluntary demotion is to a position that no longer requires supervisory responsibilities;

(2)(a) If the demotion is due to reorganization by the agency, the employee may retain the salary received prior to demotion. If the

employee's salary is not reduced upon demotion, and funding is sufficient, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files; or

(b) [(3)] The salary of an employee who is demoted because of a documented disciplinary problem or inability to perform a duty or responsibility required of the position shall be reduced by ten (10) percent of their current salary or to the minimum of the new grade; and;

(3) [(4)] The salary of an employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall be reduced to the level prior to promotion.

Section 7. Salary Upon Reinstatement of a Former Employee.

(1) A former employee may be reinstated to a position for which the employee was previously employed.

(2) The salary of an employee that is reinstated shall be at the higher of:

(a) The same pay rate the employee had been paid at the termination of service, if the time period between separation and reinstatement does not exceed three (3) years;

(b) The current established minimum entrance salary above the former salary; or

(c) Compensation plan changes.

Section 8. Salary Upon Re-employment. (1) A former employee may be re-employed to a position for which the employee was previously employed up to one (1) year after separation.

(2) The salary of an employee that is re-employed shall be:

(a) At the same pay rate the employee had been paid at the termination of service, if the period between separation and re-employment does not exceed one (1) year; or

(b) In accordance with Section 6(1) of this administrative regulation if re-employed to a lower classification.

Section 9. Lump Sum Merit Payment. (1) The appointing authority, with the approval of the department, may award a regular, full-time, part-time 100 hour, or part-time employee a merit lump sum payment.

(2) The appointing authority may grant a lump sum merit payment to an employee meeting the eligibility criteria of this section in an amount not to exceed eight (8) percent of the employee's current salary or established minimum of the employee's classification grade during the annual evaluation period of twenty-six (26) pay periods.

(3) A lump sum merit payment may be granted by the appointing authority with the approval of the department, to an employee meeting the following eligibility criteria:

(a) The employee has completed the initial probationary period required on appointment; and

(b)1. The employee's job performance is consistently above what is normally expected or required by the job duties and responsibilities; or

2. The employee has successfully completed a special project of significant importance to warrant special attention.

(4) The appointing authority shall prepare and submit written documentation to the department that shall substantiate that the employee satisfies the eligibility criteria in this section for the lump sum merit payment to be effective.

(5) The appointing authority shall inform the Board of Health of the number of lump sum merit payments granted during the fiscal year that exceed \$2,000 per payment unless the payment is based on the 902 KAR 8:096 annual evaluation.

(6) An agency may grant a one (1) time lump sum merit payment across the board during the fiscal year to all regular status employees in recognition of the agency exceeding expectations.

(a) The flat amount per employee shall not exceed \$1,000; and

(b) The appointing authority shall receive prior approval from the Board of Health and the department.

Section 10. Detail to Special Duty. (1) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to:

(a) Occupy a position and assume the job duties and responsibilities of an employee on an approved leave of absence or an employee that has separated from the agency; or

(b) To undertake a special project assigned by the appointing authority in addition to the employee's regular duties and responsibilities.

(2) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent during the detail to special duty.

(3) After completion of the special assignment, the employee shall be transferred to the classification or resume normal duties with the employee's salary reduced by five (5) percent.

(4) An employee shall be entitled to salary increases provided by the agency during the special assignment.

Section 11. Educational Achievement and Skill Enhancement Pay. (1) The job-related skill enhancement pay shall be granted to recognize and reward an employee who takes the initiative through his or her own efforts to increase job worth and significantly enhance his or her value to the agency by achieving a higher level of performance through a prescribed course of study in the employee's job field.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement salary increase.

(4) An appointing authority may grant a five (5) percent increase to an employee's salary for obtaining a high school diploma, high school equivalency certificate, or a passing score on the GED test:

(a) Outside of work hours; and

(b) While in the employment of the agency.

(5) An appointing authority may grant a five (5) percent increase to an employee's salary for postsecondary education or training if:

(a) The department has determined the employee has completed 260 hours of job-related classroom instruction;

(b) The employee began the course work after becoming an employee of the agency and completed the course work after establishing an increment date;

(c) The employee has completed the course work within five (5) years of the date on which it began;

(d) The course work has not previously been applied toward an educational achievement award;

(e) The agency has not paid for the course work or costs associated with it; and

(f) The employee was not on educational or extended sick leave when the courses were taken.

(6) An appointing authority may grant, with the approval of the department, an employee a lump sum merit payment not to exceed three (3) percent of the employee's grade minimum to an employee that presents a certificate, license, or other evidence of mastering a body of knowledge obtained through a prescribed course of study that is directly related to the position held and based on this evidence is identified as an approved program by the department.

(7) The salary adjustment for educational achievement shall not include on the job training provided by or required by the agency as part of the assigned job duties and responsibilities.

Section 12. Other Salary Adjustments. (1)(a) An agency may submit a request to the department substantiating the need for a specific salary adjustment for a regular status employee in classified service to address:

1. Compensation issues of the agency that negated the ability of the agency to commit available financial resources to salary adjustments based on the most recent compensation plan changes;

2. Special working conditions;

3. After hours adjustment if working hours cannot be adjusted;

4. Internal or external equity issues among individual employees or groups of employees; or

5. Other specific circumstances.

(b) The request shall address:

1. The nature of the salary issue;

2. The consequences of the salary issue;

3. Recommendation of an equitable resolution; and

4. Other pertinent information substantiating the need for the salary adjustment.

(c) The department may undertake a review of the request to determine the validity of the request, the impact on the submitting agency, and the impact on other agencies.

(2)(a) An agency may grant a one (1) time salary adjustment for all employees during the fiscal year to:

1. Respond to retention and recruitment needs and issues of the agency based on the inability of the agency to attract and maintain a qualified workforce in order to provide services; or

2. Place the agency in a more favorable competitive market and equity position based on an assessment of comparable agencies.

(b) The salary adjustment shall be a prescribed amount given to an employee determined by:

1. Applying an amount not to exceed five (5) percent to the employee's grade minimum;

2. Applying an amount not to exceed five (5) percent to the employee's grade midpoint; or

3. Specifying a fixed hourly amount that would be provided to an employee.

Section 13. Discretionary Salary Increases. (1) The appointing authority may grant, with the approval of the department, a salary increase not to exceed five (5) percent for a regular status employee or employees who have demonstrated, based on the current performance evaluation, excellent performance and achievement. This increase shall be limited to one (1) increase annually.

(2) The Board of Health may grant~~[-, with the approval of the department,]~~ a salary increase ~~[not to exceed five (5) percent]~~ for a regular status public health director or administrator who has demonstrated, based on the current performance evaluation, excellent performance and achievement. The increase shall be limited to one (1) increase annually.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(As Amended at ARRS, August 9, 2022)

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

RELATES TO: KRS 211.090(3), 211.170(2)(1), 211.1751, 212.170(4), 212.870, 237.109, 237.115(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the personnel program for local health departments. This administrative regulation establishes separations and disciplinary procedures applicable to a local health department.

Section 1. Disciplinary Action.

(1) An appointing authority may discipline an employee for:

(a) Lack of good behavior; or

(b) Unsatisfactory performance of a job duty.

(2) A situation that may warrant disciplinary action shall include:

(a) Inefficiency or incompetency in the performance of a duty;

- (b) Negligence in the performance of a duty;
- (c) Careless, negligent, or improper use of local health department property or equipment;
- (d) Excessive absenteeism;
- (e) Habitual pattern of failure to report for duty at the assigned time and place;
- (f) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment;
- (g) Willful abuse or misappropriation of funds, property, or equipment;
- (h) Falsification of an official document relating to or affecting employment;
- (i) Disrupting, disturbing, or interfering with management of agency operation;
- (j) Abusive behavior towards a patient, coworker, or the public in the performance of a duty;
- (k) Insubordination;
- (l) Reporting to work under the influence of alcohol or illegal drugs, or partaking of alcohol or illegal drugs on the job;
- (m) Sleeping or failure to remain alert during working hours;
- (n) Violation of confidential information policies of the agency or assigned program;
- (o) Prohibited political activity;
- (p) Unauthorized or unreported absence [or absence] for any period of working without notifying supervisor;
- (q) Breach of state law, an agency rule, policy, or directive; or[and]
- (r) Performing an unauthorized duty, or performing a duty requiring special training, licensure, or certification, that the employee has not attained.

Section 2. Administering Disciplinary Actions.

- (1) A classified employee with regular status shall not be disciplined by the appointing authority except for cause.
- (2) Except as provided by subsection (4) of this section, an appointing authority shall apply discipline in a progressive manner, with each disciplinary action more severe, in an effort to correct an employee's performance or behavior problem.
- (3) Progressive discipline shall consist of the **[following]** actions of:
 - (a) Verbal admonishment;
 - (b) Written admonishment or warning;
 - (c) Demotion or suspension; and
 - (d) Dismissal.
- (4) One (1) or more of the disciplinary actions stated in subsection (3) of this section may be bypassed by the appointing authority based on the severity of the performance or behavior problem.

Section 3. Predisciplinary Action Meeting.

- (1) Except as provided in Section 5(1) of this administrative regulation, prior to a demotion provided by 902 KAR 8:090, Section 3(1)(c), suspension, or dismissal, a classified regular employee with status shall be notified in writing of the intent of the agency to demote, suspend, or dismiss the employee. The notice shall also include[the following]:
 - (a) The specific reasons for the demotion, suspension, or dismissal including:
 - 1. The statutory, regulatory, or agency policy violation; and
 - 2. The specific action or activity that resulted in the intent to demote, suspend, or dismiss;
 - (b) The date, time, and place of the action or activity, if known;
 - (c) The name of each party involved; and
 - (d) That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.
- (2) A request to appear to reply to the appointing authority

shall be:

- (a) In writing; and
- (b) Made within two (2) working days of receipt of the notice of intent to demote, suspend, or dismiss.
- (3) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.
- (4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.
- (5) If the appointing authority decides to demote, suspend, or dismiss, the employee shall be notified in writing of[the following, in writing]:
 - (a) The effective date of the demotion, suspension, or dismissal;
 - (b) The reason for the demotion, suspension, or dismissal, including the:
 - 1. Statutory, regulatory, or agency policy violation; and
 - 2. Specific action or activity that resulted in the demotion, suspension, or dismissal;
 - (c) The date, time, and place of the action or activity, if known;
 - (d) The name of each party or witness involved; and
 - (e) The right to appeal the demotion, suspension, or dismissal in accordance with 902 KAR 8:110.
- (6) The appointing authority shall provide the employee with the **Request for Appeal [request] form, as incorporated by reference in 902 KAR 8:110.**

Section 4. Conditions for Bypassing Progressive Discipline and the Issuance of a Notice of Intent for the Suspension or Dismissal of an Employee.

- (1) An appointing authority may issue a notice of intent for the suspension or dismissal of an employee for a serious misconduct infraction.
- (2) An example of a misconduct infraction that may be considered serious enough to merit an immediate intent of suspension or dismissal includes[the following]:
 - (a) Threatening, assaulting, fighting with, or harassing a supervisor, another employee, or anyone encountered during the normal course of business;
 - (b) Stealing or deliberately damaging the property of:
 - 1. The agency;
 - 2. A client;
 - 3. A patient; or
 - 4. Another employee;
 - (c) Reporting to work under the influence of alcohol, narcotics, or other drugs, unless the drug was prescribed by a physician;
 - (d) Taking unauthorized leave or failing to show up at work without notifying a supervisor for more than three (3) consecutive work days;
 - (e) Engaging in a fraudulent activity;
 - (f) Breach of the employee confidentiality agreement; or
 - (g) Performing a procedure on a patient or client for which the employee has neither been certified nor has the current credentials to perform.
- (3) The employee shall be notified in writing by the appointing authority regarding the intent to suspend or dismiss.
- (4) If an employee wishes to reply to a notice, the employee shall:
 - (a) Request to appear personally before the appointing authority. The request shall be:
 - 1. In writing; and
 - 2. Made within two (2) working days of receipt of the notice; and
 - (b) File the request with the appointing authority. If a request is mailed by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

(5) An employee may be represented by counsel at an appearance before the appointing authority.

(6) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(7) Within five (5) working days after the employee appears to reply to the intent to suspend or dismiss, the appointing authority shall determine whether to modify, or rescind the intent to suspend or dismiss. The appointing authority shall notify the employee in writing of the decision.

(8) If the appointing authority decides to suspend or dismiss immediately following the meeting, the employee shall be notified in writing of the following, in writing]:

(a) The effective date of the suspension or dismissal;

(b) The reason for the suspension or dismissal, including the:

1. Statutory, regulatory, or agency policy violation; and

2. Specific action or activity on which the suspension or dismissal is based;

(c) The date, time, and place of the action or activity, if known;

(d) The name of each party or witness involved; and

(e) The right to appeal the suspension or dismissal in accordance with 902 KAR 8:110.

Section 5. Directive to Vacate Premises.

(1) If an employee has committed a serious misconduct infraction, and there is a need to diffuse a presently dangerous or disruptive situation, or the appointing authority intends to terminate the employee's employment, a director or designee may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken.

(2) A pre-termination hearing shall be provided within three (3) working days after removal.

(3) The employee may be placed on leave using accumulated leave or on immediate suspension without pay.

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CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (As Amended at ARRS, August 9, 2022)

902 KAR 10:140. On-site sewage disposal system installer certification program standards.

RELATES TO: KRS 211.015, 211.360, 211.375, 211.970, 211.990(2)

STATUTORY AUTHORITY: KRS Chapter 13B, 211.350, 211.357

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.350 requires the cabinet to regulate the construction, installation, or alteration of on-site sewage disposal systems except for systems with a surface discharge. KRS 211.357 requires the cabinet to establish a program of certification for installers of on-site sewage disposal systems. This administrative regulation establishes the certification program including competency testing, training, continuing education, and enforcement procedures relative to maintenance of an acceptable standard of competency for installers.

Section 1. Definitions.

(1) "Approved" is defined by KRS 211.970(1).

(2) "Cabinet" is defined by KRS 211.015(1)(a).

(3) "Certification level" means the level of technical skills and knowledge attained by an installer as categorized below:

(a) "Provisional" or "Probationary level" means the certification entry level for an installer as specified in KRS 211.357(2) and Section 2(3) of this administrative regulation;

(b) "Full level" means the certification level attained by an installer as specified in KRS 211.357(2) and Section 2(4) of this administrative regulation;

(c) "Advanced level" means the certification level attained by an installer as specified in Section 2(5) of this administrative regulation; and

(d) "Master level" means the certification level attained by an installer as specified in Section 2(6) of this administrative regulation.

(4) "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.360.

(5) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and the certification maintenance requirements contained in this administrative regulation.

(6) "Competency" means an acceptable level of professional conduct, workmanship, and technical knowledge in the design and installation of on-site sewage disposal systems.

(7) "On-site sewage disposal system", "on-site sewage system", or "on-site system" means a complete system installed on a parcel of land, under the control or ownership of any person, that accepts sewage for treatment and ultimate disposal under the surface of the ground, including:

(a) A conventional system consisting of a sewage pretreatment unit or units, distribution devices, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system, or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit or units, necessary site modifications, wasteload modifications, and a subsurface soil treatment and dispersal system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) A cluster system; and

(e) A holding tank that provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal system, or connection to a municipal sewer.

(8) "Person" is defined by KRS 211.970(6).

Section 2. Application for Certification.

(1) A person shall not offer services to construct, install, alter, or repair on-site sewage disposal systems without:

(a) Meeting the application requirement of this administrative regulation; and

(b) Obtaining a valid certification card from the cabinet.

(2) Certification shall be:

(a) Nontransferable from one (1) person to another; ~~and~~

(b) Valid statewide subject to the provisions of KRS 211.357 and this administrative regulation; and

(c) Renewed annually by submitting to the Environmental Management Branch a certification fee of forty-five (45) dollars by check or money order made payable to the Kentucky State Treasurer.

(3)(a) A person seeking provisional or probationary level certification shall:

1. Be of legal age to conduct business in Kentucky;

2. Have sufficient skills and knowledge of administrative regulations and construction techniques to pass a minimum competency examination;

3. Submit a completed DFS-303, Application for Certification or Registration, incorporated by reference in 902 KAR 45:065, to the local health department;

4. Provide proof of liability insurance; and

5. Pay the test registration fee of twenty-five (25) dollars by check or money order made payable to the local health department.

(b) A passing score of at least seventy (70) percent shall be achieved on the exam.

(c) An individual failing to achieve a passing score may retake the exam by re-registering and submitting another registration fee.

(d) An individual who passes the exam shall submit to the Environmental Management Branch~~[cabinet]~~ a forty-five (45) dollar certification fee by check or money order made payable to the Kentucky State Treasurer.

(4) A person seeking full level certification shall:

(a) Have continuously maintained provisional or probationary level status in good standing;

(b) Meet the requirements as specified in KRS 211.357(2);

(c) Submit the documentation required in subsection (3)(a)3, and ~~4.(4)~~ of this section; and

(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(5) A person seeking advanced level certification shall:

(a) Have continuously maintained full level status in good standing;

(b) Submit the documentation required in subsection (3)(a)3, and ~~4.(4)~~ of this section;

(c) Complete the necessary training workshops with passing scores on workshop tests to obtain advanced level certification as required by the cabinet; and

(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(6) A person seeking master level certification shall:

(a) Have continuously maintained advanced level status in good standing;

(b) Submit the documentation required in subsection (3)(a)3, and ~~4.(4)~~ of this section;

(c) 1. Installed a minimum of two (2) systems as specified in Section 3(4) of this administrative regulation; and

2. Submit written verification of passed inspection from a certified inspector employed by the local health department having jurisdiction; and

(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(7) A certified installer advancing to the next level certification shall submit the documentation required by subsections (4), (5), and (6) of this section, and to the Environmental Management Branch a certification fee of forty-five (45) dollars by check or money order made payable to the Kentucky State Treasurer [to the Environmental Management Branch].

Section 3. Certification Level Standards. Certification level standards shall be limited to on-site systems that utilize only the following:

(1) Provisional or probationary certification level is limited to residential, on-site systems utilizing:

(a) Gravity distribution;

(b) Rock-filled trenches or beds;

(c) Leaching chamber trenches or beds; or

(d) Evaporation-absorption lagoons.

(2) Full certification level is able to install residential, commercial, industrial, or public facility systems utilizing:

(a) ~~1.~~ Dosed systems;

~~2. [(b)]~~ Fill and wait systems;

~~3. [(c)]~~ Leaching chambers at grade; or

~~4. [(d)]~~ Constructed wetlands; and

~~[(b)] [(e)]~~ Provisional or probationary certification level system listings.

(3) Advanced certification level is able to install residential, commercial, industrial, or public facility systems utilizing:

(a) ~~1.~~ Low pressure pipe systems;

~~2. [(b)]~~ Mounds;

~~3. [(c)]~~ Drip irrigation;

~~4. [(d)]~~ Advanced treatment;

~~5. [(e)]~~ Experimental technology; or

~~6. [(f)]~~ Cluster systems; and

~~[(b)] [(g)]~~ Provisional, probationary, and full certification level system listings.

(4) Master certification level is able to install residential, commercial, industrial, or public facility systems utilizing provisional, probationary, full, and advanced certification level system listings.

Section 4. Maintenance of Certification.

(1) Each person holding a valid certification under KRS 211.357 shall be required to:

(a) Attend training workshops offered by the cabinet to maintain certification and improve competency based on the level of certification attained;

(b) Maintain and submit proof of liability insurance annually to the local health department; and

(c) Annually pay the certification fee as required by Section 2(3)(d) of this administrative regulation ~~[to the Kentucky Department for Public Health].~~

(2) An installer whose certification has expired shall:

(a) Comply with subsection (1) of this section;

(b) Submit proof of completion of continuing education units; and

(c) Receive a renewal certification card prior to installing an on-site sewage system.

~~(3)(a)~~ For provisional, probationary, full, and advanced~~[all]~~ certification levels, a minimum of two (2) training workshops for a total of six (6) approved continuing education units per year with passing scores on workshop tests shall meet certification maintenance requirements.

(b) For master certification level, a minimum of two (2) training workshops for a total of six (6) approved continuing education units every two (2) years with passing scores on workshop tests shall meet certification maintenance requirements.

(4) Attendance at workshops, seminars, or conferences not sponsored by the cabinet may be substituted on a one (1) for one (1) basis to meet certification maintenance requirements at the determination of the cabinet. Requests for consideration of other training for substitution shall be based upon the following:

(a) Submission of a copy of the training agenda, speaker or presenter biographies, and course outlines; and

(b) Submission of proof of attendance and results of any testing or other performance measurement with verification by the training sponsor.

(5) Upon receipt of a request for training substitution the cabinet shall compare that training for equivalency with similar training it provides. If equivalency is demonstrated, the cabinet shall accept that training for substitution as specified in subsection (4) of this section.

(6) Any person failing to meet certification maintenance requirements shall be subject to administration action under Section 7 of this administrative regulation and KRS 211.357(4).

Section 5. Training.

(1) The cabinet shall develop and implement a series of training workshops for certified installers in the areas of on-site sewage disposal system design, technology, application, and function.

(2) Training workshops shall be conducted throughout the state at frequencies, times, and locations necessary to provide all certified installers a reasonable opportunity to attend a number of workshops sufficient to maintain certification.

(3) A schedule of training workshops, including dates, times, location, and topics shall be prepared and made available to all certified installers to notify them of training opportunities and allow for scheduling attendance.

(4) A series of training courses shall be developed including instructor and student manuals, and other audiovisual and written materials.

(5) The cabinet may charge a reasonable fee at each training workshop to support program costs.

(6) The cabinet shall establish, through grants or contracts, a training staff composed of local health department fully certified inspectors to conduct training workshops on a regional basis. These local instructors shall serve as supplemental staff to the cabinet and act under the direct supervision of the cabinet.

(7) Training workshops for staff and supplemental staff instructors shall be conducted to assure uniformity of training for certified installers.

(8) The cabinet may contract with other governmental agencies, private consultants, or professional organizations for specialized instructor services.

Section 6. Materials and Equipment.

(1) Each training course shall be developed into a training materials packet consisting of the following:

- (a) Course outline;
- (b) Instructor script;
- (c) Trainee guide;
- (d) Audiovisual materials;
- (e) Trainee worksheets and reference sheets;
- (f) Test;
- (g) Instructor comment sheet; and
- (h) Trainee comment sheet.

(2) A complete training materials packet, in hardcopy or digital format shall be provided to each instructor for each course.

(3) A training material packet, excluding subsection (1)(b), (d), and (g) of this section, shall be provided to each trainee for each course.

(4) Sufficient stocks of instructor and trainee material packets shall be maintained for each course to meet demand.

(5) Audiovisual equipment shall be available to each instructor.

Section 7. Enforcement.

(1) Failure of any certified installer to comply with the requirements of KRS 211.350, 211.357(4) and (5), 902 KAR 10:081, 902 KAR 10:085, or this administrative regulation shall result in administrative action being taken.

(2) A minimum six (6) months probationary period shall be assigned to any certified installer who:

(a) Fails final inspection on any two (2) consecutive systems that require follow-up inspections before approval is granted;

(b) Backfills any system before final inspection is conducted and approval to backfill is given;

(c) Fails final inspection on any system that results in reconstruction of the system before approval can be given;

(d) Fails to place, cause to be placed, or fails to supervise placement of any required additional fill soil over an installed system;

(e) Fails to call for final inspection of any system;

(f) Fails to be present on the site anytime work is being performed on the system under construction;

(g) Fails to provide name, certification number, and notification of intent on application of permit when performing excavation and backfilling work on permitted homeowner installations; or

(h) Performs work on any system outside of the designated certification level.

(3) Probation may be assigned to a certified installer by the cabinet or by the certified inspector having local jurisdiction. Terms of the probationary period shall stipulate any restrictions, requirements, or additional training determined necessary to correct performance.

(4) For other violations, the provisions of KRS 211.357(4) and (5) relating to suspension or revocation of certification shall apply.

(5) In all instances of administrative action being taken for probation, suspension, or revocation, a certified installer shall have the right to request an administrative conference. The request shall be submitted in writing on form DFS-212 - Request for Conference, incorporated by reference in 902 KAR 1:400, to the local health department having jurisdiction or to the cabinet. All administrative conferences shall be conducted pursuant to 902 KAR 1:400.

(6) If immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or compel compliance with KRS 211.350(5), (7), (8), and (9), 211.357(4) and (5), or administrative regulations pursuant to those statutes, the cabinet or local health department concerned may maintain, in its own name, injunctive action against any person engaged in the construction, installation, or alteration of an on-site sewage disposal system.

(7) The cabinet shall be notified within two (2) business days of any administrative action taken by a local health department against any certified installer, so that other local health departments can be alerted to that installer's status.

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CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (As Amended at ARRS, August 9, 2022)

902 KAR 30:120. Evaluation and eligibility.

RELATES TO: KRS 200.654, 200.668, 211.647, 216.2970, 34 C.F.R. [303.11, 303.321,]303.322, 303.421[-20 U.S.C. 1434]

STATUTORY AUTHORITY: KRS 194A.050, 200.660(7), 34 C.F.R. 303.300, 303.321, 20 U.S.C. 1434

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds [appropriated] to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the evaluation, eligibility, and redetermination of eligibility requirements for the Kentucky Early Intervention System (KEIS)[First Steps, Kentucky's Early Intervention program].

Section 1. Initial Eligibility. (1) Initial eligibility shall be determined by the review [and synthesis] of:

(a) The results of at least one (1) multi-domain evaluation instrument designed to confirm the presence of a significant developmental delay;

(b) Information about the infant or toddler's[child's] developmental history through parent interview;

(c) Identification of the infant or toddler's[child's] level of functioning in each developmental area;

(d) Information from other sources, such as childcare workers; and

(e) All available relevant medical and educational records.

(2) An infant or toddler[A child] shall be eligible for services[First Steps service] if the infant or toddler[child]:

(a) Is between[age] birth and[up to] three (3) years of age;

(b) Is a resident of Kentucky or homeless within the boundaries of the state at the time of referral and resides in Kentucky while receiving early intervention services; and

(c) 1. Has a documented established risk condition that has a high probability of resulting in developmental delay; or

2. Is determined to have a significant developmental delay based on the evaluation and assessment process.

(3) Eligibility by established risk conditions:

(a) In accordance with KRS 200.654(10)(b), an infant or toddler[a child] meeting the criteria established in subsection (1)(a) and (b) of this section with a suspected established risk condition shall be eligible once the diagnosis is confirmed by a physician. The established risk condition shall be documented in the infant or toddler's[child's] record through the KEIS online[First Steps on-line] data management system.

(b) The Kentucky Early Intervention System[First Steps] Established Risk Conditions[condition] list shall be maintained by KEIS[the First Steps Program].

1. An infant or toddler[A child] with an established risk shall have a five (5) area assessment, assessing the five (5) areas listed in subsection (4)(a) of this section, completed by a primary level[developmental] evaluator using a cabinet-approved, criterion-referenced assessment instrument in lieu of a norm-referenced evaluation, in accordance with 902 KAR 30:130.

2. If the established risk condition relates to hearing loss, the five (5) area assessment shall be performed by a speech therapist or a

teacher of the deaf and hard of hearing.

(4) Eligibility by developmental delay:

(a) ~~An infant or toddler~~[A child] meeting the criteria established in subsection (2)(a) and (b) of this section shall be eligible for [First Steps] services if the ~~infant or toddler~~[child] is determined to have a ~~developmental delay~~[fallen significantly behind in development], based on the evaluation and assessment process, in one (1) or more of the following domains of development:

1. Total cognitive development;
2. Total communication area through speech and language development, ~~that~~[which] shall include expressive and receptive language;
3. Total physical development including motor development, vision, hearing, and general health status;
4. Total social and emotional development; or
5. Total adaptive skills development.

(b) Evidence of ~~a developmental delay~~[falling significantly behind in developmental norms] shall be determined on a norm-referenced test by the ~~infant or toddler~~'s[child's] score that is:

1. Two (2) standard deviations below the mean in one (1) skill area; or
2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(c) 1. If a norm-referenced test reveals a delay in one (1) of the five (5) skill areas, but does not meet the eligibility criteria required by paragraph (b) of this subsection, a more in-depth standardized test in that area of development may be administered if the following is evident:

- a. The ~~initial evaluator and a~~ parent ~~has~~[or guardian have] a concern or ~~suspects the infant or toddler~~'s[suspect that the child's] delay is greater than the testing revealed; and
- b. A different norm-referenced test tool reveals a standardized score ~~that~~[which] would meet eligibility criteria; and
- c. ~~There is one (1) area of development that is of concern.~~

2. The results of the alternate testing required by subparagraph 1. of this paragraph shall be considered as part of the ~~infant or toddler~~'s[child's] eligibility if the standardized scores indicate a delay of at least two (2) standard deviations ~~below the mean~~.

(5) Eligibility by professional judgment. ~~An infant or toddler~~[A child] may be determined eligible by informed clinical opinion by the following multidisciplinary evaluation teams of professionals:

- (a) An approved neonatal follow-up program team, as described in 902 KAR 30:150 Section 2(3)(f)(e);
- (b) An approved intensive level evaluation team, as described in 902 KAR 30:150 Section 2(3)(e)(d); or
- (c) The designated record review team, if reviewing for eligibility.

Section 2. Initial [Child] Evaluation. (1) Prior to the administration of an evaluation instrument, the ~~infant or toddler~~'s[child's] vision and hearing status shall be determined through screening or evaluation.

(2) ~~An infant or toddler referred to KEIS~~[A child referred to the First Steps Program] who meets the criteria established in Section 1(2)(a) and (b) of this administrative regulation shall receive an initial evaluation if:

- (a) There is a suspected developmental delay [as] confirmed by the cabinet-approved screening protocol;
- (b) The ~~infant or toddler~~[child] does not have an established risk diagnosis; and
- (c) The parent requests and consents to an evaluation ~~that includes norm-referenced and criterion-referenced instruments~~.

(3) For ~~an infant or toddler~~[a child] without an established risk diagnosis, an initial evaluation shall be used to:

- (a) Determine developmental status; and
- (b) Establish the baselines for progress monitoring.

(4) For ~~an infant or toddler~~[a child] with an established risk diagnosis, a ~~cabinet-approved~~ criterion-referenced assessment shall be completed to:

- (a) Determine developmental status ~~for program planning~~; and
- (b) Establish the baseline for progress monitoring.

(5)(a) Initial evaluations shall include the five (5) developmental areas identified in Section 1(4)(a) of this administrative regulation using norm-referenced standardized instruments that provide a

standard deviation score in the total domain for the five (5) areas and shall include a cabinet-approved criterion-referenced assessment instrument, in accordance with 902 KAR 30:130.

(b) The initial evaluation shall include:

1. A medical component completed by a qualified medical professional[physician or nurse practitioner] that includes:

- a. A complete history; ~~and~~
- b. Physical examination; and
- c. Other medical information; and

2. A developmental component completed by a cabinet-approved initial evaluator, in accordance with 902 KAR 30:150, that includes:

a. A statement of the ~~infant or toddler~~'s[child's] health status during the evaluation, including notation of health issues that affect the results of the evaluation; and

b. Completion of each appropriate instrument needed to determine the ~~infant or toddler~~'s[child's] unique strengths and needs.

(c) An evaluation report shall be entered into the KEIS[First Steps online] data management system:

1. Within five (5) ~~business~~[working] days of the completion of the evaluation; and
2. In clear, concise language that is easily understood by the family.

(6) ~~Infant or toddler~~[Child] records of evaluations transferred from a developmental evaluator outside the ~~program~~[Kentucky Early Intervention System] shall be reviewed by the POE[Point of Entry] staff and shall be used for eligibility determination if:

- (a) The records meet evaluation timelines established in subsection (7) of this section; and
- (b) The records contain the developmental evaluation information required by subsection (5)(b) of this section.

(7) If there is a developmental evaluation available, as required by subsection (5)(b) of this section, it shall be considered as part of the ~~infant or toddler~~'s[child's] eligibility if the evaluation was performed within:

- (a) Three (3) months prior to referral to KEIS for an infant[First Steps, for a child] under twelve (12) months of age; or
- (b) Six (6) months prior to referral to KEIS for a toddler who is at least[First Steps, for a child between] twelve (12) months up to[of age and] three (3) years of age.

(8)(a) ~~An infant or toddler~~[A child] referred to KEIS[the First Steps program] who was born ~~premature~~[at less than thirty-seven (37) weeks gestational age] shall be evaluated and assessed using an adjusted gestational age to ~~account~~[correct] for prematurity, unless the ~~toddler~~[child] is twenty-four (24) months of age or older at the time of the referral.

(b) For ~~an infant~~[a child] who is less than six (6) months corrected age, the initial evaluation shall be done by an approved intensive level evaluation team, an approved neonatal follow-up program team, or an approved district child evaluation specialist in accordance with Section 1(5) of this administrative regulation.

(9) If the ~~infant or toddler~~[child] does not have an established risk diagnosis and is determined not eligible, the POE staff shall:

- (a) Provide a [First Steps] Notice of Action (FS-9) in accordance with 34 C.F.R. 303.421; and
- (b) Discuss available community resources ~~[such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other community programs]~~.

(10) ~~Eligibility for cases that are complex or have contradictory information from the initial evaluation shall be determined by record review. Upon receiving a referral, the record review team shall conduct a review of all available evidence and issue an eligibility determination within ten (10) calendar days.~~[A review of the child's First Steps record by the record review team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility for cases which are complex or have contradictory information from testing.

(a) Upon obtaining a written consent by the parent or guardian, a service coordinator shall submit a child's record to the Department for Public Health or the designee for a record review if:

1. ~~The child does not meet eligibility guidelines at the initial~~

evaluation;

2. The initial evaluator and a parent or guardian have concerns that the child is developing atypically; and

3. A determination of eligibility based on professional judgment is needed.

(b) Upon receiving a referral, a record review team shall conduct a record review and issue findings within ten (10) calendar days of receipt of the request.]

Section 3. Annual Redetermination of Eligibility. (1) A redetermination of eligibility shall occur at least annually[not be used to address concerns that are medical in nature].

(2) An infant or toddler[A child] shall have continuing program eligibility for [First Steps] services if:

(a) The infant or toddler is eligible by age and residency[child is:

1. Under three (3) years old; and

2. A resident of Kentucky or homeless within the boundaries of the state]; and

(b) The result of the most recent progress review, including the annual five (5) area assessment, demonstrates:

1. A significant delay in at least one (1) or more developmental areas; and

2. Continued [First Steps] services are required in order to support continuing developmental progress.

(3) Based on the results of the redetermination of eligibility, the IFSP team shall:

(a) Continue with the same or modified outcomes and services; or

(b) [Continue with modified outcomes and services; or

(c) Transition the infant or toddler from[child from First Steps] services.

(4) Redetermination of eligibility shall not be used to address concerns that are medical in nature[occur at least annually].

(a) The annual redetermination shall be part of the infant or toddler's[child's] ongoing assessment and shall include an assessment in all five (5) areas using a cabinet-approved criterion-referenced instrument, in accordance with 902 KAR 30:130, and shall be completed between thirty (30) and sixty (60) calendar days prior to the annual IFSP date.

(b) If a person directly involved in conducting the evaluation and assessments is unable to attend an IFSP meeting, arrangements shall be made for that person's involvement by other means including participating in an audio-only or audio-visual[a telephone] conference call, designating[having] a representative to attend the meeting, or making records and reports available at the meeting.

Section 4. Determination of [Child's] Hearing Status. (1) If the referral is for an infant or toddler[a child] who has a diagnosis of a[significant] hearing loss, in accordance with[as specified by] KRS 200.654(10)(b), the infant or toddler[child] shall be considered to have an established risk diagnosis and be eligible for [First Steps] services and the referral process shall continue.

(2) If the referral is for an infant or toddler[a child] who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and who is suspected of having developmental delays, the POE staff shall initiate the evaluation that[for First Steps, which] shall include an audiological evaluation at a cabinet[an approved Infant Audiological Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970].

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

(a) "[First Steps] Notice of Action (FS-9)", October 2021[October 2012] edition; and

(b) "Kentucky Early Intervention System[First Steps] Established Risk Conditions[Condition list]", January 2022[January 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is available on the agency's Web site at

<https://chfs.ky.gov/agencies/dph/dmch/ecdb/Pages/keis.aspx> and available by contacting the Kentucky Early Intervention System office at <https://chfs.ky.gov/agencies/dph/dmch/ecdb/fs/SLAcontacts.pdf> df.]

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
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, August 10, 2022)

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), 503.110(4), 527.100, 527.110, 600.020, Chapter 605[605.090(4)], 610.110(6), 610.125, 615.010-615.990, 620.030, 620.090(2), 620.140(1)(d), 620.230(3), [Chapter 625, 16 C.F.R. 1219 - 1220, 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)(40) "Child-placing agency" is defined by KRS 199.011(6).

(12)(41) "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) **"Department" is defined by KRS 199.011(7) and 199.641(1)(b).**

(14)(42) "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)(43) "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)(45) "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)(46) "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker that meets the requirements **established[specified]** in Section 4(3) of this administrative regulation.

(18)(47) "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)(48) "Independent living services" means services provided to an eligible child, as **established[described]** in Section 15[46] 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)(49) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(21)(20) "Mental health treatment" means services provided to an individual determined to have emotional, mental, or behavioral **needs[problems]**.

(22)(21) "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) "Program director" means the person responsible for supervising the day-to-day operation of the program.

(24)(23) "Respite care" means temporary care provided by another individual or family that meets requirements **established[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) "Sex crime" is defined by KRS 17.500(8).

(26)(25) "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, **which[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, **if[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) **Establish[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. Supervise/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 considered/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 established/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 established/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. Supervise/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 state/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. A social service worker/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 established/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. **Documentation has been signed by the Division of Protection and Permanency director or designee and provided to the agency that states the employee may resume regular duties.**[A prevention plan has been written and approved by a designated regional cabinet staff.]

b.[b.] The person is cleared of the charge; or

c.[b.]**c.**[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 **established**[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, **which**[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 **through**[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 **through**[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 **established**[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 or not 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 18~~ of this administrative regulation. If an applicant lacks training in accordance with this paragraph, the child-placing agency shall, prior to placement of a child in the home:

1. Provide training in accordance with Section 5, 7, 10, or 13, ~~or 18~~ of this administrative regulation; or
2.
 - a. Develop an individualized curriculum to fulfill unmet training needs; and
 - b. Document the applicant's compliance with the individualized curriculum.

Section 5. Orientation and Preparation of a Foster Home.

[(1)] With the exception of training requirements 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)[1-] 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 based on maintaining the health and safety of the child.

(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 established[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 established[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, established[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 established[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 could[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) Could[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 (3)[(5)] of this section, the number of children residing in a therapeutic foster care home that cares for a child in the custody of the cabinet shall be limited to a total of four (4) children, including no more than two (2) therapeutic foster care children.~~
- (5) ~~(5)~~ To make a request for an exception to subsection (4) of this section, a child-placing agency shall follow the procedure established[set forth] in Section 6(6)(b) of this administrative regulation.
- (6) ~~(6)~~ A treatment director shall supervise a treatment team and shall participate in the development of the ITP and the quarterly case consultation.
- (7) ~~(7)~~ A child-placing agency shall provide or contract, as established[specified] in KRS 199.640(5)(a)2, for therapeutic services individualized for the child, as needed, at least two (2) times per month.
- (8) ~~(8)~~ A therapeutic foster care parent shall be responsible for:
 - (a) Participation in the development of an assessment, ITP, and supervision plan as established[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 established[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) 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 established[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) A child-placing agency shall:~~

(a) Meet requirements established[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[45] 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 established[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 established[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 established[specified] by subsection (2)(b) and (c) of this section; and

(b) Continues to meet the requirements in Section 14[45] 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 who[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 established[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) A smoke-free environment by refraining from smoking in the direct presence of a child for whom their physician recommends, in writing, a smoke-free environment;~~f.]~~

(2) Allow[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) Upon request, surrender a child or children to the authorized representative of the child-placing agency or the state agency that[, 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 established[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)[8(4)] of this administrative regulation if the provider cares for a child requiring therapeutic foster care.

(6) A respite care provider for a child with medical complexity shall:

(a) Meet the requirements of Section 10(4)(b), (5), and (6) of this administrative regulation;

(b) Receive training on how to meet the specific needs of the child with medical complexity from:

1. A health professional; or

2. The foster parent trained by a health professional; and
- (c) Maintain certification in:
 1. Infant, child, and adult CPR; and
 2. First Aid.

Section 14. ~~[Private Placement Process. Except for a child in the custody of or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, a child-placing agency shall follow the procedures established by this section if a private placement is conducted.]~~

~~[(1)] [For a child being placed with a child-placing agency, the child-placing agency shall obtain an:]~~

~~[(a)] [Agreement for voluntary care signed by the custodian; or]~~

~~[(b)] [Order from a court of competent jurisdiction placing the child into the custody of the child-placing agency.]~~

~~[(2)] [The child-placing agency shall:]~~

~~[(a)] [Complete an intake assessment of the strengths and needs of the child and the child's family of origin; and]~~

~~[(b)] [Ascertain the appropriateness of the referral for the child.]~~

~~[(3)]~~

~~[(a)] [The child-placing agency shall develop an ITP individualized for a child and the child's family based on an individualized assessment of the child's and family's needs:]~~

~~[1.] [Within thirty (30) days of the child's placement with the child-placing agency; or]~~

~~[2.] [Prior to the child being placed out of state.]~~

~~[(b)] [An exception to the requirement specified in paragraph (a) of this subsection may be made for a child:]~~

~~[1.] [Under the age of twelve (12) months; and]~~

~~[2.] [With no extraordinary needs.]~~

~~[(c)] [The assessment shall be revised as needed.]~~

~~[(d)] [The assessment and ITP shall include the type and extent of services to be provided to the child and the child's family.]~~

~~[(e)] [Assessment of the child shall include consideration of the following history:]~~

~~[1.] [Behavioral health treatment;]~~

~~[2.] [Trauma;]~~

~~[3.] [Risk for harm to self or others; and]~~

~~[4.] [Past behaviors or safety issues that could increase the likelihood of placement disruption.]~~

~~[(4)] [Unless not in the best interest of the child, the child, parent, and foster parent shall be included in developing the assessment and ITP.]~~

~~[(5)]~~

~~[(a)] [The foster home selected for placement shall be the most appropriate home based on the child's needs and the strengths of the foster family.]~~

~~[(b)] [The foster home shall be located as close as possible to the home of the family of origin, in order to facilitate visiting and reunification.]~~

~~[(6)]~~

~~[(a)] [The social services worker and the foster parent shall work collaboratively to prepare the child prior to the placement.]~~

~~[(b)] [Unless a circumstance precludes preparation and the circumstance is documented in the case record, a child shall have a period of preparation prior to the placement in the foster home.]~~

~~[(7)] [The child-placing agency shall:]~~

~~[(a)] [Provide or arrange for services to support reunification for a child for whom family reunification is the goal;]~~

~~[(b)] [Assess and document the parent's capacity for reunification quarterly;]~~

~~[(c)] [Provide for review of the child in order to evaluate the progress toward achieving the child's permanency goal every six (6) months; and]~~

~~[(d)] [Assure that foster care continues to be the best placement for the child.]~~

~~[(8)]~~

~~[(a)] [Services to the family of origin and to the child shall be adapted to their individual capacities, needs, and problems.]~~

~~[(b)] [A reasonable effort shall be made to return the child to the family of origin.]~~

~~[(9)] [Planning for the child regarding treatment program matters, including visitation, health, education, and permanency goals, shall be developed in collaboration with the:]~~

~~[(a)] [Family of origin;]~~

~~[(b)] [Treatment director;]~~

~~[(c)] [Social services worker; and]~~

~~[(d)] [Foster home;]~~

~~[(10)]~~

~~[(a)] [The child-placing agency shall work with a foster home to promote stability and avoid disruption for a child, to include:]~~

~~[1.] [Services specified in Section 6(1) through (3), and (7) through (11) of this administrative regulation; and]~~

~~[2.] [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)~~~~(14)~~ 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)~~[twelve (12)]~~ to twenty-one (21) years of age;
- (b) Directly or indirectly through a foster parent with whom the child is placed;
- (c) As established~~[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)(a) The child-placing agency shall maintain a record on each child and foster home, including medically complex foster homes and therapeutic foster care homes, 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(1)(b)3.a]~~ of this administrative regulation;
- (h) Copy of any placement exceptions granted; and
- (i) If applicable, copy of the written statement of the foster home's closure completed pursuant to Section 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, archive~~[1.]~~ the record and maintain~~[have it transferred to one (1) of the cabinet's designated record centers; or]~~ 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.

a. 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.

b. 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 established~~[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, including~~[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", 09/22/07/22~~[(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.

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
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, August 9, 2022)

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, Chapter 605, 620.030, Chapter 625, 45 C.F.R. Parts 160, 164

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 a state agency~~[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 922 KAR 1:310, 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 a state agency~~[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;

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. **[(1)]** 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. **[(1)]** A child-placing agency shall close a foster or adoptive home in accordance with 922 KAR 1:310, Section 18.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at Senate Standing Committee on Health and Welfare and House Standing Committee on Health and Family Services meetings on August 25, 2022)

922 KAR 5:070. Adult protective services.

RELATES TO: KRS Chapter 13B, 61.872, 194A.010, 202A.051, 202B.100, Chapter 209, 387.540(1), 42 U.S.C. 1397

STATUTORY AUTHORITY: KRS 194A.050(1), 209.030(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth [Commonwealth] and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.030(1) authorizes the secretary to promulgate administrative regulations necessary for the implementation of adult protective services. This administrative regulation establishes the procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209.020(8).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Authorized agency" is defined by KRS 209.020(17).

- (4) "Caretaker" is defined by KRS 209.020(6).
 (5) "Emergency" is defined by KRS 209.020(11).
 (6) "Employee" is defined by KRS 209.032(1)(a).
 (7) "Exploitation" is defined by KRS 209.020(9).
 (8) "Investigation" is defined by KRS 209.020(10).
 (9) "Mental injury" means a negative impact on the emotional or psychological state of the adult that is inconsistent with an individual's medical care and:
 (a) Requires medical or therapeutic treatment;
 (b) Is manifested by a behavioral change; or
 (c) ~~Caused the~~Would cause a reasonable person to feel fear, distress, humiliation, or ridicule.
 (10) "Neglect" is defined by KRS 209.020(16).
 (11)~~[(40)]~~ "Protective services" is defined by KRS 209.020(5).
 (12)~~[(14)]~~ "Records" is defined by KRS 209.020(15).
 (13) "Unreasonable confinement" means the unnecessary restriction of an adult's movement through physical or chemical restraints or the unnecessary isolation of an individual.
 (14)~~[(12)]~~ "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).
 (15)~~[(13)]~~ **"Vulnerable adult services provider" is defined by KRS 209.032(1)(c).]**

Section 2. Receiving a Report of Adult Abuse, Neglect, or Exploitation. (1) An individual suspecting that an adult has suffered abuse, neglect, or exploitation shall:

- (a) Report to the cabinet in accordance with KRS 209.030(2) and (3); and
 (b) Provide the information specified in KRS 209.030(4).
 (2) The identity of the reporting individual shall remain confidential in accordance with KRS 209.140.
 (3) The cabinet shall make available a twenty-four (24) hour on-call response system for emergency reporting after normal office hours.
 (4) The cabinet shall investigate an anonymous report that provides sufficient information regarding the alleged abuse, neglect, or exploitation of an adult.
 (5) If a report does not meet criteria for investigation, the cabinet may refer the reporting source to:
 (a) Community resources;
 (b) General adult services in accordance with 922 KAR 5:090; or
 (c) A domestic [Domestic] violence protective services provider~~[in accordance with 922 KAR 5:102]~~.
 (6) Upon accepting a report for investigation of alleged adult abuse, neglect, or exploitation, the cabinet shall:
 (a) Conduct an initial assessment and initiate an investigation in accordance with KRS 209.030(5); and
 (b) Take into consideration the safety of the adult when proceeding with the actions necessary to initiate an investigation.
 (7) The cabinet shall initiate an investigation upon acceptance of a report of:
 (a) Abuse~~[as defined in KRS 209.020(8),]~~ if the report alleges an adult:
 1. Being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, or kidney areas;
 2. Has an injury that:
 a. Was intentionally inflicted by another person; or
 b. Is of unknown origin in a critical area of the body;
 3. Was sexually abused;
 4. Was subjected to unreasonable confinement;
 5. Was subjected to intimidation; or
 6. Received a punishment that resulted in pain, injury, or mental injury~~[Marks that are or have been observed on an adult that another individual allegedly inflicted;~~
 2. Physical abuse inflicted upon the adult resulting in pain or injury, including a mental injury;
 3. An adult being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, and kidney areas; or
 4. An act of sexual abuse];

(b) Neglect~~[as defined in KRS 209.020(16),]~~ of an adult that may result in harm to the health and safety of the adult in the following areas:

1. Hygiene neglect, if the adult has physical symptoms that require treatment due to poor care as a result of:
 - a. An act or omission by a caretaker; or
 - b. The absence of a caretaker;
 2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of necessary and appropriate supervision;
 3. Food neglect, if an adult shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration;
 - c. Food poisoning; or
 - d. Lack of adequate food for a period of time that:
 - (i) Results in physical symptoms; or
 - (ii) Requires treatment;
 4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caretaker is not taking appropriate action to eliminate the problem; or
 5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that:
 - a. Results in an observable decline in the adult's health and welfare;
 - b. May be life threatening; or
 - c. May result in permanent impairment;
- (c) Exploitation of an adult~~[as defined in KRS 209.020(9),]~~ if the report alleges~~[that the perpetrator was a person in a position of trust to the alleged victim and caused]~~:
1. Isolation from friends, relatives, or important information, such as:
 - a. Screening telephone calls;
 - b. Denying visitors; or
 - c. Intercepting mail;
 2. Physical or emotional dependency;
 3. Manipulation;
 4. Acquiescence; and
 5. Loss of resources to a person in a position of trust to the alleged victim; or

(d) An adult in need of protective services~~[as defined in KRS 209.020(5)].~~

(8) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.

(9) The following criteria shall be used in identifying a report of alleged adult abuse, neglect, or exploitation not requiring an adult protective service investigation:

- (a) The report does not meet the statutory definitions of:
1. Adult; and
 2. a. Abuse;
 - b. Neglect; or
 - c. Exploitation; or
- (b) There is insufficient information to:
1. Identify or locate the adult; or
 2. Explore leads to identify or locate the adult.
- (10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall provide the information specified in KRS 209.030(4):
- (a) For a determination of investigation assignment by cabinet supervisory staff;
- (b) To the local guardianship office, if the adult is a state guardianship client; and
- (c) To appropriate authorized agencies, as specified in KRS 209.030(5).

Section 3. Adult Protective Service Investigations. (1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).

(2) An adult protective service investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.

(3) Information obtained as a result of a protective service investigation shall be kept confidential in accordance with KRS 209.140.

(4) Requests for written information of the protective service investigation, except for court ordered releases, shall be handled through the open records process in accordance with KRS 61.872 and 922 KAR 1:510.

(5) Designated regional cabinet staff shall initiate the investigation of a report of alleged adult abuse, neglect, or exploitation. If the accepted report of alleged adult abuse, neglect, or exploitation with the expressed permission of the adult indicates:

(a) An emergency, the investigation shall be initiated within four (4) hours~~one (1) hour~~; or

(b) A nonemergency, the investigation shall be initiated within forty-eight (48) hours.

(6) If permission is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.

(7)(a) The cabinet shall obtain a written voluntary statement of adult abuse, neglect, or exploitation if the adult, witness, or alleged perpetrator is willing to provide the written statement; and

(b) The cabinet shall inform the adult, witness, or alleged perpetrator that the:

1. Statement may be shared with appropriate authorized agencies; ~~and~~

2. Statement may be used in an administrative hearing conducted by the cabinet; and

3. Individual may be required to testify in an administrative hearing or in a court of law.

(8) If investigating reports of alleged abuse or neglect of an adult resulting in death, designated regional cabinet staff shall:

(a) Examine the coroner's or doctor's report;

(b) Obtain a copy of the death certificate for the case record, if possible;

(c) Notify the commissioner or designee;

(d) Consult with appropriate law enforcement, in accordance with KRS 209.030(6)(a) in completing the investigation, if an adult died allegedly as a result of abuse or neglect; and

(e) Determine if another resident in an alternate care facility is at risk of abuse or neglect, if the findings of an investigation suggest that an adult in the alternate care facility died allegedly as a result of abuse or neglect.

(9) Unless the legal representative is alleged to have abused, neglected, or exploited the adult, a legal representative may act on behalf of an adult for purposes of this administrative regulation.

Section 4. Results of the Investigation. (1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:

(a) The adult's account of the situation, if possible;

(b) The alleged perpetrator's account of the situation, if available;

(c) The information supplied by collateral contact;

(d) Records and documents;

(e) The assessment information;

(f) Previous reports involving the adult or alleged perpetrator; and

(g) Other information relevant to the protection of an adult.

(2) The findings of the adult protective service investigation shall be:

(a) Shared with appropriate authorized agencies in accordance with KRS 209.030(5); and

(b) Documented on the cabinet's database.

(3) Designated regional cabinet staff shall maintain a written record, as specified in KRS 209.030(5), to include:

(a) Information reported in accordance with KRS 209.030(4); and

(b) A narrative documenting:

1. The investigation; and

2. Findings of the investigation.

(4) If an issue or concern identified by the cabinet does not require a protective service case being opened, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

Section 5. Substantiation Criteria and Submission of Findings.

(1) In determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:

(a) Adult; and

(b)1. Abuse;

2. Neglect; or

3. Exploitation.

(2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of and substantiate abuse, neglect, or exploitation.

(3) A finding made by cabinet staff shall not be a judicial finding.

(4) Cabinet supervisory staff shall review and approve a finding of an investigation prior to its finalization.

Section 6. Reports of Alleged Adult Abuse, Neglect, or Exploitation Involving an Employee or Compensated Person. If the cabinet receives a report involving an employee or a person acting with the expectation of compensation, cabinet staff shall provide the alleged perpetrator during the investigative interview:

(1) Notice of the basic allegations, which shall be void of any specifics that may compromise the investigation;

(2) Notice that the alleged perpetrator will be provided notification of the findings upon completion of the investigation;

(3) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032; and

(4) A statement that a validated substantiated finding shall be reported on the caregiver misconduct registry established ~~[governed]~~ by 922 KAR 5:120.

Section 7. Opening a Case. (1) A case may be opened:

(a) As a result of a protective service investigation; or

(b) Upon identification of an adult through a general adult services assessment as being at risk of abuse, neglect, or exploitation.

(2) The decision to open a case shall be based on the:

(a) Voluntary request for, or acceptance of, services by an adult who needs adult protection or general adult services; or

(b) Need for involuntary emergency protective services.

(3) If it has been determined that an adult is incapable of giving consent to receive protective services, the court may assume jurisdiction and issue an ex parte order in accordance with KRS 209.130.

(4) Emergency protective services shall be provided in accordance with KRS 209.100~~[209.140]~~.

(5) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the following:

(a) Designated regional cabinet staff;

(b) Family members;

(c) Family friends;

(d) Community partners; or

(e) Other individuals requested by the adult.

(6) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:

(a) Initiate a case plan with the adult; and

(b) Submit the plan to supervisory staff for approval.

Section 8. Referrals for Criminal Prosecution. The cabinet shall refer substantiated reports of adult abuse, neglect, or exploitation to Commonwealth's Attorneys ~~[Commonwealth attorneys]~~ and county attorneys for consideration of criminal prosecution in accordance with KRS 209.180.

Section 9. Restraining Order or Injunctive Relief. If necessary, designated regional cabinet staff shall contact the cabinet's Office of Legal Services for advice and assistance in obtaining restraining orders or other forms of injunctive relief that may be issued for protection of an adult, in accordance with KRS 209.040.

Section 10. Guardianship or Conservatorship of Disabled Persons. (1) In an attempt to provide appropriate protective services, designated regional cabinet staff shall assess the need for guardianship if an individual appears unable to make an informed choice to:

- (a) Manage personal affairs;
- (b) Manage financial affairs; or
- (c) Carry out the activities of daily living.

(2) Designated regional cabinet staff may assist in protective service situations in seeking out family, friends, or other interested and qualified individuals who are willing and capable to become guardians.

(3) Upon an order of the court, the cabinet shall file an interdisciplinary evaluation report in accordance with KRS 387.540(1).

Section 11. Involuntary Hospitalization. (1) Designated regional cabinet staff shall encourage the voluntary hospitalization of an adult who needs to secure mental health treatment to avoid serious physical injury or death.

(2) Designated regional cabinet staff may file a petition for involuntary hospitalization in accordance with KRS 202A.051 and 202B.100 if:

- (a) The adult lacks the capacity to consent or refuses mental health treatment;
- (b) Other resources are not available;
- (c) Another petitioner is absent or unavailable; and
- (d) Prior cabinet supervisory approval is obtained.

Section 12. Reporting. (1) Reports of alleged adult abuse, neglect, or exploitation shall be maintained in the cabinet's database for:

- (a) Use in future investigations; and
- (b) Annual reporting requirements as specified in KRS 209.030(12).

(2) The cabinet shall submit a report annually to the Governor and Legislative Research Commission in accordance with KRS 209.030(12)(b).

(a) In addition to the information required by KRS 209.030(12)(b), the summary of reports received by the cabinet shall include for each individual who is the subject of a report:

- 1. Age;
- 2. Demographics;
- 3. Type of abuse;
- 4. The number of:
 - a. Accepted reports; and
 - b. Substantiated reports; and
- 5. Other information relevant to the protection of an adult.

(b) The information required in paragraph (a) of this subsection shall only be provided if it does not identify an individual.

Section 13. Case Closure and Aftercare Planning. (1) The cabinet's decision to close an adult protective service case shall be based upon:

(a) Evidence that the factors resulting in adult abuse, neglect, or exploitation are resolved to the extent that the adult's needs have been met;

(b) The request of the adult; or

(c) A lack of legal authority to obtain court ordered cooperation from the adult.

(2) An adult shall be:

(a) Notified in writing of the decision to close the protective service case; and

(b) Advised of the right to request a service appeal in accordance with Section 14 of this administrative regulation.

(3) If an adult protective service case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

(4) If the cabinet closes the protective service case in accordance with this section, aftercare planning may link the adult

to community resources for the purpose of continuing preventive measures.

Section 14. Appeal Rights. (1) A victim of adult abuse, neglect, or exploitation may request a service appeal in accordance with 922 KAR 1:320, Section 2.

(2) If the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall receive appeal rights [appeals] in accordance with 922 KAR 5:120.

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**ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS**

**BOARDS AND COMMISSIONS
Board of Dentistry
(Amended After Comments)**

201 KAR 8:550. Anesthesia and sedation related to dentistry.

RELATES TO: KRS 313.035

STATUTORY AUTHORITY: KRS 313.035(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 313.035(1) requires the board to promulgate administrative regulations related to anesthesia and sedation permits. The administration of local anesthesia, sedation, and general anesthesia is an integral part of dentistry and the foundation of pain control. This administrative regulation establishes requirements for permits to perform sedation or anesthesia associated with dentistry.

Section 1. Definitions. (1) "Analgesia" means the diminution or elimination of pain.

(2) "ADA" means American Dental Association.

(3) "ASA" means American Society of Anesthesiologists.

(4) "Continual" means repeated regularly and frequently in steady succession.

(5) "Continuous" means prolonged without any interruption.

(6) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function could be impaired. The patient might require assistance in maintaining a patent airway, and spontaneous ventilation could be inadequate. Cardiovascular function is usually maintained.

(7) "Enteral" means a technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (oral, rectal, or sublingual).

(8) "General anesthesia" means a drug-induced loss of consciousness during which a patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation could be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function might be impaired.

(9) "Immediately available" means onsite at the facility and available for immediate use.

(10) "Local anesthesia" means the elimination or diminution of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug.

(11) "Maximum Recommended Dose" or "MRD" means the maximum FDA-recommended dose of a drug for minimal sedation, as printed in FDA-approved labeling for unmonitored home use.

(12) "Minimal sedation" means a minimally depressed level of consciousness produced by a pharmacological method that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination might be modestly impaired, ventilatory and cardiovascular functions are unaffected.

(13) "Moderate sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. This term includes the enteral administration of drugs exceeding the maximum recommended dose during a single appointment.

(14) "Nitrous oxide sedation" or "N2O sedation" means a technique of inhalation sedation with nitrous oxide and oxygen.

(15) "Operating dentist" means a licensed dentist with primary responsibility for providing dental care during a procedure.

(16) "Pediatric patient" means a patient twelve (12) years of age or younger.

(17) "Qualified anesthesia provider" means a licensed anesthesiologist, Certified Registered Nurse Anesthetist, or dentist with an applicable sedation permit.

(18) "Qualified dentist" means a licensed dentist with an applicable sedation permit. A qualified dentist can also be an operating dentist if they fulfill the requirement of subsection (15) of this section.

(19) "Time-oriented anesthesia record" means documentation at appropriate time intervals of drugs administered, doses of drugs administered, and physiologic patient data obtained during patient monitoring.

(20) "Trained individual" means personnel with an active certification in Basic Life Support for Healthcare Providers, who has been trained in monitoring EKG's, pulse oximetry, blood pressures, airway management, and capnography. Training, whether formal or internal, is documented in employee records.

Section 2. Scope and Applicability. (1) The board shall be committed to the safe and effective use of sedation and anesthesia by licensed, educated, and trained dentists.

(2) Because large doses of local anesthetics, especially in combination with sedative agents, carry the risk of central nervous system depression, each licensed dentist shall be aware of the maximum, safe dosage limits for each patient.

(3) Level of sedation shall be independent of the route of administration. Moderate or deep sedation, or general anesthesia, may be achieved via any route of administration.

(4) Because sedation and general anesthesia are a continuum and it is not always possible to predict how an individual patient will respond, each licensed dentist intending to produce a given level of sedation shall be able to diagnose and manage the physiologic consequences for patients whose level of sedation becomes deeper than initially intended. For all levels of sedation, the qualified dentist shall have the training, skills, drugs, and equipment to identify and manage such an occurrence until either:

(a) Assistance arrives; or

(b) The patient returns to the intended level of sedation without airway or cardiovascular complications.

(5) Because new indications, agents, and techniques lead to changes in anesthesia and sedation practices, the board shall evaluate changes for safety, efficacy, and to what extent changes become accepted practice within the profession of dentistry.

Section 3. Nitrous Oxide Sedation. (1) Nitrous oxide sedation may be used by a Kentucky-licensed dentist without a sedation permit or by a Kentucky-licensed dental hygienist who is registered to deliver nitrous oxide analgesia under the direct supervision of a dentist as per KRS 313.060(10).

(2) Equipment used in the administration of nitrous oxide sedation shall have functional safeguard measures that:

(a) Limit the minimum oxygen concentration to thirty (30) percent; and

(b) Provide for scavenger elimination of nitrous oxide gas.

(3) The dentist shall:

(a) Ensure that a patient receiving nitrous oxide is constantly monitored; and

(b) Be present in the office while nitrous oxide is being used.

(4) A Kentucky-registered dental assistant shall not independently administer nitrous oxide sedation, but may initiate nitrous oxide sedation if the dentist is in the office and gives the dental assistant specific instructions regarding the mode of administration and the titration, rate, and dosage of the anesthetic agent.

Section 4. Minimal Sedation. (1) A sedation permit shall not be required for a Kentucky-licensed dentist to provide minimal sedation as defined by Section 1(12) of this administrative regulation.

(2) A patient whose only response is reflex withdrawal from repeated painful stimuli shall not be considered to be in a state of minimal sedation.

(3) The enteral administration of drugs exceeding the maximum recommended dose during a single appointment is considered to be moderate sedation, and Section 5 of this administrative regulation shall apply.

(4) Nitrous oxide, if used in combination with a sedative agent, may be considered to produce minimal, moderate, or deep sedation, or general anesthesia.

(5) If more than one (1) drug is administered enterally to achieve the desired sedation effect, with or without the concomitant use of nitrous oxide, Section 5 of this administrative regulation shall apply.

(6) A dentist who administers minimal sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness. The use of the MRD to guide dosing for minimal sedation is intended to create this margin of safety.

(7) If minimal sedation is administered to a patient who is taking another substance known to increase the sedative effects on the patient, Section 5 of this administrative regulation shall apply.

(8) An operating dentist shall not be required to complete additional training to administer minimal sedation.

(9) The administration of minimal sedation by another dentist or qualified anesthesia provider shall require the operating dentist to maintain current certification in Basic Life Support for Healthcare Providers.

(10) Clinical guidelines.

(a) Patient history and evaluation. Patients considered for minimal sedation shall be evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this evaluation shall consist of a review of the patient's current medical history and medication use. In addition, patients with significant medical considerations (ASA III, IV) shall, unless otherwise documented by the provider, require consideration of a consultation with their treating physician prior to being administered minimal sedation.

(b) Pre-operative evaluation and preparation.

1. The patient or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

2. Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of minimal sedation.

3. The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, and pulse rate shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

4. Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

5. The patient or the patient's parent, legal guardian, or caregiver, shall be given preoperative verbal and written instructions regarding the patient's sedation and procedure.

(c) Personnel and equipment requirements.

1. Personnel. All clinical staff participating in the care of a minimally sedated patient shall be certified in Basic Life Support for Healthcare Providers.

2. Equipment.

a. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

b. All equipment shall be examined for proper performance prior to each administration of sedation.

c. If inhalation equipment is used, it shall have a fail-safe system that shall be examined and calibrated and a functioning device that shall prohibit the delivery of less than thirty (30) percent oxygen, or a calibrated and functioning in-line oxygen analyzer with audible alarm.

d. A scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

3. Monitoring and documentation.

a. Monitoring. The dentist or a trained individual chosen by the dentist, shall remain in the treatment room during active dental treatment to monitor the patient continuously until the patient meets the criteria for discharge to the recovery area. The following shall be monitored unless precluded or invalidated by the nature of the patient:

(i) Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed;

(ii) Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;

(iii) Ventilation. The patient's chest excursions shall be monitored and respirations shall be verified; and

(iv) Circulation. Blood pressure and heart rate shall be evaluated pre-operatively and postoperatively

b. Documentation. A sedative record shall be maintained for each patient to whom sedation is administered. The sedative record shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

4. Recovery and discharge.

a. Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

b. The dentist or a trained individual chosen by the dentist shall monitor the patient during recovery until the patient is ready for discharge.

c. The dentist shall examine the patient and document the patient's level of consciousness, oxygenation, ventilation, and circulation prior to discharge.

d. The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(d) Emergency management.

1. If a patient enters a deeper level of sedation than the dentist is qualified to provide, the dentist shall stop the dental procedure until the patient is returned to the intended level of sedation.

2. The operating dentist shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of minimal sedation and patient rescue.

Section 5. Moderate Sedation. (1) A Moderate Sedation Permit issued by the board shall be required for a Kentucky-licensed dentist to administer moderate sedation as defined by Section 1(13) of this administrative regulation.

(2) A dentist who administers moderate sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness.

(3) A qualified dentist shall be aware that repeated dosing of an agent before the effects of previous dosing can be fully appreciated could result in a greater alteration of the state of consciousness than intended. A dentist who administers moderate sedation shall refrain from administering an additional drug increment before the previous dose has taken full effect.

(4) A patient whose only response is reflex withdrawal from a painful stimulus shall not be considered to be in a state of moderate sedation.

(5) To qualify for a Moderate Sedation Permit, a dentist shall:

(a) Submit an Application for Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Provide documentation that the dentist meets the educational requirements of paragraphs[subsection] (6)(a) and (b) [or (7)] of this section.

(6) Education requirements for moderate sedation.

(a) To administer moderate sedation to an adult patient, a dentist shall have current certifications in Basic Life Support for Healthcare Providers and Advanced Cardiac Life Support, and complete:

1. A comprehensive training program in moderate sedation that complies with the requirements established in the Moderate Sedation section of the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students at the time training

was commenced; or

2. An advanced education program accredited by the Commission on Dental Accreditation that provides comprehensive training necessary to administer and manage moderate sedation commensurate with this administrative regulation.

(b) To administer moderate sedation to a pediatric patient, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation that provides comprehensive training necessary to administer and manage moderate sedation commensurate with this administrative regulation; and

2. Current certifications in Basic Life Support for Healthcare Providers and Pediatric Advanced Life Support.

(c) If [To] authorizing[authorize] a third-party qualified anesthesia provider to administer moderate sedation to an adult patient, the operating dentist shall confirm that at least two (2) members of the onsite care team maintain current certifications in Basic Life Support for Healthcare Providers and Advanced Cardiac Life Support. The operating dentist or the facility at which the moderate sedation is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified anesthesia provider to provide moderate sedation.

(d) If [To] authorizing[authorize] a third-party qualified anesthesia provider to administer moderate sedation to a pediatric patient, the operating dentist shall confirm that at least two (2) members of the onsite care team maintain current certifications in Basic Life Support for Healthcare Providers and Pediatric Advanced Life Support.

(e) Any valid moderate sedation permits issued prior to this administrative regulation shall ~~remain active until their expiration date and shall comply with the requirements of this section, except that moderate adult enteral and parenteral permit holders shall~~ have until December 31, 2023 to comply with subsection (6)(a)1. and 2. of this section.

(7) Clinical guidelines; patient history and evaluation.

(a) Patients considered for moderate sedation shall be evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, and ASA status.

(b) Patients with significant medical considerations (ASA III, IV) shall, unless otherwise documented by the provider, require consideration of a consultation with their treating physician prior to being administered moderate sedation.

(8) Pre-operative evaluation and preparation.

(a) The patient or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

(b) Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of moderate sedation.

(c) The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, and pulse rate shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

(d) Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

(e) The patient or the patient's parent, legal guardian, or caregiver, shall be given preoperative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ADA Guidelines for the Use of Sedation and General Anesthesia by Dentist, adopted October 2016.

(9) Personnel and equipment requirements.

(a) Personnel. All clinical staff participating in the care of a moderately sedated patient shall be certified in Basic Life Support for Healthcare Providers.

(b) Equipment.

1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system that shall be examined and calibrated and a functioning device that shall prohibit the delivery of less than thirty (30) percent oxygen, or a calibrated and functioning in-line oxygen analyzer with audible alarm.

4. A scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

5. Equipment necessary to establish intravascular or intraosseous access and a defibrillator or automated external defibrillator shall be immediately available until the patient meets discharge criteria.

(10) Monitoring and documentation.

(a) Monitoring.

1. If leaving the room, a qualified dentist shall have at least one (1) month of general anesthesia training and shall select a trained individual to continuously monitor the patient; or

2. A qualified anesthesia provider shall remain in the treatment room during active treatment until the patient meets the criteria for discharge to the recovery area.

(b) The following shall be monitored:

1. Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed;

2. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;

3. Ventilation: The qualified anesthesia provider shall be responsible for the observation of ventilation and breathing by monitoring end tidal CO₂ unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions;

4. Circulation. The qualified anesthesia provider shall continually evaluate blood pressure and heart rate unless invalidated by the nature of the patient and noted in the time-oriented anesthesia record; and

5. The patient's pulse oximetry, heart rate, end tidal CO₂, blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.

(c) Documentation. A sedative record shall be maintained for each patient to whom sedation is administered. The sedation record shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

(11) Recovery and discharge.

(a) Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

(b) When active treatment concludes and the patient recovers to a minimally sedated level, the qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall remain with and continue to monitor the patient until the patient is discharged from the facility. The qualified anesthesia provider shall not leave the facility until the patient is discharged.

(c) The qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.

(d) The qualified anesthesia provider shall determine and document the patient's level of consciousness, oxygenation, ventilation, and circulation prior to discharge.

(e) The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(f) Because re-sedation could occur after the effects of a reversal agent have waned, if a pharmacological reversal agent is administered before the patient's discharge criteria have been met, the patient's escort shall be notified of the risk of re-sedation.

(12) Emergency management.

(a) If a patient enters a deeper level of sedation than the

qualified anesthesia provider is qualified to provide, the procedure shall stop until the patient is returned to the intended level of sedation.

(b) The qualified anesthesia provider shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of moderate sedation and patient rescue.

Section 6. Deep Sedation and General Anesthesia. (1) A Deep Sedation and General Anesthesia Permit issued by the board shall be required for a Kentucky-licensed dentist to administer "deep sedation" and "general anesthesia" as defined by Section 1(6) and (8) of this administrative regulation.

(2) To qualify for a deep sedation and general anesthesia permit, a dentist shall:

(a) Submit an Application for Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Provide documentation that the dentist meets the educational requirements of paragraph[subsection] (3)(a) of this section.

(3) Education requirements.

(a) To administer deep sedation or general anesthesia, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation, which provides comprehensive training necessary to administer and manage deep sedation or general anesthesia; and

2. Current certifications in:

a. Basic Life Support for Healthcare Providers;

b. Advanced Cardiac Life Support if administering sedation to adult patients; and

c. Pediatric Advanced Life Support if administering sedation to pediatric patients.

(b) If [To] authorizing[authorize] a third-party qualified anesthesia provider to administer deep sedation or general anesthesia, the operating dentist shall confirm that at least two (2) members of the onsite care team maintain current certifications in:

1. Basic Life Support for Healthcare Providers;

2. Advanced Cardiac Life Support if sedation is administered to adult patients; and

3. Pediatric Advanced Life Support if sedation is administered to pediatric patients. [The operating dentist or the facility at which deep sedation or general anesthesia is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified anesthesia provider to provide deep sedation or general anesthesia.]

(4) Clinical guidelines; for patient history and evaluation. Each patient considered for deep sedation or general anesthesia shall be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, nothing by mouth status, and ASA status. In addition, patients with significant medical considerations (ASA III, IV) shall, unless otherwise documented by the provider, require consideration of a consultation with their treating physician prior to being administered deep sedation or general anesthesia.

(5) Pre-operative evaluation and preparation.

(a) The patient or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

(b) Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be confirmed prior to the administration of deep sedation or general anesthesia.

(c) The patient shall be physically examined prior to the administration of deep sedation or general anesthesia. Baseline vital signs including body weight, height, blood pressure, blood oxygen saturation, and pulse rate shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

(d) The patient or the patient's parent, legal guardian, or caregiver, shall be given preoperative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ASA Summary of Fasting and Pharmacologic Recommendations.

(e) An intravenous line shall be established and secured throughout the procedure, except for patients with special needs as per subsection (9) of this section.

(6) Personnel and equipment requirements.

(a) Personnel. All clinical staff participating in the care of a deeply sedated patient or a patient who has been administered general anesthesia shall be certified in Basic Life Support for Healthcare Providers.

(b) A minimum of three (3) individuals shall be present while a patient is being treated with deep sedation or general anesthesia. If a pediatric patient is being treated with deep sedation or general anesthesia, in addition to the operating dentist, a separate qualified anesthesia provider shall manage the patient's anesthesia unless the anesthesia is performed by an oral and maxillofacial surgeon.

(c) Equipment.

1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system that shall be examined and calibrated and a functioning device that shall prohibit the delivery of less than thirty (30) percent oxygen, or a calibrated and functioning in-line oxygen analyzer with audible alarm.

4. A scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

5. Equipment necessary to establish intravenous access and to monitor end tidal CO₂ and auscultation of breath sounds shall be immediately available.

6. Resuscitation medications, a defibrillator, equipment and drugs necessary to provide advanced airway management and advanced cardiac life support shall be immediately available.

(7) Monitoring and documentation.

(a) Monitoring.

1. If leaving the room, a qualified dentist shall have at least one (1) month of general anesthesia training and shall select a trained individual to continuously monitor the patient; or

2. A qualified anesthesia provider shall remain in the treatment room during active treatment until the patient meets the criteria for discharge to the recovery area. The following shall be monitored:

3. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;

4. Ventilation. For an intubated patient, end-tidal CO₂ shall be continually monitored and evaluated. For a non-intubated patient, end-tidal CO₂ shall be continually monitored and evaluated unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions;

5. Circulation. The qualified anesthesia provider shall continually evaluate heart rate and rhythm by ECG throughout the procedure, as well as the patient's pulse rate by pulse oximetry;

6. Temperature. A device capable of measuring body temperature shall be readily available during the administration of deep sedation or general anesthesia. Equipment necessary to continually monitor body temperature shall be available and used if triggering agents associated with malignant hyperthermia are administered; and

7. The patient's pulse oximetry, heart rate, end tidal CO₂, blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.

(b) Documentation. A sedative record shall be maintained for each patient to whom sedation is administered. The sedative record shall include the names of all drugs administered, including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

(8) Recovery and discharge.

(a) Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

(b) When active treatment concludes and the patient recovers to a minimally sedated level, the qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall remain with and continue to monitor the patient until the patient is discharged from the facility. The qualified anesthesia provider shall not leave the facility until the patient is discharged.

(c) The qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.

(d) The qualified anesthesia provider shall determine and document the patient's level of consciousness, oxygenation, ventilation, and circulation prior to discharge.

(e) The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(9) Patients with special needs.

(a) Because many dental patients undergoing deep sedation or general anesthesia are mentally or physically challenged, it is not always possible to administer a comprehensive physical examination or appropriate laboratory tests prior to sedation. In this circumstance, the dentist responsible for administering the deep sedation or general anesthesia shall document the reasons preventing the examination of the patient in the patient's medical record.

(b) Deep sedation or general anesthesia may be administered without first establishing an indwelling intravenous line if the establishment of intravenous access after deep sedation or general anesthesia is rendered necessary because of poor patient cooperation.

(10) Emergency management. The qualified anesthesia provider shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of patient rescue and deep sedation or general anesthesia.

Section 7. Multiple Application Levels. A dentist with the required education and training to provide more than one (1) level of sedation may mark all[the] levels of qualification on the Application for Sedation or Anesthesia Permit without paying additional application fees.

Section 8. Renewal of a Sedation or Anesthesia Permit. (1) A qualified dentist applying for renewal of an active permit to administer moderate sedation, or deep sedation or general anesthesia shall:

(a) Submit an Application for Renewal of Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520;

(c) Complete at least four (4) hours of clinical continuing education related to sedation or anesthesia in a classroom setting during the two (2) year term of the permit; and

(d) Maintain Advanced Cardiac Life Support[ACLS] or Pediatric Advanced Life Support[PALS] certification as required by Sections 5 and 6 of this administrative regulation.

(2) The continuing education requirements of this section shall be in addition to the license renewal requirements of 201 KAR 8:532.

(3) Unless properly renewed, each permit issued under this administrative regulation shall expire on December 31 of odd-number years.

Section 9. Location Requirement. A dentist holding a permit in accordance with this administrative regulation shall advise the board of the name and address of each facility where the dentist intends to or has ceased to administer anesthesia and sedation by submitting the Sedation or Anesthesia Permit Location Notification Form within ten (10) business days of the change.

Section 10. Facility Certificates. (1) The owner or operator of a facility shall obtain an Anesthesia or Sedation Facility Certificate from the board for any location at which a dentist holding a sedation or general anesthesia permit provides moderate sedation, deep sedation, or general anesthesia. A facility certificate shall not be required for minimal sedation or nitrous oxide sedation alone.

(2) A facility certificate shall also be required if a dentist allows an independently practicing qualified anesthesia provider to administer sedation or general anesthesia in a dental office.

(3) A facility owner or operator desiring to obtain an Anesthesia or Sedation Facility Certificate shall:

(a) Submit an Application for Sedation or Anesthesia Facility Certificate; and ~~and~~

(b) Pay the fee required by 201 KAR 8:520; and

(c) Hold an active sedation permit issued by the board;

(4) The owner or operator of a facility shall not allow an individual to administer anesthesia or sedation unless the individual is permitted to do so as established by this administrative regulation.

(5) The owner or operator of a facility shall maintain for at least seven (7) years, for inspection by the board, the name and license number of each dentist or independently practicing qualified anesthesia provider who has administered anesthesia or moderate sedation at that location.

(6) The owner or operator of a facility shall ensure that the facility remains equipped and staffed for the duration of time that moderate sedation, deep sedation, or general anesthesia is provided at the facility.

(7) The owner or operator of a facility shall ensure that the facility has nonexpired emergency and sedation medications.

Section 11. Renewal of Facility Certificate. (1) All active facility certificates shall expire on December 31 of odd-numbered years.

(2) ~~[Any valid facility certificates issued prior to this administrative regulation shall remain active until their original expiration date, at which time the requirements of this regulation shall have to be met prior to renewal.~~

~~(3)]~~ To renew a facility certificate, the owner or operator shall:

(a) Submit an Application for Renewal of Sedation or Anesthesia Facility Certificate; and ~~and~~

(b) Pay the fee required by 201 KAR 8:520; and

(c) Maintain an active sedation permit issued by the board;

Section 12. Facility Criteria. (1) To qualify for a facility certificate, the owner or operator of a facility shall attest in the Application for Sedation or Anesthesia Facility Certificate that the facility has:

(a) An oxygen and gas delivery system with fail-safe backup;

(b) A safety indexed gas system;

(c) A suction and backup system;

(d) An auxiliary lighting system;

(e) An operating room to include:

1. At a minimum, ten (10) feet by eight (8) feet or eighty (80) square feet in size;

2. An operating primary light source and secondary portable back-up source, unless a backup generator is available; and

3. Accessibility by emergency medical staff;

(f) A recovery area, including oxygen, suction, and electronic monitoring, which may be a part of the operating room;

(g) Preoperative medical history and physical evaluation form; and

(h) Anesthesia and monitoring equipment checked to ensure working order and calibration, if applicable.

(2) The following shall be maintained in working order by the facility or by the qualified individual administering sedation or anesthesia at or on behalf of the facility:

(a) Drugs for each procedure, all of which shall be unexpired, including reversal agents and emergency medications;

(b) Devices to maintain an airway with positive pressure ventilation;

(c) Anesthesia records, including monitoring and discharge records;

(d) Monitoring equipment, including pulse oximeter, blood pressure monitor, and end tidal CO2 monitor. An electrocardiogram

(EKG) shall be required for facilities providing deep sedation or general anesthesia;

- (e) Defibrillator or automated external defibrillator (AED); and
- (f) Precordial stethoscope or pretracheal stethoscope for deep sedation or general anesthesia in pediatric patients.

Section 13. Morbidity and Mortality Incident Reports. (1) A dentist shall report to the board, in writing, any death caused by or resulting from the [dentist's] administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within seven (7) days after the death.

(2) A dentist shall report to the board, in writing, any incident that occurred at a facility operating under a Sedation or Anesthesia Facility permit that resulted in hospital inpatient admission or emergency room visit caused by or resulting from the [dentist's] administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within thirty (30) days after the hospitalization or emergency room visit.

(3) The written report to the board required in subsections (1) and (2) of this section shall include:

- (a) The date of the incident;
 - (b) The name, age, and address of the patient;
 - (c) The patient's original complete dental records;
 - (d) The name and permit number of the dentist and the name and address of all other persons present during the incident;
 - (e) The address where the incident took place;
 - (f) The preoperative physical condition of the patient;
 - (g) The type of anesthesia and dosages of drugs administered to the patient;
 - (h) The techniques used in administering the drugs;
 - (i) Any adverse occurrence including:
 - 1. The patient's signs and symptoms;
 - 2. The treatment instituted in response to adverse occurrences;
 - 3. The patient's response to the treatment; and
 - 4. The patient's condition on termination of any procedures undertaken; and
 - (j) A narrative description of the incident including approximate times and evolution of symptoms.
- (4) The duties established in this section shall apply to every dentist who administers any type of sedation or anesthesia.

Section 14. Registered Dental Assistant Duties while Working with Sedation Permit Holders. A registered dental assistant working with a qualified dentist administering sedation or anesthesia in accordance with this administrative regulation may, under direct supervision:

- (1) Apply noninvasive monitors on the patient;
- (2) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative, and post-operative (recovery) phases of treatment;
- (3) Report monitoring parameters at pre-determined intervals, and if changes in monitored parameters occur;
- (4) Record vital sign measurements in the sedation record;
- (5) Establish and remove intravenous lines if the registered dental assistant has completed training in intravenous access;
- (6) Assist in the management of a patient emergency; and
- (7) Administer medications into an existing intravenous line upon the verbal order and direct supervision of a qualified dentist in accordance with this administrative regulation.

Section 15. Administration by Qualified Anesthesia Provider. (1) An operating dentist may authorize the administration of sedation or anesthesia by a qualified anesthesia provider.

(2) The administration of anesthesia or sedation by an individual established in subsection (1) of this section shall:

- (a) Comply with the requirements of this administrative regulation; and
 - (b) Not require board review prior to the administration of sedation or anesthesia.
- (3) Nothing in this section shall preclude a dentist from working with a qualified anesthesia provider to provide care in an ambulatory

care center or hospital.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Sedation or Anesthesia Permit", March 2020;
- (b) "Application for Sedation or Anesthesia Facility Certificate", March 2020; and
- (c) "Sedation or Anesthesia Permit Location Notification Form", March 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: August 12, 2022

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for dentist to receive permits to perform sedation or anesthesia.

(b) The necessity of this administrative regulation: KRS 313.035(1) requires the board to promulgate administrative regulations related to anesthesia and sedation permits

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for permits to perform sedation or anesthesia.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for permits to perform sedation or anesthesia in conformity with its authorizing statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes minor clarifications of the existing requirements for dental sedation and anesthesia.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to clarify some reporting and training requirements in the existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates the requirements for permits to perform sedation or anesthesia in conformity with its authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the requirements to perform sedation and anesthesia, thereby reducing non-compliance and improving public safety.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect the approximately 400 dentists with a moderate or deep sedation permit in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will be required to administer sedation or anesthesia in accordance with applicable law and administrative regulations.

(b) In complying with this administrative regulation or

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amendment, how much will it cost each of the entities identified in question (3): No additional costs are likely to be accrued as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Licensure fees.

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

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

(9) TIERING: Is tiering applied? No; this amendment impacts all similarly situated practitioners 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? None, other than the Board of Dentistry itself.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.035

(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.

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not require additional costs to administer.

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: This amendment will not generate or require additional funding.

(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? 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.

Cost Savings (+/-): None

Expenditures (+/-): None

Other Explanation: This amendment will not generate additional costs.

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

BOARDS AND COMMISSIONS

Real Estate Commission (Amended After Comments)

201 KAR 11:121. Standards of professional conduct.

RELATES TO: KRS 324.010(3), 324.111, 324.112, 324.121, 324.160, 324.281(5), 324.310, 324.360, 381.9203(1), (3), 383.580, 24 C.F.R. 3500, 44 C.F.R. 64.3(b), 12 U.S.C. 2601-2617

STATUTORY AUTHORITY: KRS 324.121, 324.160(4)(e), 324.281(5), 324.282, 324.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 require the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller or lessor, buyer or lessee, or prospective buyer to the exclusion of all other licensees associated with the principal broker. KRS 324.360(2) requires the commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form with content as set forth by KRS 324.360(3). KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. This administrative regulation establishes requirements for designated agency; the required Seller's Disclosure of Property Condition form; a specific process and form for disclosing prior relationships between parties in a residential transaction; standards and requirements, to inform and set certain standards for licensees and to protect the public, regarding delivery of signed documents, broker supervision, broker record retention, sales associate affiliation and termination, and written agreements between licensees and consumers to provide real estate brokerage services, including standards for listing and purchase contracts; and behavior considered improper conduct.

Section 1. Improper Conduct.

(1) In addition to the obligations and prohibitions set forth in KRS 324.160, a licensee shall not:

(a) Accept or agree to accept, or offer or agree to offer, anything of value to another person in violation of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601 through 2617 ("RESPA").[-] This provision shall not affect paying or receiving referral fees between principal brokers for brokerage services;

(b) Refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the real estate brokerage company with which the licensee is affiliated, without the written and signed direction of the listing or leasing client. This provision shall not be construed to permit otherwise unlawful discrimination;

(c) Offer real estate for sale or lease without written consent from the person or persons, or entity or entities authorized to sell or lease the subject real estate;

(d) Fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client:

1. Loyalty;
2. Obedience to lawful instructions;
3. Disclosure;

4. Confidentiality;
5. Reasonable care and diligence; and
6. Accounting;

(e) Fail to satisfy one (1) or more of the following duties owed to the licensee's prospective client:

1. Good faith;
2. Fair dealing; and
3. The duty of confidentiality;

(f) Fail to satisfy one (1) or more of the following duties owed to a consumer or to any other party in a transaction:

1. Good faith; and
2. Fair dealing;

(g) Enter an ongoing team or group relationship with any other licensee at the same brokerage company without the written consent of the principal broker;

(h) Induce any party to a contract for sale or lease to break the contract for the purpose of substituting in lieu thereof a new contract for sale or lease with another **principal broker[client]**;

(i) If advertising real property at an absolute auction, sell the advertised property to anyone other than the highest bona fide bidder on the day of the auction; and

(j) If dually licensed as an auctioneer and real estate licensee, before a real estate licensee commences an auction, the licensee shall disclose his or her status as a real estate licensee to potential purchasers and whether he or she intends to bid during the auction.

(2) The fiduciary duty of confidentiality, if owed, shall survive the termination of the Agency Consent Agreement contemplated in Section 6 of this administrative regulation.

(3) It shall not be considered improper conduct for a licensee to advertise the fee or other compensation the principal broker agrees to charge for his or her services.

(4) It shall not be considered improper conduct for a licensee to offer rebates, discounts, or other inducements to consumers, prospective clients, or clients to use the licensee's services or truthfully advertise the same.

(5) It shall not be considered improper conduct for a licensee to use his or her registered nickname in place of the licensee's first name anytime the licensee shall identify himself or herself on an official document or to the commission.

Section 2. Submission of Written Offers.

(1) If a principal broker has entered into a written listing agreement, or any other written agreement, under the terms of which the principal broker agrees to provide real estate brokerage services for a fee, compensation, or other valuable consideration for the client, the principal broker shall provide, unless specifically waived or modified by the client in writing, for real estate that is the subject of the written agreement, the following services:

(a) Accept delivery and submit to the client, without delay, all written offers to lease or purchase;

(b) Accept all earnest money deposits that are presented to the principal broker or an affiliated licensee of the principal broker;

(c) Until the completion of the transaction, assist the client in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to offers and counteroffers; and

(d) Answer the client's questions relating to offers, counteroffers, notices, and contingencies involved in the lease or purchase.

(2)

(a) Each principal broker, or an affiliated licensee of the principal broker, who represents a client shall, without delay, submit all written offers to lease or purchase real estate from the principal broker's client to the person or legal entity authorized to sell or lease the property or to the principal broker, or an affiliated licensee of the principal broker, who has entered into a written agreement according to subsection (1) of this section. A licensee representing a seller shall submit a notice in writing through electronic, text, or other media to the licensee representing a buyer of the date and time when the offer was presented to the seller.

(b) If the principal broker is acting as a transactional broker, the principal broker shall follow the lawful instructions of the parties and provide the brokerage services as outlined in the transactional brokerage agreement.

(3) Failure to comply with this section shall constitute gross negligence in violation of KRS 324.160(4)(v).

Section 3. Listing and Purchase Contracts.

(1) A listing contract completed by or at the direction of a licensee shall include the:

(a) Listing price of the property, unless the sale is to be by auction;

(b) Date and time of the signing of the listing contract for all parties who sign;

(c) First and last name of the principal broker and the full name of the real estate brokerage company;

(d) Effective date and time of listing and advertising, if different;

(e) Date of expiration of the listing contract;

(f) Fee, compensation, or other valuable consideration agreed upon between the principal broker and the client;

(g) Address or a general description of the real estate sufficient to identify the parcel or parcels;

(h) Signatures and printed names of all parties necessary to affect a sale of the property, including any dower or **curtesy[courtesy]** considerations or the official representative of a legal entity, that is the subject of the listing agreement;

(i) Special directions of the client concerning limitations or restrictions on showings; and

(j) Date, time, and initials for all changes on the contract prior to acceptance.

(2) An offer to purchase completed by, or at the direction of, a licensee shall include the:

(a) Purchase price or a valid escalation clause with the maximum purchase price;

(b) Amount of contract deposit, if given, who is to hold the deposit, and the time period to deliver the deposit;

(c) Date and time of signing of the offer for all parties who sign;

(d) Date and time when the offer expires;

(e) Address or a general description of the real estate sufficient to identify the parcel or parcels;

(f) Signatures of all parties making the offer and the printed first and last name of the licensee who completed or directed the completion of the offer;

(g) Date, time, and initials for all changes on the contract prior to acceptance;

(h) Provision setting forth the date by which, or the date range within, the closing shall occur and when possession shall be given to the buyer; and

(i) Proposed payment terms.

(3) A counteroffer completed by, or at the direction of, a licensee shall include any amendments to any term required by subsection (1) and (2) of this section and:

(a) Date and time of signing of the counteroffer for all parties who sign;

(b) Date and time when the counteroffer expires;

(c) Signatures of all parties making the counteroffer;

(d) The first and last name of the licensee who completed or directed the completion of the offer, if not found on the original offer or a previous counteroffer; and

(e) Date, time, and initials for all changes on the contract prior to acceptance.

(4)

(a) If a licensee presents an offer to purchase real estate for which an executory contract to sell the property is already in existence, the offer shall include language that indicates in writing that the offer is contingent upon the nonperformance of the existing executory contract.

(b) The contingency language required by paragraph (a) of this subsection shall indicate the disposition of any contract deposit and be:

1. Inserted by the licensee who completes or prepares the offer to purchase, if licensee is aware of the existing contract; or

2. Made by the listing licensee as a counteroffer.

(5) If financing is involved, a contract providing for the purchase of property shall specifically state:

(a) The manner in which the purchase shall be financed; and

(b) The amount of any encumbrance and whether it is to be underwritten by the seller or a commercial institution or otherwise.

(6) Any agreement for compensation, including rebates and inducements, from a licensee to his or her client shall be in writing.

(7)

(a) Prior to the expiration of a current listing agreement, another licensee shall not contact the seller to obtain a subsequent listing agreement.

(b) Notwithstanding paragraph (a) of this subsection, a licensee may discuss newly listing the seller's property that is currently listed if:

1. The seller initiates contact with the new licensee to obtain a new listing contract;

2. The proposed listing contract states that it shall not take effect until the expiration of the seller's current listing contract with the original licensee; and

3. The licensee and seller properly complete and sign the Seller-Initiated Listing Form. Nothing in this subsection shall prohibit a licensee from approaching a seller to list the seller's property following the seller's cancellation of their current listing contract or expiration of the current listing contract.

(8) If a licensee fails to comply with the requirements in this section, the licensee's conduct and dealings shall be considered improper in violation of KRS 324.160(4)(u).

Section 4. Required Disclosures.

(1) A licensee shall direct the seller-client of a single family residential real estate dwelling, duplex, triplex, fourplex, condominium, or townhouse to accurately complete and sign the Seller's Disclosure of Property Condition form required by KRS 324.360, including all necessary initials and signatures, unless the seller-client refuses and documents his or her refusal, or the licensee documents the seller-client refusal, on the Seller's Disclosure of Property Condition form.

(2) A licensee who is involved in the brokerage of a condominium transaction shall advise the client in writing of the client's right to receive the Condominium Seller's Certificate required by KRS 381.9203(1) and the purchasing client's right to void the sales contract consistent with KRS 381.9203(3).

Section 5. Prospective Client Disclosures.

(1) A licensee shall complete, time and date, and deliver to the appropriate prospective client the commission's Guide To Agency Relationships at the earliest of the following times:

(a) Prior to entering into a contemplated written agreement to provide real estate brokerage services for compensation with a prospective client;

(b) Prior to entering into a contemplated oral agreement to provide real estate brokerage services with a prospective client; or

(c) Prior to signing an agency consent agreement.

(2) The licensee shall solicit the signature of the prospective client on the Guide to Agency Relationships as acknowledgement by the prospective client of his or her receipt. The licensee shall maintain a record that the prospective client signed the Guide to Agency Relationships. If the prospective client refuses to, or does not, sign the Guide to Agency Relationships upon receipt, the licensee shall document the delivery, or attempted delivery, including a date and time, to the appropriate prospective client~~(client)~~.

(3) The completed Guide to Agency Relationships shall provide or include:

(a) The agency relationships available between the licensee and client or party in Kentucky;

(b) The first and last name of the licensee completing the form, the first and last name of the principal broker of the licensee, and the full name of the licensee's real estate company;

(c) The name of the prospective client; and

(d) The signature, time, and date of signing by the prospective client.

(4) The provisions of this section shall not apply to:

(a) The sale of real estate at auction; or

(b) A commercial transaction.

Section 6. Agency Consent Agreement.

(1) Prior to entering into a written agreement to provide real estate brokerage services or completing, or directing the completion of, a contract, offer, or lease for a real estate transaction:

(a) The licensee shall complete and deliver the Agency Consent Agreement to the prospective client; and

(b) Seek and obtain written consent to the Agency Consent Agreement from the prospective client.

(2) The commission's Agency Consent Agreement shall provide:

(a) The first and last name of the client, the first and last name of the licensee or licensee's and principal broker, and the full name of the real estate brokerage company;

(b) The specific agency relationship proposed between the principal broker of the real estate brokerage company, and any affiliated licensee of the real estate brokerage company, and the prospective client;

(c) If applicable, any known business, family, or personal relationship the licensee has with another party to the contemplated transaction who is not a party to the Agency Consent Agreement and an explanation of the nature of the relationship or relationships; and

(d) Whether the transaction involves an unrepresented party;; and

~~[(e)] [Disclosure of prior contact with a former prospective client who is involved in the presently contemplated real estate transaction.]~~

(3) The Agency Consent Agreement shall be updated, and written consent obtained, if the agency relationship initially established later changes.

(4) The provisions of this section shall not apply to a:

(a) Sale of real estate at auction; or

(b) Commercial transaction.

(5) The form of agency identified in the most recent Agency Consent Agreement shall terminate upon either:

(a) The provision of the agreed upon services; or

(b) At the closing of the contemplated real estate transaction.

Section 7. Affiliation.

(1) The principal broker shall be the owner of all written contracts for provision of real estate brokerage services, including items such as listing contracts, purchase contracts, and exclusive agency agreements.

(2) When a principal broker, or a licensee acting on behalf of the principal broker, enters into a written agreement with a client, an agency relationship is formed, and the client is the principal.

(3) Absent operating as a designated agency company, each licensee affiliated with the real estate brokerage company shall have the same agency relationship with respect to a client, prospective client, or party as the principal broker in an in-house transaction.

(4) If only one (1) broker is affiliated with a company, he or she shall be the principal broker.

(5) If one (1) or more additional licensees is affiliated with the company, one (1) broker shall be the principal broker registered with the commission.

(6)

(a) Unless there is a written contract stipulating otherwise, a licensee shall, upon termination of his or her affiliation with his or her principal broker, immediately turn over to the principal broker all records described in Section 9(1)(a)-(h) of this administrative regulation obtained during his or her affiliation regardless of whether the information was originally received from his or her principal broker, copied from the records of the principal broker, or acquired by the licensee during his or her affiliation.

(b) Nothing in paragraph (a) of this subsection shall require an affiliated licensee to deliver to the principal broker records which the principal broker is not under an obligation to retain consistent with this administrative regulation or records which are already in the principal broker's possession.

(7)

(a) A principal broker may be principal broker of more than one (1) real estate brokerage company.

(b) A principal broker shall not also be an affiliate broker at

another real estate brokerage company, except for as provided in KRS 324.112(5).

(8) A sales associate or broker affiliated with a principal broker shall only be affiliated with one principal broker at one office, or branch office, location.

(9) A real estate brokerage company may have more than one (1) physical office location, including branch offices.

Section 8. Facsimile and Digital Transmissions.

(1) A licensee may use facsimile (FAX) devices and digital transmissions to transmit and receive documents according to the provisions of KRS Chapter 369 and 201 KAR Chapter 11.

(2) A document received by facsimile devices or digital transmissions shall be immediately placed in the licensee's file and retained as required by this administrative regulation.

Section 9. Principal Broker Duties and Prohibitions.

(1) A principal broker shall confidentially preserve, either in hard copy or digital format, for five (5) years following its consummation or failure, records in one (1) file relating to any real estate transaction, which shall include:

- (a) Any written offers to lease or purchase the real estate;
- (b) The acquisition and disbursement of any monies;
- (c) Listing and sales contracts or leases;
- (d) Closing sheets;

(e) Seller's Disclosure of Property Condition and Condominium Seller's Certificate forms;

- (f) Agency Consent Agreement forms;
- (g) Guide to Agency Relationships forms; and
- (h) Timeshare records.

(2) A principal broker who engages in property management shall also confidentially preserve, either in hard copy or digital format, for five (5) years:

- (a) Property management agreements;
- (b) Leases;
- (c) Monthly owner statements and reports;
- (d) Owner and unit ledgers; and
- (e) Bank statements relating to property management.

(3) If the death or incapacity of the principal broker occurs, records required to be maintained pursuant to this section shall be maintained by:

(a) A new principal broker or a designated manager, so designated previous to the time of the death or incapacity of the principal broker to maintain the records;

(b) The real estate brokerage company of the principal broker at the time of the death or incapacity of the principal broker, if the company continues to be an active company;

(c) A licensee designated by the commission to maintain the records and serve as the principal custodian of the records, without any liability or obligation, other than to confidentially maintain the records and to provide the records to a party as required by law or by demand of the commission; or

(d) Any appointee of the commission who will agree to maintain the records and serve as the principal custodian of the records, without any liability or obligation, other than to confidentially maintain the records and to provide the records to a party as required by law or by demand of the commission.

(4) At the time of signing all documents, the principal broker, or an affiliated licensee of the principal broker, shall ensure that a copy of all documents are delivered to all parties executing the documents if the document has been provided, prepared by, or at the direction of the principal broker or an affiliated licensee of the principal broker.

(5) The principal broker, or an affiliated licensee of the principal broker, shall ensure that a debit and credit type closing statement is furnished to a client upon closing a real estate transaction unless the financial institution, title agency, the attorney involved, or other authorized individuals, has prepared the closing statement.

(6) A principal broker shall not be a party to an exclusive listing contract which contains an automatic continuation of the period of the listing beyond the fixed termination date set forth therein.

(7) If a principal broker permits teams, a principal broker shall notify the commission in writing of the alternate or assumed name

used by the team and the name of the team leader before permitting team advertising.

(8) If a principal broker authorizes team, group, or other business arrangements between affiliated licensees, the principal broker shall:

(a) Offer, at a minimum, company procedures for advertising, agency relationships and handling confidential information, management and operations specific to team, group, or other business arrangements between affiliated licensees;

(b) Designate a licensee who shall be responsible, along with the principal broker and designated manager, for the operations of the team, group, or other business arrangement. The designated licensee shall be referred to as the "team leader" regardless of how the team, group, or other business arrangement labels itself;

(c) Maintain a current list of all affiliated licensees, employees, office personnel, and clerical staff who are a part of each individual team, group, or other business arrangement; and

(d) Notify the commission in writing of the first and last name and license number of the team leader.

(9) A principal broker shall ensure any employee or unlicensed personal assistant, salaried or independently contracted, employed by, retained by, or under the direction of the principal broker or any affiliated licensee, are in compliance with the applicable provisions of KRS Chapter 324 and 201 KAR Chapter 11.

(10) A principal broker shall implement and maintain an appropriate information security system that shall:

(a) 1. Notify licensees, management, employees, officer personnel, and clerical staff of company policy and procedures related to confidential information, including in-person interactions or discussions in the office environment;

2. Prohibit the disclosure of confidential information by licensees, management, employees, office personnel and clerical staff;

3. Require notification to each client involved in a transaction, if the principal broker becomes aware of an unauthorized or inadvertent disclosure of confidential information relating to that transaction; and

4. Prohibit an employee from assisting more than one (1) designated agent in the same transaction if the designated agents represent different clients in that transaction.

(b) Nothing in this provision shall prohibit a licensee who is party to an Agency Consent Agreement from maintaining a separate individual client file containing confidential information.

(11) A principal broker of a real estate brokerage company that practices designated agency shall require that all documents that contain confidential information relating to a client be kept in an individual file maintained by the principal broker and accessed only by the principal broker, designated manager, or designated agent appointed by the principal broker to represent the individual.

(12) A principal broker who appoints a designated manager of the real estate brokerage company, a registered company branch, team, group, or other business arrangement shall notify the commission in writing of the name of the designated manager within ten (10) days of the appointment.

Section 10. Property Management.

(1) A principal broker, or an affiliated licensee, shall not engage in property management without a current written property management agreement.

(2) A property management agreement shall contain, at a minimum:

(a) The full name and address of the principal broker's real estate brokerage company as registered with the commission;

(b) The name and address of the client for whom the property is being managed;

(c) The address of the real estate being managed and the number of units;

(d) The effective dates of the agreement, and a provision stating whether the client agrees to automatic annual renewal;

(e) A provision stating the method for early termination;

(f) The amount of, or the method for computing, the amount of

compensation to the principal broker;

(g) The amount of, or the method of determining, the minimum security deposit to be collected from tenants for each unit managed;

(h) The name and address of the bank where the principal broker's escrow or management account is held, and, consistent with KRS 383.580(1), the account number. This information shall also be contained in the lease;

(i) A provision which is in accord with KRS 383.580 setting forth the procedures governing returning or retaining the security deposit. This provision shall also be contained in the lease;

(j) A provision setting forth the conditions under which the principal broker may pay expenses related to the real estate being managed;

(k) A statement setting forth the date when the principal broker shall send the client an accounting of the transactions related to the real estate being managed;

(l) A copy of the form of the lease document which the principal broker shall have the tenant sign shall be attached to the agreement;

(m) A provision whereby the client certifies that he or she has received a duplicate copy of the agreement and the attached lease form; and

(n) The signature and date of signature of the client and the principal broker.

(3) A principal broker shall maintain, in electronic or written form:

(a) An owner ledger for each client of real estate being managed;

(b) A unit ledger for each unit in the real estate being managed; and

(c) Upon the written request of the client of the property being managed, the principal broker shall provide a unit ledger by tenant.

(4) Money received shall be deposited into an escrow or management account of the principal broker within three (3) business days of receipt.

(5) The amount of money received shall be entered into the owner and unit ledgers.

(6) A receipt shall be given for money received.

(7) Expenses paid by the principal broker shall be documented by invoice or receipt, by unit, and retained with a principal broker's records.

(8) Adjustments to a security deposit shall be made in accordance with KRS 383.580. Adjustments shall also be entered on the owner and unit ledgers.

(9) On the date determined by the parties, a principal broker shall send a monthly accounting to a client of transactions related to the real estate being managed, by unit.

(10) Within sixty (60) days of the termination of a management agreement, a principal broker shall send the client a final accounting that contains any transaction that occurred after the last monthly accounting.

(11) A principal broker who has an ownership interest in the real estate being managed shall:

(a) Maintain a unit ledger for each unit in the real estate being managed; and

(b) Comply with KRS 383.580 relating to receipt, deposit, and adjustment of tenant security deposits.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Seller-Initiated Listing Form", KREC Form 403, 10/2019;

(b) "Seller's Disclosure of Property Condition", KREC Form 402, 08/2022[04/2022][12/2019];

(c) "Condominium Seller's Certificate", KREC Form 404, 10/2019;

(d) "Guide to Agency Relationships", KREC Form 400, 08/2022[04/2022][12/2019];

(e) "Agency Consent Agreement - Buyer", KREC Form 401B, 08/2022[04/2022][12/2019];

(f) "Agency Consent Agreement - Seller", KREC Form 401S, 08/2022[04/2022][12/2019].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 500 Mero Street[656 Chamberlin Avenue, Suite B],

Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available from the commission's Web site: www.krec.ky.gov.

LOIS ANN DISPONETT, Chair

ROBERT ASTORINO, Executive Director

APPROVED BY AGENCY: August 15, 2022

FILED WITH LRC: August 15, 2022 at 11:45 p.m.

CONTACT PERSON: August L. Pozgay, Kentucky Real Estate Authority, 500 Mero Street, 2 NE 09, Frankfort, Kentucky 40601, phone 502-782-0714, email August.Pozgay@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: August L. Pozgay

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the professional standards of conduct for real estate brokers and sales associates. It also outlines the required elements of listing contracts, purchasing contracts, counteroffers, and agency consent agreements.

(b) The necessity of this administrative regulation: KRS 324.281(5)(a) require the commission to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority. KRS 324.020 requires individuals to obtain a license to practice real estate brokerage within the state. KRS 324.160 and KRS 324.165 establish the actions that constitute improper conduct. KRS 324.360 requires the commission to promulgate an administrative regulation authorizing a seller's disclosure of property conditions form. KRS 324.121 allows sales associates and brokers to engage dual agency and designated agency. This administrative regulation helps licensees comply with the abovementioned statutes through the promulgation of agency disclosure forms, seller's disclosure of property conditions form, and

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller, buyer or prospective buyer to the exclusion of all other licensees associated with the principal broker. This administrative regulation establishes requirements for designated agency. KRS 324.360(2) requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form whose content is set forth by KRS 324.360(3). This administrative regulation establishes the required Seller's Disclosure of Property Condition form. KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. This administrative regulation establishes a specific format for disclosing prior relationships between parties in a real estate transaction. Additionally, this administrative regulation establishes requirements, to inform and set certain standards for licensees and to protect the public, regarding delivery of signed documents, broker supervision, broker record retention, sales associate affiliation and termination, and written agreements between licensees and consumers to provide real estate brokerage services, including standards for listing and purchase contracts. This administrative regulation establishes behavior considered improper conduct.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the professional standards of conduct for real estate brokers and sales associates.

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

(a) How the amendment will change this existing administrative regulation: Amendments to this administrative regulation include changes to several promulgated forms as well as the removal of the requirement to disclose prior contact with a former perspective client involved in the contemplated transaction.

(b) The necessity of the amendment to this administrative regulation: There are several errors in the current versions of the forms promulgated in this regulation. The proposed amendment

corrects those errors to bring the forms into compliance with the regulation and KRS Chapter 324.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the professional standards of conduct for real estate brokers and sales associates. The amendment brings this administrative regulation into compliance with current versions of binding regulatory guidance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will amend the Guide to Agency Relationships, Agency Consent Agreement – Buyer, and Agency Consent Agreement – Seller to make them more straightforward and easier to use for licensees and consumers. In addition, it will amend these forms to ensure they include all elements and sections required by statute and this administrative regulation. This amendment will amend the Seller's Disclosure of Property Condition form to make it clearer and easier to use, and to ensure more complete and detailed disclosure of issues with real property to be sold. It also clarifies the rules that will govern the practice as a licensed real estate professional in Kentucky and removes one disclosure rule that is unfeasible in practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 16,000 active real estate sales associates and brokers as well as numerous real estate educators and trade organizations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities, and specifically active real estate sales associates and brokers, will have to use the amended promulgated forms to conduct real estate business. Likewise, they will have to ask seller clients to complete the amended seller's disclosure form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation should not cost regulated entities anything.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will benefit from clearly written forms while engaging in real estate brokerage activities.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies similarly to all similarly situated persons.

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 Real Estate Commission will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.281(5)(a), 324.360(2).

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

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

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

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

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

(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)]

EDUCATION AND LABOR CABINET Department of Workers' Claims (Amended After Comments)

803 KAR 25:195. Utilization review, appeal of utilization review decisions, and medical bill audit.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5), [and—](6), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the

commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. KRS 342.035(5) provides the commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(8) requires the commissioner to adopt or develop a pharmaceutical formulary and treatment guidelines; utilization review assists in the proper implementation of the pharmaceutical formulary and treatment guidelines. This administrative regulation ~~ensures~~**[insures]** that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and medical bill audit program.

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday or any day which is a legal holiday.

(2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.

(3) "Carrier" is defined by KRS 342.0011(6).

(4) "Commissioner" is defined by KRS 342.0011(9).

(5) "Denial" means a determination by the utilization reviewer that the medical treatment, proposed treatment, service, or medication under review is not medically necessary or appropriate and, therefore, payment is not recommended.

(6) "Department" is defined by KRS 342.0011(8).

(7) "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

(8) "Medically necessary" or "medical necessity" means healthcare services, including medications, that a medical provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating, an illness, injury, disease or its symptoms, and that are:

(a) In accordance with generally accepted standards of medical practice;

(b) Clinically appropriate, in terms of type, frequency, extent site and duration; and

(c) Considered effective for the patient's illness, injury, or disease.

(9) "Medical payment obligor" means any self-insured employer, carrier, insurance carrier, self-insurer, or any person acting on behalf of or as an agent of the self-insured employer, carrier, insurance carrier, or self-insurer.

(10) "Medical provider" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, osteopathic and chiropractic practitioners, physician assistants, and advanced practice registered nurses, acting within the scope of their license

(11) "Physician" is defined by KRS 342.0011(32).

(12) "Preauthorization" means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(13) "Same medical specialty" means a branch of medical practice focused regularly and routinely on a defined group of patients, diseases, skills, body part, or type of injury and performed by a physician with the same or similar qualifications.

(14) "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease.

(15)~~(14)~~ "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner by each medical payment obligor describing the procedures governing utilization review and medical bill audit activities.

(16)~~(15)~~ "Vendor" means a person or entity which implements a utilization review and medical bill audit program for purposes of offering those services to carriers.

Section 2. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:

(a) A utilization reviewer has the education, training, and experience, necessary to evaluate clinical issues and services for medical necessity and appropriateness~~[is appropriately qualified]~~;

(b) Treatment rendered to an injured worker is medically necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy comply with KRS Chapter 342 and 803 KAR Chapter 25;

(b) A medical bill auditor has the education, training, or experience, necessary to evaluate medical bills and statements~~[is appropriately qualified]~~; and

(c) A statement for medical services is not disputed without reasonable grounds.

Section 3. Utilization Review and Medical Bill Audit Plan Approval. (1) A medical payment obligor shall fully implement and maintain a utilization review and medical bill audit program.

(2) A medical payment obligor shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner.

(4) A medical payment obligor who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years.

(a) At least ninety (90) calendar days prior to the expiration of the period of approval, a medical payment obligor or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

(6) A medical payment obligor or its utilization review vendor~~[carrier who contracts with an approved vendor for utilization review services]~~ shall provide annually to the commissioner summaries of the number of utilization reviews conducted,~~[utilization reviews waived in accordance with KRS 342.035(5)(c),]~~ utilization reviews resulting in an approval, and utilization reviews resulting in a denial, peer-to-peer conferences requested, peer-to-peer conferences that resulted in approval of the requested treatment, and peer-to-peer conferences that resulted in denial of the requested treatment.

(a) The medical payment obligor or its utilization review vendor shall email the summaries in a Microsoft Excel spreadsheet with rows labeled for each summary category to LaborEDI@ky.gov.

(b) The summaries shall only include data gathered from the medical payment obligor's most recent complete fiscal year that ended on or before March 31 of the year in which the summaries are due. The summaries~~[The annual report of the approved vendor]~~ shall be filed with the commissioner no later than September 1 each year~~[August 1 for the preceding year, including any fiscal year ending on or before June 30].~~

(c) If a utilization review vendor provides utilization review services for more than one medical payment obligor, the utilization review vendor shall submit a separate spreadsheet for each medical payment obligor.

(d) If a utilization review or a peer-to-peer conference results in a portion of the treatment being approved and a portion of the treatment being denied, the result shall be

reported as both an approval and a denial for reporting purposes.

Section 4. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

- (1) A description of the process, policies and procedures for making decisions;
- (2) A statement that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making;
- (3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;
- (4) A description of the:
 - (a) Qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit; and
 - (b) The manner in which the personnel shall be involved in the review process;
- (5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;
- (6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096 **or 803 KAR 25:110**;
- (7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;
- (8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;
- (9) An assurance that a database shall be maintained, which shall:
 - (a) Record:
 1. Each instance of utilization review;
 2. Each instance of medical bill audit;
 3. The name of the reviewer;
 4. The extent of the review;
 5. The conclusions of the reviewer; and
 6. The action, if any, taken as the result of the review;
 - (b) Be maintained for a period of at least two (2) years; and
 - (c) Be subject to audit by the commissioner, or his agent, pursuant to KRS 342.035(5)(b); and
- (10) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information.

Section 5. Claim Selection Criteria. (1) Unless the medical payment obligor, in good faith, denies the claim as noncompensable or waives utilization review pursuant to KRS 342.035 (5)(c), medical services reasonably related or asserted to be related to the claim shall be subject to utilization review if:

- (a) A medical provider requests preauthorization of a medical treatment or procedure;
- (b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;
- (c) The total medical costs cumulatively exceed \$3,000;
- (d) The total lost work days cumulatively exceed thirty (30) days;

or

- (e) An administrative law judge orders a review.
- (2) Utilization review shall commence when the medical payment obligor has notice that a claims selection criteria has been met. The medical payment obligor may waive utilization review pursuant to KRS 342.035(5)(c) within two (2) business days of notice that a claims selection criteria has been met **unless additional information is required, in which case, utilization review shall be waived within two (2) business days following receipt of the requested information.**

(a) The following requirements shall apply if preauthorization has been requested and utilization review has not been waived by the medical payment obligor:

1. The initial utilization review decision shall be communicated to the medical provider and employee within two (2) business days of the initiation of the utilization review process, unless additional

information is required. If additional information is required, a single request shall be made within two (2) additional business days.

2. The requested information shall be submitted by the medical provider within ten (10) business days.

3. The initial utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The initial utilization review decision shall be communicated to the medical provider and employee within **seven (7) business[ten (10) calendar]** days of the initiation of the utilization review process, unless additional information is required. If additional information is required, a single request shall be made within two (2) additional business days.

2. The requested information shall be submitted by the medical provider within ten (10) business days.

3. The initial utilization review decision shall be rendered within two (2) business days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be rendered and communicated within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period for paying medical expenses shall commence on the date of the final utilization review decision.

(5) Each medical bill audit shall be initiated within **five (5) business[seven (7) calendar]** days of receipt to assure:

(a) Compliance with applicable fee schedules, in accordance with 803 KAR Chapter 25;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096 **or 803 KAR 25:110**.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4).

Section 6. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. The following professionals shall issue an initial utilization review approval:

(a) A physician;

(b) A registered nurse;

(c) A licensed practical nurse;

(d) A medical records technician; or

(e) Other personnel whose training and experience qualify them to issue decisions on medical necessity or appropriateness, **[including a medical doctor, surgeon, psychologist, optometrist, dentist, podiatrist, and osteopathic practitioner, acting within the scope of the license or licenses required by the jurisdiction in which they are employed.]**

(2) Utilization review personnel shall hold the license required by the United States' jurisdiction in which they are employed.

(3) A physician shall supervise utilization review personnel.

(4) A physician shall authorize and ratify any utilization review denial.

(5)[(2)] Only a physician may issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(6)[(3)] Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 7. Written Notice of Denial. (1) Following initial review, a written notice of denial shall:

- (a) Be issued to both the medical provider and the employee in

a timely manner but no more than two (2) business days after initiation of the utilization review process unless additional information was required, in which case, the written notice of denial shall be issued no later than two (2) business days after the initial utilization review decision~~[ten (10) calendar days from the initiation of the utilization review process]~~;

(b) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and

(c) Contain:

1. A statement of the medical reasons for denial;
2. The name, state of licensure and medical license number of the reviewer; and
3. An explanation of utilization review reconsideration rights.

(2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 8. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review.

(a) A request for reconsideration of the initial utilization review decision shall be made by an aggrieved party within ten (10) business~~[fourteen (14) calendar]~~ days of receipt of a written notice of denial.

(b) Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of the same medical specialty~~[at least the same qualifications]~~ as the medical provider whose treatment is being reconsidered.

(c) A written reconsideration decision shall be rendered within seven (7) business~~[ten (10) calendar]~~ days of receipt of a request for reconsideration unless a peer-to-peer conference is requested, in which case, the written reconsideration decision shall be rendered within five (5) business days after the day on which the peer-to-peer conference was held. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION".

(d) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

~~[(2)(a) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area, or a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095 has not previously reviewed the matter, an aggrieved party may request further review by:~~

- ~~1. A board eligible or certified physician in the appropriate specialty or subspecialty; or~~
- ~~2. A chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.~~

~~(b) A written decision shall be rendered within ten (10) calendar days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".]~~

~~[(3)]~~ A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within ten (10) business~~[fourteen (14) calendar]~~ days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within seven (7) business~~[ten (10) calendar]~~ days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 9. Peer-to-Peer Conference. (1) If the medical payment obligor denies preauthorization following utilization review, it shall issue a written notice of denial as required in Section 7 of this administrative regulation.

(2) The medical provider whose recommendation for treatment is denied may request reconsideration[,] and may require the reconsideration include a peer-to-peer conference with a second utilization review physician.

(3) The request for a peer-to-peer conference shall be made by electronic communication and shall provide:

(a) A telephone number for the reviewing physician to call;

(b) A date or dates for the conference not less than five (5) business days after the date of the request unless the peer-to-peer conference request stems from a denial issued pursuant to 803 KAR 25:270, in which case, a date or dates not less than two (2) business days after the date of the request. In either case, the parties may by agreement hold the conference in a shorter time period; and

(c) A one (1)-hour period during the date or dates specified during which the requesting medical provider, or a designee, will be available to participate in the conference between the hours of 8:00 a.m. and 6:00 p.m. (Eastern Time), Monday through Friday.

(4) The reviewing physician participating in the peer-to-peer conference shall be of the same medical specialty as the medical provider requesting reconsideration.

(5) Failure of the reviewing physician to participate during the date and time specified shall result in the approval of the request for preauthorization and approval of the recommended treatment unless good cause exists for the failure to participate. In the event of good cause for failure to participate in the peer-to-peer conference, the reviewing physician shall contact the requesting medical provider to reschedule the peer-to-peer conference. The rescheduled peer-to-peer conference shall be held no later than two (2) business days following the original conference date. Failure of the requesting medical provider or its designee to participate in the peer-to-peer conference during the time he or she specified availability may result in denial of the request for reconsideration.

(6) A written reconsideration decision shall be rendered within five (5) business days of date of the peer-to-peer conference. The written decision shall be entitled "FINAL UTILIZATION REVIEW DECISION."

(7) If a Final Utilization Review Decision is rendered denying authorization for treatment before an award has been entered by or agreement approved by an administrative law judge, the requesting medical provider or the injured employee may file a medical dispute pursuant to 803 KAR 25:012. If a Final Utilization Review Decision is rendered denying authorization for treatment after an award has been entered by or agreement approved by an administrative law judge, the employer shall file a medical dispute pursuant to 803 KAR 25:012.

(8) Pursuant to KRS 342.285(1), a decision of an administrative law judge on a medical dispute is subject to review by the workers' compensation board under the procedures set out in 803 KAR 25:010,

SCOTT WILHOIT, Commissioner

APPROVED BY AGENCY: August 11, 2022

FILED WITH LRC: August 12, 2022 at 1:40 p.m.

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 governs medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to KRS Chapter 342.

(b) The necessity of this administrative regulation: KRS 342.035(5)(c) requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to KRS Chapter 342.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.020 makes employers and their payment obligors responsible for payment of reasonable and necessary medical treatment for the cure and relief of work-place injuries and occupational diseases. Utilization review assists employers and employees in determining whether medical treatment is reasonable and necessary. Additionally, KRS 342.020(7)(f) requires employers with a managed care system to establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee. This regulation provides guidance to stakeholders regarding the requirements of a utilization review program and its implementation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to stakeholders regarding the requirements of a statutorily required utilization review program and its implementation.

(2) If 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 an amendment to new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: To respond to stakeholder comments.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Insurance carriers, self-insured groups, self-insured employers, and injured employees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Insurance carriers, self-insured groups, and self-insured employers will be required to have a system of utilization review to assess the reasonableness and necessity of medical treatment. Entities utilizing a managed care organization must include utilization review as part of that program. Employees will receive appropriate medical treatment in a timely manner.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs are expected to remain consistent with current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employers, medical payment obligors, and employees may be assured that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, is cost ineffective, and not harmful to the employee.

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

(a) Initially: No additional costs are associated with implementation.

(b) On a continuing basis: No additional 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 is necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the utilization review procedure 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 342.020, 342.035, and 342.260.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new administrative costs will be required.

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 activities associated with the administrative regulation are currently performed by those entities; however, the same cannot be said absent this administrative regulation.

(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 (+/-):

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)]

PUBLIC PROTECTION CABINET
Department of Insurance
(Amended After Comments)

806 KAR 17:585. Annual report mental health parity nonquantitative treatment limitation compliance.

RELATES TO: KRS 304.1-050(1), 304.17A-660, 304.17A-669

STATUTORY AUTHORITY: KRS 304.2-110, 304.17A-661

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-661 requires an insurer that issues or renews a health benefit plan to annually report to the commissioner the self-compliance with the federal Mental Health Parity and Addiction Equity Act related to nonquantitative treatment limitations between medical and surgical benefits and mental health substance use disorder benefits to demonstrate that such treatment limitations are applied comparably. This administrative regulation sets forth the format and submission time frame for the data reporting requirements in KRS 304.17A-661.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Insurer" is defined by KRS 304.17A-005(29).

(3) "Nonquantitative treatment limitations" as defined by KRS 304.17A-660(3).

Section 2. Data Reporting Requirements. (1) An insurer that issues or renews a health benefit plan and is authorized to write health insurance in this state shall submit an annual report containing the information described in KRS 304.17A-661 on the Nonquantitative Treatment Limitation (NQTL) Reporting Submission Form to the commissioner by April 1st of each year for the previous plan year.

(2) Be submitted in an electronic format prescribed by the Commissioner.

Section 3. Material Incorporated by Reference.

(1) "Nonquantitative Treatment Limitation (NQTL) Reporting Submission Form", 8/2022[5/2022] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm. This material is also available on the Department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: August 12, 2022

FILED WITH LRC: August 12, 2022 at 8:23 a.m.

CONTACT PERSON: Abigail Gall, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the manner in which regulated entities are to report to the Department of Insurance their Mental Health Parity comparison report.

(b) The necessity of this administrative regulation: The regulation is necessary to establish the submission form for regulated entities to provide the required information prescribed in KRS 304.17A-661.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary

for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-661 requires that any insurer that issued a health benefit plan on or after January 1, 2022 shall report to the Commissioner in a manner and format prescribed through administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates the form for insurers to report to the Commissioner electronically.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 12 insurers offering health benefit plans.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These insurers are responsible for filing with the department the incorporated form that captures the requested information regarding Mental Health Parity NQTL Comparison of benefits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities should already be completing similar reporting under federal law and so they should have the proper processes in place. This should not cost anything for the entities other than administrative costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be reporting to the Department the appropriate information to meet the statutory requirements set forth in KRS 304.17A-661.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: This does not associate a cost on the department to implement this administrative regulation's provisions.

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all health insurers offering health benefit plans in Kentucky (12).

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance will be impacted as the implementer of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.17A-661

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue generated by this administrative regulation is expected to be minimal.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have a cost to implement in the first year.

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

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This number is unknown, but the Department does not foresee any cost or savings increase or decrease.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This number is unknown, but the Department does not foresee any cost or savings increase or decrease.

(c) How much will it cost the regulated entities for the first year? The cost should be minimal, if any.

(d) How much will it cost the regulated entities for subsequent years? The cost should be minimal, if any.

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

Cost Savings (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation should not have a major economic impact as defined above because regulated entities should already have the administrative abilities to conduct the comparative analysis as described in KRS 304.17A-661 and as required under federal law.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C. sec. 300gg-26, as amended, and any related federal regulations, as amended, including but not limited to 45 C.F.R. secs. 146.136, 147.160, and 156.115(a)(3).

(2) State compliance standards. The state compliance standards are as described in KRS 304.17A-661

(3) Minimum or uniform standards contained in the federal mandate. A health benefit plan issued or renewed on or after January 1, 2022, that provides coverage for treatment of a mental health condition shall provide coverage of any treatment of a mental health condition under terms or conditions that are no more restrictive than the terms or conditions provided for treatment of a physical health condition.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amended After Comments)

815 KAR 7:120. Kentucky Building Code.

RELATES TO: KRS 132.010, 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.260, 198B.990, 227.300, 227.550(7)

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the department to promulgate a mandatory uniform state building code that establishes standards for the construction of all buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions.

(1) "Building" is defined by KRS 198B.010(4).

(2) "Department" is defined by KRS 198B.010(13)(14).

(3) "Industrialized building system" or "building system" is defined by KRS 198B.010(18)(46).

(4) "Manufactured home" is defined by KRS 227.550(6)(7).

(5) "Single-family dwelling" or "[one- (1)] family dwelling" means a single unit that:

(a) Provides complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) Is not connected to another [unit or] building.

(6) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(7) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Building Code. The 2015 International Building Code shall be the mandatory state building code for all buildings constructed in Kentucky except that:

(1) The Kentucky amendments in the 2018 Kentucky Building Code shall supersede any ~~conflicting~~[confliction][conflicting] provision in the 2015 International Building Code;

(2) One (1) family dwellings, two (2) family dwellings, and townhouses shall be governed by 815 KAR 7:125; and

(3) Manufactured homes shall be governed by KRS 227.550 through 227.665.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by

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the department.

(1) Fast track elective.

(A) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings.

(a) The department's inspection fees shall be calculated by multiplying:

1. The cost per square foot of each occupancy type as listed in Table 121.3.1 in subsection (3) of this section; and

2. The square footage of the outside dimensions of the building.

(b) The fee for a building with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.

(c) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(3) Table 121.3.1, Basic Department Fee Schedule. The basic plan review or inspection fee shall be as established in Table 121.3.1 in this subsection.

OCCUPANCY TYPE	COST PER SQUARE FOOT
Assembly	16 (Sixteen (16)) cents
Business	15 (Fifteen (15)) cents
Day care centers	15 (Fifteen (15)) cents
Educational	15 (Fifteen (15)) cents
High Hazard	16 (Sixteen (16)) cents
Industrial factories	15 (Fifteen (15)) cents
Institutional	16 (Sixteen (16)) cents
Mercantile	15 (Fifteen (15)) cents
Residential	15 (Fifteen (15)) cents
Storage	15 (Fifteen (15)) cents
Utility and Miscellaneous	13 (Thirteen (13)) cents
Production greenhouse	10 (Ten (10)) cents

(4) Additions to existing buildings.

(a) Plan review fees for additions to existing buildings shall be calculated by multiplying the cost per square foot of the occupancy type listed in Table 121.3.1 in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition and any other changes made to the existing build.

(b) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in Table 121.3.1 in subsection (3) of this section by using the total square footage of the entire building or structure pursuant to the new occupancy type as determined by the outside dimensions.

(b) The minim fee for review of plans pursuant to this subsection shall be \$285.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of multiplying the:

1. Cost ~~of~~~~for~~ the alterations or repairs by 0.0030; or

2. Total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(7) Specialized fees. In addition to the fees established by subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule. The inspection fee for automatic sprinklers shall be as established

in Table 121.3.9 in this paragraph:

NUMBER OF SPRINKLERS	FEE
4-25 (Four (4) – twenty-five (25))	\$150
26 (Twenty-six) – 100	\$200
101 – 200	\$250
201 – 300	\$275
301 – 400	\$325
401 – 750	\$375
OVER 750	\$375 plus thirty (30) cents per sprinkler over 750

(b) Fire detection system review fee.

1. Zero through 20,000 square feet shall be \$275; and

2. Over 20,000 square feet shall be \$275 plus thirty (30) dollars for each additional 10,000 square feet in excess of 20,000 square feet;

(c) The standpipe plan review fee shall be \$275. The combination of stand pipe and riser plans shall be reviewed pursuant to the automatic sprinkler review fee schedule;

(d) Carbon dioxide suppression system review fee.

1. One (1) through 200 pounds of agent shall be \$275; and

2. Over 200 pounds of agent shall be \$275 plus five (5) cents per pound in excess of 200 pounds;

(e) Clean agent suppression system review fee.

1.

a. Up to thirty-five (35) pounds of agent shall be \$275; and

b. Over thirty-five (35) pounds ~~of agent~~ shall be \$275 plus ten (10) cents per pound in excess of thirty-five (35) pounds; and

2. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than \$150;

(f) Foam suppression system review fee.

1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed pursuant to the automatic sprinkler review fee schedule.

3. The fee for review of plans pursuant to subclause 1. of this paragraph shall not be less than \$275 or more than \$1,500;

(g) The commercial range hood review fee shall be \$225 per hood;

(h) Dry chemical systems review fee (except range hoods). The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be \$275; and

2. Over thirty (30) pounds of agent shall be \$275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds; and

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and overflow detection, cathodic protection, or associated components.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "2015 International Building Code", International Building Code Council, Inc.; and

(b) "2018 Kentucky Building Code", Third Edition, August[March] 2022~~(Second Edition, May 2020)~~.

(2) ~~This[The]~~~~[This]~~ material may be inspected copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

RAY A. PERRY, Secretary

RICK W. RAND, Commissioner

APPROVED BY AGENCY: August 11, 2022

FILED WITH LRC: August 12, 2022 at 11:26 a.m.

CONTACT PERSON: Jonathon M. Fuller, Department of

Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0617, fax (502) 573-1057, email max.fuller@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathon M. Fuller

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Building Code.

(b) The necessity of this administrative regulation: KRS 198B.040(7) and 198B.050 require the department to adopt and promulgate a mandatory Uniform State Building Code that establish the standards for the construction of all buildings, as defined in KRS 198B.010, in the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.040(7) and 198B.050 require the department to adopt and promulgate a mandatory Uniform State Building Code that establish the standards for the construction of all buildings, as defined in KRS 198B.010, in the state. This administrative regulation incorporates by reference the 2015 International Building Code and 2018 Kentucky Building Code—the “Kentucky amendments”.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the Kentucky Building Code, as required by KRS 198B.040(7) and 198B.050 for the enforcement of the uniform state building code, incorporating all applicable laws into its processes.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes updated standards for controlled environment agriculture facilities in the Kentucky Building Code and corrects grammatical and technical errors in the 2018 Kentucky Building Code. Specifically:

1. Amends Section 201, Definitions, to include a definition of controlled environment agriculture facilities.

2. Amends Section 201, Definitions, to update the definition of commercial greenhouse to clarify public access and research uses.

3. Amends Section 304.1 by removing reference to 902 KAR 20:073.

4. Amends Section 306.3 Low-hazard factory industrial, Group F-2 to include packing and shipping areas of controlled environment agriculture facilities as an example of an F-2 occupancy.

5. Amends Section 433 to include references to controlled environment agriculture facilities and the applicable code standards for these facilities.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement code changes to the incorporated material. Specifically, the amendments related to controlled environment agriculture facility result from the requests of industry professionals, code professionals, and the public.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.040(7) and 198B.050 require the department to adopt and promulgate a mandatory Uniform State Building Code that establish the standards for the construction of all buildings, as defined in KRS 198B.010, in the state. This administrative regulation incorporates by reference the 2015 International Building Code and 2018 Kentucky Building Code—the “Kentucky amendments”.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Building Code will enhance public safety and allow the construction industry to use current technologies, methods, and materials.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All construction projects subject to the Kentucky Building Code are affected by this administrative regulation. Architects, engineers, contractors, project managers, businesses, local governments, and Department personnel will be

affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The identified entities must comply with any applicable amendments to the Kentucky Building Code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities will likely have no additional costs in complying with these amendments. They may save money as a result of these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include a more clear building code with fewer errors, flexibility in building design, and increased clarity of construction standards.

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

(a) Initially: There are no anticipated additional costs to implement this administrative regulation.

(b) On a continuing basis: There are no anticipated additional costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is anticipated to result in no additional costs to the agency. Any agency costs resulting from the implementation and enforcement of this administrative regulation will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not necessitate an increase in fees or funding. No fees are raised or changed by this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied as all regulated entities are subject to the same amended requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and building inspection and plan review programs of local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 198B.040(7) and KRS 198B.050.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this amendment in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this amendment for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment may save certain regulated entities the cost of the installation of fire suppression equipment in facilities where the amendment clarifies that they are not required in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This amendment may save certain regulated entities the cost of the installation of fire suppression equipment in facilities where the amendment clarifies that they are not required in subsequent years.

(c) How much will it cost the regulated entities for the first year? This amendment will not require additional expenditures by regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? This amendment will not require additional expenditures by regulated entities for subsequent years.

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

Cost Savings (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None.

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

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Fire Prevention
(Amended After Comments)

815 KAR 10:060. Kentucky standards of safety.

RELATES TO: KRS 198B.050, 227.300, [227.330,] 227.331, 227.715, 227.990, 234.140

STATUTORY AUTHORITY: KRS 227.300(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.300(1) requires the commissioner to promulgate an administrative regulation establishing the Kentucky Standards of Safety, which shall provide a reasonable degree of safety for human life against the exigencies of fire and panic and insuring as far as practicable against fire loss. This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety.

Section 1. Definitions.

(1) "Accepted" means that all deficiencies communicated, in writing, to the owner have been corrected to the satisfaction of the inspecting authority.

(2) "Distinct fire hazard":

(a) Means a condition that poses a threat to life or property, including a condition likely to inhibit escape from danger of fire or explosion; and

(b) Does not mean a condition in which the methods of construction met the uniform state building code requirements, as applicable, at the time of construction.

(3) "Fire protection sprinkler system" is defined by KRS

198B.550(6).

(4) "NFPA" means the National Fire Protection Association.

(5) "NICET" means the National Institute for Certification of Engineering Technologies.

(6) "Unsafe Building" means a building characterized by:

(a) Deficiency in means of egress;

(b) Danger to human life or public welfare by reason of illegal or improper use, occupancy, or maintenance;

(c) Non-compliance with the construction codes in place at time of construction;

(d) Significant damage including as the result of:

1. Fire;

2. Explosion;

3. Natural disaster;

4. Neglect; or

5. Vandalism;

(e) Falling away, hanging loose, or loosening of siding, block, or other building material, appurtenance, or part thereof; or

(f) Existence of structurally unsafe conditions.

Section 2. Scope.

(1) Applicability. This administrative regulation shall apply to all buildings except one (1) and two (2) family dwellings.

(2) Enforcement.

(a) State Fire Marshal. The State Fire Marshal shall:

1. Have primary jurisdiction over all property, unless a local government has established a fire inspection program by ordinance adopting this administrative regulation pursuant to KRS 227.320; and

2. Have exclusive jurisdiction over state-owned property and facilities licensed by the Kentucky Cabinet for Health and Family Services. A local fire chief may request authority for the inspection and enforcement responsibilities of licensed facilities from the State Fire Marshal.

(b) Local fire chief. Jurisdictions wherein a local fire chief is designated by ordinance to operate a fire inspection program pursuant to KRS 227.320 shall have primary jurisdiction for the enforcement of all property within the local governmental boundary except as established in subparagraph (a)2. of this subsection.

Section 3. Existing Buildings and Conditions.

(1) The standards for the construction pursuant to 815 KAR 7:120, Kentucky Building Code, in effect at the time of construction, and for which there has been issued a lawful certificate of occupancy, shall supersede different construction standards regarding the requirements for egress facilities, fire protection, and built-in fire protection equipment established in this administrative regulation or conflicting local ordinances.

(2) Change of use. It shall be unlawful to make a change in the use of a building or portion thereof without project plan review and approval in accordance with 815 KAR 7:120, Kentucky Building Code, except as established in Chapter 34 therein.

(3) Buildings and conditions approved under other codes.

(a) Buildings constructed prior to promulgation of the uniform state building code. A building, or portion thereof, which was constructed and approved prior to the effective date of the uniform state building code shall be maintained as constructed and approved.

(b) Previous fire code. A building, or portion thereof, which was inspected, approved, or accepted pursuant to a previously adopted fire code shall:

1. Be maintained as previously approved or accepted; and

2. Not be required to make a modification or change for so long as the building is maintained and used as previously accepted or approved.

(c) Buildings not occupied or used for one (1) year or more. Prior to occupancy, a building shall be inspected by the State Fire Marshal or a designee to ensure that the structure is neither a distinct fire hazard nor an unsafe structure.

(4) Distinct Fire Hazards.

(a) A building shall be deemed a distinct fire hazard if the authority having jurisdiction determines:

1. A fire, explosion, or asphyxiation is likely to occur;
 2. Conditions might provide a ready fuel supply to augment the spread or intensity of a fire or explosion;
 3. A building is vacant, unguarded, and open to unauthorized entry;
 4. An accumulation of combustible dust, debris, or materials is present;
 5. Required exits or fire protection are in non-working condition or not present;
 6. Objects are placed or installed so as to interfere with exits or exit routes;
 7. Combustible materials or items are in dangerous proximity to an ignition source such as a stove, fireplace, or heater;
 8. Electrical or mechanical systems or installations create a hazardous condition; or
 9. Operations, conditions, processes, use, or materials being used fail to afford adequate safety to the public.
- (b) If the State Fire Marshal or local fire chief determines that a distinct fire hazard exists, the fire hazard shall be remedied so as to render the property safe.

(c) The State Fire Marshal or a local fire chief shall use the standards established in this administrative regulation to identify and to order the correction of a distinct fire hazard acting in accordance with the procedures established in KRS Chapter 227 and this administrative regulation. In exercising authority granted, the following shall be applicable:

1. NFPA 1, Uniform Fire Code, 2018 edition, and the NFPA referenced standards included in Chapter 2 of NFPA 1 except:
 - a. NFPA 403, Guide for Aircraft Rescue and Fire Fighting Operation, 2018 edition;
 - b. NFPA 1031, Standard for Professional Qualifications for Fire Inspectors and Plan Examiner, 2014 edition;
 - c. NFPA 1192, Standard on Recreational Vehicles, 2018 edition;
 - d. NFPA 1194, Standard for Recreational Vehicle Parks and Campgrounds, 2018 edition;
 - e. NFPA 1901, Standard for Automotive Fire Apparatus, 2016 edition;
 - f. NFPA 1906, Standard for Wildland Fire Apparatus, 2016 edition;
 - g. NFPA 1925, Standard on Marine Fire-Fighting Vessels, 2013 edition;
 - h. NFPA 1963, Standard for Fire Hose Connections, 2014 edition;
 - i. NFPA 2113, Standard on Selection, Care, Use, and Maintenance of Flame-Resistant Garments for Protection of Industrial Personnel Against Short-Duration Thermal Exposures from Fire, 2015 edition;
 - j. NFPA 5000, Building Construction and Safety Code, 2018, edition;
 - k. Code reference 1.7.2, Minimum Qualifications to Enforce this Code;
 - l. Code reference 10.2.7, Minimum Fire Prevention Inspection Frequencies for Existing Occupancies;
 - m. Code reference 13.3.2.26, High Rise Buildings;
 - n. Code reference 13.3.2.8, Existing Assembly Occupancies; and
 - o. Code reference 13.6, Portable Extinguishers, which if required, shall be modified to exclude the provisions for installation of portable extinguishers in the occupancies listed in Table 13.6. Portable extinguishers shall be installed as required in the occupancy chapters of NFPA 101, Life Safety Code, 2018 Edition;
 2. NFPA 101, Life Safety Code, 2018 edition, and the NFPA referenced standards included in Chapter 2 of NFPA 101 except Code reference 13.3.5;
- 3. For sites at which consumer fireworks are offered for sale, NFPA 1124, Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 Edition:**
- 4.[3.]** NFPA 70, National Electrical Code, 2017 Edition; and
 - 5.[4.]** 815 KAR 7:120, Kentucky Building Code.
- (d) Modifications, alternatives, and interpretations. If the State Fire Marshal accepts or approves an alternative to a code provision

or issues an interpretation and the alternative or interpretation is of general applicability, it shall be published and forwarded to all known fire inspectors and other persons requesting a copy.

(5) Abatement of fire hazards. The abatement of a distinct fire hazard pursuant to this administrative regulation shall not require construction measures that would exceed the requirements of the current edition of 815 KAR 7:120, Kentucky Building Code, if the building were being newly constructed.

(6) Maintenance of equipment.

(a) All fire suppression and fire protection equipment, systems, devices, and safeguards shall be maintained in accordance with the applicable NFPA referenced code and the manufacturer's recommendations.

(b) This administrative regulation shall not be the basis for removal or abrogation of a fire protection or safety system or device installed in a building without approval granted by the authority having jurisdiction.

(7) Cooperation with building official. The State Fire Marshal and the local fire chief shall coordinate and cooperate with the building code official having jurisdiction in assessing a building for relative fire safety and to assure that the proper standards are applied.

Section 4. Permits.

(1) State permits required. A permit shall be required from the State Fire Marshal for flammable, combustible, or hazardous material storage vessel installations.

(2) Local permits allowed.

(a) A permit from a local government shall not be required unless required by local ordinance.

(b) An inspection or permit fee, if applicable, shall be established within the local government adopting legislation.

Section 5. Enforcement of Violations.

(1) Notice of deficiency. If the State Fire Marshal or local fire chief observes an apparent violation of a provision of this administrative regulation or other codes or ordinances under state or local jurisdiction, the State Fire Marshal or local fire chief shall prepare a written notice of deficiency. The notice of deficiency shall state the applicable code provision violated and specify the date by which the required repairs or improvements shall be completed. Pursuant to KRS 227.336, corrective action shall be ordered remedied within a period of time not to exceed sixty (60) days.

(2) Services of notice. The written notice of deficiency shall be served personally or via certified U.S. Mail upon the owner or the owner's duly authorized agent and upon each other person responsible for the deficiency. Proof of service shall be required to perfect service.

(3) The State Fire Marshal shall commence enforcement action authorized in KRS 227.331 against any person who fails to correct a deficiency ordered to be remedied.

Section 6. Means of Appeal.

(1) Appeals of orders issued by the State Fire Marshal.

(a) An appeal to the State Fire Marshal from a notice of deficiency issued by the Division of Fire Prevention shall be:

1. In writing; and

2. Received by the Division of Fire Prevention, State Fire Marshal prior to the completion date specified in the notice of deficiency served.

(b) If the matter is not resolved by agreement of the affected parties and the State Fire Marshal, legal action shall be instituted pursuant to KRS Chapter 227.

(2) Appeal of an order to remedy. Pursuant to KRS 227.380, the owner of the subject property may appeal to the State Fire Marshal within ten (10) days following receipt of the issued order.

Section 7. Special Provisions.

(1) Fire incident reporting. The fire chief or highest ranking fire department officer may request investigative assistance from the State Fire Marshal.

(2) Fire protection systems testing and inspection.

(a) Reporting. Except as established in paragraph (c) of this

subsection, an inspection or test required by this administrative regulation, Chapter 11, 13, or 20 of the NFPA 1, Uniform Fire Code shall be conducted and reported to the owner by a person authorized or certified by the department.

(b) Inspection and test reports.

1. A required inspection or test shall be recorded on the applicable form contained in NFPA 25 or NFPA 72.

2. The completed report shall be given to the owner and a copy shall be forwarded to the local fire chief or highest ranking fire department officer within ten (10) working days of the date of the inspection.

(c) Reporting exceptions.

1. Portable fire extinguishers and single station smoke detectors may be inspected and tested by the property owner or the property owner's agent.

2. Allowable reports by owners and owner agents shall not be required to be filed with the State Fire Marshal, but shall be kept on file within the building and available for review upon request by the State Fire Marshal.

a. Electric single station and electric multiple station smoke alarms shall be tested monthly. A log of the test shall be kept on site for review by the fire code official.

b. Battery powered smoke alarms shall be tested weekly. A log of the test results shall be kept on site for review by the fire code official.

c. Portable fire extinguishers shall be visually inspected monthly to ensure proper charge, accessibility, and that the extinguisher hose is free of obstruction.

(d) Frequency. Periodic testing and inspection of each fire suppression and each alarm system shall be performed as established in subparagraphs 1. through 3. of this paragraph.

1. Fire detection and alarm systems and all fire suppression systems in buildings other than state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested for proper operation annually.

2. Fire detection and alarm systems and all fire suppression systems in state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested quarterly by a Kentucky certified inspector for sprinkler systems and fire alarms, respectively.

3. Systems or components for which the manufacturer recommends more frequent checks shall be performed as described by the manufacturer's instructions.

(e) Inspectors.

1. Fire alarm inspectors shall apply to be certified by the department on a Form FPS 33-01, Application for Fire Alarm Systems Certification, and shall:

a. [(a)]

(i) Be qualified as NICET level two (2), level three (3), or level four (4) in fire alarm systems; or

(ii) Pass the examination for alarm inspector administered by an examination provider approved by the department;

b. Have had at least eighteen (18) months of experience in installation, repair, testing, or a combination thereof during the five (5) year period immediately preceding application;

c. Pay an annual certification fee of fifty (50) dollars for each classification applied for; and

d. Submit a passport-sized color photograph with the application.

2. For renewals of fire alarm inspector certification, an applicant shall:

a. Submit a completed Form FPS 33-02, Renewal Application for Fire Alarm Systems Certification, May 2020;

b. Pay an annual certification renewal fee of fifty (50) dollars for each classification held;

c. Submit a passport-sized color photograph with the renewal application; and

d.

(i) Provide proof of six (6) hours of continuing education from an approved provider obtained in the twelve (12) months prior to renewal; or

(ii) Provide proof of current NICET certification.

3. Penalties. An applicant shall be subject to penalties established in KRS 227.990 and may be denied certification or renewal for:

a. Failure of a certified fire alarm inspector to conduct an inspection in accordance with the NFPA 72 standard;

b. Submission of false inspection reports;

c. Performing inspections without first having been certified by the department as a fire alarm inspector; or

d. Making a false or misleading statement on an application for certification or renewal.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) NFPA 1, "Uniform Fire Code", 2018 edition;

(b) NFPA 101, "Life Safety Code", 2018 edition;

(c) **NFPA 1124, Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 Edition;**

(d) NFPA 70, "National Electrical Code®", 2018 edition;

(e) [(d)] FPS 33-01, "Application for Fire Alarm Systems Certification", May 2020; and

(f) [(e)] FPS 33-02, "Renewal Application for Fire Alarm Systems Certification", May 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **and is available online at <http://dhbc.ky.gov>.**

RAY PERRY, Secretary

RICK W. RAND, Commissioner

APPROVED BY AGENCY: May 12, 2022

FILED WITH LRC: May 13, 2022 at 9:35 a.m.

CONTACT PERSON: Jonathon M. Fuller, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0617, fax (502) 573-1057, email max.fuller@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathon M. Fuller

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, promulgated as 815 KAR 7:120, in matters of fire safety.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky Standards of Safety, which are required, pursuant to KRS 227.300(1), to provide a reasonable degree of safety for human life against the exigencies of fire and panic and insuring as far as is practicable against fire loss.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.300(1) requires the commissioner to promulgate reasonable administrative regulations based on good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as practicable against fire loss. These standards are to supplement the Uniform State Building Code, the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety, as required by KRS 227.300(1).

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

(a) How the amendment will change this existing administrative regulation: The amendment specifies that the State Fire Marshal has exclusive inspection jurisdiction over Kentucky Cabinet for Health

and Family Services-licensed facilities and further that a local fire chief may request jurisdiction from the State Fire Marshal over licensed facilities. The amendment also incorporates by reference NFPA 1124, Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition for application to sites at which consumer fireworks are offered for sale.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add the above-detailed jurisdictional language and clarify that the State Fire Marshal may potentially grant authority to local fire chiefs for licensed facility inspections. This enables greater fire safety throughout the Commonwealth. This amendment is also necessary to adopt an edition of NFPA 1124 that addresses sites at which consumer fireworks are offered for sale to better assist fire officials with enforcement of KRS 227.715(7).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227.300(1) requires the commissioner to promulgate reasonable administrative regulations based on good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as practicable against fire loss. These standards are to supplement the Uniform State Building Code, the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety. KRS 227.715(7) requires each site at which consumer fireworks are offered for sale to comply with the applicable provisions of the adopted version of NFPA 1124.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety, as required by KRS 227.300(1). It clarifies jurisdictional boundaries and better explains how local fire chiefs may request certain jurisdictional authority. This amendment also incorporates by reference a version of NFPA 1124 that addresses the storage and retail sale of consumer fireworks to assist fire officials in enforcement of KRS 227.715(7).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Housing, Buildings and Construction, local fire officials, and fire alarm inspectors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Local fire officials will have the option to request jurisdiction over CHFS-licensed facilities from the State Fire Marshal.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment provides for clarity as to jurisdictional boundaries as well as increased facilitation of fire safety throughout the Commonwealth. This amendment also provides a clear path to application of the 2006 edition of NFPA 1124 and assists with the enforcement of KRS 227.715(7).

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

(a) Initially: There are no anticipated additional costs to implement this administrative regulation initially.

(b) On a continuing basis: There is no ongoing cost associated with the implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the department. Any cost resulting from this

amendment will be met with existing agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all regulated entities are subject to the same amended requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Fire Prevention and local fire departments or fire inspection programs will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 227.300(1) requires the commissioner to promulgate reasonable administrative regulations based on good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as practicable against fire loss. These standards are to supplement the Uniform State Building Code, the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this regulatory amendment for subsequent years.

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

Cost Savings (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate cost saving for regulated entities for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate cost saving for regulated entities for the subsequent year.

(c) How much will it cost the regulated entities for the first year? This administrative regulation is not anticipated to generate additional costs for regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation is not anticipated to generate

additional costs for regulated entities for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None.

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

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
Board of Pharmacy
(Amendment)

201 KAR 2:380. Board authorized protocols.

RELATES TO: KRS 315.010(25), 315.191(1)(a), (f)
 STATUTORY AUTHORITY: KRS 315.010(25), 315.191(1)(a),

(f) **NECESSITY, FUNCTION, AND CONFORMITY:** KRS 315.010(25) defines a prescription drug order, which includes orders issued through protocols authorized by the board. KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters pertaining to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. KRS 315.191(1)(f) authorizes the board to promulgate administrative regulations that are necessary to control the dispensing of prescription drug orders. This administrative regulation establishes procedures for board authorized protocols by which pharmacists may initiate the dispensing of noncontrolled medications or other professional services.

Section 1. Definition. "Prescriber" means any individual authorized to prescribe a legend drug.

Section 2. Procedures. A pharmacist or pharmacists may initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services under the following conditions:

(1) A prescriber-approved protocol that meets the minimum requirements in Section 3 of this administrative regulation is in place, and is dated and signed by the prescriber and pharmacist(s) authorized to initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services. A pharmacist not party to the executed protocol has no authority to utilize the protocol for medication dispensing or other professional service provision;

(2) The protocol directs the care, based on current clinical guidelines, for acute self-limiting conditions and other minor ailments, preventative health services, and disease state monitoring and management as deemed appropriate by the board[conditions listed in Section 5 of this administrative regulation];

(3) The protocol has been approved by the board, who provides notice to the prescriber's licensure board within ten (10) business days of approval by the board;

(4) The pharmacist or pharmacists documents the dispensing event in the pharmacy management system, including:

(a) Documentation as required by 201 KAR 2:171[470] for the dispensing of prescription medication; and

(b) Documentation that the individual receiving the medication or other professional service was provided with education pursuant to Section 3(4)[4] of this administrative regulation; and

(5) A pharmacist shall request the individual's primary care provider's information, provided one exists, and shall provide notification to the primary care provider within two (2) business days.

Section 3. Minimum Requirements of Protocol. Protocols shall contain the following elements:

(1) Criteria for identifying persons eligible to receive medication therapies or other professional services under the protocol, and referral to an appropriate prescriber if the patient is high-risk or treatment is contraindicated;

(2) A list of the medications, including name, dose, route, frequency of administration, and refills authorized to be dispensed under the protocol;

(3) Procedures for how the medications are to be initiated and

monitored, including a care plan implemented in accordance with clinical guidelines;

(4) Education to be provided to the person receiving the dispensed medications, including aftercare instructions, if appropriate;

(5) Procedures for documenting in the pharmacy management system all medications dispensed, including notification of the prescriber signing the protocol, if requested;

(6) Length of time protocol is in effect;

(7) Date and signature of prescriber approving the protocol;

(8) Dates and signatures of the pharmacist(s) authorized to initiate dispensing of medications or other professional services under the protocol.]; and

~~(9) The date, and education or training of the pharmacist as referenced in Section 4 of this administrative regulation.~~

~~Section 4. Pharmacist Education and Training Required. A pharmacist who dispenses medication pursuant to a prescriber-approved protocol shall first receive education and training in the subject matter of the protocol from a provider accredited by the Accreditation Council for Pharmacy Education or by a comparable provider approved by the board. Documentation of education shall be provided to the board upon request. Education shall be obtained prior to initiating care under the protocol.~~

~~Section 5. Authorized Conditions. Board-authorized protocols may be established for the following conditions:~~

~~(1) Acute influenza infection pursuant to recommendations by the Centers for Disease Control and Prevention (CDC);~~

~~(2) Acute streptococcal pharyngitis infection;~~

~~(3) Acute, uncomplicated urinary tract infection;~~

~~(4) Acute cutaneous or mucocutaneous fungal infection;~~

~~(5) Alcohol use disorder utilizing naltrexone-based therapy pursuant to recommendations from the American Psychiatric Association;~~

~~(6) Allergic rhinitis;~~

~~(7) Anaphylaxis;~~

~~(8) Colorectal cancer prevention and screening;~~

~~(9) HCV infection screening;~~

~~(10) HIV infection prophylaxis, pre-exposure and post-exposure pursuant to recommendations by the CDC;~~

~~(11) HIV infection screening pursuant to recommendations by the CDC;~~

~~(12) Nutritional supplementation with vitamins and minerals;~~

~~(13) Opioid use disorder pursuant to recommendations by the American Society of Addiction Medicine;~~

~~(14) Tobacco use disorder;~~

~~(15) Traveler's health pursuant to recommendations by the CDC;~~

~~(16) Tuberculosis prevention and control through skin testing, and referral as necessary, pursuant to recommendations by the CDC; and~~

~~(17) Self-care conditions appropriately treated with over-the-counter medications and products.]~~

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: August 8, 2022

FILED WITH LRC: August 8, 2022 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2022 at 9:00 a.m. Eastern Time via zoom teleconference. 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: 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 establishes procedures for board authorized protocols by which pharmacists may initiate the dispensing of noncontrolled medications or offer other professional services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for pharmacists to provide a high level of care to their patients, in accordance with protocols that have been provided from the prescriber and approved by the Board of Pharmacy. This will allow for discretion by the Board of Pharmacy to approve board authorized protocols as the public health need arises.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations to regulate and control all matters pertaining to pharmacists and pharmacies. KRS 315.191(1)(f) authorizes the Board to promulgate administrative regulations pertaining to prescription drug orders. KRS 315.010(25) defines a prescription drug order to include protocols authorized by the Board. This administrative regulation establishes criteria for protocols to be authorized by the Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Prescribers, pharmacists, pharmacies, patients and the public will be able to ascertain what is required for pharmacist to utilize a prescriber approved protocol.

(2) If 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 provide the board with discretion to review protocols as public health needs arise. The Cabinet for Health and Family Services has alerted the Board of Pharmacy of the need for pharmacists to be able to bill Medicaid for Paxlovid, a therapeutic drug to treat COVID-19. Without an amendment to this regulation allowing for a prescriber approved protocol for the ordering of Paxlovid by a pharmacist, Paxlovid will not be accessible to patients from pharmacies. The Department for Medicaid Services does not recognize pharmacists as prescribers despite the language in the federal PREP Act.

(b) The necessity of the amendment to this administrative regulation: This amendment will allow pharmacists to respond immediately to public health needs without the delay of going through the rulemaking process. The amendment is required to ensure access to Paxlovid, the COVID-19 therapeutic drug, for Medicaid patients. Despite the federal PREP ACT, without this amendment, Medicaid patients will not be able to acquire Paxlovid from a pharmacy without a prescription.

(c) How this amendment conforms to the content of the authorizing statutes: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by providing the board with discretion to determine what

prescriber approved protocols are appropriate as the public health need arises without going through the regulatory process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will serve the patient population that is on Medicaid by allowing them to access Paxlovid, the COVID-19 therapeutic, from pharmacies without a physician's order. Without this amendment, Medicaid patients cannot be served, despite the PREP Act because the Department for Medicaid Services does not have the ability to bill Medicaid for a pharmacist's prescription.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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: Pharmacies and pharmacists will have to familiarize themselves with new amended language in the regulation. The board will help to educate pharmacists and pharmacies in these changes.

(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 expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: Patients on Medicaid will have access to Paxlovid, the COVID-19 therapeutic drug, from pharmacies without a drug order from a health care practitioner.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists 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 Kentucky Board of Pharmacy 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 315.191(a)

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs are required 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 this administrative regulation. Not applicable.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: none

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings from this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no cost to regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to regulated entities for subsequent years.

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

Cost savings (+/-): 0

Expenditures (+/-): 0

Other Explanation: none

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

BOARDS AND COMMISSIONS

Board of Physical Therapy (Amendment)

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

RELATES TO: KRS 327.040, 327.070

STATUTORY AUTHORITY: KRS 327.040(11), (12), (13), 367.4082

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(12) requires the Board of Physical Therapy to ~~establish~~promulgate by administrative regulation a code of ethical standards and standards of practice for physical therapists and physical therapist assistants. This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070.

Section 1. Code of Ethical Standards.

(1) A physical therapist and a physical therapist assistant shall:

(a) Respect the rights and dignity of all patients;

(b) Practice within the scope of the credential holder's training, expertise, and experience;

(c) Ensure that all personnel involved in the delivery of physical therapy services are identified to the patient by name and title;

(d) Report to the board any reasonably suspected violation of KRS Chapter 327, KRS 367.4082, or 201 KAR Chapter 22 by a credential holder or applicant within thirty (30) days;

(e) Report to the board any civil judgment, settlement, or civil

claim involving the credential holder's practice of physical therapy made against the credential holder relating to the credential holder's own physical therapy practice within thirty (30) days; ~~and~~

(f) Comply with the provisions of KRS 367.4082; ~~and~~;

(g) Cooperate with any board investigations.

(2) ~~[A-]Physical therapist and [a-]physical therapist assistant shall not:~~

~~(a) Verbally or physically abuse a client; or~~

~~(b) Continue physical therapy services beyond the point of reasonable benefit to the patient, unless the patient consents in writing; or~~

~~(c) Engage in sexual misconduct or sexual harassment with a patient:~~

~~1. While that person is a patient or client of the physical therapist or physical therapist assistant; or~~

~~2. While that person is a patient of a health care facility defined by KRS 216B.015 where the physical therapist or physical therapist assistant provides physical therapy services; ~~and~~;~~

~~(d) Lie, deceive, or mislead the board, its staff, investigators, or agents.~~

~~(3) A physical therapist or physical therapist assistant shall be solely responsible in regard to a relationship with a patient. A patient's initiation of a personal or sexual relationship shall not justify, excuse, or provide a defense for a violation of this section; ~~and~~;~~

~~(4) Consensual sexual relationships established prior to the initial evaluation will not be subject to portions of this regulation.~~

Section 2. Standards of Practice for the Physical Therapist. While engaged in the practice of physical therapy, a physical therapist shall:

(1) Perform screenings in order to:

(a) Provide information on a person's health status relating to physical therapy;

(b) Determine the need for physical therapy evaluation and treatment;

(c) Make a recommendation regarding a person's ability to return to work or physical activity; and

(d) Provide physical therapy services;

(2) Evaluate each patient prior to initiation of treatment;

(3) Upon receipt of a patient under an active plan of care from another physical therapist:

(a) Complete an evaluation in compliance with subsection (2) of this section and Section 5(2)(a)-(d) of this administrative regulation;

(b) Ensure the evaluation and plan of care from the other physical therapist is current and appropriate;

(c) Retain the evaluation and plan of care from the other physical therapist in the medical record; and

(d) Comply with reassessment requirements based on the date of the most recent evaluation;

(4) Reassess each patient in accordance with the following:

(a) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;

(b) Reassessing every ninety (90) days, with the physical therapist assistant present, patients in:

1. A facility defined in 902 KAR 20:086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or

2. A school system.

a. A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year;

b. During this grace period treatment may continue based upon the previous reassessment or evaluation;

(c) Reassessing each patient not otherwise noted every thirty (30) days following the last evaluation or subsequent reassessment; ~~and~~

(d) Reassessing a patient whose medical condition has changed;

(5) Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;

(6) Be responsible for the physical therapy record of each

patient;

(7) Be responsible for the plan of care until the patient is received by another physical therapist pursuant to subsection (3) of this section;

(8) Provide services that meet or exceed the generally accepted practice of the profession;

(9) Explain the plan of care to the patient and to others designated by the patient;

(10) Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supplier if the physical therapist makes recommendations for those; and

(11) Disclose in writing to each patient any financial interest, compensation, or other value to be received by the referral source:

(a) For services provided by the physical therapist;

(b) For equipment rental or purchase; or

(c) For other services the physical therapist may recommend for the patient.

Section 3. Standards of Practice for the Physical Therapist Assistant. While engaged in the practice of physical therapy, the physical therapist assistant shall:

(1) Provide services only under the supervision and direction of a physical therapist;

(2) Refuse to carry out procedures that the assistant believes are not in the best interest of the patient or that the assistant is not competent to provide by training or skill level;

(3) Initiate treatment only after evaluation by the physical therapist;

(4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not determine the significance of the data as it pertains to the development of the plan of care;

(5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;

(6) Comply with the plan of care established by the physical therapist;

(7) Communicate with the physical therapist any change or lack of change that occurs in the patient's condition that may indicate the need for reassessment; and

(8) Discontinue physical therapy services if reassessments are not done in compliance with Section 2(4) of this administrative regulation, and inform the supervising physical therapist.

Section 4. Standards for Supervision. While supervising the physical therapist assistant and supportive personnel, the physical therapist shall:

(1)(a) At all times, including all work locations in all jurisdictions, be limited to supervising not more than four (4) physical therapist assistants or supportive personnel; and

(b) Abide by the maximum staffing ratio of physical therapists to physical therapist assistants or supportive personnel required in this section except that a maximum of seven (7) work days in a sixty (60) consecutive day period shall not constitute a violation of this standard;

(2) Provide direct supervision when supervising supportive personnel as defined by 201 KAR 22:001, Section 1(23), effective September 1, 2013;

(3) Not delegate procedures or techniques to the physical therapist assistant that are outside his or her scope of training, education, or expertise;

(4) Not delegate procedures or techniques to supportive personnel that are outside his or her scope of training, education, or expertise.

(a) Scope of training and competency for supportive personnel shall be documented and verified at least annually.

(b) Documentation of training and competency shall be immediately available for review; and

(5) Be responsible for:

(a) Interpreting any referral;

(b) Conducting the physical therapy evaluation;

(c) Establishing reporting procedures to be followed by the physical therapist assistant and supportive personnel;

(d) Evaluating the competency of the physical therapist assistant

and supportive personnel;

(e) Supervising the physical therapist assistant by being available and accessible by telecommunications during the working hours of the physical therapist assistant;

(f) Ensuring that if supportive personnel provide direct patient care that there is direct supervision as defined by 201 KAR 22:001, Section 1(6), effective September 1, 2013 by a physical therapist or physical therapist assistant;

(g) Ensuring that a physical therapy student fulfilling clinical education requirements shall receive on-site supervision by a physical therapist;

(h) Ensuring that a physical therapist assistant student fulfilling clinical education requirements shall receive on-site supervision of which eighty (80) percent may be by a credentialed physical therapist assistant;

(i) Establishing discharge planning for patients who require continued physical therapy; and

(j) Directing and being accountable for services rendered by physical therapist students or physical therapist assistant students, including documentation requirements in Section 5 of this administrative regulation.

Section 5. Standards for Documentation.

(1) The physical therapist shall be responsible for the physical therapy record of a patient. The physical therapy record shall include an evaluation and, as required, ongoing documentation and reassessment.

(2) An evaluation in the physical therapy record consists of a written or typed report signed and dated by the physical therapist who is performing the evaluation or who is supervising the physical therapist student performing the evaluation. The evaluation shall include:

(a) Pertinent medical and social history;

(b) Appropriate subjective and objective information;

(c) An assessment, which may indicate problems, interpretations, and a diagnosis identifying the nature and extent of the patient's impairment; and

(d) The plan of care, which includes the:

1. Treatment; and

2. Measurable goals, including anticipated time frame of achievement.

(3) Ongoing documentation in the physical therapy record shall:

(a) Be completed at least weekly or, if treatment is less than weekly, at each patient visit;

(b) Be written or typed, signed, and dated:

1. By the physical therapist or physical therapist assistant rendering treatment;

2. By the supervising physical therapist or physical therapist assistant if treatment was rendered by a physical therapist student or physical therapist assistant student; or

3. By the physical therapist student or physical therapist assistant student rendering treatment if countersigned and dated by the supervising physical therapist;

(c) Include:

1. The treatment rendered since the last evaluation, ongoing documentation, or reassessment;

2. The patient's response to treatment; and

3. Appropriate subjective and objective information.

(4) The reassessment included in the physical therapy record for the revision or reaffirmation of the existing plan of care, or the establishment of a new plan of care shall be written or typed, signed, and dated by a physical therapist.

~~(a) The reassessment shall:~~

~~(a)] be in compliance with Section 2(4) of this administrative regulation.]; and]~~

~~(b) A reassessment shall include:~~

~~1. Subjective, objective, and medical information acquired by the physical therapist, physical therapist student, physical therapist assistant, or physical therapist assistant student;~~

~~2. An assessment in compliance with subsection (2)(c) of this section completed by the physical therapist or physical therapist student; and~~

3. A plan of care in compliance with subsection (2)(d) of this section completed by the physical therapist or physical therapist student.

(5) The correct designation following the signature of the person who has entered a statement into the patient record shall be as follows:

(a) If written by a physical therapist: "PT". Appropriate designations for advanced physical therapy degrees may follow "PT";

(b) If written by a physical therapist assistant: "PTA";

(c) If written by supportive personnel: "PT Aide", or "Physical Therapy Aide", or "PT Tech"; and

(d) If written by a student: "Physical Therapist Student" or "PT Student", "Physical Therapist Assistant Student" or "PTA Student".

Section 6. Appointment of Fees. Unless prohibited by law, all members of a business entity shall be allowed to pool or apportion fees received in accordance with a business agreement.

STEPHEN CURLEY, Executive Director

APPROVED BY AGENCY: August 11, 2022

FILED WITH LRC: August 11, 2022 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2022, at 3:00 p.m. (ET) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 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: Stephen Curley, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, email Stephen.Curley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Curley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to the Board's role in public protection as it addresses licensees deceiving the Board or hindering investigations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment to the regulation adds provisions to the regulations prohibiting lying or failing to cooperate in investigations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment adds provisions to the regulations prohibiting deception or intentionally failing to cooperate with Board investigations.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds provisions to the regulations prohibiting deception or intentionally failing to cooperate with Board investigations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to the Board's role in public protection as it more clearly defines investigations and

procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment gives the Board the authority to address a growing trend by adding provisions to the regulations making it a violation to lie or deceive the Board during investigations.

(d) How the amendment will assist in the effective administration of the statutes: It allows the Board to ensure the information provided during investigations are truthful and if not allows the Board to take action against a credential holder who is hindering an investigation into public protection.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 6,515 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not be required to do anything to comply. This would only prohibit them from lying to the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance the Board will be able to further public protection and accurately complete investigations. This compliance will protect the ethical boundaries of the profession and enhance public trust in the profession which is beneficial to the entities identified in question (3).

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

(a) Initially: No new costs will be incurred by the change.

(b) On a continuing basis: No new costs will be incurred by the change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund

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

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

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE

(1) What 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 physical therapists and physical therapist assistants credentialed by the board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040; and 327.070.

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

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

(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.

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 regulation will not have a major economic impact.

TRANSPORTATION CABINET

Office for Civil Rights and Small Business Development (Amendment)

600 KAR 4:010. Certification of disadvantaged business enterprises.

RELATES TO: 49 C.F.R. Parts 23, 26, 15 U.S.C. 637 (a), (d), (m), Titles 23 U.S.C., 49 U.S.C., Pub. L. 114-94

STATUTORY AUTHORITY: KRS 174.080, 49 C.F.R. 26.3, 26.21

NECESSITY, FUNCTION, AND CONFORMITY: 49 C.F.R. 26.3 and 26.21 require that recipients of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Titles 23 and 49 U.S.C., or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), and Fix America's Surface Transportation Act of 2015 (FAST), Pub. L. 114-94, from the United States Department of Transportation (USDOT) implement a program to ensure nondiscrimination in the award and administration of USDOT-assisted contracts in its highway financial assistance programs. The Kentucky Transportation Cabinet, as a recipient of these funds, is required by 49 C.F.R. 26.21 to have a program that requires the participation of disadvantaged, minority, and women-owned business enterprises in contracts financed in whole or in part with these funds. This administrative regulation establishes the requirements for certification of DBE firms pursuant to federal law.

Section 1. Definitions.

(1) "ACDBE" means an Airport Concessionaire Disadvantaged Business Enterprise as defined by 49 C.F.R. 23.3(2).

(2) "Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification or continuation as a disadvantaged business enterprise.

(3) "Approval" means that the applicant has been determined by

the DBE Certification Committee to comply with the disadvantaged business enterprise eligibility criteria as established in 49 C.F.R. Part 26, Subpart D and 49 C.F.R. Part 23.

(4) "Cabinet" means the Transportation Cabinet.

(5) "Certification" means the process used by the Transportation Cabinet to determine if an applicant complies with the disadvantaged business enterprise criteria established in 49 C.F.R. Part 26, Subpart D and 49 C.F.R. Part 23.

(6) "Denial" means the cabinet has determined that the applicant does not comply with the disadvantaged business enterprise eligibility criteria established in 49 C.F.R. Part 26, Subpart D and as required by this administrative regulation.

(7) "Department" or "DOT" means the United States Department of Transportation.

(8) "Disadvantaged business enterprise" or "DBE" is defined by 49 C.F.R. 26.5, Subpart D.

(9) "Ineligibility complaint" means an action of a third party alleging verbally or in writing that a firm is ineligible to participate in the DBE program.

(10) "Notice" means a written notice from the Transportation Cabinet or Office for Civil Rights and Small Business Development delivered via certified mail to the business address listed on the application form.

(11) "On-site visit" means an interview conducted by the Office of Civil Rights and Small Business Development with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities or equipment pursuant to 49 C.F.R. 26.83(c).

(12) "Program" is defined by 49 C.F.R. 26.5.

(13) "Removal" or "removed" means that a firm or business enterprise that has been certified by the cabinet as a disadvantaged business enterprise has been determined to be ineligible, and is no longer entitled to the rights and privileges of a firm or business that has been certified by the cabinet as a disadvantaged business enterprise.

(14) "Small Business Administration" or "SBA" is defined by 49 C.F.R. 26.5.

(15) "Small business concern" is defined by 49 C.F.R. 26.5.

(16) "Socially and economically disadvantaged individual" is defined by 49 C.F.R. 26.5.

(17) "Unified Certification Program" or "UCP" is defined by 40 C.F.R. 26.81.

(18) "USDOT" means the United States Department of Transportation.

Section 2. Certification Committee.

(1) The cabinet shall establish and maintain a Certification Committee for the purpose of determining the eligibility of an applicant for certification as a DBE as established in 49 C.F.R. 26.83.

(2) The Certification Committee shall include:

(a) The following voting members:

1. Executive Director, Office of Project Development~~[for Civil Rights and Small Business Development]~~, or a proxy;

2. ~~[Executive]~~Director of the Division of Construction~~[Office of Legal Services]~~, or a proxy; and

3. Director of the Division of Construction Procurement~~[Internal Audits]~~, or a proxy; and

(b) The non-voting member, Manager of the Small Business Development Branch, or a proxy who shall chair the Certification Committee.

(3) The Kentucky administrator of the Federal Highway Administration or FHWA, or a proxy may attend Certification Committee meetings ex officio.

Section 3. Advisory Panel.

(1) The cabinet shall establish a DBE Certification Advisory Panel whose members may be called upon as needed by the Certification Committee to provide technical counsel regarding a firm's eligibility.

(2) The DBE Certification Advisory Panel shall be comprised of representatives of the following cabinet divisions:

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- (a) Division of Contract Procurement;
- (b) Division of Professional Services;
- (c) Division of Highway Design;
- (d) Division of Audits;
- (e) Division of Highway Safety; [and]
- (f) Division of Licensing; and [.]
- (g) Office of Legal Services.

Section 4. Certification Committee Procedures.

(1) Upon voting, a simple majority shall constitute a quorum. If only two (2) voting members are in attendance, they can still vote and be a quorum provided they vote in agreement. If only two (2) certification members vote and if they disagree rendering the vote a tie, the Executive Director of the Office for Civil Rights and Small Business Development or the executive director's proxy, [and a voting member of the DBE Certification Committee shall constitute a quorum and shall each have one (1) vote. In the event of a tie, the deciding vote shall be rendered by the executive director or his or her proxy.] shall cast the tie breaking vote.

(2) A summary record of each DBE Certification Committee meeting shall be retained by the Office for Civil Rights and Small Business Development for at least three (3) years from the date of initial notice of certification.

(3) The completed applications, staff summaries, and recommendations shall be provided to the DBE Certification Committee members no less than five (5) business days in advance of the scheduled meeting in which the application is to be considered.

(4) The Certification Committee shall have the authority to remove a firm's eligibility for DBE certification as established in 49 C.F.R. 26.87.

Section 5. Applications for Certification.

(1) The UCP application review process for approval of certification, and continuation of certification as a DBE, or ACDBE shall be conducted pursuant to 49 C.F.R. 26.83, 26.85, and 26.86.

(2) A UCP application shall be approved by the Federal Highway Administration pursuant to Appendix F to 49 C.F.R. Part 26. A link to the electronic version of the application form shall be available on the Kentucky Transportation Cabinet Web site.

(3) The completed UCP application shall be submitted electronically to the cabinet's Office for Civil Rights and Small Business.

(4) An incomplete UCP application missing the required information or documentation shall not be processed until the documentation and information requirements are received by the Office for Civil Rights and Small Business Development.

(5) A UCP application submitted by a firm having a principal business office registered in the Commonwealth of Kentucky shall be reviewed in accordance with 49 C.F.R. Parts 23 and 26, Subpart D.

(6) A UCP application submitted by a firm whose primary office is registered in a state other than Kentucky shall be submitted for approval of DBE certification in Kentucky to the Office for Civil Rights and Small Business Development for review in accordance with 49 C.F.R. 23 and 49 C.F.R. 26.85.

(7) The Office for Civil Rights and Small Business Development shall conduct an on-site visit at the firm's primary place of business pursuant to 49 C.F.R. 26.83(c).

(8) An applicant for DBE, or ACDBE certification, or a certified DBE or ACDBE may withdraw without penalty from the DBE program prior to the Certification Committee making a decision regarding the application.

Section 6. Appeals.

(1) The appeal of a decision by the Certification Committee shall be emailed[submitted] to S33AppealsManagementRecords@dot.gov[the United States Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE, Washington D.C. 20590] within ninety (90) days of the date of the decision of the committee. The appeal shall include the denied certification notice and other pertinent information and

provide a full and specific statement as to why the decision is erroneous, what significant fact was not considered, or what provisions of 49 C.F.R. Part 26 were not properly applied. USDOT shall not accept notices of intent or partial or otherwise non-compliant submissions.

(2) An applicant who is denied certification, or whose certification is removed by the committee, shall not reapply for DBE certification for six (6) months from the date of notice of the denial or removal.

JIM GRAY, Secretary

MELVIN BYNES, Executive Director

APPROVED BY AGENCY: August 12, 2022

FILED WITH LRC: August 15, 2022 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2022, at 10:00 a.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 October 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 administrative regulation establishes the requirements for certification of a Disadvantaged Business Enterprise or DBE firm.

(b) The necessity of this administrative regulation: This administrative regulation is required by 49 C.F.R. 26.21 to establish an application and certification process for DBE and ACDBE firms to be certified.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute contained in KRS 174.080 and 49 C.F.R. 26.3, 26.21 by setting forth definitions, application process, certification, and appeals of DBE and ACDBE firms.

(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 DBE and ACDBE application and certification processes pursuant to KRS 174.080.

(2) If 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 change source of membership of certification committee members and update current appeal process.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because of change in make-up of committee membership and appeal process.

(c) How the amendment conforms to the content of the authorizing statutes: The establishment and implementation of a

DBE program is required by 49 C.F.R. Parts 23 and 26 as a condition for receipt of federal highway funding.

(d) How the amendment will assist in the effective administration of the statutes: This amendment expedites and redefines the appeal process, pursuant to USDOT DBE/ACDBE Program Flexibilities Guidance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects disadvantaged, minority, and women-owned businesses desiring to apply for certification with the cabinet's DBE program. This administrative regulation also affects the KYTC Office for Civil Rights and Small Business Development.

(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: Applicants to the DBE program will continue to submit their applications as usual, however, the processes for review and requested appeals will be more efficient.

(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 or fees associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will improve the efficiency of the DBE program and simplify the appeals process.

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

(a) Initially: There are no costs associated with these amendments.

(b) On a continuing basis: There are no continuing costs associated with these amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

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

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

(9) TIERING: Is tiering applied? No. All DBE applicants are subject to the same scrutiny and regulations. However, non-resident applicant firms who are certified under the federal DBE program in their home state are subject to a provision in the federal regulations (49 C.F.R. 26.85) that provides a presumption of eligibility if making an initial application for DBE certification by the cabinet.

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 Office for Civil Rights and Small Business Development in the Kentucky Transportation Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 174.080, 49 C.F.R. Parts 23, 26, 15 U.S.C. 637 (a), (d), (m), Titles 23 U.S.C., 49 U.S.C., Pub. L. 114-94

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should not have any effect on expenditures and revenues of a state or local government agency.

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

fire departments, or school districts) for the first year? Revenue will not be generated by this regulation for state or local government for the first year.

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

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

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

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

Revenues (+/-): 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. 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 will be negligible.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for subsequent years will be negligible.

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

(d) How much will it cost the regulated entities for subsequent years? No additional costs are expected 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 (+/-): N/A

Expenditures (+/-): N/A.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This amendment should not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 49 C.F.R. Parts 23, 26, 15 U.S.C. 637 (a), (d), (m), Titles 23 U.S.C., 49 U.S.C., Pub. L. 114-94

(2) State compliance standards. KRS 174.080.

(3) Minimum or uniform standards contained in the federal mandate. 49 C.F.R. Parts 23, 26, 15 U.S.C. 637 (a), (d), (m), Titles 23 U.S.C., 49 U.S.C., Pub. L. 114-94

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements are imposed.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, ~~[157.360,]~~158.030, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, ~~157.360, 158.070~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative ~~regulations~~[regulation] establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 ~~defines~~[and 159.035 define] attendance credit for moral instruction, and KRS 159.035 defines attendance for 4-H activities, military basic training, page programs of the General Assembly, attendance at the Kentucky State Fair, educational enhancement opportunities, and when a parent or custodian is called to active military duty. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. Daily Attendance. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a pupil entry and exit log at each school.

(2) Daily attendance of pupils in middle and high schools shall be determined by taking attendance by class period and maintaining a pupil entry and exit log at each school.

(3) The pupil entry and exit log shall include the date, pupil name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed), and other information required by the local board of education. For elementary pupils who are signed out, the pupil entry and exit log shall also include a signature of:

- (a) A parent;
- (b) A legal guardian; or
- (c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A pupil may be counted in attendance for a virtual high school class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7;

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive, at a minimum, the instruction required pursuant to ~~KRS 158.033~~[KRS 157.270];

(e) The pupil has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive at a minimum, the instruction required pursuant to paragraph (d) of this subsection;

(f) The pupil has an individual education program (IEP) that

requires less than full-time instructional services;

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 7 and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305. A pupil may be counted in attendance for performance-based credit for a class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7;

(h) The pupil participates in a school that is authorized by the commissioner to design and deliver an educational program so that all graduation requirements are based on pupil proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 7; or

(i) The pupil is enrolled and participating in a full-time, online, virtual and remote learning program pursuant to the requirements of 704 KAR 3:535. A pupil shall be counted in attendance pursuant to the requirements of 704 KAR 3:535.~~[For school year 2021-2022, the pupil is in quarantine due to documented possible exposure to COVID-19 or isolation due to COVID-19 infection, in accordance with Centers for Disease Control and Kentucky Department for Public Health guidelines, and is receiving at least the minimum amount of daily instruction required pursuant to KRS 158.060].~~

(5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy. However, a pupil being transported to school on a district school bus or district vehicle shall not be considered tardy if the cause of the lateness is due to the bus or vehicle arriving after the beginning of the school day.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 2. Calculation of Attendance. The guidelines in this section shall be used to calculate pupil attendance for state funding purposes.

(1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent thirty-five (35) percent or less of the regularly-scheduled school day for the pupil's grade level.

(3) A half day absence shall be recorded for a pupil who is absent thirty-six (36) percent to eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent more than eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

Section 3. Shortened School Day. A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. The time a pupil is in attendance shall be included in calculating the district's average daily attendance.

Section 4. Dual Enrollment. A local board of education may permit an arrangement in which a pupil pursues part of the pupil's education under the direction and control of one (1) public school and part of the pupil's education under the direction and control of another public or nonpublic school. The time a pupil is served by each public school shall be included when calculating the district's average daily attendance.

Section 5. Private School Placement. If a local school district, under the provisions of KRS 157.360(7), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 6. Age of Pupil. (1) If a local school district enrolls in the entry level program a pupil who will not be five (5) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in subsection (3) of this section.

(2) If a local school district enrolls in the second level of the primary program a pupil who will not be six (6) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in subsection (3) of this section.

(3) (a) The local board of education shall have determined that the pupil is eligible for enrollment in the appropriate level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:

1. Anecdotal records;
2. A variety of pupil work samples, including evidence of pupil self-reflection; and
3. Standardized test results.

(b) The team shall be comprised of three (3) members who have knowledge of the pupil's developmental skills and abilities. Team members shall be chosen from these categories:

1. Teachers;
2. Parents;
3. Psychologists;
4. Principals; or
5. District specialists.

(c) At least one (1) team member shall represent the district office and have an understanding of early childhood development and knowledge of developmentally-appropriate practices.

(d) If a pupil is recommended by the local board of education for accelerated placement into the entry or second level of the primary program, the district shall forward that recommendation to the department for approval with:

1. A list of data sources used in making the decision;
2. A list of all individuals who submitted the data sources;
3. A list of team members; and
4. The data needed to create a pupil attendance record.

(4) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years who wishes to enroll. The days attended after the pupil's 21st birthday shall not be included in the calculation of the district's average daily attendance.

Section 7. Due Dates for Certain Reports. (1) The Growth Factor Report for the first two (2) school months of the school year created pursuant to KRS 157.360(9) shall be submitted to the department through the statewide student information system within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

(2) Pursuant to KRS 157.360(2), the Superintendents Annual Attendance Report (SAAR) for the school year shall be submitted to the department through the statewide student information system by June 30 of each year.

Section 8. Nonresident Pupils.

(1)(a) The district of attendance shall provide a list of all enrolled nonresident students to the district of residence not later than November 1 of each school year. [A written agreement executed by local boards of education for enrollment of nonresident pupils as provided by KRS 157.350(4)(a) shall be filed in both the attending district and the resident district no later than October 1 of the school year prior to the school year to which it will apply.

(b) ~~The written agreement shall include the specific terms to which the districts have agreed.~~

c) ~~A list of the names of all nonresident pupils enrolled in the attending district covered by the agreement shall be filed in both the attending district and the resident district not later than November 1~~

~~of the school year covered by the agreement.~~

(d) ~~A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be filed in both the attending district and the resident district no later than June 30 of each year.~~

(2) ~~The district of attendance shall provide to the district of residence a list of the names of all nonresident pupils whose parent is an employee of the district as provided by KRS 157.350(4)(c) [and who are not covered by the nonresident agreement shall be filed in both the attending district and the resident district] not later than November 1 of each [the] school year.~~

[(3)(a) If an agreement cannot be reached for the enrollment of nonresident pupils as provided in KRS 157.350(4)(a), a local board of education may file an appeal to the commissioner no later than October 15 of the school year prior to the school year to which an agreement would apply.

(b) ~~A local board of education shall file its appeal to the commissioner in person or by mail at the following address: Commissioner of Education; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601. A local board of education filing an appeal to the commissioner shall include written arguments and documents in support of its position.~~

(c) ~~Upon receipt of an appeal pursuant to KRS 157.350(4)(a), the commissioner shall notify the local boards of education involved in the dispute and provide a deadline not to exceed twenty (20) calendar days for the responding local board of education to file written arguments and documents supporting its position. The commissioner shall issue a written decision settling the dispute within thirty (30) calendar days following the deadline for the responding local board of education to file written arguments and documents supporting its position.~~

(4) (a) ~~A local board of education may appeal the commissioner's written decision to the state board of education by filing a notice of appeal and request for hearing no later than fifteen (15) calendar days following issuance of the commissioner's written decision.~~

(b) ~~A notice of appeal and request for hearing from a local board of education shall include:~~

1. ~~The name of the school district filing the notice of appeal and request for hearing;~~
2. ~~The case number, if any, assigned to the commissioner's written decision;~~
3. ~~The date of the commissioner's written decision;~~
4. ~~A statement of the issues which form a basis for the notice of appeal and request for hearing; and~~
5. ~~The signature of the local board of education chair or counsel authorized to act on behalf of the local board of education.~~

(c) ~~A local board of education shall file its notice of appeal and request for hearing in person or by mail at the following address: Kentucky Board of Education; General Counsel; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601.~~

(5)(a) ~~Upon receipt of a notice of appeal and request for hearing, a notice of hearing pursuant to KRS 13B.050 shall be issued and a hearing officer shall be assigned pursuant to KRS 13B.030.~~

(b) ~~Following issuance of a notice of hearing and assignment of a hearing officer as set forth in subsection (5)(a) of this section, the hearing officer shall preside over the matter and schedule an administrative hearing pursuant to KRS Chapter 13B to conclude no later than sixty (60) calendar days following the notice of hearing described in subsection (5)(a) of this section.~~

(c) ~~Following conclusion of administrative hearings not conducted before a quorum of the state board, the hearing officer shall issue a recommended order to the state board of education pursuant to KRS 13B.110.~~

(d) ~~Parties may file exceptions to the hearing officer's recommended order pursuant to KRS 13B.110.~~

(e) ~~Following receipt of the hearing officer's recommended order and any exceptions filed by the parties, or following conclusion of the administrative hearing if conducted before a quorum of the state board of education, the state board of education shall issue a final~~

order pursuant to KRS 13B.120.]

Section 9. Weather-related Low Attendance Days. (1) The SAAR may:

(a) Substitute the prior year's average daily attendance for up to ten (10) designated weather-related low attendance days; and

(b) Shall constitute certification that the low attendance was due to inclement weather, in accordance with KRS 157.320(17).

(2) Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 10. Nontraditional Instruction Program Health and Safety Closings. (1) The SAAR may:

(a) Substitute the prior year's average daily attendance for up to ten (10) designated instructional days, in accordance with KRS 158.070(8)(10); and

(b) Shall constitute certification that the low attendance was due to health and safety reasons.

(2) Documentation that the low attendance was due to health and safety reasons shall be retained at the central office.

(3) Days granted in this section shall be in addition to any days granted under Section 9 of this administrative regulation.

Section 11. Original Source of Attendance Data. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, pupil entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and pupil entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 12. Enrollment Codes. The following entry, reentry, and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew as a W07, W24 or W25 for previous school years;

(4) R01 - A pupil received from another grade or grade level in the same school year, or having a change in schedule structure or enrollment service type;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R06 - A pupil reentering the school after dropping out, discharge, or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(7) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;

(8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools and charter schools) in Kentucky during the current school year;

(9) R22 – A pupil previously enrolled in a charter school in Kentucky during the current school year;

(10) W01 - A pupil transferred to another grade in the same school or with grade level changes in the same school mid-year, or with a change in schedule structure or enrollment service type. The reentry code to use with W01 shall be R01;

(11)(10) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(12)(14) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 2(1), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the pupil is too ill to participate in regular school attendance, local homebound instructional services or hospital setting instructional services, or if the pupil has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(13)(12) W08 - A pupil withdrawn due to death;

(14)(13) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(15)(14) W17 - An entry level pupil in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060;

(16)(15) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;

(17)(16) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;

(18)(17) W22 - A pupil who has transferred to another Kentucky public school district and for whom a request for pupil records has been received or enrollment has been substantiated;

(19)(18) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;

(20)(19) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated or failed to attend on the first day of school in a district but thereafter enrolled in the district;

(21)(20) W25 – A pupil who is at least eighteen (18) years of age and has withdrawn from public school;

(22)(21) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate;

(23)(22) W27 – A pupil who has withdrawn from school and subsequently received a GED;

(24)(23) W28 - A pupil who has reached the maximum age for education services without receiving a diploma or an alternative high school diploma;

(25)(24) W29 - A pupil who has moved out of state or out of the United States;

(26)(25) W30 - A pupil with an IEP enrolled in Grade 14 who has previously received an alternative high school diploma, re-enrolled, and withdrew in the middle of the reporting school year;

(27)(26) W31 - A pupil in the preschool program, withdrawn due to immaturity or mutual agreement by the parent, guardian or other custodian and the school;

(28) W32 - A pupil transferred to a charter school. The reentry code to use with W32 shall be R22;

(29) C01 - A pupil who completes the school year in the school of the most current enrollment;

(30)(27) G01 - A pupil who graduates in less than four (4) years;

(31)(28) G02 - A pupil who graduates in four (4) years;

(32)(29) G03 - A pupil who graduates in five (5) or more years;

(33)(30) G04 - A pupil who graduates in six (6) or more years; and

(34)(31) NS - A pupil who completed the prior year with a C01 and was expected to enroll in the district but did not enroll by October 1 of the current year whose enrollment elsewhere cannot be substantiated.

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Section 13. Suspension. (1) For a pupil who has been suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence.

Section 14. Ethnicity. The ethnicity of each pupil shall be designated as either Hispanic/Latino or not Hispanic/Latino. The designation shall be "Hispanic/Latino" if the person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture of origin regardless of race. The term "Spanish origin" may be used in addition to "Hispanic/Latino".

Section 15. Racial Category Codes. One (1) or more of the following racial codes shall be used to indicate the racial category of pupils:

(1) White - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East;

(2) Black or African American - A person having origins in any of the black racial groups of Africa;

(3) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam;

(4) American Indian or Alaskan Native - A person, having origins in any of the original peoples of North America and South America (including Central America), who maintains cultural identification through tribal affiliation or community attachment; and

(5) Native Hawaiian or other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Section 16. Withdrawal and Transfer Records. (1) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his or her designee pursuant to KRS 159.170, and shall be maintained in the pupil's permanent file.

Section 17. Incorporation by Reference. (1) "Home/Hospital Program Form", October 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed at <https://education.ky.gov/districts/enrol/Documents/HomeHospitalProgramForm.pdf>.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner

LU S. YOUNG, Ed.D., Chairperson

APPROVED BY AGENCY: August 9, 2022

FILED WITH LRC: August 10, 2022 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 25, 2022 at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 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 G. 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 G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amendment establishes a uniform method of recording pupil attendance. Pupil attendance is used for school district funding purposes.

(b) The necessity of this administrative regulation: It is important that attendance be recorded uniformly across school districts because district average daily attendance is used to calculate Support Education Excellence in Kentucky (SEEK) funding. For an equitable distribution attendance must be recorded the same across districts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: As stated above, this administrative regulation establishes a uniform method of recording pupil attendance which is used for school district SEEK funding purposes.

(2) If 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 authorize districts to take student attendance and thereby receive funding for students enrolled in a full-time, virtual online program operated pursuant to the proposed new regulation, 704 KAR 3:535. This amendment also removes no longer applicable provisions related to the resolution process for district disputes related to nonresident students. It further amends enrollment and withdrawal codes for clarity related to nonresident students and charter school students.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enable students to be counted in attendance when enrolled in a school district's full-time virtual online instructional program. It is also necessary to clean-up existing provisions related to nonresident and charter students to conform to statutory requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. The current regulation establishes the requirements to be counted in attendance for funding purposes. The proposed amendment permits a district to count students in attendance pursuant to the requirements of the contemporaneously filed proposed regulation, 704 KAR 3:535. That regulation establishes the requirements for virtual online programs. Such programs are optional and at the discretion of school districts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides a mechanism for districts that operate full-time, virtual online programs pursuant to the

requirements of 704 KAR 3:535 to take attendance and receive funding for students enrolled and attending those programs. KRS 157.360 requires district to receive funding for students in average daily attendance. Further, students no longer have to attend a nonresident district pursuant to an agreement between the district of residence and the nonresident district. Rather, districts must adopt policies related to the acceptance of nonresident students. Therefore, the provisions of the existing regulation related to the dispute resolution process when districts cannot agree on nonresident student contracts are no longer needed. The amendment strikes the dispute resolution provisions consistent with KRS 157.350 and 158.120.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The regulation amendment will allow districts to take attendance for students enrolled in a virtual online instructional program operated pursuant to 704 KAR 3:535. This will provide districts, parents/custodians and students with more instructional options. Additionally, the proposed amendment removes the no longer valid school district nonresident student dispute process.

(a) List 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 establishes that a district operating a full-time virtual online instructional program may count students in attendance when the program is operated pursuant to 704 KAR 3:535. School districts that choose to operate a full-time virtual online program will need to conform to the requirements of the proposed new regulation, 704 KAR 3:535.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Any costs associated with this regulation would be minimal and limited to school district personnel staff time learning about the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment permits school districts to operate virtual online programs and receive funding for students enrolled in such programs. This will provide additional instructional opportunities for students.

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

(a) Initially: Any additional costs associated with the implementation of the regulation would be minimal to nil. These would only be associated with school district staff time in learning of the new regulatory provisions.

(b) On a continuing basis: There are no continuing costs expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: School district 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, increased funding or fees will be necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. The proposed amendment is applicable to all school districts.

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? School districts.

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

regulation. KRS 156.160, 156.010, 157.320, 157.360 and 158.070.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Districts that operate full-time virtual online instructional programs pursuant to 704 KAR 3:535 will receive funding students in attendance. Their attendance will be included in the district's average daily attendance. Districts will receive the same per pupil funding for students enrolled in online virtual programs as for in-person students. It is unknown whether virtual programs will attract additional nonresident or resident homeschool students and generate additional revenue for districts operating such programs.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Virtual programs will generate per pupil funding for school districts operating such programs. It is unknown whether virtual programs will attract additional nonresident or homeschool students and thus, additional revenue to districts.

(c) How much will it cost to administer this program for the first year? There is no cost associated with this regulation. Any costs of operating a full-time virtual online program pursuant to 704 KAR 3:535 would be dependent on the district's particular program.

(d) How much will it cost to administer this program for subsequent years? There are no expected new costs from this proposed regulation 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: There are no costs associated with this regulation. This regulation establishes the procedures for school districts to use for recording student enrollment and attendance. Student attendance is used to determine school district funding.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The regulation establishes the ability of a district to take attendance and receive funding for students enrolled in a virtual online program operated pursuant to 704 KAR 3:535. In addition, the amendment strikes the current dispute resolution process for nonresident student agreement disputes between districts. Per statute, nonresident agreements are no longer necessary. Rather, districts are required to adopt nonresident policies. District may see some unknown savings by the elimination of the agreement.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Unknown. Savings to districts may result from the elimination of the nonresident student agreement dispute resolution process. The requirement that districts have policies rather than entering into agreements regarding nonresident students is statutory.

(c) How much will it cost the regulated entities for the first year? Unknown. However, no new costs are expected. Enrolling students and taking attendance is a continuing requirement for districts.

(d) How much will it cost the regulated entities for subsequent years? Unknown. However, no new costs are expected. Enrolling students and taking attendance is a continuing requirement for districts.

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: Specific dollar estimates are impossible. Districts that operate a full-time virtual online instructional program

per 704 KAR 3:535 may see additional revenue if additional nonresident or homeschooled students enroll in the district. This regulation provides the mechanism for students enrolled in such a program to be counted in attendance and receive state education per-pupil funding.

(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 proposed regulation amendment will not have a "major economic impact" on local school districts. The regulation permits school districts to take attendance and receive funding for students enrolled in a full-time virtual online instructional program operated pursuant to 704 KAR 3:535.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

705 KAR 4:041. Work-based learning program standards.

RELATES TO: KRS [156.029(7),]156.802, 158.810(4)

STATUTORY AUTHORITY: KRS [156.029(7),]156.070(1), 156.802(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) provides that the Kentucky Board of Education shall have the management and control of the common schools[and 156.029(7) require the Kentucky Board of Education to promulgate administrative regulations managing schools and programs and governing the Department of Education]. KRS 156.802(5) requires the board to establish program standards for secondary area career and technical education and technology centers. This administrative regulation establishes program standards for work-based learning in state-operated area technology centers and local school districts.

Section 1. Definitions. (1) "Apprentice" means a worker at least sixteen (16) years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn an apprenticeable occupation.

(2) "Career and technical education" is defined by KRS 158.810(4).

(3) "Career pathway completer" is defined as student who has completed a minimum of four (4) credits within a Kentucky Department of Education approved career pathway.

(4)[(2)] "Cooperative education" is a form of work-based learning[means an educational program] consisting of in-school instruction combined with program related on-the-job paid work experience in a business or industrial establishment.

(5) "Entrepreneurship" education allows individual students to develop a deeper understanding of economic principles and to apply classroom learning by organizing and operating a business enterprise.

(6) "Internship" is a type of work-based learning that provides work experience in a particular occupation, often leading to course credit and compensation.

(7) "Journey person certificate" is the culmination of an apprenticeship that leads to a nationally recognized and portable credential.

(8) "Mentoring" is a form of work-based learning that involves business and community volunteers developing one-to-one relationships with students to build an understanding of careers and work ethics that goes beyond the formal obligations of a teaching and supervisory role.

(9) "Registered apprenticeship program" is a program validated by the United States Department of Labor and combines paid on-the-job training and classroom instruction under the supervision of an experienced industry professional.

(10) "Registered youth apprenticeship" is a program that

combines academic and technical classroom instruction with work experience through a United States Department of Labor registered apprenticeship program.

(11) "Registered youth pre-apprenticeship" is a program or set of strategies designed to prepare students for entry into United States Department of Labor registered apprenticeship programs.

(12) "Related technical instruction" is the classroom component of a registered apprenticeship, which requires 144 hours for every 2,000 hours of the apprenticeship.

(13) "School-based enterprise" is a simulated or actual business conducted within the school setting.

(14) "Service learning" is a teaching and learning strategy that integrates meaningful community service with instruction and reflection to enrich the learning experience, teach civic responsibility and strengthen communities.

(15) "Shadowing" is a form of work-based learning that allows students to learn through observation by spending time with an individual from a chosen occupation.

(16) "State apprenticeship agency" is the state agency and staff responsible for registered apprenticeship activity, which acts on behalf of the United States Department of Labor.

(17)[(3)] "Work-based learning" means an effective teaching approach used to engage students in real-life occupational experiences, that incorporates structured, work-based learning activities into the curriculum and allows a student to apply knowledge and skills learned in class and connect these learning experiences in the workplace.

Section 2. Cooperative education shall meet the minimum requirements established in this section.

(1) To participate in cooperative education, a student shall be at least sixteen (16) years of age.

(a) A student who is under eighteen (18) shall secure a verification of age issued by the local superintendent of schools.

(b) A student who is between age eighteen (18) to twenty-one (21) shall have a certificate of age on file with the employer.

(2) A student shall have:

(a) Successfully completed the basic career and technical skill prerequisites required by the preparatory program the student is pursuing; and

(b) Gained sufficient knowledge and skills necessary for success in a cooperative education program.

(3) A student shall be:

(a) Enrolled in a course included within the student's chosen career pathway within the same academic year; or

(b) A career pathway completer[completed] by the conclusion of the student's junior year; or

(c) Enrolled in an approved registered youth or pre-apprenticeship program.

[(4) The cooperative education program shall be an integral part of the school's program of studies and be described in the school catalog.]

(4)[(5)] A student may receive academic credit on an hour-for-hour-basis equivalent to a Carnegie Unit only for work experience directly related to the student's individual learning plan (ILP) and approvable under the minimum requirements for high school graduation, 704 KAR 3:305.

(5)[(6)] A student shall receive a salary for the work experience phase of instruction in accordance with local, state, and federal minimum wage requirements.

(6)[(7)] The school shall arrange and coordinate with the employer for on-the-job training. A training agreement by the school, student, parent (if the student is a minor), and employer shall be placed on file with the school. This agreement shall be monitored and evaluated by the certified program area teacher.

[(8) A student shall be excused from school attendance only for the purpose of participating in an approved cooperative education program activity.]

(7)[(9)] The program shall include an evaluation component to assess the effectiveness of the program in assisting students in the achievement of their educational and career goals.

(8)[(40)] The student shall spend a minimum of ten (10) clock

hours per week in a salaried position which provides work experience directly related to the student's career goals as identified in their [his] individual learning plan (ILP).

(9)[(44)] The school shall provide work site supervision of the student by a certified or classified staff member[teacher-coordinator] on a regular basis throughout the period of time a student is participating in the cooperative education program.

Section 3. Other types of work-based learning opportunities for secondary students may include service learning, mentoring, shadowing, entrepreneurship, school-based enterprises, internships, and registered youth or pre-apprenticeships. Definitions of each type of work-based learning shall be located in the Kentucky Work-Based Learning Manual. Local districts and state-operated area technology centers shall have the responsibility of coordinating work-based learning programs and shall comply with the Kentucky Work-Based Learning Manual.

Section 4. Local districts and state-operated area technology centers shall have the responsibility of coordinating work-based learning programs and shall comply with the Kentucky Work-Based Learning Manual.

(1) Work-based learning programs shall be an integral part of the school's program of studies and be described in the school's scheduling resources.

(2) A student participating in an approved work-based learning activity shall be counted in attendance as provided in 702 KAR 7:125, Section 1(4)(a).

Section 5. Incorporation by Reference. (1) "Kentucky Work-Based Learning Manual", August 2022[March 2015], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Career and Technical Education, 5th[20th] Floor, [Capital Plaza Tower], 300 Sower Boulevard[500 Mero Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed at: <http://education.ky.gov/CTE/cter/Pages/WBL.aspx>.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner

LU S. YOUNG, Ed.D., Chairperson

APPROVED BY AGENCY: August 9, 2022

FILED WITH LRC: August 10, 2022 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 25, 2022 at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 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 G. 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 work-based learning program standards for state-operated Area Technology Centers (ATCs) and local school districts.

(b) The necessity of this administrative regulation: KRS 156.802(3) provides that the Kentucky Department of Education shall have the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area vocational and education centers. KRS 156.070(1) provides that the Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes standards for Career and Technical Education (CTE) work-based learning programs. Work-based learning is an integral and required component of the career pathway experience for students, pursuant to 705 KAR 4:231, Section 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standards for CTE work-based learning programs.

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

(a) How the amendment will change this existing administrative regulation: Proposed amendments to 705 KAR 4:041 update statutory citations, provide greater flexibility in which staff can assume the role of worksite supervisor and make necessary updates to the Kentucky Work-Based Learning Manual incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: These amendments ensure compliance with applicable state/federal laws and establish the standards for work-based learning programs in state-operated ATCs and local school districts.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.802(3) provides that the Kentucky Department of Education shall have the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area vocational and education centers. KRS 156.070(1) provides that the Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools.

(d) How the amendment will assist in the effective administration of the statutes: These amendments provide updated information and provide clarity for better efficiency with implementation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this regulation include CTE students and staff within state-operated ATCs and local school districts.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments will impact implementation of CTE work-based learning programs by providing the required standards.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: ATC and district staff must utilize this administrative regulation and the Kentucky Work-Based Learning Manual incorporated by reference when planning for and implementing work-based learning programs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): ATCs and districts must comply with background check requirements pursuant to KRS 160.380 and KRS 161.148. If all three (3) checks are required (federal, state and CA/N), it is estimated to cost approximately \$100 per individual.

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

entities identified in question (3): These amendments ensure proper alignment to other state/federal laws.

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

(a) Initially: N/A

(b) On a continuing basis: Minimal staff time at the Kentucky Department of Education (for training and technical assistance) will be required to implement these amendments on an annual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Local and state funds.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all ATCs and local school districts.

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? School districts and the Kentucky Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.802(3) and KRS 156.070(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. The amendments to this regulation create no new fiscal impact for the entities involved. There are existing statutory requirements for background checks, which does create a potential fiscal impact on ATCs and local districts.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? Background checks are estimated at approximately \$100 per individual.

(d) How much will it cost to administer this program for subsequent years? Undetermined (based on individuals needing background checks and how often).

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 (+/-): Undetermined

Other Explanation: The number of participating employers/individuals and the frequency of the background checks if required make this amount undeterminable for each ATC or district.

(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 anticipated.

(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?

The number of participating employers/individuals and the frequency of the background checks if required make this amount undeterminable for each ATC or district.

(d) How much will it cost the regulated entities for subsequent years? As stated above, the number of participating employers/individuals and the frequency of the background checks if required make this amount undeterminable for each ATC or district.

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

Cost Savings (+/-): None anticipated.

Expenditures (+/-): Undetermined

Other Explanation: As stated above, the number of participating employers/individuals and the frequency of the background checks if required make this amount undeterminable for each ATC or district.

(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)] A major economic impact is not anticipated.

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Telehealth Services (Amendment)

900 KAR 12:005. Telehealth terminology and requirements.

RELATES TO: KRS 205.510, 205.559, 205.5591, 211.332(2) - (5), 304.17A-005(23), 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. 3729-3733, 42 U.S.C. 1320a-7b(b), 42 U.S.C. 1320d-1, 42 U.S.C. 1320d-9, 42 U.S.C. 1395nn

STATUTORY AUTHORITY: KRS 194A.105, 211.334(1)(d), 211.335, 211.336(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.334 and 211.336 require the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to establish a telehealth terminology glossary to provide standard definitions for all health care providers who deliver health care services via telehealth, all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors; establish minimum requirements for the proper use and security of telehealth including requirements for confidentiality and data integrity, privacy, and security, informed consent, privileging and credentialing, reimbursement, and technology; and establish minimum requirements to prevent waste, fraud, and abuse related to telehealth. This administrative regulation establishes a telehealth terminology glossary and minimum requirements for the proper use and security of telehealth.

Section 1. Definitions. (1) ["Department" means Department for Medicaid Services.

(2) "Division" means Division of Telehealth Services.

(2) [(3)] "Health care provider" is defined by KRS 304.17A-005(23), unless the provider or service is otherwise regulated by KRS 205.8451(7).

(3) [(4)] "Health care service" is defined by KRS 211.332(2).

(4) [(5)] "Professional licensure board" is defined by KRS 211.332(3).

(5) [(6)] "State agency authorized or required to promulgate administrative regulations relating to telehealth" is defined by KRS 211.332(4).

(6) [(7)] "Telehealth" or "digital health" is defined by KRS 211.332(5).

Section 2. Compliance. Health care providers performing a telehealth or digital health service shall:

(1) Maintain confidentiality of patient medical information in accordance with KRS 311.5975;

(2) Maintain patient privacy and security in accordance with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d through 1320d-9, unless waived by the applicable federal authority;

(3) Obtain patient informed consent in accordance with KRS 311.5975 and 304.40-320;

(4) Secure credentialing if required by a third party or insurer or other payor;

(5)

(a) Utilize the appropriate current procedural terminology (CPT) or health care common procedure coding (HCPCS) code and place of service (POS) code to secure reimbursement for a professional telehealth service; or

(b) Utilize appropriate telehealth service code, if a CPT or HCPCS code is not available or not used for that service, according to customary practices for that health care profession, including the use of any telehealth modifiers or alternate codes;

(6) Utilize non-public facing technology products that are HIPAA compliant;

(7) As appropriate for the service, provider, and recipient, utilize the following modalities of communication delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. secs. 1320d to 1320d-9:

(a) Live or real-time audio and video synchronous telehealth technology;

(b) Asynchronous store-and-forward telehealth technology;

(c) Remote patient monitoring using wireless devices, wearable sensors, or implanted health monitors;

(d) Audio-only telecommunications systems; or

(e) Clinical text chat technology if:

1. Utilized within a secure, HIPAA compliant application or electronic health record system; and

2. Meeting:

a. The scope of the provider's professional licensure; and

b. The scope of practice of the provider; and

(8) Comply with the following federal laws to prevent waste, fraud, and abuse relating to telehealth:

(a) False Claims Act, 31 U.S.C. § 3729-3733;

(b) Anti-Kickback Statute, 42 U.S.C. 1320a-7b(b); and

(c) Physician Self-Referral, Section 1877 of the Social Security Act (42 U.S.C. 1395nn).

Section 3. Incorporation by Reference.

(1) "Telehealth Terminology Glossary", August 2022[July-2024], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Telehealth Services, 275 East Main Street[4WE], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at <https://telehealth.ky.gov>.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 26, 2022

FILED WITH LRC: August 8, 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 October 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this hearing shall notify this agency in writing by October 17, 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 October 31, 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; and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a telehealth terminology glossary and minimum requirements for the proper use and security of telehealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 211.334 – 211.336.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 211.334 – 211.336 by establishing a telehealth terminology glossary and minimum requirements for the proper use and security of telehealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing a telehealth terminology glossary and minimum requirements for the proper use and security of telehealth as required by KRS 211.334 to 211.336.

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

(a) How the amendment will change this existing administrative regulation: This amendment is required by KRS 211.335, a new statute created by the passage of HB 188 during the 2022 session of the Kentucky General Assembly. KRS 211.335(1) directs the cabinet to promulgate administrative regulations to add a definition of "temporarily located" to the glossary of telehealth terminology required by KRS 211.334, in order to clarify when telehealth providers may provide services to patients in other states. This amendment also updates the glossary to include definitions of "encryption," "mHealth," "payment parity," "peripheral device," and "telepractice." It also deletes the terms: "covered entities," "credentialing," "Medicaid telehealth provider," "medically necessary health care services," "privileging," "referral," and "telehealth consultation," and makes general formatting and grammatical changes.

(b) The necessity of the amendment to this administrative regulation: This amendment is required by KRS 211.335.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 211.335 by adding a definition of "temporarily located" to the glossary of telehealth terminology required by KRS 211.334. It also updates the glossary required by KRS 211.334 by adding and deleting other terms.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by adding a definition of "temporarily located" pursuant to KRS 211.335 and updating the glossary required by KRS 211.334.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects telehealth providers. There are approximately 13,000 professionally active physicians and 72,000 active nurses in Kentucky, as well as an

unknown number of psychologists, counselors, licensed clinical social workers, and other healthcare providers who may provide telehealth services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this regulation defines telehealth terms but does not create any additional requirements to be met by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this regulation defines telehealth terms but does not create any additional requirements to be met by regulated entities, so there will be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this regulation clarifies when telehealth providers may provide services to patients in other states, and updates the glossary of terms.

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

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation is Federal Centers for Medicare and Medicaid Services (CMS) funding, state restricted funding, and MCO capitation fees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all telehealth providers and state agencies regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts telehealth providers 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 211.334, 211.335, and 211.336

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a

brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This amendment will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This amendment imposes no additional costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This amendment imposes no additional costs on regulated entities during subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will not have a major economic impact on providers who use telehealth.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

(2) State compliance standards. KRS 211.334 to 211.336

(3) Minimum or uniform standards contained in the federal mandate. 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose requirements that are stricter than federal laws or regulations. Not applicable.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 4:020. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act.

RELATES TO: KRS 205.510-205.647, 205.6481-205.6497, [211.461 – 211.466,]304.5-040, 304.17A-005(8), (14), 42 C.F.R. 432, 433, 435, 436, 440.230, 457, 42 U.S.C. 1396, 1396a, 1397aa-jj, 9902

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3) 205.6485, 42 U.S.C. 1397aa-jj

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(2) requires the Cabinet for Health and Family Services, Department for Medicaid Services, to administer Title XIX of the

Federal Social Security Act, 42 U.S.C. 1396 to 1396v. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the 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 205.6485 authorizes the cabinet to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated health care services to children of the commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the KCHIP eligibility criteria, covered services, application requirements, grievance and appeal rights for recipients, and the requirements for providers who wish to participate with the commonwealth to provide health care coverage to KCHIP members through an expansion of the Title XIX Medicaid Program.

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services or its designee.

(2) "Child" means an individual under the age of nineteen (19) years.

(3) "Creditable coverage" is defined by KRS 304.17A-005(8)(a)1-3 and 5-10.

(4) "Department" means the Department for Medicaid Services or its designee.

(5) "Excepted benefits" is defined by KRS 304.17A-005(14).

(6) "Health insurance" is defined by KRS 304.5-040.

(7) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

Section 2. Eligibility Criteria. (1) A child shall be eligible for KCHIP if the child:

(a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;

(b) Is a noncitizen[an-alien] who meets the requirement established in 907 KAR 20:005;

(c) Meets the technical requirements of 907 KAR 20:005;

(d) Provides to the department the information required in Section 4 of this administrative regulation;

(e) Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2;

(f) Meets the relative responsibility requirements established in 907 KAR 20:040;

(g) Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100; and

(h) Is an optional targeted low-income child as defined in 42 U.S.C. 1397jj(b) who:

1. Has family income that does not exceed 213[159] percent of the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2); ~~and~~

2. Does not have creditable coverage and may be covered by excepted benefits; and

3.a. If an eligibility determination indicates that an individual's income exceeds 213 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall apply an additional cushion of five (5) percent of the federal poverty level toward the eligibility determination for the individual as described pursuant to 42 U.S.C. 1396a(e)(14)(I)(i).

b. If after the five (5) percent adjustment, the individual's income is under the adjusted income threshold, the individual shall meet the modified adjusted gross income standard.

(2) Eligibility for KCHIP shall be determined by the department. Upon receipt of eligibility information defined in subsection (1) of this section, the department shall determine if a child is eligible for benefits pursuant to 42 U.S.C. 1396 or 1397aa to jj.

Section 3. Covered Services. (1) Health services shall be considered medically necessary in accordance with:

(a) 907 KAR 3:130; and

(b) 42 C.F.R. 440.230.

(2) Amount and duration of benefits covered by KCHIP shall be as established in Title 907 KAR.

(3) A medical service shall be covered through KCHIP Phase II if an individual is determined eligible for KCHIP benefits in accordance with Section 2 of this administrative regulation.

(4) Preventive and remedial public health services shall be provided to KCHIP Phase II members in accordance with 907 KAR 1:360.

(5) KCHIP Phase II shall be the payor of last resort.

Section 4. KCHIP Application Requirements. The following information shall be required from a child or responsible party for KCHIP enrollment:

(1) A child's demographics that shall include:

(a) Name;

(b) Address;

(c) Sex;

(d) Date of birth;

(e) Race; and

(f) Social Security number;

(2) Monthly gross earned income, if any, of a parent and a recipient[child] for whom information is being submitted;

(3) An employer type and address, if any;

(4) Frequency of income;

(5) Name and address of a health insurance provider who currently provides creditable coverage;

(6) Creditable coverage policy number, policy holder's name, Social Security number, and individuals covered by the plan;

(7) Unearned income, if any, received weekly, biweekly, bimonthly, quarterly, or annually;

(8) Name and age of a child or disabled adult for whom care is purchased in order for a parent or responsible person to work; and

(9) Signature, date, and telephone number of a person submitting the information for a child.

Section 5. Provider Participation Requirements. A provider's enrollment, disclosure, and documentation for participation in KCHIP shall meet the requirements of:

(1) 907 KAR 1:671; and

(2) 907 KAR 1:672.

Section 6. Grievance, Hearing, and Appeal Rights. (1) If dissatisfied with an action taken by the department as to the application of Sections 1 through 5 of this administrative regulation, a child, the child's parent, or the child's guardian shall be entitled to a grievance, hearing, or appeal with the department, to be conducted in accordance with:

(a) 907 KAR 1:560, if pertaining to initial eligibility; or

(b) 907 KAR 1:563, if pertaining to a covered service.

(2) If a service is provided by a managed care organization, a dispute resolution between a provider and a child, the child's parent, or the child's guardian shall be in accordance with[:

~~(a) KRS 211.461 through 211.466; and~~

~~(b) 907 KAR 17:010.~~

(3) A KCHIP Phase II eligible child or a responsible party shall be informed in writing of the right to and procedures for due process by the cabinet:

(a) At the time information to obtain KCHIP Phase II approval is submitted;

(b) If there is a change in eligibility status; or

(c) As required by federal and state laws.

Section 7. Quality Assurance and Utilization Review. The department shall evaluate the following on a continuing basis:

(1) Access to services;

(2) Continuity of care;

(3) Health outcomes; and

(4) Services arranged or provided as established in 907 KAR Chapter 17.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2022

FILED WITH LRC: July 19, 2022 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 17, 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 October 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Children's Health Insurance Program (KCHIP) eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights. KCHIP offers health care coverage to children whose parents' income exceeds the income thresholds for the Medicaid Program but is under 218 percent of the federal poverty level.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(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 KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation moves all KCHIP children under the requirements of this administrative regulation, clarifies how a five (5) percent income disregard is to be calculated, and deleting references to certain repealed legislation.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to move all children under one income standard. This will allow for the program to ensure fund availability throughout each fiscal year.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing a state plan amendment to KCHIP and ensuring the availability of KCHIP for children.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing a state plan amendment to KCHIP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS estimates that between 80,000-105,000 children will participate in the KCHIP program over the course of the year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Recipients who could be eligible will need to apply for KCHIP services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). DMS does not anticipate any expenses for this population.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). This technical change is a best practice nationwide and will allow for full coverage to be assured all year for all KCHIP income levels.

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

(a) Initially: DMS does not anticipate additional expenses to the KCHIP program in implementing this change.

(b) On a continuing basis: DMS does not anticipate additional expenses to the KCHIP program in implementing this change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendments.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2), 42 U.S.C. 1396a(gg), and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 457 establishes requirements relating to state Children's Health Insurance Programs.

(4). Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS does not anticipate additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate additional costs in administering this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact"

means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 4:030. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

RELATES TO: KRS 205.6481 – 205.6497, 211.461 – 211.466, 281.010(25), 304.5-040, 304.17A-005(8), (14), 42 C.F.R. 435.403, 440.230, Part 457, 42 U.S.C. 1396, 1397aa

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6481-205.6497, 42 U.S.C. 1397aa

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.6485 authorizes the cabinet, by administrative regulations, to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated health care services to participant children of the Commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, grievance and appeal rights, and the requirements for delivery of health services for providers who wish to participate with the Commonwealth to provide health care coverage for KCHIP Phase III members through the provision of a separate health insurance program under Title XXI.

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services or its designee.

(2) [~~"Child" means an individual under the age of nineteen (19) years.~~]

(3) "Creditable coverage" is defined by KRS 304.17A-005(8)(a)1-3 and 5-10.

(3) [(4)] "Department" means the Department for Medicaid Services or its designee.

(4) [(5)] "Excepted benefits" is defined by KRS 304.17A-005(14).

(5) [(6)] "Health insurance" is defined by KRS 304.5-040.

(6) [(7)] "KCHIP" means the Kentucky Children's Health Insurance Program in accordance with 42 U.S.C. 1397aa through 42 U.S.C. 1397jj.

Section 2. Eligibility Criteria. (1) An individual shall be eligible for KCHIP Phase III if the individual is a pregnant person who:

(a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;

(b) Is an immigrant who is lawfully present;

(c) Is not an inmate of a public institution or a patient in an institution for mental diseases;

(d) Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100;

(e)1. Has family income that does not exceed 213 percent of the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), a five (5) percent income disregard is available consistent with the following:

a. If an eligibility determination indicates that an individual's income exceeds 213 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall apply an additional cushion of five (5) percent of the federal poverty level toward the eligibility determination for the individual as described pursuant to 42 U.S.C. 1396a(e)(14)(i); and

b. If after the five (5) percent adjustment, the individual's income

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is under the adjusted income threshold, the individual shall meet the modified adjusted gross income standard;

2. Does not have creditable coverage and may be covered by excepted benefits;

3. Provides to the department the information required in Section 4(4) of this administrative regulation; and

4. Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2; and

(f) A pregnant person's federal poverty level calculation pursuant to 42 U.S.C. 9902(2) shall be at least two (2) and shall include the pregnant person and any unborn children of the pregnant person. Other members of the household shall be calculated and included consistent with KAR Title 907. [A child shall be eligible for KCHIP Phase III if the child:

(a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;

(b) Is an alien who meets the requirements established in 907 KAR 20:005;

(c) Is not an inmate of a public institution or a patient in an institution for mental diseases;

(d) Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100; and

(e) Is a targeted low-income child as defined in 42 U.S.C. 1397jj(b) who:

1. Has family income that does not exceed 213 percent of the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2);

2. Does not have creditable coverage and may be covered by excepted benefits;

3. Provides to the department the information required in Section 4(4) of this administrative regulation;

4. Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2; and

5. Meets the relative responsibility requirements established in 907 KAR 20:040.]

(2)(a) Eligibility for KCHIP Phase III shall be determined by the department.

(b) Upon receipt of the eligibility information established in subsection (1) of this section, the department shall determine if a participant[child] is eligible for benefits pursuant to 42 U.S.C. 1396 or 1397bb.

Section 3. Covered Services. (1) Health services shall be considered as medically necessary in accordance with:

(a) 907 KAR 3:130; and

(b) 42 C.F.R. 440.230.

(2) [Covered services shall exclude:

(a) EPSDT special services as established in 907 KAR 11:034, Section 7;

(b) Human service transportation delivery as defined by KRS 281.010(25) and as required by 603 KAR 7:080; and

(c) Locally authorized medical transportation as established in 907 KAR 1:060, Section 4.

(3) The amount and duration of benefits covered by KCHIP Phase III shall be as established in Title 907 KAR excluding the services identified in subsection (2) of this section.

(3)[(4)] A medical service shall be covered through KCHIP Phase III if the individual is determined eligible for KCHIP benefits in accordance with Section 2 of this administrative regulation.

(4)[(5)] Preventive and remedial public health services shall be provided to KCHIP Phase III members in accordance with 907 KAR 1:360.

(5)[(6)] KCHIP Phase III shall be the payor of last resort.

Section 4. KCHIP Phase III Approval Process. The following information shall be required from a participant[child] or responsible party for KCHIP Phase III enrollment:

(1) A participant[s][child's] demographics that shall include:

(a) Name;

(b) Address;

(c) Sex;

(d) Date of birth;

(e) Race; and

(f) Social Security number;

(2) Monthly gross earned income, if any, of a parent and a participant[child], for whom information is being submitted, an employer type and address, if any, and frequency of income;

(3) The name and address of a health insurance provider who currently provides creditable coverage;

(4) The creditable coverage policy number, policy holder's name, Social Security number, and individuals covered by the plan;

(5) Unearned income, if any, received weekly, biweekly, bimonthly, quarterly, or annually;

(6) The name and age of a participant[child] or disabled adult for whom care is purchased in order for a parent or responsible person to work; and

(7) The signature, date, and telephone number of the person submitting the information for a participant[child].

Section 5. Provider Participation Requirements. A provider's enrollment, disclosure, and documentation for participation in KCHIP Phase III shall meet the requirements established in:

(1) 907 KAR 1:671; and

(2) 907 KAR 1:672.

Section 6. Complaint, Grievance and Appeal Rights. (1) If dissatisfied with an action taken by the cabinet, the participant[child], the participant[s][child's] parent, or the participant[s][child's] guardian shall be entitled to a complaint, grievance, or appeal with the cabinet to be conducted in accordance with:

(a) 907 KAR 1:560; or

(b) 907 KAR 1:563.

(2) If a service is provided by a managed care organization, a dispute resolution between a provider and a participant[child], the participant[s][child's] parent, or the participant[s][child's] guardian shall be in accordance with:

(a) KRS 211.461 through 211.466; and

(b) 907 KAR 17:010.

(3) A KCHIP Phase III eligible participant[child] or a responsible party shall be informed in writing of the right to and procedures for due process by the cabinet:

(a) At the time information to obtain KCHIP Phase III approval is submitted;

(b) If there is a change in eligibility status; or

(c) As required by federal and state laws.

Section 7. Quality Assurance and Utilization Review. The department shall evaluate the following on a continuing basis:

(1) Access to services;

(2) Continuity of care;

(3) Health outcomes; and

(4) Services arranged or provided as established in 907 KAR Chapter 17.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2022

FILED WITH LRC: July 19, 2022 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 17, 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 October 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Children's Health Insurance Program (KCHIP) Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights. The KCHIP Phase III program offers health care coverage to participants whose income exceeds the income thresholds for the Medicaid Program but is under 213 percent of the federal poverty level.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(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 KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation introduces an option for pregnant recipients to receive KCHIP services up to the limits of KCHIP Phase III eligibility. The amendment also reflects the current program by expanding the KCHIP Phase III program to 218 percent of the federal poverty level. An amendment is also made to delete a subsection addressing exceptions to covered services.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to reflect an updated state plan amendment to KCHIP Phase III that extends coverage to pregnant recipients.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing a state plan amendment to KCHIP Phase III.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing a state plan amendment to KCHIP Phase III.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS provides coverage for about 24,000 pregnancies each year. DMS anticipates that up to 1,000 additional pregnancies and pregnant recipients could be served by this expansion. This segment of the population often has multiple coverage options, such as employer coverage or coverage via a parent, therefore, DMS does not anticipate a large population of individuals relative to the size of other income levels served by Medicaid will seek to participate.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Recipients who could be eligible will need to apply for KCHIP Phase III services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). DMS does not anticipate any expenses for this population.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). DMS anticipates that another avenue of coverage will be provided to pregnant individuals within the KCHIP eligibility population.

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

(a) Initially: The department anticipates that providing KCHIP coverage to 1000 pregnant individuals for 1 year will cost \$1.4 million in state funds.

(b) On a continuing basis: The department anticipates that providing KCHIP coverage to 1000 pregnant individuals for 1 year will cost \$1.4 million in state funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendments.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2), 42 U.S.C. 1396a(gg), and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 457 establishes requirements relating to state Participant[children's Health Insurance Programs.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1315.

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

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

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

(c) How much will it cost to administer this program for the first year? The department anticipates that providing KCHIP coverage to 1000 pregnant individuals for 1 year will cost \$1.4 million in state funds.

(d) How much will it cost to administer this program for subsequent years? The department anticipates that providing KCHIP coverage to 1000 pregnant individuals for 1 year will cost \$1.4 million in state funds.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative

regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 20:020. Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals.

RELATES TO: KRS 205.520, 42 C.F.R. Part 130, Section 4735 of Pub.L. 105-33, 42 U.S.C. 1382a, 1383c(b), 1396-1396v, 1396p(d)(4), 1397jj(b)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435, 42 U.S.C. 1396a, 1396b, 1396d, 1397aa, 1382a(b)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program in accordance with 42 U.S.C. 1396 through 1396v. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the income standards by which Medicaid eligibility is determined, except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1. Income Limitations. (1)(a) Income shall be determined by comparing adjusted income as required by Section 2 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse, and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	\$2,820	\$235
2	3,492	291
3	4,056	338
4	5,028	419
5	5,904	492
6	6,672	556
7	7,452	621

(b) For each additional family member, \$720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) For a pregnant woman or child eligible pursuant to 42 U.S.C. 1396a(e), a change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period, which ends at the end of the month containing the 365th[60th] day of a period beginning on the last day of her pregnancy.

(3) The special income limits and provisions established in this subsection shall apply for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1).

(a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) A Medicare qualified individual group 1 (QI-1) shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

(d) A qualified disabled and working individual shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) Income shall be limited to the allowable amounts for the SSI

program for a:

- (a) Child who lost eligibility for SSI benefits due to the change in the definition of childhood disability as established in 42 U.S.C. 1396a(a)(10); or
- (b) Person with hemophilia who received a class action settlement as established in 42 C.F.R. Part 130.
- (5) Income shall be limited to the allowable amounts for the mandatory or optional state supplement program for an individual established in 42 C.F.R. 435.135.

Section 2. Income Disregards. In comparing income with the scale established in Section 1 of this administrative regulation, gross income shall be adjusted as established in this section.

- (1) In a TANF or family related Medicaid case:
 - (a) The standard work expense of an adult member or out-of-school child shall be deducted from gross earnings;
 - (b) For a person with either full-time or part-time employment, the standard work expense deduction shall be ninety (90) dollars per month; and
 - (c) Earnings of an individual attending school who is a child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.
- (2) For an ABD Medicaid case, the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b) shall apply.
- (3) For an individual in a Medicaid eligibility group subject to 42 U.S.C. 1396a(a)(10)(E)(i), (ii), or (iv) or 42 U.S.C. 1396d(p), if an annual Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment causes an individual to be ineligible for Medicaid benefits:
 - (a) The individual's most recent Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment shall be disregarded; and
 - (b) The disregard established in paragraph (a) of this subsection shall continue until the individual loses Medicaid eligibility for any other reason for three (3) consecutive months.
- (4) An ABD Medicaid case shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).

Section 3. Lump Sum Income. Except as established in Section 8 of this administrative regulation, for a Medicaid case, lump sum income shall be considered as income in the month received.

Section 4. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill a plan approved by the United States Social Security Administration to achieve self support, IRWE deduction, or BWE deduction shall be excluded from consideration.

(2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration as income if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparation payment shall not be considered available in the eligibility or post eligibility treatment of income of an individual in a nursing facility or hospital or who is receiving home and community based services under a waiver program.

(5) A Social Security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1) until after the month following the month in which the official poverty income guidelines promulgated by the United States Department of Health and Human Services are published.

(6) Any amount received from a victim's compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran or the spouse of a veteran residing in a nursing facility who is receiving a Veterans Administration (VA) pension

benefit shall have ninety (90) dollars excluded as income in the:

- (a) Medicaid eligibility determination; and
- (b) Post eligibility determination process.
- (8) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.
- (a) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in the post eligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility.
- (b) Veterans Administration payments for unmet medical expenses and aid and attendance shall not be excluded in the post eligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.
- (9) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.
- (10) An individual retirement account, KEOGH plan, or other tax deferred asset shall be excluded as income until withdrawn.
- (11) Disaster relief assistance shall be excluded as income.
- (12) Income that is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC or SSI) shall be excluded.
- (13) In accordance with 42 C.F.R. 435.122 and Section 4735 of Pub.L. 105-33, a payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.
- (14) In accordance with 42 C.F.R. Part 130, any payment received by a person with hemophilia from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.
- (15) Family alternatives diversion payments shall be excluded as income.
- (16) All monies received by an individual from the Tobacco Master Settlement Agreement shall be excluded.
- (17) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall be excluded.

Section 5. Consideration of Mandatory or Optional State Supplements. For an individual receiving a mandatory or optional state supplement, that portion of the individual's income that is in excess of the basic maintenance standard, established in Section 1(1) of this administrative regulation, shall be applied to the special need that results in the supplement.

Section 6. Pass-through Cases.

(1)(a) An increase in a Social Security payment shall be disregarded in determining eligibility for Medicaid benefits if:

- 1. The increase is a cost of living increase; and
- 2. The individual would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement.

(b) An individual who would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement shall remain eligible for the full scope of program benefits with no spend-down requirements, as established in Section 7 of this administrative regulation.

(2) For an individual who applied by July 1, 1988, the additional amount established in 42 U.S.C. 1383c(b) shall be disregarded, meaning that amount of Social Security benefits to which a specified widow or widower was entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) an individual would be eligible for federal SSI benefits.

Section 7. Spend-down Provisions.

(1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2)(a) An individual with income in excess of the basic maintenance scale established in Section 1(1) of this administrative regulation shall qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(b) Medical expenses incurred in a period prior to the quarter for which spend-down eligibility is being determined shall be used to offset excess income if the medical expenses:

1. Remain unpaid at the beginning of the quarter; and
2. Have not previously been used as spend-down expenses.

Section 8. Individual Retirement Account.

(1)(a) If an individual reaches the point at which the individual is eligible to begin withdrawing from an IRA without suffering a penalty, the individual shall begin withdrawing from the IRA at least the minimum amount determined by the financial institution holding the IRA.

(b) If an individual does not begin withdrawing from an IRA pursuant to paragraph (a) of this subsection, the individual shall be ineligible for Medicaid benefits.

(2) If an individual withdraws funds from an IRA prior to reaching the point at which the individual would suffer no penalty for withdrawing funds, the withdrawal shall be considered non-recurring lump sum income.

(3) If an individual withdraws income pursuant to subsection (1)(a) of this section, the income shall be prorated over the period of time the income covers (for example monthly, quarterly, or annually).

Section 9. Applicability. The provisions and requirements of this administrative regulation shall:

(1) Apply to:

- (a) A child in foster care;
- (b) An aged, blind, or disabled individual; and
- (c) An individual who receives supplemental security income benefits; and

(2) Not apply to an individual whose Medicaid eligibility is determined:

- (a) Using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or
- (b) Pursuant to 907 KAR 20:075.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2022

FILED WITH LRC: July 19, 2022 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 17, 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 October 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid eligibility income standards except for Medicaid eligibility categories for which the modified adjusted gross income standard is the income standard.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid eligibility income standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to Medicaid eligibility income standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to Medicaid eligibility income standards.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation by implementing a state plan amendment (SPA) required by 2022 Ky. Acts ch. 223 to extend Medicaid coverage to new mothers for one year following the birth of a child.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to implement 2022 Ky. Acts ch. 223.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to implement 2022 Ky. Acts ch. 223.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation conforms to a statutory change made during the 2022 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Pregnant women will be impacted by this administrative regulation. There are approximately 24,000 pregnancies in the Medicaid program each year. DMS anticipates that up to 1,750 individuals will receive a full year of postpartum Medicaid services by implementing this legislation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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). No costs are imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Eligible individuals will be eligible for a full year of postpartum Medicaid benefits.

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

(a) Initially: The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

(b) On a continuing basis: The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendments.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2), 42 U.S.C. 1396a(gg), and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

(3) Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals [individuals over sixty-five (65) years of age or who receive Social Security Disability Insurance; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals.

Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3).

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in the implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in the continuing operation of this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 20:100. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(e)(14)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to

comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the provisions and requirements for individuals whose Medicaid eligibility is determined using the modified adjusted gross income as the income standard. The affected individuals include children under the age of nineteen (19) years, pregnant women [up] to 365[sixty-(60)] days postpartum, caretaker relatives, and adults under age sixty-five (65) who do not have a dependent child under the age of nineteen (19) years and are not otherwise eligible for Medicaid benefits.

Section 1. Applicability. (1)(a) The provisions and requirements of this administrative regulation shall apply to individuals whose Medicaid eligibility is determined using the modified adjusted gross income as the income standard.

(b) An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be an individual who is:

1. A child under the age of nineteen (19) years, excluding a child in foster care;

2. A caretaker relative with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

3. A pregnant woman, with income up to 195 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), including the postpartum period [up] to 365[sixty-(60)] days after delivery;

4. An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), who:

a. Does not have a dependent child under the age of nineteen (19) years; and

b. Is not otherwise eligible for Medicaid benefits; or

5. A targeted low income child with income up to 150 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2).

(2)(a) If an eligibility determination indicates that an individual's income exceeds 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall apply an additional cushion of five (5) percent of the federal poverty level toward the eligibility determination for the individual as described pursuant to 42 U.S.C. 1396a(e)(14)(I)(i).

(b) If after the five (5) percent adjustment, the individual's income is under the adjusted income threshold, the individual shall meet the modified adjusted gross income standard.\

(c) A pregnant person's federal poverty level calculation pursuant to 42 U.S.C. 9902(2) shall be at least two (2) and shall include the pregnant person and the number of children expected to be delivered. Other members of the household shall be calculated and included consistent with KAR Title 907.

(3) The provisions and requirements of this administrative regulation shall not apply to an individual whose Medicaid eligibility is determined using an eligibility standard that is not the modified adjusted gross income.

Section 2. MAGI-based Methods. The department shall use the MAGI-based methods established in 42 C.F.R. 435.603 to determine whether an individual meets the Medicaid income eligibility requirements if the eligibility standard is the modified adjusted gross income.

Section 3. Resources Not Considered. An individual's resources shall not be considered for the purpose of determining Medicaid eligibility if the eligibility standard is the modified adjusted gross income.

Section 4. Citizenship and Residency Requirements. (1) The

citizenship requirements established in 42 C.F.R. 435.406 shall apply.

(2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid:

(a) Citizenship requirements, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;

2. A qualified noncitizen[alien] who entered the United States before August 22, 1996, and is:

a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

b. Granted asylum pursuant to 8 U.S.C. 1158;

c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

e. A noncitizen[An-alien] whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

g. A noncitizen[An-alien] who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

h. A battered noncitizen[alien] pursuant to 8 U.S.C. 1641(c);

i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph or the unremarried surviving spouse of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

3. A qualified noncitizen[alien] who entered the United States on or after August 22, 1996, and is:

a. Granted asylum pursuant to 8 U.S.C. 1158;

b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

c. A noncitizen[An-alien] whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

d. A noncitizen[An-alien] who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unremarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;

h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

(b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403.

(3) A qualified or nonqualified noncitizen[alien] shall be eligible for medical assistance pursuant to 42 C.F.R. 440.255 and as provided in this paragraph[subsection].

(a) The individual shall meet the income, resource, and

categorical requirements of the Medicaid Program.

(b) Coverage for the individual shall be:

1. Limited to the medical care and services necessary for the treatment of an emergency medical condition or pregnancy of the individual;

2. The individual shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition:

1.] Not related to an organ transplant procedure; and

3. For~~2. Which shall be~~ a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(c) The individual's coverage shall be recertified every twelve (12) months.~~[including:~~

1. Approval of eligibility shall be for a time limited period which includes, except as established in subparagraph 2 of this paragraph, the month in which the medical emergency began and the next following month.

2. The eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period.

(d) The Medicaid benefits to which the individual is entitled shall be limited to the medical care and services, including limited follow-up, necessary for the treatment of the emergency medical condition of the individual.]

(4)(a) The satisfactory documentary evidence of citizenship or nationality requirement in subsection (2)(a)1 of this section shall not apply to an individual who:

1. Is receiving SSI benefits;
2. Previously received SSI benefits but is no longer receiving them;
3. Is entitled to or enrolled in any part of Medicare;
4. Previously received Medicare benefits but is no longer receiving them;
5. Is receiving:
 - a. Disability insurance benefits under 42 U.S.C. 423; or
 - b. Monthly benefits under 42 U.S.C. 402 based on the individual's disability pursuant to 42 U.S.C. 423(d);
6. Is in foster care and who is assisted under Title IV-B of the Social Security Act, which is codified as 42 U.S.C. 621 through 628b; or

7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act, which is codified as 42 U.S.C. 670 through 679c.

(b) The department's documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396b(x).

(5) The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf.

(6)(a) Except as established in paragraph (b) of this subsection, an individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met.

(b) The retroactive eligibility period shall begin no earlier than January 1, 2014 for an individual who gains Medicaid eligibility solely by qualifying:

1. As a former foster care individual pursuant to 907 KAR 20:075; or
2. As an adult with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), who:
 - a. Does not have a dependent child under the age of nineteen (19) years; and
 - b. Is not otherwise eligible for Medicaid benefits.

(7) The documentation of citizenship requirements established

in this administrative regulation shall not apply to a noncitizen under nineteen (19) years of age who is lawfully present in the United States of America.

(8) Except as established in subsection (9) of this section, a noncitizen shall be considered to be lawfully present in the United States of America if the individual:

- (a) Is a qualified noncitizen;
- (b) Is a noncitizen in a valid immigrant status;
- (c) Is a noncitizen who has been paroled into the United States of America in accordance with 8 U.S.C. 1182(d)(5) for less than one (1) year, except for an individual:

1. Paroled for:
 - a. Prosecution; or
 - b. Deferred inspection; or
2. Pending removal proceedings;
- (d) Is a noncitizen who:
 1. Has been granted:
 - a. Temporary resident status in accordance with 8 U.S.C. 1160 or 1225a;

b. Temporary protected status in accordance with 8 U.S.C. 1254a or is an individual with a pending application for temporary protected status who has been granted employment authorization;

- c. Employment authorization under 8 C.F.R. 274a.12(c);
- d. Deferred action status; or
- e. An administrative stay of removal under 8 C.F.R. Part 241;
2. Is a family unity beneficiary in accordance with Section 301 of Pub. L. 101-649 as amended, and 8 C.F.R. Part 236;

3. Is under deferred enforced departure in accordance with a decision made by the President of the United States of America; or

4. Is a beneficiary of an approved visa petition who has a pending application for an adjustment of status;
- (e) Is an individual with a pending application for asylum:
 - 1.a. Under 8 U.S.C. 1158;
 - b. For withholding of removal under 8 U.S.C. 1231; or
 - c. Under the Convention of Torture; and

2. Who:

- a. Has been granted employment authorization; or
- b. Is under the age of fourteen (14) years and has had an application pending for at least 180 days;

(f) Is an individual who has been granted withholding of removal under the Convention Against Torture;

(g) Is a child who has a pending application for special immigrant juvenile status as described in 8 U.S.C. 1101(a)(27)(J); or

(h) Is a victim of severe trafficking in persons in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386, as amended in 22 U.S.C. 7105(b)).

(9) An individual with deferred action under the Department of Homeland Security's deferred action for the childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, shall not be considered to be lawfully present with respect to any of the categories listed in subsection (8) of this section.

Section 5. Provision of Social Security Numbers. (1)(a) Except as provided in subsections (2) and (3) of this section, an applicant for or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(b) If a parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a Social Security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failing to meet technical eligibility requirements.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.

(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

Section 6. Institutional Status. (1) An individual shall not be eligible for Medicaid if the individual is a:

(a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of this section;

(b) Patient in a state tuberculosis hospital unless he or she has reached age sixty-five (65);

(c) Patient in a mental hospital or psychiatric facility unless the individual is:

1. Under age twenty-one (21) years of age;

2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday; or

3. Sixty-five (65) years of age or over; or

(d) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).

(2) An inmate shall be eligible for Medicaid during the period of time the inmate is admitted to a hospital if the inmate:

(a) Has been admitted to a hospital;

(b) Has been an inpatient at the hospital for at least twenty-four (24) consecutive hours; and

(c) Meets the Medicaid eligibility criteria established in this administrative regulation.

Section 7. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have assigned to the Cabinet for Health and Family Services any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 8. Third-party Liability as a Condition of Eligibility. (1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;

2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or

3. May interfere with adoption considerations or proceedings.

(2) A failure of an individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman with income up to 195 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2) shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 9. Application Process, Initial and Continuing Eligibility Determination. (1) An individual may apply for Medicaid by:

(a) Using the Web site located at www.kynect.ky.gov;

(b) Applying over the telephone by calling:

1. 1-855-459-6328; or

2. 1-855-306-8959 to speak to the DCBS Family Support Call Center; or

3. 1-855-326-4654 if deaf or hearing impaired;

(c) Faxing an application to 1-502-573-2007;

(d) Mailing a paper application to DCBS Family Support, P.O. Box 2104, Frankfort, Kentucky 40602 ~~Office of Health Benefits Exchange, 12 Mill Creek, Frankfort, Kentucky 40604~~; or

(e) Going to the applicant's local Department for Community Based Services Office and applying in person.

(2)(a) An application shall be processed (approved, denied, or a request for additional information sent) within forty-five (45) days of application submittal.

(b) Immediately after submittal if there is a variance of ten (10) percent or more regarding income information reported by the applicant versus information available from a trusted source or sources, a request for additional information shall be generated for the applicant requesting documentation to prove the applicant's income.

(c) If a trusted source indicates that an applicant is incarcerated, a request for additional information shall be generated requesting verification of the applicant's incarceration dates.

(d) If an applicant fails to provide information in response to a request for additional information within thirty (30) days of the receipt of the request, the application shall be denied.

(3)(a) An annual renewal of eligibility shall occur without an individual having to take action to renew eligibility, unless:

1. The individual's eligibility circumstances change resulting in the individual no longer being eligible for Medicaid; or

2. A request for additional information is generated due to a change in income or incarceration status.

(b)1. If an individual receives a request for additional information as part of the renewal process, the individual shall provide the information requested within forty-five (45) days of receiving the request.

2. If an individual fails to provide the information requested within forty-five (45) days of receiving the request, the individual's eligibility shall be terminated on the forty-fifth day from the request for additional information.

(4) An individual shall be required to report to the department any changes in circumstances or information related to Medicaid eligibility.

Section 10. Adverse Action, Notice, and Appeals. The adverse action, notice, and appeals provisions established in 907 KAR 20:060 shall apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

Section 11. Miscellaneous Special Circumstances. (1) A person~~woman~~ during pregnancy, and as though pregnant through the end of the month containing the 365th~~sixtieth~~ day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(l)(1), shall meet the income requirements for this eligibility group in accordance with this administrative regulation.

(2) If an eligible child is receiving covered inpatient services, except for services in a long term care facility or behavioral health services in an inpatient facility on a long-term basis, on a birthday which will make the child ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age.

(3) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of the child's birth if the child has not reached his or her first birthday.

(4)(a) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(b) If a parent is not included in the case, a caretaker relative or relatives may be included to the same extent the caretaker relative would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.

(5) For an individual eligible on the basis of utilizing his or her excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.

(6) If a family member is pregnant, the unborn child shall be considered as a family member for income determination purposes.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2022

FILED WITH LRC: July 19, 2022 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held October 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 17, 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 October 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income (or MAGI.)

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income. The Affordable Care Act mandates that the modified adjusted gross income be used (effective January 1, 2014) to determine Medicaid eligibility for certain populations rather than the prior Medicaid eligibility rules; thus, the administrative regulation is necessary to comply with the federal mandate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with a federal mandate to establish the modified adjusted gross income as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations of individuals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with a federal mandate to establish the modified adjusted gross income as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations 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: The amendment changes the administrative regulation by implementing a state plan amendment (SPA) required by 2022's SB 178 to extend Medicaid coverage to new mothers for one year following the birth of a child. The amendment also includes a modification that allows for noncitizens to receive emergency services, and for noncitizens who are pregnant to receive prenatal and maternal care services.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to implement 2022's SB 178.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to implement 2022's SB 178.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation conforms to a statutory change made during the 2022 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Pregnant women will be impacted by this administrative regulation. There are approximately 24,000 pregnancies in the Medicaid program each year. DMS anticipates that up to 1,750 individuals will receive a full year of postpartum

Medicaid services by implementing this legislation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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). No costs are imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Eligible individuals will be eligible for a full year of postpartum Medicaid benefits.

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

(a) Initially: The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

(b) On a continuing basis: The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and under the Affordable Care Act and matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendments to this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the income standard applies equally to all affected individuals.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

(3) Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations governed by the new requirements include children under nineteen (19) [excluding children in foster care]; pregnant women; caretaker relatives with income up to 133 percent of the federal poverty level; adults with no

child under nineteen (19) with income up to 133 percent of the federal poverty level who are not otherwise eligible for Medicaid benefits; and targeted low-income children with income up to 150 percent of the federal poverty level.

Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard.

Additionally, states are prohibited from applying an asset or resource test for eligibility purposes for the aforementioned population.

States are also required to create and adopt an income threshold (under the modified adjusted gross income) that ensures that individuals who were eligible for Medicaid benefits prior to January 1, 2014 (the date that the modified adjusted gross income standard is adopted) do not lose Medicaid coverage due to the modified adjusted gross income standard taking effect.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

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 (DMS) 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. 42 C.F.R. 435.603 authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS estimates that the Medicaid expansion has brought in at least \$1.4 billion in federal funds into the state in 2021 (this number is exclusive of rate enhancement programs utilized for hospitals and emergency medical transport). In addition, DMS estimates that more than 16,700 jobs have been created within the Commonwealth as a result of the Medicaid expansion. Furthermore, in 2021, approximately \$30 million in income tax revenue, \$29.4 million in sales tax increases, and \$12 million in local occupational and payroll taxes were generated when compared to not expanding the Medicaid program.

(b) How 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 estimates that the Medicaid expansion has brought in at least \$1.4 billion in federal funds into the state in 2021 (this number is exclusive of rate enhancement programs utilized for hospitals and emergency medical transport). In addition, DMS estimates that more than 16,700 jobs have been created within the Commonwealth as a result of the Medicaid expansion. Furthermore, in 2021, approximately \$30 million in income tax revenue, \$29.4 million in sales tax increases, and \$12 million in local occupational and payroll taxes were generated when compared to not expanding the Medicaid program.

(c) How much will it cost to administer this program for the first year? The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

(d) How much will it cost to administer this program for subsequent years? The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Behavioral Health, Developmental and Intellectual Disabilities Division of Program Integrity (Amendment)

908 KAR 1:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.

RELATES TO: KRS 198B.260, 218A.180, 218A.202, 222.231, 222.462, 21 C.F.R. 1301.72, 1301.74, 1301.75, 1301.91, 1301.92, 42 C.F.R. Part 8, 15 U.S.C. 1471

STATUTORY AUTHORITY: KRS 222.231(2), (12), 222.462

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.231(2) requires the cabinet to promulgate administrative regulations to establish requirements and standards for treatment programs, including health and safety standards, patient care standards, and classification of alcohol and other drug use[abuse] programs according to type, range of services, and level of care provided. KRS 222.231(12) requires the cabinet to promulgate administrative regulations to establish standards of operation for narcotic treatment programs. KRS 222.462 requires the cabinet to develop enhanced licensure and quality standards for substance use disorder treatment and recovery. This administrative regulation establishes standards for nonhospital-based alcohol and other drug treatment entities (AODE) that provide ambulatory withdrawal management, outpatient treatment services, intensive outpatient services, partial hospitalization, or office-based opiate treatment services. This administrative regulation further establishes standards for the operation of narcotic treatment programs in accordance with KRS 222.231(12) and 42 C.F.R. Part 8.

Section 1. Definitions. (1) "Approved controlled substance" means the drugs methadone, buprenorphine, or other FDA-approved drug used in the treatment of narcotic addiction in a Narcotic Treatment Program.

(2) "CHFS" or "cabinet" means the Cabinet for Health and Family Services.

(3) "Central Registry" means a cabinet-approved electronic system used to register patients at a licensed narcotic treatment program (NTP) for the purpose of preventing simultaneous enrollment in other NTPs, gathering program-compliance information, and monitoring performance data.

(4) "Correctional Facility" means a jail, prison, or other place of incarceration by a government official.

(5)(3) "CSAT" means the Center for Substance Abuse Treatment.

(6)(4) "DEA" means the Drug Enforcement Administration.

(7)(5) "Dose" means a one (1) day quantity of an approved controlled substance[,] administered on site at a narcotic treatment program[, in not less than one (1) fluid ounce of an oral solution, formulated to minimize misuse by injection].

(8)(6) "Drug screening" means the process by which a program determines the presence or the absence of drugs in the body fluids.

(9)(7) "Main program" means the location where all administrative and medical information related to a narcotic treatment program is retained for the purpose of on-site reviews by federal agencies or the state narcotic authority.

(10)(8) "Medication station" means any dosing location that obtains its drug supply from the main program site and retains all records (except dosing, drug screens) at the main location]is defined and authorized as a medication unit in 42 C.F.R. 8. Medication stations are not extension sites as established in 908 KAR 1:370 Section 2(1)(c).

(11) "Mobile unit" means a narcotic treatment program (NTP) operating from a motor vehicle that:

(a) Serves as a mobile component for an existing licensed NTP;

(b) Operates under the registration of the NTP; and

(c) Engages in maintenance or detoxification treatment with narcotic drugs in schedules II-V at a location or locations remote from its registered and licensed location in Kentucky.

(12) "Program prescriber" means:

(a) A practitioner as defined in KRS 218A.010(40); and

(b) Is authorized to prescribe Schedule II controlled substances by state and federal requirements;

(13)(9) "SNA" means the state narcotic authority. The Department for Behavioral Health, Developmental and Intellectual Disabilities is the SNA for Kentucky.

(14)(40) "Take-home dose" means a quantity of an approved controlled substance, which the patient[client] is eligible to take off the premises of a narcotic treatment program.

(15)(14) "Treatment phase" means a stage in the patient's[client's] progress through a narcotic treatment program's sequential treatment system.

(16)(42) "Voluntary withdrawal management" means a medically supervised withdrawal from the approved controlled substance requested by a patient[client] of a narcotic treatment program.

Section 2. Ambulatory Withdrawal Management. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that provides ambulatory withdrawal management or maintenance services shall accept and provide services only to patients[clients] meeting the:

(a) Diagnostic criteria for a substance-related disorder for alcohol, tobacco, and other drug use as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM); and

(b) Dimensional criteria for outpatient services as established in the most recent version of The American Society of Addiction Medicine (ASAM) Criteria.

(2) Ambulatory withdrawal management services shall:

(a) Be provided in regularly scheduled sessions;

(b) Be delivered in accordance with:

1. Clinical protocols established for ambulatory withdrawal management in the most recent version of The ASAM Criteria; or

2. Nationally recognized, evidence-based clinical protocols approved by the cabinet; and

(c) Include the following features:

1. Specialized psychological and psychiatric consultation and supervision for biomedical, emotional, behavioral, and cognitive problems as indicated;

2. Completion of a comprehensive medical history and physical examination of the patient[client] at admission;

3. Affiliation with other levels of care, including other levels of specialty addiction treatment for additional problems identified through the comprehensive biopsychosocial assessment required by 908 KAR 1:370, Section 18;

4. Appropriate laboratory and drug screening; and

5. Twenty-four (24) hour access to emergency medical consultation services if needed.

(3) Staff shall include:

(a) Physicians and licensed health practitioners acting within their scope of practice who, if not present on-site at the time of admission, shall be readily available to evaluate and confirm that ambulatory withdrawal management is safe for the patient[client]; and

(b) Clinical staff who shall be knowledgeable about the biopsychosocial dimensions of alcohol, tobacco, and other substance use disorders, including the signs and symptoms of alcohol and other drug intoxication and withdrawal.

(4) Therapies offered by ambulatory withdrawal management services shall include:

(a) Individual assessment;

(b) Medication or non-medication methods of withdrawal management;

(c) Monitoring, assessment, and management of signs and symptoms of intoxication and withdrawal by a physician or licensed health practitioner acting within their [his-or-her] scope of practice;

(d) Patient education;

(e) Non-pharmacological clinical support;

(f) Involvement of family members or significant others in the withdrawal management process; and

(g) Discharge or transfer planning, including referral for counseling and involvement in community recovery support groups.

(5) A program shall establish an individualized treatment plan in accordance with 908 KAR 1:370, Section 19 that includes:

(a) Problem identification in dimensions two (2) through six (6) of the most recent version of The ASAM Criteria;

(b) Development of treatment goals and measurable treatment objectives;

(c) Activities designed to meet the treatment objectives and management of withdrawal syndrome;

(d) Daily assessment of:

1. Progress during withdrawal management; and

2. Any treatment changes;

(e) Transfer and discharge planning, beginning at the point of admission; and

(f) Referral and linkage arrangements for:

1. Counseling;

2. Medical care;

3. Psychiatric care; and

4. Continuing care.

(6) Progress notes shall:

(a) Be maintained in the patient[client] record in accordance with 908 KAR 1:370, Section 17(4)(h);

(b) Reflect implementation of the treatment plan;

(c) Document the patient's[client's] response to treatment; and

(d) Include each amendment of the treatment plan.

(7) Withdrawal rating scale tables and flow sheets that include tabulation of vital signs shall be used as needed.

(8) Treatment of a patient[client] shall continue until:

(a) Withdrawal signs and symptoms are sufficiently resolved so that the patient[client] can participate in:

1. Self-directed recovery; or

2. Ongoing treatment without the need for further medical or nursing withdrawal management monitoring;

(b) The patient's[client's] signs and symptoms of withdrawal have:

1. Failed to respond to treatment; and
2. Intensified so that transfer to a more intensive level of withdrawal management is indicated; or

(c) ~~Ambulatory~~[The client is unable to complete ambulatory] withdrawal management is ~~not adequate to meet the severity of the patient's substance use disorder~~[despite an adequate trial, meaning the client is experiencing intense craving and evidencing insufficient coping skills to prevent continued alcohol or other drug use concurrent with the withdrawal management medication, indicating a need for more intensive services].

Section 3. Outpatient Treatment Services. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that offers outpatient treatment services:

(a) Shall provide alcohol and other drug use[abuse] counseling to each patient[client], with counseling provided to no more than twelve (12) patients[clients] per clinician if provided in a group;

(b) Shall provide each patient[client] with education regarding:

1. The disease of addiction;
2. The patient's[client's] diagnosis;
3. The effects of alcohol and other drug use [abuse];
4. The risks of exposure to human immunodeficiency virus (HIV), hepatitis, and other health consequences of substance use disorder;

5. Family issues related to substance use disorder; and

6. Relapse prevention;

(c) Shall refer each patient[client] to [recovery support] services specific to addiction treatment and recovery, which may include:

1. Support groups;
2. Peer support;
3. Recovery housing;
4. Community supports;
5. Supported employment;
6. Co-occurring disorders; and

7. Medications for addiction treatment[Medication-assisted treatment];

(d) Shall have a direct affiliation with, or close coordination through referral to more intensive levels of care and medication management;

(e) Shall have a procedure to inform patients[clients] of the availability of emergency services available twenty-four (24) hours a day, seven (7) days a week; and

(f) May provide additional therapies including:

1. Motivational enhancement;
2. Occupational and recreational therapy;
3. Psychotherapy; or
4. Medications for addiction treatment[Medication-assisted therapy].

(2) Staff who provide outpatient treatment services:

(a) Shall be able to obtain and interpret information regarding the patient's[client's] biopsychosocial needs;

(b) Shall be knowledgeable about the biopsychosocial dimensions of alcohol, tobacco, and other substance use disorders, including assessment of the patient's[client's] stage of readiness to change;

(c) Shall be capable of monitoring stabilized mental health problems and recognizing any instability in a patient[client] with co-occurring disorders; and

(d) May include physicians and other licensed health care practitioners acting within their scope of practice on staff if medications for addiction treatment are[medication-assisted therapy is] provided.

(3) Progress notes shall:

(a) Be maintained in the patient[client] record in accordance with 908 KAR 1:370, Section 17(4)(h);

(b) Reflect implementation of the treatment plan;

(c) Document the patient's[client's] response to therapeutic interventions for all disorders treated; and

(d) Include each amendment of the treatment plan.

(4) The patient's[client's] discharge summary shall be completed within thirty (30) calendar days of discharge.

Section 4. Intensive Outpatient Program. (1) In addition to the licensing requirements of 908 KAR 1:370 and Section 3 of this administrative regulation, an outpatient AODE that offers intensive outpatient services shall ensure that the program provides a multi-modal, multi-disciplinary structured approach to services that:

- (a) Are more intensive than outpatient treatment services; and
- (b) Provide a minimum of services:

1. For adults:

a. Nine (9) hours per week; and

b. Given on no less than three (3) days per week; or

2. For adolescents:

a. Six (6) hours per week; and

b. Given on no less than two (2) days per week.

(2) Services shall include:

(a) Individual outpatient therapy;

(b) Group outpatient therapy;

(c) Family outpatient therapy, unless contraindicated;

(d) Crisis intervention; and

(e) Psycho-education during which the patient or patient's[client or client's] family member shall be provided with information regarding:

1. The patient's[client's] diagnosis;

2. Reasons why a particular treatment might be effective for reducing symptoms; and

3. How to cope with the patient's[client's] diagnosis or condition in a successful manner.

(3) A program shall:

(a) Maintain a patient[client]-to-staff ratio of no more than ten (10) patients[clients] to one (1) staff;

(b) Establish an individualized treatment plan for each patient[client] in accordance with 908 KAR 1:370, Section 19 that focuses on stabilization and transition to a lower level of care;

(c) Provide access to a:

1. Board-certified or board-eligible psychiatrist for consultation, which may be delivered through the use of telehealth technology; and

2. Psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

(d) Provide each patient[client] with a schedule of all planned therapeutic activities or otherwise ensure that the schedule is conspicuously posted in a public area of the facility.

(4)(a) If the program prepares meals on-site for a patient[client] who receives services for at least five (5) or more consecutive hours, the program shall be subject to inspection in accordance with 902 KAR 45:005.

(b) If patients[clients] prepare their own meals on-site or are otherwise responsible for their meals, a food service permit shall not be required.

Section 5. Partial Hospitalization. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that offers partial hospitalization services shall be fully accredited by at least one (1) of the following:

(a) Joint Commission;

(b) Commission on Accreditation of Rehabilitation Facilities;

(c) Council on Accreditation; or

(d) Other nationally recognized accrediting organization with comparable standards.

(2) Partial hospitalization services shall:

(a) Be short-term, four (4) to six (6) weeks on average;

(b) Meet the same standards required for intensive outpatient services, except for Section 4(1)(b) of this administrative regulation;

(c) Be provided at least five (5) hours a day and at least four (4) days per week; and

(d) Provide access to educational services for adolescent patients[clients].

(3) An AODE program that provides partial hospitalization shall comply with 902 KAR 45:005 if the program provides meals directly

to its patients~~[clients]~~.

Section 6. Office-based Opioid~~[Opiate]~~ Treatment Services. (1) Excluding methadone-based treatment, a facility shall be licensed as an outpatient AODE that provides office-based opioid~~[opiate]~~ treatment (OBOT) services if:

(a) Any individual with ownership interest in the facility is not a Kentucky-licensed physician; and

(b) The facility employs or has an affiliation with a physician, physician assistant, or advanced practice registered nurse who prescribes ~~[products containing buprenorphine or other]~~ FDA-approved medications~~[drugs]~~ for the treatment of opioid use disorder to fifty (50) percent or more of the facility's patients.

(2) In addition to the licensing requirements of 908 KAR 1:370, an OBOT shall:

(a) Designate a medical director who shall:

1. Be responsible for the supervision of all medical staff and the administration of all medical services at the facility, including compliance with all federal, state, and local laws and administrative regulations regarding the medical treatment of opioid use disorder;

2. Be physically present at the facility at least twenty-five (25) percent of the time the facility is open to the public each week;

3. Conduct a monthly review of ten (10) percent of the medical charts for patients currently admitted at the facility and document each chart review; and

4. Not serve as medical director of more than three (3) OBOT facilities;

(b) Have sufficient medical staff on-site to provide the medical treatment and oversight necessary to serve patient needs, including a practitioner authorized to prescribe ~~[products containing buprenorphine or other]~~ FDA-approved medications~~[drugs]~~ for the treatment of opioid use disorder on-site during all hours of operation;

(c) Ensure that each practitioner authorized to prescribe~~[physician or advanced practice registered nurse]~~ complies with the prescribing and dispensing standards in accordance with 201 KAR 9:270 or 201 KAR 20:065 respectively for FDA-approved medications ~~[drugs]~~ used for the treatment of opioid addiction;

(d) Ensure that a practitioner authorized to prescribe~~[physician or advanced practice registered nurse]~~ documents in the patient's record whether or not the patient is compliant with prescribed dosing as evidenced by the results of:

1. A KASPER report released in accordance with KRS 218A.202(7)(e); and

2. Drug screening;

(e) Offer individual and group outpatient therapy;

(f) Monitor compliance with recommended non-medication therapies;

(g) Provide case management or care coordination services; and

(h) Implement pre-employment and ongoing random drug screening of all facility employees.

(3) Admission and discharge.

(a) ~~Each~~~~[Prior to admission to the OBOT facility, each prospective]~~ patient shall be evaluated to determine whether or not the patient meets the diagnostic criteria for an opioid use disorder as defined in the most recent version of the DSM.~~[A prospective patient shall not be admitted unless he or she meets those criteria.]~~

(b) The OBOT facility shall use evidence-based assessment and evaluation tools that have been peer reviewed and validated, including the most recent edition of:

1. ASAM placement criteria;

2. Addiction Severity Index;

3. Substance Abuse and Mental Health Services Administration (SAMHSA) Treatment Improvement Protocol; or

4. Any other equivalent assessment and evaluation tool.

(c) Prior to receiving treatment at the facility, the patient shall acknowledge in writing having received education on:

1. Treatment options, including withdrawal management, and the benefits and risks associated with each treatment option;

2. The risk of neonatal abstinence syndrome and use of voluntary long-acting reversible contraception for all female patients

of child-bearing age and potential;

3. Prevention and treatment of chronic viral illnesses, such as HIV and hepatitis;

4. Expected therapeutic benefits and adverse effects of treatment medication;

5. Risks for overdose, including drug interactions with central nervous system depressants, and return to use~~[relapse]~~ after a period of abstinence from opioids; and

6. Overdose prevention and reversal agents.

(d) An OBOT facility shall not provide any type of reward to a third party for referral of potential patients to the clinic.

(4) Comprehensive assessment. The facility shall complete a comprehensive assessment in accordance with 908 KAR 1:370, Section 18 and in accordance with peer-reviewed opioid use disorder~~[medication-assisted]~~ treatment guidelines developed by nationally recognized organizations, such as SAMHSA and the American Society of Addiction Medicine.

(5) Treatment planning. An OBOT facility shall complete an individualized treatment plan for each patient in accordance with 908 KAR 1:370, Section 19, featuring a plan for aftercare that includes the development of a list of appropriate treatment resources available to the patient in their ~~[his or her]~~ community.

(6) Discharge.

(a) A discharge plan shall be completed at the time of the patient's discharge by the staff person who has primary responsibility for coordinating or providing for the care of the patient, including a final assessment of the patient's status at the time of discharge.

(b) If applicable, a parent, guardian, family member, or responsible person may participate in aftercare and discharge planning.

(c) The reason for any patient not participating in aftercare and discharge planning shall be documented in the patient's record.

(d) The OBOT facility shall document if a patient discontinues services.

(e) Determination of the events that constitute a patient's discontinuation of services at an OBOT shall be at the discretion of the facility.

Section 7. Narcotic Treatment Programs. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that operates a narcotic treatment program (NTP) using an FDA-approved medication~~[methadone]~~ to treat individuals with substance use disorder shall comply with:

(a) 42 C.F.R. Part 8;~~and]~~

(b) The requirements of this section; and

(c) Submit and maintain all required data in the Central Registry.

(2) An NTP requesting a change of location shall:

(a) Comply with 908 KAR 1:370, Section 4; and

(b) Provide information regarding any:

1. Dosing procedural changes; and

2. Drug distribution problems that could occur due to the relocation.

(3) Organization and operation.

(a) In addition to meeting the requirements of 908 KAR 1:370, Section 9, an NTP shall develop and comply with policies and procedures that include:

1. Waiting list criteria;

2. Data collection for participation in the program in accordance with 908 KAR 1:300;

3. A protocol that ensures the integrity of the chain of custody for all drug screens;

4. A protocol for voluntary and involuntary termination of a patient's~~[client's]~~ participation in the program, including reasons for termination for cause;

5. Requirements for the preparation and labeling of patient~~[client]~~ doses in accordance with the requirements of subsection (10) of this section;

6. Quality assurance and utilization review;

7. A patient~~[client]~~ identification system;

8. A system to prevent multiple program registrations;

9. Inventory maintenance;

10. A protocol for daily dosing schedules; and
11. Drug screening procedures that utilize random selection or unannounced collection.

(b) An NTP shall order approved controlled substances from the manufacturer or approved wholesalers in accordance with 42 C.F.R. Part 8.

(c) Policies for voluntary withdrawal management and involuntary termination from NTP treatment shall be in accordance with 42 C.F.R. Part 8.12.

(d) An NTP shall have and follow policies that prohibit recruitment of new patients[clients] into the program by offering:

1. A bounty;
2. Monetary, equipment, or merchandise rewards; or
3. Free services for individuals.

(e) An NTP shall implement the system of treatment phases established in subsection (12) of this section.

(f) An NTP shall be open for dosing services six (6)[seven (7)] days a week with the optional exception of:

1. New Year's Day, January 1;
2. Presidents Day;
3. Martin Luther King Day;
4. Easter Sunday;
5. Memorial Day, last Monday in May;
6. Independence Day, July 4;
7. Labor Day, first Monday in September;
8. Thanksgiving Day, fourth Thursday in November;[and]
9. Christmas Day, December 25; and
10. Any federal holiday.

(g) An NTP shall have dosing times sufficient to meet the needs of its patients[clients].

(h) An NTP shall have a written emergency plan that complies with 908 KAR 1:370, Section 9, establishing the course of action in the event of a natural or manmade disaster or any sudden closing. The plan shall also include:

1. Alternate providers for each payment type that the NTP accepts; and
2. A communication plan to reach each patient[client] and provide information and instructions.

(i) The initial drug screens and confirmatory tests for drugs tested on behalf of the NTP shall meet federal[the following] standards for the following:

1. [Marijuana metabolites:
 - a. Initial screen 50ng/ml; and
 - b. Confirmation test 15ng/ml;
2. [Cocaine metabolites;]:
 - a. Initial screen 300ng/ml; and
 - b. Confirmation test 150ng/ml;]
 2. [3.] Opioid [Opiates] metabolites;]:
 - a. Initial screen 300ng/ml; and
 - b. Confirmation test 300ng/ml;]
 3. [4.] Amphetamines;]:
 - a. Initial screen 4000ng/ml; and
 - b. Confirmation test of amphetamine 500ng/ml and methamphetamine confirmation test 500ng/ml;]
 4. [5.] Barbiturates;]:
 - a. Initial screen 300ng/ml; and
 - b. Confirmation test 300ng/ml; and]
 5. [6.] Benzodiazepines;]:
 - a. Initial screen 300ng/ml; and
 - b. Confirmation test 300ng/ml;]

(j) An NTP that dispenses buprenorphine shall:

1. Have sufficient medical staff on-site to provide the medical treatment and oversight necessary to serve patient needs, including a practitioner authorized to prescribe FDA-approved medications for the treatment of opioid use disorder on-site during all hours of operation;

2. Ensure that each practitioner authorized to prescribe or dispense complies with the prescribing and dispensing standards in accordance with 201 KAR 9:270 or 201 KAR 20:065 respectively for FDA-approved medications used for the treatment of opioid use disorder;

3. Ensure that a practitioner authorized to prescribe or dispense

documents in the patient's record whether or not the patient is compliant with prescribed dosing as evidenced by the results of:

a. A KASPER report released in accordance with KRS 218A.202(7)(e); and

b. Drug screening;

c. Provide patient dosing of buprenorphine which is exempt from treatment protocol phasing as outlined in subsection (12) of this section.

(4) Medication stations.

(a) Medication stations shall not require a separate license.

(b) To establish a medication station, the NTP shall submit to the SNA, an Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) form incorporated by reference in 908 KAR 1:370.

(c) ~~[A medication station shall be located between forty-five (45) miles and ninety (90) miles from the main NTP.~~

~~(d) The medication station shall obtain its supply of approved controlled substances from the stocks of the main NTP.~~

(e) The medication station shall provide the following services:

1. Dosing; and
2. Drug screen collection.

~~(d)[(f)] The program director shall develop a system to prevent patients[clients] from dosing at both the main NTP and the medication station.~~

~~[(g) Other services shall not be provided at the medication station without prior approval of the CSAT and SNA.]~~

(5) Personnel.

(a) An NTP shall have a program director who shall:

1. Have at least two (2) years of experience in the treatment of addiction; and

2.a. Be certified by the Board of Certification of Alcohol and Drug Counselors;

b. Hold at least a master's degree in the field of addiction or a related field; or

c. Be a physician, registered nurse, physician assistant, pharmacist, or nurse practitioner certified by the licensing subspecialty.

(b) The program director may be the program sponsor as required by 42 C.F.R., Part 8.

(c) The program director shall:

1. Be responsible for ensuring compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility;

2. Provide onsite supervision of employees;

3. Ensure the laboratory performing the testing required under this administrative regulation is approved by the SNA and is certified by the Centers for Medicare and Medicaid Services as a Clinical Laboratory Improvement Amendments (CLIA) certified laboratory; and

4. Ensure that initial drug screens and confirmatory tests for drugs tested on behalf of the program meet the standards in subsection (3)(i) of this section.

(d) An NTP shall have a medical director who shall be:

1. Licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth; and

2.a. A board eligible psychiatrist with at least three (3) years of experience in the provision of services to persons who have a substance use disorder; or

b. Board-certified as an addiction medicine specialist.

(e) The medical director shall function autonomously within an NTP free from any protocol imposed by an NTP, director, or any other entity except under the guidelines established in 42 C.F.R. Part 8 and this administrative regulation.

(f) The medical director shall be responsible for the NTP's adherence to federal, state, and local laws and administrative regulations pertaining to the operation of the facility.

(g) An NTP may have a program prescriber[physician]. If an NTP has a program prescriber[physician], the program prescriber[physician] shall be:

1. Licensed by the Commonwealth of Kentucky to prescribe controlled substances[practice medicine within the Commonwealth]; and

2.a. Board-certified as an addiction medicine specialist; or
b. A person who has at least one (1) year of experience in providing service to individuals with a substance use disorder.

(h) A program prescriber[physician] shall be under the supervision of the medical director and shall function autonomously within the NTP free from any protocol imposed by any NTP, director, or any other entity except under the guidelines imposed by 42 C.F.R. Part 8 and this administrative regulation.

(i) A program prescriber[physician] shall be responsible for the NTP's compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility.

(j) The medical director may be the program prescriber[physician].

(k)

1. There shall be a minimum of one (1) medical director or program prescriber[physician] on staff for every 300 patients[clients], or fraction thereof, enrolled in an NTP; and

2. The medical director or program prescriber shall not be responsible for more than 300 total patients, which includes all patients of the NTP nationally.

(l) The medical director or program prescriber[physician] shall:

1. Ensure [there is evidence of physiologic dependence on narcotics for] all patients[clients] admitted to the NTP meet the most recent version of DSM criteria for opioid use disorder;

2. Ensure [there is a history of addiction, or] that any exceptions to admissions criteria are approved by the SNA and documented in the patient's[client's] record before the first dose is administered;

3. Ensure that appropriate medical histories and physical examinations have been performed before the first dose shall be administered;

4. Ensure that appropriate laboratory studies have been performed;

5. Review all laboratory testing results and documents;

6. Document, sign, or cosign all medical orders, within forty-eight (48) hours, including the first dose of an approved controlled substance;

7. Document, sign, or cosign all subsequent medication orders within forty-eight (48) hours, including dose increases and decreases, changes in frequency of take-home doses, emergency situations, or special circumstances;

8. Ensure that a review and cosignature of all telephone or other verbal orders are documented within forty-eight (48) hours of the order;

9. Supervise staff responsible for preparation and administration of the approved controlled substances;

10. Ensure compliance with program procedures and administrative regulations; and

11. Order through the licensed NTP all:

a. Initial doses; and

b. Increases or decreases.

(m) An NTP shall hire dosing personnel who shall:

1. Hold a license as a registered nurse, licensed practical nurse, or pharmacist; and

2. Not be dually assigned as clinicians.

(n) An NTP shall provide dosing personnel in sufficient numbers to meet the needs of the patients[clients] during dosing hours.

(o) Dosing prescribers[physicians] and pharmacists shall comply with KRS 218A.180 related to labeling if preparing doses to be taken outside the program site.

(p) An NTP shall hire clinicians who meet the requirements of 908 KAR 1:370, Section 11.

(q) There shall be at least one (1) clinician for every fifty (50) patients[forty (40) clients] in the program.

(6) Security and control.

(a) The program director and dosing nurse supervisor or pharmacist shall conduct quarterly reviews to ensure compliance with this subsection and 42 C.F.R. Part 8.12.

(b) Security of the narcotic safe and the building perimeter shall be checked at least quarterly with the contracted security company.

(c) The safe shall be locked at all times while staff are not obtaining, restocking, or inventorying controlled substances.

(d) 1. Inventory reconciliation shall be conducted at least

quarterly;

2. All reconciliation documents shall be retained by the program for at least five (5) years; and

3. All DEA and federal regulations concerning [Five (5)-percent or more of any] inventory discrepancies shall be followed, and any inventory discrepancy required to be reported to the [SNA and the] DEA offices shall also be reported to the SNA within forty-eight (48) hours of reconciliation.

(e) Dosing personnel shall count all new bottles of narcotic tablets before removing any for patient[client] doses.

(f) Any discrepancies in narcotic tablet count shall be reported to the SNA, DEA, CSAT, and the cabinet within forty-eight (48) hours of the event.

(g) A system shall be in place to assure the NTP completes the DEA biennial inventory of narcotic drugs on hand.

(h) Order forms for controlled substances, the dosing records, and inventory reconciliation records shall conform with 42 C.F.R. Part 8.12 and shall be maintained in a locked, secured area separate from the storage site of the controlled substances.

(i) Quarterly, the program director or designee shall review a ten (10) percent random sample of patient[client] records for:

1. A consent to treatment form signed by the patient[client]; and

2. A release of information form signed by the patient[client] that includes:

a. A description of the specific type of confidential information to be obtained or released; and

b. The specific dates that the release is to cover.

(j) If the program director serves as a clinician, the medical director shall review a ten (10) percent random sample of the program director's patient[client] records for inclusion of the documents listed in paragraph (i) of this subsection.

(k) An NTP shall retain on file documentation that quarterly reviews were conducted, which shall be available for review by regulatory agencies for at least five (5) years.

(7) Admission policies.

(a) The admitting physician or licensed health practitioners acting within their scope of practice for the NTP shall comply with the admission requirements of 42 C.F.R. Part 8.12.

(b) When a patient[client] applies for admission to an NTP, the patient[client] shall be required to sign a release of information that authorizes a program to release or solicit information regarding the patient's[client's] status in any other substance use disorder treatment[abuse] program.

(c) In addition to complying with the requirements of 908 KAR 1:370, Section 16, an NTP shall:

1. Provide each patient[client] written information describing all facets of the program in a manner that the patient[client] understands; and

2. Explain the contents of all required federal forms to the patient[client] before he or she is asked to sign.

(d) At admission, readmission, and at six (6) month intervals for the first two (2) years of treatment, and as indicated clinically after two (2) years, an NTP shall give the patient[client] information on communicable diseases including:

1. Tuberculosis;

2. Hepatitis;

3. Sexually transmitted diseases; and

4. HIV/AIDS.

(e) A patient[client] shall have access to voluntary HIV testing at admission and if clinically indicated thereafter and shall receive HIV/AIDS pre-test and post-test counseling if the patient[client] elects to be tested.

(f) In order for an NTP to admit or continue to treat a patient[client] who is pregnant, the medical director or program prescriber[physician] shall determine and document in the patient's[client's] record that the patient[client] is medically able to participate in the program.

(g) Pregnant individuals with an opioid[epiate] use disorder shall be given priority for admission and services if the NTP has a waiting list.

(8) Patient[client] transfers and guest dosing.

(a) An NTP may accept patients[clients] transferring from

another NTP if the patient[client] meets the criteria for admission in subsection (7) of this section and in accordance with this subsection.

(b) The program prescriber[physician] or medical director at the receiving NTP shall review the patient's[client's] records on an individual basis to determine the patient's[client's] placement on the receiving program's patient[client] listing. Reviews for proposed transfers shall determine the patient's[client's]:

1. Need;
2. Program placement availability; and
3. Circumstances for the transfer request.

(c) If a patient transfers[client] from an existing narcotic[out-of-state, medication-assisted] treatment program[transfers to an NTP located in Kentucky], the NTP shall ensure, if clinically indicated, the patient remains in their confirmed current phase from the sending NTP[designate the client as a new admission or "entry phase" as established in subsection (12) of this section unless other phase levels are approved by the SNA].

(d) The sending NTP shall:

1. Forward all relevant patient[client] records to the receiving NTP within seventy-two (72) hours of receipt of a request to transfer, excluding any day the NTP is closed; and

2. Continue dosing until the patient[client] is enrolled at the receiving NTP.

(e) The receiving NTP shall:

1. Contact the sending NTP to confirm the patient's[client's] enrollment prior to administering the patient's[client's] initial dose at the receiving NTP; and

2. Include documentation in the patient's[client's] medical record of the:

a. Date of receipt of the patient's[client's] records from the sending NTP, including reason for transfer; and

b. Verification that the patient[client] meets the admission criteria in subsection (7) of this section.

(f) An NTP may provide guest dosing to patients who are not eligible for take home doses.

(g) The NTP may develop policies based upon national federal guidelines and best practices.

(h) The NTP shall check the individual's enrollment in the central registry.

(i) The NTP shall confirm and provide the correct guest dosing arrangement with the home NTP.

(9) Drug screens.

(a) Drug screen sample collection policies intended to prevent falsification shall be developed and followed.

(b) Drug screens shall be analyzed for the following drugs:

1. Approved controlled substance;
2. Cocaine;
3. Opioids[Opiates];
4. Amphetamines;
5. Barbiturates;
6. [Tetrahydrocannabinol];
- 7.] Benzodiazepines;

7.[8.] Any other drug or drugs that has been determined by the NTP or the SNA to be misused[abused] in that program's locality; and

8.[9.] Any other drugs that could have been misused[abused] by the patient[client].

(c) Drug screens shall be reviewed by the treatment team monthly to determine the patient's[client's] reduction in the use of unauthorized medications.

(d) Controlled substance medications shall be considered unapproved usage if they are being used by the patient[client] without a valid prescription.

(e) A drug screen that is negative for the approved controlled substances allowed to be used in the NTP shall be considered positive for unauthorized drug use.

(f) An NTP shall not use drug screens as the sole criteria for involuntarily terminating a patient's[client's] participation in the program.

(g) When drug screening results are used, presumptive laboratory results shall be distinguished in the patient[client] record from results that are definitive.

(h) Samples used for drug screening purposes shall be handled in a manner that ensures patient[client] confidentiality.

(10) Dosing requirements.

(a) The dose prepared for a patient[client] shall be the quantity of approved controlled substances that is indicated on the patient's[client's] narcotic sheet within the medical record.

(b) The dose shall be labeled with the exact quantity of narcotic drug ordered.

(c) Take-home doses shall be formulated in a manner that reduces the likelihood of injecting the dose.

(d) Take-home doses of the approved controlled substances shall be packaged in containers in accordance with 15 U.S.C. 1471.

(e) The label of take-home doses shall include the:

1. Name of the program;
2. Address and telephone number of the program;
3. Name of the controlled substance;
4. Name of the patient[client];
5. Name of the prescriber [physician] ordering the substance;
6. Quantity of the controlled substance, unless the patient[client] has requested in writing that the quantity of the substance not be revealed to him or her;
7. Date of filling order; and
8. Instructions for medicating, including dosage amount and dates medication is to be taken.

(f) Dosing personnel shall not alter patient[client] doses without the medical director or program prescriber's[physician's] order.

(g) Verbal dosing orders shall be reduced to writing and signed by the medical director or program prescriber[physician] within forty-eight (48) hours of the order's receipt.

(h) The medical record shall indicate any reason for dose changes and shall be signed by the medical director or program prescriber [physician] within forty-eight (48) hours of the order's receipt.

(11) Patient[Clients] who are pregnant.

(a) If the medical director or program prescriber[physician] does not accept the responsibility for providing prenatal care for the term of the patient's[client's] pregnancy, then the medical director or program prescriber[physician] shall refer the patient[client] to:

1. A primary care physician who practices obstetrics; or
2. An obstetrician.

(b) The medical director or program prescriber[physician] shall inform the prescriber[physician] accepting the referral of the patient's[client's] participation in the NTP.

(c) The medical director or program prescriber[physician] shall ensure that appropriate arrangements have been made for the medical care of both the patient[client] and the child following the birth of the child.

(d) The medical director or program prescriber[physician] shall notify the pregnant patient's[client's] primary care physician of any changes in the patient's[client's] treatment.

(e) The program shall ensure that the following services are available for pregnant individuals and are a part of the treatment plan:

1. Nutritional counseling; and
2. Parenting training that includes information about:
 - a. Newborn care;
 - b. Handling a newborn;
 - c. Newborn health; and
 - d. Newborn safety.

(12) Treatment protocol phases.

(a) In accordance with 42 C.F.R. Part 8.12, NTPs shall comply with the treatment phase system as outlined in paragraphs (e) through (j) of this subsection for the dosing of methadone for treatment of opioid use disorder[to achieve the goals of:

1. Reduced health problems;
2. Reduced criminal activity;
3. Increased productivity;
4. Stabilization of family life; and
5. Eventual drug-free living].

(b) Program infractions shall include:

1. [Failed drug screens;
- 2.] Disruptive behavior at the clinic site; or

2.[3.] Threats to staff or other patients[clients; or
4. Failure to attend scheduled dosing or counseling appointments].

(c) Program non-compliance shall include:

1. Non-compliant drug screens; or

2. Failure to attend scheduled dosing or counseling appointments.

(d) Patient[Client] treatment plans shall be established, reviewed, and updated in accordance with 908 KAR 1:370, Section 19.

(e)[(d)] The medical director or program prescriber[physician] shall sign the treatment plan within thirty (30) days.

(f) A patient shall successfully complete current treatment protocol phase before entering the subsequent treatment protocol phase with no non-compliance issues, unless excused pursuant to paragraph (n) of this subsection, for at least ninety (90) consecutive days.

(g)[(e)] Phase one (1). Days one (1) to ninety (90) in treatment[Entry Phase. During the first ninety (90) days of treatment], all patients[clients] shall:

1. Attend clinic six (6)[seven (7)] times each week for observed ingestion of an approved controlled substance at the clinic site;

2. Be eligible to receive a one (1) day take-home dose of an approved controlled substance;

3. Be provided [weekly] counseling sessions to support the implementation of their treatment plan as clinically indicated;

4.[3.] Be informed about appropriate support groups; and

5.[4.] Provide a[an-observed] drug screen sample one (1) time per week on a random basis.

(h)[(f)] Phase two (2). Days ninety-one (91) to 180.[Phase one (1).]

1. In order for a client to enter phase one (1), the client shall:

a. Have participated in the "entry phase" for at least ninety (90) consecutive days; and

b. Not have committed any program infractions for at least ninety (90) consecutive days.

2. Once the patient[client] enters phase two (2)[one (1)] the patient[client] shall:

1.[a.] Attend clinic five (5)[six (6)] times each week for observed ingestion of an approved controlled substance;

2.[b.] Be eligible to receive a two (2)[one (1)] day take-home dose of an approved controlled substance;

3.[c.] Be provided [weekly] counseling sessions to support the implementation of their treatment plan as clinically indicated;

4.[d.] Provide a[an-observed] drug screen sample on a random basis at least monthly or more frequently if their treatment plan requires[every other week]; and

5.[e.] Be encouraged to attend [an] appropriate support groups[group].

(i)[(g)] Phase three (3). Days 181 to 270.[Phase two (2).]

1. In order for a patient[client] to enter phase three (3)[two (2)], the patient[client] shall be:

[a. Have participated in phase one (1) for at least ninety (90) consecutive days;

b. Not have committed any program infractions for at least ninety (90) consecutive days;

c. Be:

a. [(i)] Pursuing or engaged in gainful employment;

b. [(ii)] Pursuing vocational training;

c. [(iii)] Attending school;

d. [(iv)] Engaged in volunteer work;

e. [(v)] Attending parenting classes if they are a parent at home with children; or

f. [(vi)] A patient[client] with disabilities or other circumstances that might make compliance with this clause unattainable, if the patient[client] submitted a written waiver request to the SNA justifying specific reasons for the request that was not denied; and

2.[d.] Have a treatment plan to meet any special needs, including disabilities.

3.[2.] Patients[Clients] in phase three (3)[two (2)] shall:

a. Attend clinic four (4)[five (5)] times each week for observed ingestion of an approved controlled substance;

b. Be eligible to receive up to three (3)[two (2)] days of take-home doses of an approved controlled substance;

c. Provide a[an-observed] drug screen sample randomly on a monthly basis, or more frequently if their treatment plan requires;

d. Be provided [monthly] counseling sessions, [or more frequently if their treatment plan requires]as clinically indicated; and

e. Be encouraged to attend appropriate support groups outside the clinic.

(j)[(h)] Phase 4. Days 271 to 365.[Phase three (3).]

1. In order for the patient[client] to enter phase four (4)[three (3)], the patient[client] shall:

a. Have completed phase 3; and[participated in phase two (2) for at least ninety (90) consecutive days];

b. [Not have committed any program infractions for at least ninety (90) consecutive days; and

c.] Have met the same entry criteria requirements as established in phase three (3)[two (2)].

2. Patients[Clients] in phase four (4)[three (3)] shall:

a. Attend clinic one (1) time[three (3) times] each week for observed ingestion of an approved controlled substance;

b. Be eligible to receive up to six (6)[two (2)] days of take-home doses of an approved controlled substance;

c. Provide eight (8) random drug screen samples within a twelve month period[an observed drug screen sample randomly on a monthly basis], or more frequently if their treatment plan requires;

d. Be provided [monthly] counseling sessions, [or more frequently if their treatment plan requires]as clinically indicated; and

e. Be encouraged to attend appropriate support groups outside the clinic.

(k)[(i)] Phase 5. Days 365 to 730.[Phase three (4).]

1. In order for the patient[client] to enter phase five (5)[four (4)], the patient[client] shall have:

a. Successfully completed phase four (4)[three (3)]; and

b. Adhered to the requirements of the maintenance treatment program for at least 365 days[twelve (12) consecutive months].

2. Patient[Clients] in phase five (5)[four (4)] shall:

3. Be dosed at the clinic site once every fifteen (15) days[two (2) days per week] for observed ingestion of an approved controlled substance;

b. Be eligible for up to fourteen (14)[three (3)] days of take-home doses of an approved controlled substance;

c. Be provided an appropriate number of counseling sessions, which shall be based;

(i) Based on the clinical judgement of the program physician and program staff; and

[(ii) No less than one (1) per month; and]

d. Provide eight (8) random drug screen samples within a twelve month period[an observed drug screen sample randomly on a monthly basis], or more frequently if their treatment plan requires.

[3. Prior to successful completion of phase four (4), a plan shall be developed that shall assist the client toward a drug free treatment regimen for continued support.]

(l)[(j)] Phase 6. Days 731 and up.[Phase three (5).]

1. In order for the patient[client] to enter phase six (6)[five (5)], the patient[client] shall have:

a. Successfully completed phase five (5)[four (4)]; and

b. Adhered to the requirements of the maintenance treatment program for at least 731 days[two (2) consecutive years].

2. Patients[Clients] in phase six (6)[five (5)] shall:

a. Be dosed at the clinic site one (1) day per month[per week] for observed ingestion of an approved controlled substance;

b. Be eligible for up to thirty one[six (6)] days of take-home doses of an approved controlled substance;

c. Be provided an appropriate number of counseling sessions, which shall be based;

(i) Based on the clinical judgement of the program prescriber[physician] and program staff; and

[(ii) No less than one (1) per month; and]

d. Provide eight (8) random drug screen samples within a twelve month period[an observed drug screen sample randomly on a monthly basis], or more frequently if their treatment plan requires.

(m) The medical director may excuse a non-compliance issue

on a case-by-case basis focusing on the following:

1. The interactions between a positive drug screen and the medication used for treatment;

2. Past history of non-compliance issues;

3. Employment issues; and

4. Length of time in program.

(n) If the medical director excuses a non-compliance issue, as specified in paragraph (m) of this subsection, the non-compliance issue excused shall not be used to:

1. Move a patient out of a phase; or

2. Keep a patient from advancing phases.

(o) The medical director shall document the the non-compliance excuse in the patient's medical record.

(13) Take home dose restrictions and terminations.

(a) In determining the patient's[client's] take-home medications, the medical director or program prescriber[physician] shall act in accordance with 42 C.F.R. Part 8.12 and subsections (7) through (12) of this section.

(b) [An NTP shall restrict a client's take-home dosage privileges by moving the client back at least one (1) phase level on the schedule for take-home dosages if the client's drug screening results disclose the unauthorized presence any substance established in subsection (9)(b) of this section.

(c) An NTP shall restrict a patient's[client's] take-home dosage by moving the patient[client] back on the take-home dosage schedule if the medical director or program prescriber[physician] concludes that the patient[client] is no longer a suitable candidate for take-home privileges as presently scheduled.

(c)[(d)] An NTP shall revoke a patient's[client's] take-home privileges for not less than thirty (30) days and shall require the patient[client] to ingest each dosage at the facility for any of the following reasons:

1. The patient's[client's] drug screening discloses an absence of the controlled substance prescribed by the program;

2. The patient[client] is discovered to be misusing medication, as established in subparagraph 5. of this paragraph;

3. The patient[client] attempts to enroll in another NTP;

4. The patient[client] alters or attempts to alter a drug screen; or

5. The patient[client] is not satisfactorily adhering to the requirements of the NTP by the following:

a. The patient[client] has not complied with the rules of the NTP;

b. [There is indication that the client has repeatedly used drugs improperly;

c.] The patient[client] is sharing, giving away, selling, or trading their [his or her] approved controlled substance dosage; or

c.[d.] The patient[client] is not ingesting their[his or her] approved controlled substance dose in accordance with treatment program rules[;

e. There is indication that the client is selling, distributing, or otherwise involved with illicit drugs and their use; or

f. The client is not participating in an educational, vocational, or home-making activity].

(d)[(e)] A patient[client] whose daily dosage is twenty-five (25) milligrams or less shall be exempt from paragraph (c)[(d)4.] of this subsection.

(e)[(f)] A patient[client] whose take-home privileges were revoked or restricted may regain take-home privileges according to the following schedule:

1. Phase one (1) – satisfactory adherence for at least thirty (30) days;

2. Phase two (2) – satisfactory adherence for at least thirty (30) days after regaining phase one (1) privileges;

3. Phase three (3) – satisfactory adherence for at least thirty (30) days after regaining phase two (2) privileges;

4. Phase four (4) – satisfactory adherence for at least thirty (30) days after regaining phase three (3) privileges;[and]

5. Phase five (5) – satisfactory adherence for at least thirty (30) days after regaining phase four (4) privileges; and

6. Phase six (6) - satisfactory adherence for at least thirty (30) days after regaining phase five (5) privileges.

(f)[(g)] This subsection shall not be used to circumvent the

requirements of this administrative regulation. A patient[client] shall not be advanced to a phase level pursuant to this subsection unless the patient[client] has previously been at that phase level after having satisfied the requirements of each phase.

(g)[(h)] Treatment shall be continued as long as it is medically necessary based upon the clinical judgment of the medical director or program prescriber [physician] and staff.

(h)[(i)] Scheduled withdrawal shall be under the immediate direction of the medical director or program prescriber[physician] and shall be individualized.

(i)[(j)] A patient[client] may voluntarily terminate participation in an NTP even if termination is against the advice of the NTP.

(j)[(k)] Except as established in subsection (15)(e) of this section, either voluntary or involuntary termination shall take place over a period of time not less than fifteen (15) days, unless:

1. The medical director or program prescriber[physician] deems it clinically necessary to terminate participation sooner and documents the reason in the patient's[client's] record; or

2. The patient[client] requests in writing a shorter termination period.

(k) Patients who are voluntarily and involuntarily terminated shall be offered the following prior to discharge:

1. Overdose education;

2.a. A Federal Drug Administration approved opioid overdose reversal agent; or

b. A Federal Drug Administration approved opioid overdose reversal agent prescription; and

3. Referral with appointment to the level-of-care appropriate and accessible to the patient.

(14) Exceptions.

(a) The medical director or program prescriber [physician] may grant an exception to the criteria for take-home dosages for any of the following reasons:

1. The patient[client] has a serious physical disability that would prevent frequent visits to the program facility; or

2.a. The patient[client] is subject to an exceptional circumstance such as acute illness, family addcrisis, or necessary travel; and

b. Hardship would result from requiring exact compliance with the phase level schedule established in subsection (12) of this section.

(b) Exception to the criteria for take-home dosages shall:

1. Be subject to the limitations in this administrative regulation; and

2. Have written approval from the SNA that shall be filed in the patient[client] record.

(c) If a patient[client] is required to travel out of the program area, the medical director or program prescriber[physician] shall attempt to arrange for the patient's[client's] daily dosage to be received at another program in lieu of increasing take-home dosages.

(d) The medical director or program prescriber[physician] shall document in the patient's[client's] record the granting of any exception and the facts justifying the exception.

(e) Each program shall maintain a separate record for all exceptions granted.

(f) The SNA shall not grant additional exceptions, except in cases of medical emergency or natural disaster, such as fire, flood, or earthquake.

(g) Patient take home exceptions shall be entered into the Substance Abuse and Mental Health Services Administration's system in accordance with the system's requirements.

(h) Emergency Dosing.

1. Under emergency conditions a program may issue take-home doses in accordance with this subsection.

2. Within forty-eight (48) hours after administration of the first emergency dose, an NTP shall:

a. Notify the SNA in writing;

b. Submit justification of the emergency dose or doses; and

c. Request permission for any subsequent dose after the first two (2) doses.

3. Subsequent emergency doses shall not be given unless permission is received by the SNA.

4. This request shall include the:

- a. Number of take-home doses requested;
- b. Reason for the request;
- c. Patient's[Client's] standing in program phases;
- d. Patient's[Client's] adherence to program policies; and
- e. Total length of time the patient[client] has been enrolled at the NTP.

(15) Patient[Client] program compliance and infractions.

(a) If a patient has a non-compliance issue as described in section 7(12)(c) of this administrative regulation [client commits a program infraction], the counseling staff shall review and modify the treatment plan to assist the patient[client] in complying with program policies.

(b) If a patient[client] continues to have non-compliance issues[commit infractions] and the medical director or program prescriber[physician] determines additional intervention is warranted, the director or prescriber[physician] may:

1. Move the patient[client] back to an earlier treatment phase; [or]
2. Limit or revoke the patient's[client's] take-home privileges;
3. Increase the frequency of counseling sessions;
4. Increase the frequency of drug screen samples; or
5. Increase the medication dose to reduce cravings.

(c) If a patient commits a program infraction as described in section 7(12)(b) of this administrative regulation [the client continues to commit program infractions], the patient[client] may be involuntarily terminated from the program based on the recommendation of the medical director or program prescriber[physician].

(d) A patient's[client's] participation in an NTP may be involuntarily terminated for cause. Cause shall include:

1. Polydrug use if risk of co-use outweighs risk of overdose death following termination of methadone treatment[abuse];
2. Diversion of an approved controlled substance;
3. Violence or threat of violence to program staff or other patients[clients] in the program; or
4. Dual enrollment in another NTP.

(e) If the medical director or program prescriber[physician] determines that the patient's[client's] continued participation in the program creates a physically threatening situation for the staff or other patients[clients], the patient's[client's] participation may be terminated immediately.

(f) A patient[client] shall be given written notice of a decision to terminate their[his or her] participation in the program, which shall include the reasons for the termination.

(16) Program monitoring. If an NTP fails to comply with the requirements in this administrative regulation, the SNA may take action in accordance with 908 KAR 1:370, Sections 5 and 20. In addition to the authority to deny, suspend, or revoke a license in accordance with 908 KAR 1:370, the SNA may:

(a) Order the NTP to discontinue all or part of the take-home doses of any approved controlled substance used in the NTP;

(b) Restrict the NTP's take-home procedures to the provision of emergency take-home doses in accordance with subsection (14) of this section; or

(c) Order the NTP to discontinue the utilization of any drug approved for use in narcotic treatment programs.

(17) Waivers and Exemptions.

(a) The cabinet may grant a waiver to any part of this administrative regulation if:

1. The governor declares a state of emergency; or
2. There is a natural or manmade disaster.

(b) An NTP may request an exemption in accordance to 42C.F.R. 8.11(h)[a-waiver] from the SNA from any requirement of this administrative regulation.

1. [(a)] This application for an exemption[a-waiver] shall:

- a. [1.] Be in the form of a letter to the SNA;
- b. [2.] Identify the specific sections of this administrative regulation for which an exemption[a-waiver] is being sought; and
- c. [3.] Give the rationale for the request.

2. [(b)] If an exemption[a-waiver] pertains to a client, a copy of an exemption[the waiver] request and response shall become part of the client's permanent record.

3. [(e)] An application for an exemption[a-waiver] request shall be mailed to: Kentucky State Narcotic Authority Department for Behavioral Health, Developmental and Intellectual Disabilities, 275 East Main Street, Frankfort, Kentucky 40621.

4. [(d)] Approval or denial of an exemption[a-waiver] shall be based upon a review of the merits of the request, taking into consideration:

- a. [1.] Public safety;
- b. [2.] Practicality; and
- c. [3.] The purpose of the requirement for which an exemption[waiver] is requested.

5. [(e)] An exemption[waiver] shall expire twelve (12) months from the date the exemption[waiver] is granted unless the SNA gives an earlier expiration date.

[(f) A waiver given prior to January 1, 2020 shall expire on January 1, 2020.]

Section 8. Physical Environment. (1) Accessibility. An outpatient AODE shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities in accordance with KRS 198B.260 and 815 KAR 7:120.

(2) Fire safety. An outpatient AODE shall be approved by the State Fire Marshal's office prior to initial licensure or if the AODE changes location.

(3) Physical location and overall environment.

(a) An outpatient AODE shall:

1. Comply with building codes, ordinances, and administrative regulations that are enforced by city, county, or state jurisdictions;
2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;
3. Have a publicly listed telephone number;
4. Have a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day or use encrypted electronic messaging technology;
5. Have a reception and waiting area;
6. Provide a restroom for patient[client] use; and
7. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of patients[clients], personnel, and visitors shall be assured.

(4) Additional requirements for NTPs.

(a) The building used for the NTP shall meet the requirements of 21 C.F.R. 1301.74(j).

(b) The waiting area shall be separated from the dosing area to permit each patient[client] privacy and confidentiality at the time of dosing.

(c) The dosing area shall be clean and sanitary and shall contain:

1. A sink;
2. Hot and cold running water; and
3. Pill-counting trays if tablets are being used.

(d) The security and floor plan of the dosing area shall be in accordance with 21 C.F.R. 1301.72.

(e) The facility shall have two (2) restrooms, which shall be accessible to patients[clients] with disabilities.

(f) Restrooms available to patients[clients] to provide urine specimens shall be:

1. Secure;
2. Clean; and
3. Sanitary.

(g) The building shall be secured by a local security company approved by the DEA and the SNA.

(h) There shall be a minimum of two (2) panic buttons or similar devices for each NTP with:

1. One (1) in the reception area; and
2. One (1) in the dosing area.

(i) There shall be a telephone with an outside line accessible in the dosing area.

(j) Internal security shall meet the requirements of 21 C.F.R. 1301.74(b), (h), (i), (j), (k); 1301.91; 1301.92 and shall be installed only after consultation with the DEA and the SNA.

(k) Parking spaces at the clinic site shall be adequate to accommodate the maximum number of patients[clients] expected to be at the clinic site at one (1) time.

Section 9. Incarcerated Individuals.

(1) An NTP may provide FDA-approved medications for opioid use disorder for incarcerated individuals.

(2) The NTP shall:

(a) Submit a waiver application to the SNA identifying the services the NTP can and cannot provide directly to the incarcerated individual in accordance with Section (7); or

(b) Facilitate the transfer of the incarcerated individual to a corrections based NTP, if available.

(3) Document in the incarcerated individuals record:

(a) The program physician or program director's coordination efforts with the jail; and

(b) The date(s) of incarceration, reason(s), and circumstances involved.

WENDY T. MORRIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 2, 2022

FILED WITH LRC: August 4, 2022 at 8:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 17, 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 October 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 Rachael M. Ratliff and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation establishes standards for nonhospital-based alcohol and other drug treatment entities (AODE) that provide ambulatory withdrawal management, outpatient treatment services, intensive outpatient services, partial hospitalization, or office-based opiate treatment services. This administrative regulation further establishes standards for the operation of narcotic treatment programs in accordance with KRS 222.231(12) and 42 C.F.R. Part 8.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to update federal standards and comply with Senate Bill 178 (2022 Regular Session).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of Senate Bill 178 (2022 Regular Session) by establishing guidelines for the use of buprenorphine at licensed narcotic treatment programs.

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

administrative regulation assists in the effective administration of the statutes by establishing guidelines for licensure of non-hospital based alcohol and other drug treatment 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: This amended administrative regulation will incorporate the provisions of SB 178 for the use of buprenorphine at narcotic treatment programs. Further amendments incorporate changes to federal guidelines to the certification and requirements of narcotic treatment programs.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to incorporate the provisions of SB 178 for the use of buprenorphine at narcotic treatment programs, as well as incorporating changes to federal guidelines to the certification and requirements of narcotic treatment programs.

(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation incorporates the provisions of SB 178 for the use of buprenorphine at narcotic treatment programs.

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation incorporates the provisions of SB 178 for the use of buprenorphine at narcotic treatment programs and will ensure compliance with updated federal guidelines and regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation will impact up to 600 alcohol and other drug entities with thirty NTP programs statewide.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 amended administrative regulation will provide updates to regulatory requirements and federal guidelines, as well as incorporating statutory changes as a result of SB 178. Narcotic treatment programs will need to ensure they have a prescribing and dosing provider who meets federal guidelines for the administration of buprenorphine.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amended administrative regulation will not result in a cost increase to the affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended administrative regulation should result in greater patient flexibility and access. Additionally, providing federal guidelines as requirements will allow greater flexibility when updated to reflect current opioid use disorder treatment guidance.

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

(a) Initially: This amended administrative regulation is implemented through the use of state general funds and federal grant funding currently.

(b) On a continuing basis: This amended administrative regulation will continue to be implemented through existing department funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amended administrative regulation is implemented by state general funds and federal grant 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: This amended administrative regulation should not necessitate an increase in funding or fees 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.

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

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 Behavioral Health, Intellectual and Developmental Disabilities 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. This amended administrative regulation is authorized by 42 C.F.R. Part 8 and KRS 222.231.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 impact on the expenditure or revenues of state or local governmental agencies as a result of this amended administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? This is an existing administrative regulation and therefore will not require any new funding and will be administered within the current departmental budget.

(d) How much will it cost to administer this program for subsequent years? This amended administrative regulation will continue to be administered within the departmental budget.

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 amended administrative regulation does not require new expenditures from the regulated entities for the first full year. It is unknown if there will be cost savings to the regulated entities. Any costs savings would be determined by the regulated entities choice in medications administered and provided to patients.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? It is unknown, if any, cost saving this amended administrative regulation would generate for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? It is unknown, if any, cost saving this amended administrative regulation would generate for the regulated entities.

(c) How much will it cost the regulated entities for the first year? There will be no new or additional costs to the regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no new costs for the regulated entities in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. Part 8

(2) State compliance standards. KRS 222.231(2), (12), 222.462

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 8

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Family Support

(Amendment)

921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (KTAP)[(K-TAP)].

RELATES TO: KRS 205.010, 205.2005, 205.703, 205.720(1), 403.720(1), 45 C.F.R. [Parts]-260-265, Part 1626.2(b), 7 U.S.C. 2011-2036, 8 U.S.C. 1101-1524, [21 U.S.C. 802(6), 22 U.S.C. 7102(8), 7105, 38 U.S.C. 101, 107, 1101, 1301, 1304, 5303A(d), 42 U.S.C. 416, 601-619, 1381-1384, 1396, Pub. L. 111-118

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), (3), 205.2003(1), 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet 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 205.2003(1) requires the secretary to promulgate administrative regulations to develop a work program for recipients of public assistance under Title IV-A of the Federal Social Security Act, 42 U.S.C. 601 to 619. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance in conformity with 42 U.S.C. 602 and federal regulations. KRS 205.200(3) authorizes the secretary to promulgate administrative regulations prescribing as a condition of eligibility that a needy child regularly attend school, and the degree of relationship of the person or persons in whose home the needy child must reside. This administrative regulation establishes the technical requirements of [school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for] eligibility for [benefits from] the Kentucky Transitional Assistance Program (KTAP)[(K-TAP)].

Section 1. Definitions. (1) "Assistance" is defined by 45 C.F.R. 260.31.

(2) "Barriers" means a limitation in an individual's ability to become employed and self-sufficient[self-sufficient] or to comply with KTAP[K-TAP] requirements.

(3) "Battered or subjected to extreme cruelty" is defined by 45 C.F.R. 1626.2(b)[means an individual who has been subjected to:

(a) A physical act that resulted in, or threatened to result in, physical injury to the individual;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative of a dependent child to engage in a nonconsensual sexual act or activity;

(e) Threat of, or an attempt at, physical or sexual abuse;

(f) Mental abuse; or

(g) Neglect or deprivation of medical care].

(4) "Benefit group" means a group composed of one (1) or more children and may include as a specified relative a person pursuant to Section 6[44] of this administrative regulation.

(5) "Child" means "minor child" as defined by 45 C.F.R. 260.30[an individual:

(a) Age fifteen (15) or under;

(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school; or

(c) Under age eighteen (18) and a high school graduate].

(6) "Domestic violence and abuse" is defined by KRS 403.720(1)[means the same as the definition for "battered or subjected to extreme cruelty" pursuant to subsection (3) of this section].

(7) ["Employed" means a person who performs a physical or mental activity in exchange for direct monetary compensation.

(8)] "Family member" means an individual:

(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or

(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 261.2(n).

(8)[(9)] "Kentucky Transitional Assistance Program" or "KTAP"["K-TAP"] means Kentucky's Temporary Assistance for Needy Families (TANF) cash assistance[money payment] program for eligible families with a child living in the home[a child who is deprived of parental support or care due to:

(a) Death of one (1) parent;

(b) Continued voluntary or involuntary absence of one (1) parent; or

(c) If both parents are in the home:

1. Physical or mental incapacity of one (1) parent; or
2. Unemployment of at least one (1) parent].

(9)[(10)] "Kentucky Works Program" or "KWP" means the program established in 921 KAR 2:370[a program that assists in obtaining education, training, experience and employment necessary to leave public assistance].

(10)[(11)] "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married, or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(11)[(12)] "Penalized individual" means a person who is required to be included in the benefit group, but fails to fulfill an eligibility requirement that causes a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(12)[(13)] "Prior labor market attachment" or "PLMA" means the parent has earned not less than \$1,000 during the twenty-four (24) months prior to the application for K-TAP benefits based on the deprivation of unemployment pursuant to Section 10 of this administrative regulation.

(14)] "Qualified immigrant[alien]" means an immigrant lawfully[alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 to 1524;

(b) Granted asylum pursuant to 8 U.S.C. 1158;

(c) A refugee who is admitted to the United States pursuant to 8 U.S.C. 1157;

(d) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld pursuant to:

1. 8 U.S.C. 1253, as in effect prior to April 1, 1997; or
2. 8 U.S.C. 1231(b)(3);

(f) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7) as in effect prior to April 1, 1980;

(g) An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

(h) Battered or subjected to extreme cruelty in the United States:

1. By a:
 - a. Spouse or parent; or
 - b. Member of the spouse or parent's family residing in the same household as the alien, and the spouse or parent consented to, or acquiesced in, the battery or cruelty; and
2. If:
 - a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;
 - b. There is a substantial connection between the battery or cruelty and the need for the benefit; and
 - c. The alien has been approved or has a petition pending for:
 - (i) Status as a spouse or child of a United States citizen pursuant to 8 U.S.C. 1154(a)(1)(A)(ii), (iii), or (iv);
 - (ii) Classification pursuant to 8 U.S.C. 1154(a)(1)(B)(ii) or (iii); or
 - (iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);
 - (i) A child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States:

1. By a:
 - a. Spouse or parent of the alien without the active participation of the alien in the battery or cruelty; or
 - b. Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty; and
2. If:
 - a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;
 - b. There is a substantial connection between the battery or cruelty and the need for the benefit; and
 - c. The alien has been approved or has a petition pending for:
 - (i) Status as a spouse or child of a United States citizen pursuant to 8 U.S.C. 1154(a)(1)(A)(ii), (iii), or (iv);
 - (ii) Classification pursuant to 8 U.S.C. 1154(a)(1)(B)(ii) or (iii); or
 - (iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);
 - (j) An alien who is lawfully residing in Kentucky and is:
 1. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
 2. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303A(d);
 3. The spouse or surviving spouse who is not remarried if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual pursuant to subparagraph 1 or 2 of this paragraph;
 4. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105; or
 5. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;

(k) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101; or

(l) An alien admitted to the United States as an Afghan or Iraqi special immigrant on or after December 19, 2009, in accordance with Pub. L. 111-118, Section 8120].

[(15)] "Qualifying parent" means the parent who meets PLMA.

(16) "Recipient" means an individual receiving K-TAP including a specified relative or a specified relative receiving on behalf of a child.]

[(13)][(17)] "Sanctioned individual" means a person who is required to be included in the benefit group, but who is excluded from the benefit group due to failure to fulfill an eligibility

requirement.

(14)(18) "Second chance home" means an entity that:

(a) Provides a minor teenage parent a supportive and supervised living arrangement; and

(b) Requires a minor teenage parent to learn:

1. Parenting skills, including child development;
2. Family budgeting;
3. Health and nutrition; and
4. Other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(15)(19) "Severe form of trafficking in persons" is defined by 22 U.S.C. 7102(8).

(16)(20) "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his or her place of employment.

(17)(24) "Supplemental Security Income" or "SSI" means a monthly cash payment made pursuant to:

(a) 42 U.S.C. 1381 to 1384 to the aged, blind, or [and] persons with a disability;

(b) 42 U.S.C. 1382e; or

(c) 42 U.S.C. 1382.

(18)(22) "Two parent case" or "Unemployed parent case" or "UP case" means KTAP[K-TAP] benefits paid to a family if both parents live[are] in the home and are both required to participate in the KWP[at least one (1) parent is unemployed].

(19)(23) "Work" means participation in a KWP activity pursuant to 921 KAR 2:370, Section 2(1)(c).

Section 2. Eligible Parent. (1) An eligible parent shall include the natural, adopted, or adjudicated parent of the child.

(2) An adjudicated parent shall include an administrative establishment of the relationship.

(3) A stepparent shall not be an eligible parent.

Section 3. Age and School Attendance. (1) The definition of [a "child", pursuant to Section 1(5) of this administrative regulation, shall be met for at least one (1) person living in the home.

(2) Verification of school attendance shall be required for a:

(a) Child who is [sixteen (16), seventeen (17), or] eighteen (18) years of age, in order to determine his or her continuing eligibility; or

(b) Minor teenage parent pursuant to Section 15(1)(20(4)) of this administrative regulation.

(3) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in a month he or she is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

(4) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 4. Enumeration. (1) A person included in the KTAP[K-TAP] case shall furnish his or her Social Security number or apply for a number if one (1) has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The cabinet shall assist an individual in making application for a Social Security number, if needed.

Section 5. Residence and Citizenship. (1) Residence. A resident shall be an individual who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b)1. Entered the state with a job commitment or seeking employment; and

2. Is not receiving assistance funded by a block grant program pursuant to 42 U.S.C. 601 to 619 from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, KTAP[K-TAP] shall be provided only to a United States citizen.

(b) A qualified immigrant[alien], pursuant to Section 1(12)(14) of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for KTAP[K-TAP], shall be eligible for assistance.

(c) A qualified immigrant[alien], pursuant to Section 1(14) of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for KTAP[K-TAP] for a period of five (5) years beginning on the date of the immigrant's[alien's] entry into the United States with the following exceptions:[- The following exceptions shall apply to this provision]:

1. An immigrant[alien] who is admitted to the United States as a refugee pursuant to 8 U.S.C. 1157;

2. An immigrant [alien] who is granted asylum pursuant to 8 U.S.C. 1158;

3. An immigrant[alien] whose deportation is being withheld pursuant to:

a. 8 U.S.C. 1253, as in effect prior to April 1, 1997; or

b. 8 U.S.C. 1231(b);

4. An immigrant[alien] who is lawfully residing in Kentucky and is:

a. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of immigrant status[alienage];

b. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303A(d);

c. The spouse or un-remarried[unremarried] surviving spouse if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;

d. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking in persons who is admitted to the United States pursuant to 22 U.S.C. 7105; or

e. A parent or a sibling of a victim of a severe form of trafficking in persons who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;

5. An immigrant[alien] who is a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

6. An immigrant[alien] who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101; or

7. An immigrant[alien] admitted to the United States as an Afghan or Iraqi special immigrant on or after December 19, 2009, in accordance with Pub. L. 111-118, Section 8120.

(d) Failure of the parent or other adult applying for or receiving benefits to verify citizenship or immigrant[alien] status shall cause the needs of the parent or other adult to be removed from the case.

~~[Section 6. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care pursuant to Section 1(9) of this administrative regulation.~~

~~(2) A specific deprivation factor under Section 7, 8, 9, or 10 of this administrative regulation shall be verified for a child for whom assistance is approved.~~

~~Section 7. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.~~

~~Section 8. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent.~~

~~(2) Absence may be voluntary or involuntary.~~

~~(a) Voluntary absence shall include:~~

~~1. Divorce;~~

~~2. Legal separation;~~

~~3. Marriage annulment;~~

~~4. Desertion of:~~

~~a. Thirty (30) days or more if the parent:~~

~~(i) Voluntarily leaves; or~~

- (ii) Refuses to accept the child into his or her home; or
- b. Less than thirty (30) days if:
 - (i) The child leaves the parent because the parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;
 - (ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;
 - (iii) The child is voluntarily placed with a relative following a finding by the cabinet that the home is unsuitable;
 - (iv) The child is placed by the court with a specified relative other than the parent;
 - (v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or
 - (vi) Both parents are absent from the home;
- 5. Forced separation; or
- 6. Birth out-of-wedlock.
- (b) Involuntary absence shall include:
 - 1. Commitment to a penal institution for thirty (30) days or more;
 - 2. Long-term hospitalization;
 - 3. Deportation; or
 - 4. Single parent adoption.
- (3) A parent who is a convicted offender, but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be considered absent from the home.

Section 9. Deprivation Due to Incapacity. (1) A determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

- (a) Medical;
- (b) Social; and
- (c) Economic.
- (2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.
- (3) Incapacity shall exist in a case if the following criteria are met:
 - (a) A medical determination is made that one (1) parent has a physical or mental disability, illness, or impairment that:
 - 1. Was present at the time of application; and
 - 2. Has continued or is expected to last for a period of at least thirty (30) calendar days. The thirty (30) day period may include a period the claimant is undergoing:
 - a. Planned diagnostic study; or
 - b. Evaluation of rehabilitation potential; and
 - (b) A nonmedical evaluation determines that the disability, illness, or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.
 - (4) A determination regarding incapacity shall be made by:
 - (a) Field staff if the following criteria are met:
 - 1. The parent declares physical inability to work;
 - 2. The worker observes some physical or mental limitation; and
 - 3. The parent:
 - a. Is receiving SSI;
 - b. Is age sixty-five (65) or over;
 - c. Has been determined to meet the definition of blindness pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by the Social Security Administration;
 - d. Has been determined to meet the definition of permanent and total disability pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by either the:
 - (i) Social Security Administration; or
 - (ii) Medical review team of the cabinet;
 - e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested, and there is no visible improvement in condition;

- f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;
- g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter;
- h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, a statement from the physician shall be requested to indicate if incapacity existed as of the application date;
- i. Is recovering from surgery, illness, or injury that requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. A period longer than six (6) weeks shall be determined through the medical review team;
- j. Is on approved sick leave recovering from surgery, illness, or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or
- k. Is a woman in a high-risk pregnancy, during the duration of the pregnancy, as verified by physician statement; or
- (b) The medical review team, consisting of a licensed physician and a social worker employed by the cabinet, if a determination by field staff is precluded.
- (5) The factors to be considered by the medical review team in making the medical determination shall include:
 - (a) The claimant's medical history and subjective complaint regarding an alleged physical or mental disability, illness, or impairment; and
 - (b) Competent medical testimony relevant to whether:
 - 1. A physical or mental disability, illness, or impairment exists; and
 - 2. The disability, illness, or impairment is:
 - a. Sufficient to reduce the parent's ability to support or care for a child; and
 - b. Likely to last thirty (30) days.
 - (6) The factors to be considered in making the nonmedical evaluation shall include:
 - (a) The claimant's:
 - 1. Age;
 - 2. Employment history;
 - 3. Vocational training;
 - 4. Educational background; and
 - 5. Subjective complaint regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and
 - (b) The extent and accessibility of employment opportunity available in the claimant's area of residence.
 - (7) A written report shall be made of the determination under this section.
 - (8) A claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing pursuant to 921 KAR 2:055.

Section 10. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent if both parents are in the home shall be based on the determination that the qualifying parent meets the criteria of unemployment pursuant to subsection (3) of this section and has a PLMA, pursuant to Section 1(13) of this administrative regulation.

- (2) The qualifying parent designation shall remain with the same parent as long as assistance is received on the basis of the same application.
- (3) A parent shall be considered to be unemployed if employed:
 - (a) Less than 100 hours in a calendar month; or
 - (b) In excess of 100 hours in a particular month if the employment is intermittent and the excess is of a temporary nature, if the parent:
 - 1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and
 - 2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.
- (4) The 100 hour requirement for unemployment in subsection

(3) of this section shall apply to a K-TAP applicant.

(5) PLMA shall be established if the parent:

(a) Attests to the amount of earnings pursuant to Section 4(13) of this administrative regulation with the following requirements:

1. Gross income from self-employment and farming shall qualify as earned income in determining PLMA; and

2. The self-employed individual shall not have to realize a profit to meet this requirement;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(6) In determining whether or not criteria in subsection (5) of this section are met, two (2) semesters of full-time school attendance, as defined by the school or institution, may be substituted for \$500 of the \$1,000 earnings.

(7) Unemployment shall not exist if the qualifying parent:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather condition or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work pursuant to 921 KAR 2:370, Section 4(3); or

2. Subject to KWP, pursuant to 921 KAR 2:370;

(g) Has refused a bona fide offer of employment or training for employment without good cause, pursuant to 921 KAR 2:370, Section 6(1), in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits; or

(h) Has been discontinued in accordance with 921 KAR 2:370, Section 7(2)(a)2, for less than thirty (30) days.]

Section 6.[Section 11.] Living with a Specified Relative. (1) To be eligible for KTAP[K-TAP], a [needy-]child shall be living in the home of a relative as follows:

(a) A blood relative, including a relative of a[the] half-blood sibling;

(b) A person listed in paragraph (a) of this subsection if the alleged father has had relationship established through the administrative determination process pursuant to Section 7[12] of this administrative regulation;

(c) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent; or

(d) A relative by marriage, even if the marriage may have terminated, if termination occurred after the birth of the child,[-as follows:]

1. A couple that has been considered married by a state with a common-law marriage provision shall be considered married in Kentucky for KTAP[K-TAP] eligibility purposes; and

2. The statement of the applicant or recipient that the couple's marriage is recognized from another state as a common-law marriage shall be accepted as verification by the cabinet.

(2) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more shall exist if the parent or relative caregiver continues to exercise care and control of the child and the child is absent due to:

(a) Medical care;

(b) Attendance at school, including boarding school;

(c) College or vocational school;

(d) Foster care, as verified by the cabinet; or

(e) A short visit with a friend or relative if it is intended that the child will return to the home and the parent or specified relative caregiver maintains parental control of the child.

(3)(a) A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in foster care.

(b) If the only eligible child in the benefit group is absent due to foster care, the otherwise eligible parent or parents in the benefit group shall:

1. Remain eligible for sixty (60) days from the date the child is placed in foster care; and

2. Be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in foster care if no other eligible child is in the benefit group.

(4)(a) If a parent or specified relative caregiver fails to notify the cabinet of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (2) of this section, the parent or specified relative caregiver shall not be eligible for his or her share of KTAP[K-TAP] benefits during the period of the child's unreported absence of thirty (30) consecutive days or more.

(b) Ineligible benefits received by the parent or specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to 921 KAR 2:016, Section 11.

Section 7.[Section 12.] Administrative Establishment of Relationship. (1) An administrative determination of relationship as established in this administrative regulation shall be used only to establish relationship for KTAP[K-TAP] eligibility if the following type of evidence is present:

(a) A birth certificate listing the alleged parent;

(b) Legal document which shall include:

1. Hospital record;

2. Juvenile court record;

3. Will; or

4. Other court record that clearly indicates the relationship of the alleged parent or specified relative caregiver;

(c) Receipt of statutory benefits as a result of the alleged parent's circumstance;

(d) Documents declaring voluntary paternity as specified in 901 KAR 5:070, Section 1; or

(e) A sworn statement or affidavit of either parent acknowledging relationship plus one (1) of the following:

1. School record;

2. Bible record;

3. Immigration record;

4. Naturalization record;

5. Church document, such as baptismal certificate;

6. Passport;

7. Military record;

8. U.S. Census record; or

9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative relationship shall occur if the parent or, in the absence of the parent, the caretaker relative:

(a) Alleges the evidence pursuant to subsection (1)(a) or (b) of this section is erroneous;

(b) Provides substantiation of the erroneous information; and

(c) Provides a notarized statement or affidavit:

1. Acknowledging the erroneous information; and

2. Containing the correct information on the actual alleged parent.

(3) Presence of the notarized statement or affidavit pursuant to subsection (2)(c) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of relationship shall not be acknowledged.

Section 8.[Section 13.] One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for KTAP[K-TAP] if receiving SSI.

(2) If a child who receives SSI meets the KTAP eligibility~~[K-TAP]~~ requirements ~~[of age, deprivation,] and is living in the home of a specified relative, the specified relative caregiver shall be approved for KTAP~~~~[K-TAP]~~ if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the KTAP eligibility~~[K-TAP]~~ requirements ~~[of age, deprivation,] and is living in the home of a specified relative, the specified relative caregiver shall be approved for KTAP~~~~[K-TAP]~~ if all other eligibility factors are met.

Section 9~~[Section 14.]~~ Strikers. (1) A family shall be ineligible for benefits for a month the parent, with whom the child is living on the last day of the month, is participating in a strike.

(2) A specified relative other than the parent shall be ineligible for benefits for a month if, on the last day of the month, the relative is participating in a strike.

Section 10~~[Section 15.]~~ Work Registration. An adult applicant or recipient of the KTAP~~[K-TAP]~~ benefit group shall register for work pursuant to 921 KAR 2:370, Section 4(3).

Section 11~~[Section 16.]~~ Assessment. A work-eligible individual, as defined by 45 C.F.R. 261.2(n), shall complete an assessment pursuant to 921 KAR 2:370.

Section 12~~[Section 17.]~~ Kentucky Works Program. The technical requirements for participation in the Kentucky Works Program (KWP) shall be pursuant to 921 KAR 2:370.

Section 13~~[Section 18.]~~ Cooperation in Child Support Activities.

(1) In cooperation with the Department for Income Support, the Department for Community Based Services shall attempt to secure parental support, and if necessary establish paternity, for a child receiving assistance pursuant to Section 1(1) of this administrative regulation, who has a parent absent from the home due to:

- (a) Divorce;
- (b) Desertion;
- (c) Birth out-of-wedlock;
- (d) Legal separation;
- (e) Forced separation; or
- (f) Marriage annulment.

(2) With the exception of a good cause reason, pursuant to subsections (4) and (5) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in KTAP~~[K-TAP]~~ benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child support activities that shall include:

- (a) Identifying the noncustodial parent or obligor;
- (b) Providing information to assist in the:
 - 1. Location of the noncustodial parent or obligor;
 - 2. Enforcement of a child support order; or
 - 3. Review or modification of a child support order;
- (c) Establishing paternity, if required;
- (d) Establishing, modifying or enforcing a child support order;

and

- (e) Forwarding a child support payment received to the state's centralized collection agency.

(3) The cabinet shall inform the applicant or recipient of the individual's right to file a good cause claim for refusing to cooperate in a child support activity.

(4) The applicant or recipient shall be excused from penalty for failure to cooperate with a child support activity, pursuant to subsection (2) of this section, if one (1) of the following criteria is met:

- (a) Cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the:
 - 1. Child; or
 - 2. Caretaker relative to an extent that it would reduce the capacity to care for the child adequately;
- (b) The child was conceived as a result of incest or forcible rape and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation;
- (c) Legal proceedings for adoption of the child by a specific

family are pending before a court of competent jurisdiction and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) The applicant or recipient is being assisted by a public or licensed private social service agency to resolve whether to keep the child or release the child for adoption if:

1. Discussion has not gone on for more than three (3) months; and

2. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have thirty (30) days from the date the good cause claim is made to provide evidence to substantiate the claim.

(a) Evidence used to determine good cause shall include:

1. Birth certificate, medical information, or law enforcement record indicating that the child was conceived as a result of incest or forcible rape;

2. Court document or other record indicating legal proceedings for adoption of the child by a specific family is pending before a court of competent jurisdiction;

3. Record or other evidence indicating the noncustodial parent, or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption, and the issue has not been pending more than three (3) months; or

5. Notarized statement from an individual, other than the applicant or recipient, with knowledge of the circumstance that provides the basis for the good cause claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

- 1. The present emotional state of the individual subject to emotional harm;
- 2. The emotional health history of the individual;
- 3. The extent and probable duration of the individual's emotional impairment; and
- 4. The extent of involvement required by the individual in establishing paternity or enforcing a support obligation.

(c) If the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted, the cabinet shall conduct an investigation if it is believed that:

- 1. Corroborative evidence is not available; and
- 2. The claim is credible without corroborative evidence.

(d) If the cabinet conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support, unless the contact is necessary to establish the good cause claim.

(e) If it is necessary for the cabinet to contact the noncustodial parent, or obligor, or the alleged parent during the investigation of a good cause claim, the worker shall notify the applicant or recipient of the proposed contact to either:

- 1. Obtain permission for the contact; or
- 2. Enable the applicant or recipient to:
 - a. Present additional evidence or information so that the contact shall be unnecessary;
 - b. Withdraw the application for assistance or request discontinuance of KTAP~~[K-TAP]~~; or
 - c. Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the cabinet shall:

- (a) Document the case;
- (b) Determine that good cause:
 - 1. Exists and a support activity cannot be initiated without endangering the:
 - a. Best interests of the child; or
 - b. Physical or emotional health of the child or the relative; or
 - c. Does not exist;
 - (c) Advise the applicant or recipient of the result of the good

cause claim determination; and

(d) Identify each case that good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not considered to be met by the cabinet, KTAP[K-TAP] benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 9 of 921 KAR 2:016.

(8) If, after the reduction of the KTAP[K-TAP] payment for failure to cooperate, the specified relative states he or she will cooperate, the cabinet shall:

(a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he or she will cooperate and verification of cooperation is provided timely; and

(b) Not authorize a back payment for the period the individual did not cooperate.

(9) As a condition of eligibility for assistance, each applicant for, or recipient of, KTAP[K-TAP] shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1). The assignment shall:

(a) Include all members of the case for whom support rights apply; and

(b) Be completed at the time of application for KTAP[K-TAP] benefits.

Section 14.[~~Section 19.~~] Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive another benefit if potential entitlement exists.

(2) Failure to apply for another benefit or comply with its requirements shall result in ineligibility for KTAP[K-TAP].

(3) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 15.[~~Section 20.~~] Minor Teenage Parents. (1) A minor teenage parent shall participate in an educational activity directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the individual has:

(a) A minor child at least twelve (12) weeks of age in his or her care; and

(b) Not completed a high school education (or its equivalent).

(2) Except pursuant to subsection (4) of this section, a minor teenage parent and his or her minor child shall reside in:

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian; or

3. An adult relative pursuant to Section 6[44] of this administrative regulation; or

(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and barriers of the minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if the:

(a) Minor teenage parent does not have a:

1. Parent, legal guardian, or appropriate adult relative pursuant to Section 6[44] of this administrative regulation who is living or whose whereabouts is known; or

2. Living parent, legal guardian, or other appropriate adult relative pursuant to Section 6[44] of this administrative regulation who:

a. Otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent; and

b. Would allow the minor teenage parent to live in the home of the parent, guardian, or relative pursuant to Section 6 [44] of this administrative regulation; or

(b) Cabinet determines:

1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or

2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if the cabinet determines:

(a) Living in the place of residence maintained by the parent, legal guardian, or adult relative pursuant to Section 6 [44] of this administrative regulation is not in the best interest of the minor child taking into consideration the needs of the minor child; or

(b) The minor teenage parent's current living arrangement is appropriate.

(5) If a circumstance changes and the current arrangement ceases to be appropriate based on the needs and barriers of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) If the minor teenage parent is determined to be ineligible for KTAP[K-TAP] as a result of not complying with a provision found in this section, payment shall continue for the eligible child of the minor teenage parent.

(7) Even if exemption criteria are met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and the child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative pursuant to Section 6[44] of this administrative regulation, second chance home, or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 21 of this administrative regulation.

Section 16.[~~Section 24.~~] Benefit Time Limits. (1) KTAP[K-TAP], or any other assistance from a federally-funded program pursuant to 42 U.S.C. 601 to 619, shall not be provided for more than sixty (60) cumulative months to a benefit group that includes:

(a) An adult; or

(b) A minor teenage parent who is head of household; or

(c) A fugitive or drug felon not eligible pursuant to Section 23 or 24 of this administrative regulation].

(2) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) month time limit, during the period the individual:

(a) Is battered or subjected to extreme cruelty. During the extension period the individual shall have an individual service plan pursuant to Section 18(1)(b)[25(4)(b)] of this administrative regulation;

(b) Is a work-eligible individual in the benefit group, who the cabinet determines has a physical or mental disability[—as established in Section 9(3) of this administrative regulation]. During the extension period, the individual shall comply with:

1. Treatment or other activity recommended by the referral source and approved by the cabinet, as required by the Kentucky Works Program pursuant to 921 KAR 2:370, Sections 2(1)(c)12 and 4(2); and

2. Child support cooperation requirements pursuant to Section 13[48] of this administrative regulation;

(c) In accordance with 45 C.F.R. 261.2(n)(2)(i), is a parent providing care for a disabled family member living in the home as verified pursuant to 921 KAR 2:370, Section 3(5). During the extension period, the individual shall comply with child support cooperation requirements pursuant to Section 13[48] of this administrative regulation;

(d) Is a grandparent or other relative, except for a parent, caring for an eligible child who would otherwise be placed in foster care. The caretaker relative shall continue to comply with:

1. Child support cooperation requirements pursuant to Section 13[48] of this administrative regulation; and

2. Except for a caretaker relative age sixty (60) or over, KWP

requirements pursuant to 921 KAR 2:370 if the caretaker relative is included in the benefit group;

(e) Is an adult with insufficient employment opportunities, who:

1. Has complied with:

a. KWP requirements pursuant to 921 KAR 2:370; and

b. Child support cooperation requirements pursuant to Section 13[18] of this administrative regulation;

2. During the extension period, shall:

a. Comply with:

(i) KWP requirements pursuant to 921 KAR 2:370;

(ii) Child support cooperation requirements pursuant to Section 13[18] of this administrative regulation;

(iii) Employment opportunities and activities listed on the KW-202, Transitional Assistance Agreement, incorporated by reference in and pursuant to 921 KAR 2:370, Section 4(2); and

(iv) Work registration requirements pursuant to 921 KAR 2:370, Section 4(3); and

b. Not quit or refuse a job without good cause pursuant to 921 KAR 2:370, Section 6; and

3. Shall be limited to an extension period of six (6) consecutive months; or

(f) 1. Received a domestic violence and abuse exemption pursuant to Section 19(2)[25(2)] of this administrative regulation, up to the number of months the individual received KTAP[K-TAP] during the domestic violence and abuse exemption.

2. During the extension period, the individual shall comply with:

a. Child support cooperation requirements pursuant to Section 13 [18] of this administrative regulation; and

b. KWP requirements pursuant to 921 KAR 2:370.

(3) If otherwise eligible, a benefit group containing a member who has lost a job, through no fault of the recipient, within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) consecutive month extension of the time limitation.

(4) A benefit group that receives an extension to the sixty (60) months' time limit shall be reviewed:

(a) Every six (6) months for an extension pursuant to subsection (2)(a), (c), or (f) of this section;

(b) Every three (3) months for an extension pursuant to subsection (2)(e) of this section;

(c) Every three (3) months or the medical review team review period for an extension pursuant to subsection (2)(b) of this section; or

(d) Annually for an extension pursuant to subsection (2)(d) of this section.

(5) The cabinet shall send a notice containing a list of the hardship extensions, pursuant to subsection (2) of this section, to a benefit group nearing the sixty (60) month time limit.

(6) A benefit group discontinued from KTAP[K-TAP] due to reaching the sixty (60) month time limitation shall receive a notice pursuant to 921 KAR 2:046, Section 4.

(7) The cabinet shall conduct a review at least two (2) months prior to the expiration of the sixty (60) month time limit to:

(a) Determine if the benefit group meets criteria established for a hardship extension pursuant to subsection (2) of this section; and

(b) Inform the benefit group of safety net services[Safety-Net Services], pursuant to 922 KAR 1:400, Section 5.

(8)(a) KTAP[K-TAP] shall not be provided to a benefit group, pursuant to Section 2(1) of 921 KAR 2:016, that includes an adult, or minor teenage parent pursuant to Section 15(7)[20(7)] of this administrative regulation, who has:

1. Received six (6) cumulative months of assistance from a federally funded program pursuant to 42 U.S.C. 601 to 619; and

2. Been penalized for failure to cooperate in KWP, pursuant to 921 KAR 2:370, for a period of three (3) cumulative months.

(b) An adult or minor teenage parent in paragraph (a) of this subsection shall receive assistance if the individual:

1. Demonstrates cooperation in KWP pursuant to 921 KAR 2:370;

2. Meets the technical requirements established in this administrative regulation; and

3. Meets the standard of need in accordance with 921 KAR 2:016.

(9) Time limitations shall apply to a:

(a) Sanctioned individual; or

(b) Penalized individual.

Section 17.[Section 22.] Receiving Assistance in Two (2) or More States. (1) KTAP[K-TAP] assistance shall be denied for ten (10) years to a person who has been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states for:

(a) A program pursuant to:

1. 42 U.S.C. 601 to 619;

2. 42 U.S.C. 1396; or

3. 7 U.S.C. 2011 to 2036; or

(b) Benefits received under SSI.

(2) The requirement in subsection (1) of this section shall not apply to a conviction for a month beginning after the granting of a pardon by the President of the United States with respect to the conduct that was the subject of the conviction.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in KWP in accordance with 921 KAR 2:370.

Section 18.[Section 23.] Fugitive Felons. (1) KTAP[K-TAP] assistance shall not be provided to an individual:

(a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, that is a felony; or

(b) Violating a condition of probation or parole imposed under federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for a month beginning after the President of the United States grants a pardon with respect to the conduct.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in KWP in accordance with 921 KAR 2:370.

Section 19.[Section 24. Denial of Assistance for a Drug Felon.] (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and that has as an element the possession, use or distribution of a controlled substance pursuant to 21 U.S.C. 802(6), shall not be eligible for K-TAP benefits, except pursuant to KRS 205.2005.

(2) An individual applying for K-TAP benefits shall be required to state in writing whether the individual or a member of the household has been convicted of a crime pursuant to subsection (1) of this section.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in KWP in accordance with 921 KAR 2:370.

Section 25.] Domestic Violence and Abuse. (1)(a) A KTAP[K-TAP] applicant or recipient shall be screened for a history of domestic violence and abuse.

(b) If the applicant or recipient is identified as a survivor[victim] of domestic violence and abuse[or with a history of domestic violence], an appropriate services plan shall be required for the individual. The plan shall:

1. Be developed by a provider off[person trained in] domestic violence and abuse services;

2. Reflect the individualized assessment and a revision made by a redetermination;

3. Include appropriate referral to counseling and supportive services based on the needs and barriers identified in the individualized assessment, as determined by the cabinet;

4. Be designed to lead safely to employment; and

5. Be completed at least[no less often than] every six (6) months.

(2) If compliance with the following KTAP[K-TAP] requirements would make it more difficult for an individual receiving KTAP[K-TAP]

to escape domestic violence and abuse or unfairly penalize the individual who is a survivor of ~~off[er has been victimized by]~~ domestic violence and abuse, the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 5 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section ~~13~~¹⁴ of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section ~~16~~²⁴ of this administrative regulation; or

(d) Participation in KWP requirements pursuant to 921 KAR 2:370.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 2, 2022

FILED WITH LRC: August 4, 2022 at 8:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 17, 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 October 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 and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility criteria for the Kentucky's Temporary Assistance for Needy Families (TANF) program, Kentucky Transitional Assistance Program (KTAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility and benefits criteria for the Kentucky Transitional Assistance Program (KTAP).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050(1), which authorizes the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. The Cabinet has responsibility pursuant to 45 C.F.R. 260 to implement the federal Temporary Assistance for Needy Families (TANF) program in Kentucky.

(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 eligibility and benefits criteria for KTAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates many outdated definitions and cites to federal and statutory definitions, updates program names

consistent with other administrative regulations, eliminates administrative barriers requiring verifying school attendance for children under the age of 18, and removes deprivation requirements that have kept many two-parent families from being eligible for KTAP. One of the four goals of TANF is to encourage the formation and maintenance of two-parent families.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding in providing KTAP services for eligible, low-income households that contain a child. This amendment specifically removes burdens that kept many two-parent, intact families from being eligible for the assistance. The amendment is also necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104. The administrative regulation was reviewed for certification and determined to require updating.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for program eligibility, benefit provisions, and compliance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of the TANF-funded KTAP program in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services (DCBS) administers this program. As of April 2022, there were approximately 10,422 KTAP cases throughout Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment removes administrative burdens relating to proving school attendance for children under the age of 18 and proving deprivation for two-parent, intact families.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DCBS will have minor costs associated with data system changes. There are no costs to KTAP applicants or recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Costs associated with changes in KTAP are funded by the TANF Block Grant.

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

(a) Initially: DCBS will have minor costs associated with data system changes. There are no costs to KTAP applicants or recipients.

(b) On a continuing basis: There are no ongoing 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 implementation and enforcement of this administrative regulation is funded by the federal TANF Block Grant.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619

(2) State compliance standards. KRS 194A.050(1), 205.200(2),

(3), 205.2003(1)

(3) Minimum or uniform standards contained in the federal mandate. Operating a state program consistent with the rules of the Temporary Assistance for Needy Families Block Grant.

(a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(b) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(c) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(d) Encourage the formation and maintenance of two-parent families.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter requirements than those required by the federal mandate. The state meets the requirements of TANF through many different programs.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation by administering this program.

(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), 205.200(2), (3), 205.2003(1), 42 U.S.C. 601-619

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

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

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

(c) How much will it cost to administer this program for the first year? DCBS will have minor costs associated with data system changes. The cabinet will utilize the administrative funds available under the federal TANF Block Grant to administer these programs in the first year. There are no costs to KTAP applicants or recipients.

(d) How much will it cost to administer this program for subsequent years? There are no ongoing 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.

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 contains technical requirements for program eligibility. Cost savings are not generated by this administrative regulation, but it also does not require costs from regulated entities

(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?

There are no costs to regulated entities associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact or a negative or adverse economic impact on any parties.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

921 KAR 2:016. Standards of need and amount for the Kentucky Transitional Assistance Program (KTAP) [(K-TAP)].

RELATES TO: KRS 205.200, 205.210, 205.2001, 205.211, 45 C.F.R. 233.20(a)(13), Parts 260-265, 400.66(d), 8 U.S.C. 1183a, 20 U.S.C. 1088(b)(1), 2302(3), (13), 25 U.S.C. 459, 1261, 1401, 26 U.S.C. 6409, 29 U.S.C. 723(a)(5), 2801, 2931(a)(2), 38 U.S.C. 1833, 42 U.S.C. 7(xviii), (D)(4), 1381-1384, 1771, 1775, 3001, 4950-5084, 8621, 10602(c)

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.210(1), 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet 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 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Kentucky Transitional Assistance Program (KTAP) [(K-TAP)], the block grant program funded by 42 U.S.C. 601 to 619. This administrative regulation sets forth the standards of need for and the amount of a Kentucky Transitional Assistance Program payment.

Section 1. Definitions. (1) "Assistance" is defined by 45 C.F.R. 260.31.

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative a person pursuant to 921 KAR 2:006, Section 6[44].

(3) "Change in a circumstance" means a change in income or dependent care expense affecting the ongoing KTAP [(K-TAP)] payment that includes:

(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 the dependent care expense due to a change in:

1. Provider;

2. Number of hours of care;

3. Number of individuals for whom care is given; or

4. Amount charged; or
(f) Change in farm cropping arrangement or type of self-employment activity.

(4) "Claimant" means the individual responsible for the repayment of an overpayment.

(5) "Countable income" means income that remains after excluded income and appropriate deductions are removed from gross income.

(6) "Deduction" means an amount subtracted from gross income to determine countable income.

(7) "Electronic benefit transfer" or "EBT" means a computer-based electronic benefit transfer system in which an eligible household's benefit authorization is received from a central computer through a point of sale terminal or automated transfer machine.

(8) ~~"Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.~~

(9) "Excluded income" means income that is received but not counted in the gross income test.

(9)(40) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(10)(44) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;
2. A general educational development program; or
3. A literacy program;

(b) The number of hours required by the individual program for participation in a college or university; or

(c) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

(11)(42) "Gross income limitation standard" means 185 percent of the assistance standard, as set forth in Section 9 of this administrative regulation.

(12)(43) "Kentucky Transitional Assistance Program" or "KTAP" ~~"K-TAP"~~ means the program established in 921 KAR 2:006 ~~a money payment program for a child who is deprived of parental support or care pursuant to 921 KAR 2:006, Section 1.~~

(13)(44) "Kentucky Works Program (KWP)" means the program established in 921 KAR 2:370 ~~a program~~ that assists a:

(a) Recipient of KTAP ~~K-TAP~~ in obtaining education, training, experience, and employment ~~necessary to leave public assistance~~; or

(b) Former KTAP ~~K-TAP~~ recipient with job retention ~~services~~ ~~service~~.

(14)(45) "Lump sum income" means income that does not:

- (a) Occur on a regular basis; or
- (b) Represent accumulated monthly income received in a single sum.

~~(15)(46) "Minor" means a person who is under the age of eighteen (18).~~

~~(47) "Minor parent" means an individual who:~~

- (a) Has not attained eighteen (18) years of age;
- (b) Is not married or is married and not living with the spouse;

and

(c) Has a minor child in the applicant's or recipient's care.

(16)(48) "Part-time employment" means employment of:

- (a) Less than thirty (30) hours per week; or
- (b) Less than 130 hours per month.

(17)(49) "Part-time school attendance" means a workload that is less than full-time school attendance as determined by the educational institution.

(18)(20) "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement, causing a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(19)(24) "Recoupment" means recovery of an overpayment of an assistance payment.

(20)(22) "Sanctioned individual" means a person who is

required to be included in the benefit group, but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(21)(23) "Self-employment income" means income from a business enterprise if taxes are not withheld prior to receipt of the income by the individual.

(22)(24) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1384 to the aged, blind, or persons with a disability ~~and disabled~~.

(23)(25) "Unavailable" means that the income is not accessible to the KTAP ~~K-TAP~~ benefit group for use toward basic food, clothing, shelter, ~~or~~ ~~and~~ utilities.

(24)(26) "Workforce Innovation and Opportunity ~~Investment~~ Act" or "WIOA" ~~"WIA"~~ means a program to assist adults, dislocated workers, and youth with entering, retraining, and advancing within employment ~~as established by 29 U.S.C. 2801~~.

(25)(27) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, and tools.

Section 2. Technical Eligibility. (1) A benefit group shall include:

(a) A dependent child;

(b) A child's parent living in the home with the dependent child who is:

1. Eligible for KTAP ~~K-TAP~~; or
2. Ineligible for KTAP ~~K-TAP~~ due to benefit time limitations pursuant to 921 KAR 2:006, Section 16 ~~24~~;

(c) An eligible sibling living in the home with a dependent child, except for a sibling who is an applicant or recipient of the Kinship Care Program pursuant to 922 KAR 1:130; or

(d) An eligible child who is:

1. In full-time school attendance or part-time school attendance; and

2.a. Eighteen ~~Sixteen (16) through eighteen~~ (18) years of age;

or

b. A minor parent.

(2) If the KTAP ~~K-TAP~~ benefits to a household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, the child shall not be included in the benefit group.

(3) If a dependent child's parent is a minor living in the home with an eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(4) ~~A~~ ~~An incapacitated or unemployed~~ natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors of 921 KAR 2:006 are met.

Section 3. Resource Limitations. (1) A liquid asset shall be considered a countable resource if it is:

(a) Available to the benefit group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;
2. A sanctioned or penalized individual; or
3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The total amount of resources reserved by a benefit group shall not be in excess of \$10,000 ~~\$2,000~~ in liquid assets, excluding an asset listed in subsection (3) of this section.

(3) Excluded resources.

(a) Resources from the following individuals shall be excluded from consideration:

1. A recipient of SSI or the state supplementation program living in the home;

2. A child excluded from the KTAP ~~K-TAP~~ grant; or

3. An individual not receiving assistance but living in the home including:

- a. The stepparent;
- b. The parent or legal guardian of a minor parent;
- c. The spouse of a nonresponsible specified relative; or
- d. The spouse of a minor dependent child.

(b) The following resources shall not be included in the [\$2,000] resource limit established in subsection (2) of this section:

1. Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home;
2. Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;
3. An excluded income payment, pursuant to Section 5 of this administrative regulation;
4. Principal and accrued interest of an irrevocable trust during a period of unavailability;
5. Prepaid burial funds;
6. Cash surrender value of all burial insurance policies per family member;
7. Principal of a verified loan;
8. Up to \$12,000 to Aleutians and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;
9. A payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to a veteran or veteran's survivor;
10. a. Any federal tax refund or advance payment of a refundable federal tax credit for a period of twelve (12) months from receipt in accordance with 26 U.S.C. 6409; or
b. ~~An~~After December 31, 2012, earned income tax credit payment in the month of receipt and the following month;
11. A payment received from the Radiation Exposure Compensation Trust Fund;
12. A nonrecurring lump sum SSI retroactive payment that is made to a KTAP[K-TAP] recipient who is not ongoing eligible for SSI, in the month paid and the next following month;
13. Up to a total of ~~\$15,000~~[\$5,000] in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section; ~~and~~
14. A payment received from the National Tobacco Growers Settlement Trust;
15. Savings in a 529 college savings plan account;
16. Savings in an ABLE account, pursuant to KRS 205.200(1); ~~and~~
17. A payment received from the Transitional Compensation for Abused Dependents Program.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise disposed of a liquid asset in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. The transfer was made expressly for the purpose of qualifying for assistance; and
2. The amount of the transfer, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) 1. If the amount of excess transferred resources does not exceed ~~\$2,500~~[\$500], the period of ineligibility shall be one (1) month.

2. The period of ineligibility shall be increased one (1) month for every ~~\$2,500~~[\$500] increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization that the applicant or recipient surrendered resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) 1. For a bank account requiring one (1) signature for withdrawal, the total balance of the account shall be considered available to the KTAP[K-TAP] applicant or recipient, unless the other owner is a recipient of SSI.

2. If the other owner receives SSI, the:

a. Balance shall be divided evenly by the number of owners; and
b. KTAP[K-TAP] applicant or recipient's share shall be considered available.

(b) For a bank account that requires more than one (1) signature for withdrawal, the KTAP[K-TAP] applicant or recipient's share shall be determined by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, the applicant or recipient's available share shall be determined by dividing the value of the business enterprise by the number of owners.

(d) If a resource is held jointly, other than a resource pursuant to paragraphs (a) through (c) of this subsection, the applicant or recipient's share shall be determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership shall be accomplished if the applicant or recipient asserts no contribution to or benefits from a jointly held resource and provides:

1. A written statement regarding ownership, who may deposit and withdraw;

2. A written statement from each of the other owners that corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant's or recipient's name has been removed from the resource.

(7)(a) To be considered an exempt resource, the individual development account shall have been:

1. Established on or after May 1, 1997; and

2. Funded through periodic contributions by a member of the benefit group using funds derived from earned income that was earned after May 1, 1997, for a qualified purpose.

(b) A qualified purpose to establish an individual development account shall be for:

1. Postsecondary educational expense that shall include:

a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution;

b. Fees, books, supplies, and equipment required for a course of instruction at an eligible educational institution; and

c. An eligible educational institution that shall be an:

(i) Institution pursuant to 20 U.S.C. 1088(b)(1); or

(ii) Area vocational education school pursuant to 20 U.S.C. 2302(3) or (13);

2. First home purchase that includes:

a. Costs of acquiring, constructing, or reconstructing a residence; and

b. Usual or reasonable settlement, financing, or other closing costs;

3. A business capitalization expenditure for a business that does not contravene a law or public policy, as determined by the cabinet, pursuant to a qualified plan which shall:

a. Include capital, plant, equipment, working capital, and inventory expenses;

b. Be approved by a financial institution; and

c. Include a description of a service or a good to be sold, a marketing plan, and projected financial statement. An applicant may use the assistance of an experienced entrepreneurial advisor if needed; or

4. Other purpose allowed by a federal regulation or clarification.

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes pursuant to paragraph (b) of this subsection.

(d) To be considered an exempt resource, an individual development account shall be matched by funds from a:

1. Nonprofit organization; or

2. State or local government agency, funding permitted, acting in cooperation with an organization pursuant to subparagraph 1 of this paragraph.

Section 4. Income Limitations. In determining eligibility for KTAP[K-TAP], the following shall apply:

(1) Gross income test:

(a) The total gross non-KTAP[K-TAP] income shall not exceed

the gross income limitation standard and shall include:

1. Income of the benefit group;
2. Income of a parent who does not receive SSI or state supplementation pursuant to 921 KAR 2:015;
3. Income of a sanctioned or penalized individual; and
4. An amount deemed available from:

a. The parent of a minor parent living in the home with the benefit group;

b. A stepparent living in the home; or

c. An immigrant[s]alien[s] sponsor and sponsor's spouse if living with the sponsor;

(b) Excluded income types pursuant to Section 5(1) of this administrative regulation shall apply; and

(c) If total gross income exceeds the gross income limitation standard, the benefit group shall be ineligible.

(2) Benefit calculation:

(a) If the benefit group meets the criteria pursuant to subsection (1) of this section, benefits shall be determined by subtracting excluded income and applicable deductions pursuant to Section 5(1), (2), and (3) of this administrative regulation;

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size pursuant to Section 9 of this administrative regulation, the benefit group shall be ineligible; and

(c) Amount of assistance shall be determined prospectively.

(3) Ineligibility period:

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during a month the assistance is paid exceeds a limit pursuant to subsection (2) of this section due to receipt of lump sum income;

(b) The ineligibility period shall be:

1. The number of months that equals the quotient of the division of total countable income by the standard of need pursuant to Section 9 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount; and

(c) The ineligibility period shall be recalculated if:

1. The standard of need pursuant to Section 9 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, that caused the calculation of the ineligibility period, has become unavailable for a reason that was beyond the control of the benefit group;

3. The benefit group incurs and pays a necessary medical expense not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the KTAP[K-TAP] household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the cabinet determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 5. Excluded Income and Deductions. (1) Gross non-KTAP[K-TAP] income received or anticipated to be received shall be considered with the application of excluded income and deduction policy:

(a) By the:

1. Benefit group;
2. Sanctioned or penalized individual;
3. Natural parent;
4. Spouse of a dependent child;
5. Parent of a minor parent living in the home with the benefit group; or

6. Stepparent living in the home; and

(b) Pursuant to subsections (2) to (4) of this section.

(2) Gross income test. An income listed in this subsection shall be excluded:

(a) A deduction applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, pursuant to Section 7 of this administrative regulation;

(b) A deduction applicable to an immigrant[alien] sponsor's income, pursuant to Section 8 of this administrative regulation;

(c) A deduction applicable to self-employment income;

(d) Allowances, earnings, and payments received under WIOA[WIA] programs in accordance with 29 U.S.C. 2931(a)(2);

(e) 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 Supplemental Nutrition Assistance Program (SNAP) allotment;

(f) Reimbursement for transportation in performance of an employment duty, if identifiable;

(g) The value of Kentucky Works Program supportive services payment pursuant to 921 KAR 2:017;

(h) Nonemergency medical transportation payment;

(i) Payment from complementary program if no duplication exists between the other assistance and the assistance provided by KTAP[the K-TAP program];

(j) Educational grant, loan, scholarship, [and—]work study income, or other type of financial assistance for education pursuant to KRS 205.200(8);

(k) Highway relocation assistance;

(l) Urban renewal assistance;

(m) Federal disaster assistance and state disaster grant;

(n) Home produce utilized for household consumption;

(o) Housing subsidy received from federal, state or local governments;

(p) Funds distributed to a member of certain Native American[Indian] tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Funds distributed per capita to or held in trust for a member of a Native American[an Indian] tribe by the federal government pursuant to 25 U.S.C. 459, 1261, and 1401;

(r) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as a:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(s) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 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;

(t) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(u) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program (LIHEAP) pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(v) The first fifty (50) dollars of child support payment;

(w) Earnings of an individual attending school who is age nineteen (19) or under;

(x) Earnings of a dependent child under eighteen (18) who is a high school graduate;

(y) Nonrecurring monetary gifts totaling 100[thirty-(30)] dollars or less per month per individual;

(z) The principal of a verified loan;

(aa) 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;

(bb) Income of an individual receiving SSI, including monthly SSI benefits and any retrospective SSI benefits;

(cc) The essential person's portion of the SSI check;

(dd) Income of an individual receiving mandatory or optional state supplementary payment pursuant to 921 KAR 2:015;

(ee) 1. Any federal tax refund or advance payment of a refundable federal tax credit; or

2. ~~The~~After December 31, 2012, the advance payment or refund of earned income tax credit;

(ff) Payment made directly to a third party on behalf of the applicant or recipient by a ~~non-responsible~~nonresponsible person;

(gg) Interest and dividend income unless derived from a corporate business;

(hh) In-kind income;

(ii) Income of a technically ineligible child;

(jj) Payment made from the Agent Orange Settlement Fund;

(kk) KTAP~~[K-TAP]~~ payment including back payment;

(ll) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship pursuant to 921 KAR 2:006, Section 6 [44];

(mm) Payment made from the Radiation Exposure Compensation Trust Fund;

(nn) Up to \$2,000 per year of income received by individual ~~Native Americans~~Indians denied from a lease or other use of individually-owned trust or restricted lands;

(oo) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(qq) A payment received from the National Tobacco Growers Settlement Trust;

(rr) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(ss) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(tt) A payment made to children of Vietnam veterans and certain other veterans, pursuant to 38 U.S.C. 1833;

(uu) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 7(xviii) and (D)(4);

(vv) 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); ~~and~~

(ww) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5); and

(xx) A payment received from the Transitional Compensation for Abused Dependents Program.

(3) Benefit calculation. Excluded income pursuant to subsection (2) of this section and an applicable deduction listed in this subsection shall be applied as follows:

(a) Work expense standard deduction of 175~~[ninety-(90)]~~ dollars for full-time and part-time employment;

(b) If the caregiver is not the parent, legal guardian, or a member of the benefit group, the dependent care disregard shall:

1. Be allowed as a work expense for:
 - a. An able-~~[-]~~bodied child age thirteen (13) or over and not under court supervision;
 - b. An incapacitated adult living in the home and receiving KTAP~~[K-TAP]~~;
 - c. A KTAP~~[K-TAP]~~ case that is otherwise ineligible for KTAP~~[K-TAP]~~ without the benefit of the disregard for child care, at the option of the recipient; or
 - d. The month of application for KTAP~~[K-TAP]~~ benefits; and
2. Not exceed:
 - a. \$175 per month per individual for full-time employment;
 - b. \$150 per month per individual for part-time employment; or
 - c. \$200 per month per individual for child under age two (2);
- (c) Child support payment received and retained until notification of eligibility for KTAP~~[K-TAP]~~ is received;
- (d) Child support payment assigned and actually forwarded or

paid to the cabinet;

(e) ~~For six (6) months, the first fifty (50) percent~~[First thirty (30) dollars and one-third (1/3) of the remainder] of earned income not already deducted for each member of the benefit group.

(f) ~~[calculated as follows:~~

1. ~~The one-third (1/3) portion of this deduction shall be applied to each member's earned income for four (4) months;~~

2. ~~The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period; and~~

3. ~~Until an~~[the] individual has earnings, reported timely, from new employment, the deductions shall not be available to the individual after expiration of the time limits; and

~~(g) [(f)]~~ For new employment, or increased wages, acquired after approval and reported timely, a two (2)~~[one-(1)]~~ time only disregard per employed adult member of the benefit group, the amount of six (6)~~[two-(2)]~~ full calendar months earnings calculated as follows:

1. The six (6)~~[two-(2)]~~ months earnings disregard shall be consecutive, and at the option of the recipient; and

2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the six (6)~~[two-(2)]~~ months earnings disregard.

(4) Deductions from earnings pursuant to subsection (3)(a), (b) and (e) of this section shall not apply for a month the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 921 KAR 2:370, Section 6(1); or

(b) Fails to report an increase in earnings, that impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case and the member employed, if different, is out of town for the entire ten (10) day report period.

Section 6. Child Care Expense. With the exception of those circumstances pursuant to Section 5(3)(b) of this administrative regulation, a child care expense incurred as a result of employment shall be paid pursuant to 922 KAR 2:160.

Section 7. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, pursuant to subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent; and

(d) A parent of a minor parent.

(2) The gross income of the individual shall be considered available to the benefit group, subject to the following deductions:

(a) The first 175~~[ninety-(90)]~~ dollars of the gross earned income; and

(b) 1. An amount equal to the KTAP~~[K-TAP]~~ standard of need for the appropriate family size, pursuant to Section 9 of this administrative regulation for:

a. The support of the individual; and

b. A person living in the home if:

(i) The needs of the person are not included in the KTAP~~[K-TAP]~~ eligibility determination; and

(ii) The person is or may be claimed as a dependent for the purpose of determining his federal personal income tax liability by the individual;

2. An amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for the purpose of determining his personal income tax liability by the individual; or

3. Payment for alimony or child support to a person not living in the home by the individual.

(3) A resource shall not be considered in determining eligibility

of the parent, minor dependent child, or specified relative other than a parent or the benefit group that belongs solely to the:

- (a) Stepparent;
- (b) Spouse of a minor dependent child;
- (c) Spouse of a specified relative other than a parent; or
- (d) Parent of a minor parent.

Section 8. Immigrant[Alien] Sponsor Income and Resources.

(1)(a) For the purpose of this section, the immigrant's[alien's] sponsor and sponsor's spouse, if living with the sponsor, shall be referred to as sponsor.

(b) This subsection and subsections (2) through (6) of this section shall apply to an immigrant who has an agreement executed other than an agreement pursuant to 8 U.S.C. 1183a.

(2) The gross non-KTAP[K-TAP] income and resources of an immigrant's[alien's] sponsor shall be deemed available to the immigrant[alien], subject to a deduction set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more immigrants[aliens], the income and resources shall be prorated among the sponsored immigrants[aliens].

(4) If adequate information on the sponsor or sponsor's spouse is not provided, a sponsored immigrant[alien] shall be ineligible for a month.

(5) If an immigrant[alien] is sponsored by an agency or organization, that has executed an affidavit of support, the immigrant[alien] shall be ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

- (a) Is no longer in existence; or
- (b) Does not have the financial ability to meet the immigrant's[alien's] needs.

(6) The provisions of this subsection shall not apply to an immigrant[alien] pursuant to subsection (5) or (7) of this section.

(a) The gross income of the sponsor shall be considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the KTAP[K-TAP] standard of need for the appropriate family size pursuant to Section 9 of this administrative regulation of:

- a. The sponsor; and
- b. Other person living in the household:

(i) Who is or may be claimed by the sponsor as a dependent in determining the sponsor's federal personal income tax liability; and

(ii) Whose needs are not considered in making a determination of eligibility for KTAP[K-TAP];

3. An amount paid by the sponsor to a non-household[nonhousehold] member who is or may be claimed as a dependent in determining the sponsor's federal personal tax liability;

4. Actual payment of alimony or child support paid to a non-household[nonhousehold] member; and

5. Income of a sponsor receiving SSI or KTAP[K-TAP].

(b) Resources deemed available to the immigrant[alien] shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if the sponsor were a KTAP[K-TAP] applicant in this state, less \$9,500[\$1,500].

(7)(a) For a sponsored immigrant[alien] who enters the United States on or after December 19, 1997, who is required to complete a sponsorship agreement pursuant to 8 U.S.C. 1183a, the total gross income and resources of an immigrant's[alien's] sponsor and sponsor's spouse shall be deemed available to the immigrant[alien].

(b) The sponsor's obligation shall be available until the:

1. Immigrant:
 - a. Becomes a United States citizen;
 - b. Is credited with forty (40) quarters of work; or
 - c. Ceases to hold the status of an immigrant[alien] lawfully admitted for permanent residence; or
2. Sponsor dies.

(c) The immigrant shall provide the sponsorship agreement pursuant to 8 U.S.C. 1183a.

(8)(a) The actual amount provided by the sponsor shall be

considered for a period up to twelve (12) months from the date of determination, if an:

1. Amount less than the amount in the sponsorship agreement is made available to the immigrant; and

2. Immigrant[Alien] is determined indigent.

(b) An immigrant[alien] shall be determined indigent if:

1. The amount of the sponsor's income and resources given to the immigrant[alien] is less than the amount in the agreement; and

2. Without KTAP[K-TAP] assistance and after consideration of the immigrant's[alien's] own income, cash, food, housing or assistance provided by an individual including the sponsor, the immigrant[alien] is unable to obtain food and shelter.

(9) Deeming of the sponsor's income shall not apply for twelve (12) months if the:

(a) Immigrant or immigrant's child[Alien or alien's child] has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse or parent; or
2. Spouse or parent's family living with the immigrant[alien] or immigrant's[alien's] child and the spouse or parent allows the cruelty or battery; or

(b) Immigrant[Alien] is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States, and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse; or
2. Member of the spouse's family living in the same household and the spouse allows the cruelty or battery.

Section 9. Payment Maximum. (1) The KTAP[K-TAP] payment maximum includes an amount for food, clothing, shelter, and utilities.

(2)(a) Countable income, pursuant to Section 10 of this administrative regulation, shall be subtracted in determining eligibility for and the amount of the KTAP[K-TAP] assistance payment as follows:

Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	\$372[\$186]	\$481[\$404]
2 persons	\$450[\$225]	\$552[\$469]
3 persons	\$524[\$262]	\$631[\$526]
4 persons	\$656[\$328]	\$710[\$592]
5 persons	\$766[\$383]	\$790[\$658]
6 persons	\$864[\$432]	\$869[\$724]
7 or more persons	\$964[\$482]	\$948[\$790]

(b) The gross income limit shall be as follows for the appropriate family size:

Number of Eligible Persons	Maximum Gross Income Limits
1 Person	\$890[\$742]
2 Persons	\$1,021[\$854]
3 Persons	\$1,169[\$974]
4 Persons	\$1,315[\$1,096]
5 Persons	\$1,462[\$1,218]
6 Persons	\$1,608[\$1,340]
7 or more Persons	\$1,754[\$1,462]

(3) Since the payment maximum does not meet full need, [effective July 1, 1989,] a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be the lesser amount of either:

1. Fifty-five (55) percent of the deficit pursuant to subsection (3) of this section; or
2. The payment maximum pursuant to subsection (2)(a) of this section.

(b) As a result of applying the forty-five (45) percent ratable reduction pursuant to subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated pursuant to KRS 205.200(2).

(5) If a benefit group's assistance payment equals zero (0), the benefit group shall be ineligible for KTAP[K-TAP].

(6) To the extent funds are available, the payment maximum, gross income limit, and standard of need shall be the amount established in this section in addition to cost of living adjustments determined by the Social Security Administration that have taken place beginning in 2023 pursuant to 42 U.S.C. 415(i) and published at <https://www.ssa.gov/cola/>.

Section 10. Best Estimate. (1) The benefit shall be computed by using a best estimate of income that may exist in the payment month.

(2) The following method shall be used to calculate a best estimate:

(a) For a case with earned income, other than self-employment earned income, a monthly amount shall be determined as follows:

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, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months[month] shall be used.

3. A monthly amount shall be determined by:

a. Adding gross income from each pay period;

b. Dividing by the total number of pay periods considered;

c. Converting the pay period figure to a monthly figure by multiplying a:

(i) Weekly amount by four and one-third (4 1/3);

(ii) Biweekly amount by two and one-sixth (2 1/6); or

(iii) Semi-monthly[Semimonthly] amount by two (2); and

d. Rounding to the nearest dollar.

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 hourly rate by the estimated number of hours to be worked in a pay period; or

b.(i) Multiplying the daily rate by the estimated number of days to be worked in the pay period; and

(ii) Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph and rounding to the nearest dollar.

(b) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Rounding cents to the nearest dollar;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

3. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(c) 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 each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for a case with earned, unearned, or self-employment income;

(b) If the agency becomes aware of a change in a circumstance;

or

(c) To reflect a mass change in the standard of need or payment maximum standard pursuant to Section 9 of this administrative regulation.

Section 11. KTAP[K-TAP] Recoupment. The following provisions shall apply for recoupment of a KTAP[K-TAP] overpayment.

(1) Necessary action will be taken promptly to correct and recoup an overpayment.

(2) An overpayment shall be recovered:

(a) From an adult claimant, whether currently receiving KTAP[K-TAP] benefits:

1. After notice and an opportunity for a fair hearing pursuant to 921 KAR 2:055 is given;

2. After administrative and judicial remedies have been exhausted or abandoned; and

3. Including assistance paid:

a. Pending the hearing decision; or

b. Due to cabinet error; and

(b) Through:

1. Repayment by the claimant to the cabinet;

2. Reduction of future KTAP[K-TAP] benefits, that shall result in the benefit group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income pursuant to Section 9 of this administrative regulation;

3. Civil action in the court of appropriate jurisdiction; or

4. If the cabinet becomes aware of expunged electronic benefits transfer (EBT) payments, reduction of the overpayment balance by an amount equal to the expunged benefits.

(3) In a case that has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment to a current recipient.

~~Section 12. [Aid to Families with Dependent Children Recoupment. (1) The cabinet shall recoup an Aid to Families with Dependent Children overpayment discovered on or after April 1, 1982, pursuant to 45 C.F.R. 233.20(a)(13).~~

~~(2) An Aid to Families with Dependent Children overpayment shall be recovered from an adult or child member of the benefit group:~~

~~(a) Pursuant to 45 C.F.R. 233.20(a)(13); and~~

~~(b) In accordance with the recoupment process specified in Section 11 of this administrative regulation.~~

~~Section 13.] Avoiding an Overpayment. (1) A KTAP[K-TAP] recipient may voluntarily:~~

~~(a) Return a benefit payment; or~~

~~(b) Give permission to the cabinet to use EBT benefits by completing and returning a written statement requesting a written statement requesting this option to avoid an overpayment if the case:~~

~~1. Is totally ineligible for the month the payment is issued; and~~

~~2. Has not been reduced for recoupment of a previous overpayment.~~

~~(2) If a payment is voluntarily returned, the cabinet shall determine whether the recipient is due a refund as described in Section 13 [14] of this administrative regulation.~~

Section 13.[Section 14.] Refund. A recipient shall be due a refund in the following situations:

(1) An amount in excess of the actual overpayment is recouped;

(2) An overpayment and an underpayment is offset and a balance is owed to the recipient; or

(3) A KTAP[K-TAP] payment that is voluntarily returned to avoid an overpayment is compared to the current month obligation of child support collected by the cabinet during the month the KTAP payment[K-TAP-check] was intended to cover, leaving a balance owed to the recipient.

Section 14.~~[Section 15.]~~ Correction of Underpayments. The following provisions shall apply to a KTAP~~[K-TAP]~~ payment:

- (1) An underpayment shall be promptly corrected to:
 - (a) A current KTAP~~[K-TAP]~~ recipient; or
 - (b) One (1) who would be a current recipient if the error causing the underpayment had not occurred.
- (2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.
- (3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in the:
 - (a) Month the payment is paid; or
 - (b) Next following month.

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

APPROVED BY AGENCY: August 2, 2022

FILED WITH LRC: August 4, 2022 at 8:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 17, 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 October 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 and Krista Quarles

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes standards of need and amounts for Kentucky's Temporary Assistance for Needy Families (TANF) program, the Kentucky Transitional Assistance Program (KTAP).
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for standard of need, gross income scale, and payment amount for the Kentucky Transitional Assistance Program (KTAP).
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050(1), which authorizes the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. The Cabinet has responsibility pursuant to 45 C.F.R. 260 to implement the TANF program in Kentucky.
 - (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 income and payment criteria for the Kentucky Transitional Assistance Program (KTAP).
 - (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative

regulation: This amendment updates terms used; updates resource limits, payment maximums, maximum gross income limit, and standard of need values that have not been updated in over twenty (20) years. This amendment incorporates a cost-of-living adjustment that has been implemented in TANF programs across the county recently. Between July 2020 and July 2021, nine states — Connecticut, Illinois, Maine, Nebraska, New Hampshire, Ohio, South Carolina, Texas, and Wyoming — included such adjustments in their state TANF programs (Center on Budget and Policy Priorities, 12/2021). More recently, Minnesota and Tennessee have adopted similar measures. This amendment also adds balances in a 529 or ABLE account to the list of excluded resources for program eligibility determinations and simplifies calculations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding in providing KTAP services for eligible TANF applicants. This amendment is also necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104. The administrative regulation was reviewed for certification and determined to require updating.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for program eligibility, benefit provisions, and compliance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of the TANF-funded KTAP program in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services (DCBS) administers this program. As of April 2022, there were approximately 10,422 KTAP cases throughout Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no additional requirements for KTAP applicants or recipients in this amendment. This amendment simplifies calculations for those considering whether they may be eligible or not.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DCBS will have minor costs associated with data system changes. Costs to the agency related to assistance provided are funded by the federal TANF Block Grant. There are no costs to KTAP applicants or recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Resource limits used to determine eligibility and the amount of assistance provided are being updated because they have not been changed in over twenty (20) years.

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

(a) Initially: DCBS will have minor costs associated with data system changes. There are no costs to KTAP applicants or recipients. The KTAP assistance provided is an eligible expenditure for federal funding from the federal TANF Block Grant.

(b) On a continuing basis: The program is funded by the federal TANF Block Grant.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is funded by the federal TANF Block Grant.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619

(2) State compliance standards. KRS 194A.050(1), 205.200(2), 205.210(1)

(3) Minimum or uniform standards contained in the federal mandate. Operating a state program consistent with the rules of the Temporary Assistance for Needy Families Block Grant.

(a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(b) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(c) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(d) Encourage the formation and maintenance of two-parent families.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation by administering this program.

(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), 205.200(2), 205.210(1), 42 U.S.C. 601619.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 and program do provide assistance to eligible low-income families that will likely be spent in their local communities. The amount of revenue depends on program participation.

(b) How 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 and program do provide assistance to eligible low-income families that will likely be spent in their local communities. The amount of revenue depends on program participation.

(c) How much will it cost to administer this program for the first year? The cabinet will utilize the administrative funds available under the federal TANF Block Grant to administer this program in the first year. Assistance provided is funded by the TANF Block Grant as well.

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the administrative funds available under the TANF Block Grant to administer this programs in the first 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 establishes standards for need and amount for the Kentucky Transitional Assistance Program (KTAP). Cost savings are not generated by this administrative regulation, but it also does not require costs from regulated entities.

(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? There are no costs to regulated entities associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact or a negative or adverse economic impact on any parties.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

921 KAR 2:500. Family Assistance Short Term (FAST)[Alternatives Diversion (FAD)].

RELATES TO: KRS 205.200, 205.2003, 205.211, 600.020(1), 45 C.F.R. 260-265, 42 U.S.C. 601-619, 42 U.S.C. 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet 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 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601-619, and federal regulations. This administrative regulation establishes requirements for the Family Assistance Short Term (FAST) program in accordance with Temporary Assistance for Needy Families (TANF) provisions established in 45 C.F.R. 260-265[Alternatives Diversion Program (FAD)].

Section 1. Definitions. (1) "Benefit group" means a group that meets the eligibility requirements established in 921 KAR 2:006.

(2) "Kentucky Transitional Assistance Program" or "KTAP"["K-TAP"] means the program established in 921 KAR 2:006[a money payment program for children who are deprived of parental support or care in accordance with 921 KAR 2:006].

(3) "Overpayment" means a FAST[FAD] benefit received by an individual who:

(a) After an initial determination of eligibility is determined to be

ineligible for the program and erroneous benefits were received by the individual; or

(b) Is determined eligible for the program and refuses to apply the benefit to the provider of the service needed to resolve the short-term emergency as indicated by the individual at the time of the application.

(4) "Self-supporting" means an individual who:

(a) Is employed ~~in accordance with 921 KAR 2:006, Section 1;~~

or

(b) Shall be employed ~~in accordance with 921 KAR 2:006, Section 1;~~ within the subsequent three (3) months.

(5) "Unsubsidized child care" means child care for which financial assistance is not provided.

Section 2. Eligibility for FAST[FAD]. (1) To qualify for FAST[FAD] benefits, the benefit group shall:

(a) ~~Meet monthly income and resource requirements in the month of application as established in 921 KAR 2:016, Sections 3, 4(1), 5(1) and (2), and 7;~~

(b) Meet the technical requirements of KTAP[K-TAP] in accordance with 921 KAR 2:006 ~~except for the thirty (30) day unemployment requirement for unemployed parent cases as described in 921 KAR 2:006, Section 10(7)(e);~~

(b)(e) Not be currently receiving ongoing KTAP[K-TAP] benefits;

(c)(d) Have a verified, non-recurrent short-term need such as ~~to include~~:

1. Car repair, to be:

a. Completed by a mechanic who is employed by a garage;

b. Completed by a vocational school automotive program; or

c. The responsibility of the FAST[FAD] recipient, if a payment is made for a new or used automotive part;

2. Other transportation assistance;

3. Unsubsidized child care;

4. Utilities payment assistance;

5. Housing payment assistance; or

6. Items required for employment; and

(d)(e) Be determined by the cabinet to be self-supporting if the short-term need is met.

(2) The cabinet shall ~~use the FA-1, Family Alternatives Diversion (FAD) Determination, to~~ determine if a potential KTAP[K-TAP] applicant's eligible benefit group ~~for FAD~~ is ~~a family~~ eligible to receive FAST[FAD] benefits.

(3) The KTAP[K-TAP] eligible benefit group shall be notified of the option to decline FAST[FAD] benefits in lieu of applying for ongoing KTAP[K-TAP] benefits.

(4) FAST[FAD] shall be utilized instead of KTAP[K-TAP] if:

(a) Requested by the benefit group; and

(b) The benefit group is deemed eligible for FAST[FAD].

(5)(a) The benefit group's countable gross income shall include earned and unearned income in accordance with 921 KAR 2:016, Sections 4 and 5.

(b) The benefit group's gross income shall be computed using the best estimate of income for the month of application in accordance with 921 KAR 2:016, Section 10.

(c) The benefit group's total gross earned and unearned income shall not exceed 100% of the official federal poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 9902(2) ~~as determined in paragraph (b) of this subsection shall be compared to the maximum gross income scale for K-TAP in accordance with 921 KAR 2:016, Section 9(2)(b).~~

(d) ~~If the benefit group's total gross earned and unearned income exceeds the maximum gross income limit for the appropriate benefit group size, pursuant to 921 KAR 2:016, Section 9(2), the family shall not be eligible for a FAD payment.~~

(6)(a) The FAST[FAD] eligibility period for an approved FAST[FAD] application shall be a three (3) consecutive month period beginning with the date of FAST[FAD] approval.

(b) One (1) or more checks with a combined total of up to \$2,600[\$1,300], to the extent funds are available, may be issued to resolve a short-term need as specified in subsection (1)(c)(d) of

this section during the three (3) month eligibility period.

(c) An adult member of a benefit group shall not be approved to receive FAST benefits until ~~for FAD more than once during~~ a twelve (12)[twenty-four (24)] month period has passed since the last FAST payment was issued.

(d) ~~An adult member of a benefit group shall not be approved for FAD more than twice in a lifetime.~~

(e) If the adult member of a benefit group has voluntarily quit employment, the adult member shall not be eligible to receive FAST[FAD], unless the adult meets criteria specified in 921 KAR 2:370, Section 6(1)(a) through (k).

Section 3. Authorization of a FAST[FAD] Payment. (1) The amount of the eligible FAST[FAD] payment shall be issued in one (1) or more checks to:

(a) A vendor; ~~or~~

(b) The eligible FAST[FAD] benefit group and vendor, as a two (2) party check; ~~or~~

(c) The eligible FAST benefit group.

(2) Except for payments for purchases of merchandise or goods, a FAST[FAD] payment shall not be issued to a vendor of services who is required and fails to provide signed documentation of:

(a) A tax identification number or Social Security number; and

(b) Verification of services.

(3) Total payments during the three (3) month FAST[FAD] eligibility period shall not exceed \$2,600[\$1,300], to the extent funds are available.

Section 4. Coordination with KTAP[K-TAP] and Other Benefit Programs. (1) Receipt of a FAST[FAD] payment shall exclude the benefit group from receiving ongoing KTAP[K-TAP] benefits for twelve (12) months unless nonreceipt would result in:

(a) Abuse or neglect of a child, as defined by ~~determined pursuant to~~ KRS 600.020(1); or

(b) The parent's inability to provide adequate care or supervision due to the loss of employment through no fault of the parent.

(2) A benefit group shall not be eligible to receive Work Incentive (WIN), KTAP[K-TAP], or FAST[FAD] funds concurrently.

(3) An application shall be taken or a referral made for the following benefits as needed for a FAST[FAD] eligible family:

(a) Supplemental Nutrition Assistance Program (SNAP);

(b) Medicaid;

(c) Child Care Assistance Program (CCAP) ~~care~~; and

(d) Child support.

(4) For a FAST[FAD] eligible benefit group, a referral shall be made as needed for other services offered through other state agencies, contractors, or charitable organizations to include the following services:

(a) Job search;

(b) Job readiness assessment;

(c) Life skills; and

(d) Other food benefit programs.

Section 5. Overpayments. (1) The cabinet shall recover the amount of an overpayment, including assistance paid pending the outcome of a hearing, from the claimant-payee.

(2) An overpayment shall be recovered through:

(a) Repayment by the claimant-payee to the cabinet; or

(b) Cabinet initiation of a civil action in the court of appropriate jurisdiction after the claimant-payee has exhausted or abandoned the administrative and judicial remedies specified in 921 KAR 2:055.

Section 6. Hearing Rights. Hearing rights for FAST[FAD] shall be the same as hearing rights for a KTAP[K-TAP] recipient in accordance with 921 KAR 2:055.

[Section 7. Incorporation by Reference. (1) The "FA-1, Family Alternatives Diversion (FAD) Determination", 04/11, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday

through Friday 8 a.m. to 4:30 p.m.]

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

APPROVED BY AGENCY: August 2, 2022

FILED WITH LRC: August 4, 2022 at 8:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 17, 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 October 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; 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 eligibility criteria for the Family Assistance Short Term (FAST) program in Kentucky, which provides assistance to eligible Kentucky families in meeting verified, non-recurrent, short-term needs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility and benefits criteria for Kentucky's Family Assistance Short Term (FAST) program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. This cabinet has responsibility under 45 C.F.R. 260 to implement the TANF program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing eligibility and benefits criteria for the implementation of the TANF "Family Assistance Short Term" program or "FAST."

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by increasing the maximum benefit for FAST services provided with Temporary Assistance for Needy Families (TANF) Block Grant funds. The amendment also updates companion program names.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding in providing FAST services for eligible Kentucky families. This amendment is also necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104. The administrative regulation was reviewed for certification and

determined to require updating.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for program eligibility, benefit provisions, and compliance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of the TANF-funded FAST program in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services (DCBS) will be impacted by this administrative regulation. DCBS administers TANF benefits throughout Kentucky's 120 counties. Through this program, assistance was provided to six (6) families statewide during the time period of June 2021 to November 2021, with an average of one (1) family per month. Data indicates that there was a slight increase in participation in this program prior to the Covid-19 pandemic.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 increases the benefit amount for the Work Incentive program. No additional actions are required by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs associated with the increase in benefit amount for the Family Assistance Short Term (FAST) program are funded by the TANF Block Grant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals eligible for FAST payments will see a slightly higher benefit amount. Costs associated with the increase in benefit amount for the Family Assistance Short Term (FAST) program are funded by the TANF Block Grant.

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

(a) Initially: The Family Assistance Short Term (FAST) program is an eligible expenditure for federal funding from the TANF Block Grant.

(b) On a continuing basis: The cabinet will ensure that the programs and state administrative activities are funded with the TANF Block Grant.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is funded by the TANF Block Grant.

(7) Provide an assessment of whether an 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 cabinet will implement and enforce this administrative regulation in subsequent years with the TANF Block Grant.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 260-265

(2) State compliance standards. KRS 194A.050(1), 205.200(2)

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 260-265

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

required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services 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. 45 C.F.R. 260-265, KRS 194A.050(1), 205.200(2)

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

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

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

(c) How much will it cost to administer this program for the first year? This program will be operated within appropriations.

(d) How much will it cost to administer this program for subsequent years? This program will be operated within 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 is necessary to establish the eligibility and benefits criteria for Kentucky's Family Assistance Short Term (FAST) program. Cost savings are not generated by this administrative regulation, but it also does not require costs from regulated entities.

(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? There are no costs to regulated entities associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

assistance to eligible Kentucky families in meeting verified, non-recurrent, short-term needs.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 2:510. Relocation Assistance Program (RAP).

RELATES TO: KRS 45.237-241, 205.211, 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary[Secretary of the Cabinet for Health and Family Services] to promulgate administrative regulations[regulation] necessary to implement programs mandated by federal law or to qualify for receipt of federal funds. KRS 205.200(2) requires the secretary to prescribe, by administrative regulation, conditions of eligibility for public assistance, in conformity with federal law. This administrative regulation establishes eligibility requirements for the Relocation Assistance Program (RAP) in accordance with Temporary Assistance for Needy Families (TANF) provisions established in 45 C.F.R. Parts 260-265.

Section 1. Definitions. (1) "Benefit group" means a group that meets the eligibility requirements established in 921 KAR 2:006.

(2) "Family Assistance Short Term" or "FAST"[Alternatives Diversion Program] or "FAD"] means the program established in 921 KAR 2:500.

(3) "Kentucky Transitional Assistance Program" or "KTAP"["K-TAP"] means the program established in 921 KAR 2:006[Kentucky's Temporary Assistance for Needy Families or "TANF" Program, means a money payment program for children who are deprived of parental support or care in accordance with 921 KAR 2:006].

Section 2. Relocation Assistance Program (RAP). (1) An applicant for [the]RAP shall:

(a) Be a current recipient of KTAP[K-TAP];

(b)1. Have a verified offer of employment with wages in an amount equal to or greater than thirty (30) hours per week at the minimum hourly wage rate; or

2. Be currently employed with wages in an amount equal to or greater than thirty (30) hours per week at the minimum hourly wage rate, reporting and verifying timely, and request relocation assistance within ninety (90) days from the start date of employment; and

(c) Be in need of assistance to relocate in order to:

1. Accept or maintain a verified offer of employment if the applicant's:

a. Current residence is located ten (10) miles or more from the location of new employment; and

b. New residence is closer to the location of new employment than the applicant's current residence; ~~or~~

2. Escape a domestic violence situation, as determined by the cabinet pursuant to 921 KAR 2:006, Section 1; or

3. Prevent homelessness.

(d) Not be required to comply with paragraphs (b) and (c)1 of this subsection, if moving to escape from a domestic violence situation; and

(e) Complete Form RA-1, Application for Relocation Assistance.

(2) To the extent funds are available, the payment shall be issued to assist an eligible KTAP[K-TAP] recipient in meeting moving-related expenses. Moving-related expenses shall include:

(a) Moving van rental;

(b) First month's rent for apartment or house; and

(c) Security deposit, utility hook-up fee, or other moving-related fee approved by the cabinet for the apartment or house referenced[listed] in paragraph (b) of this subsection.

(3) The amount of payment shall be up to \$1,500[\$500] based

on the actual verified moving-related expenses, as listed in subsection (2) of this section.

(4) Except for a domestic violence situation, an otherwise eligible recipient of [the] RAP shall receive relocation assistance a maximum of once every twelve (12) months [only one (1) time].

(5) The offer of employment, including hourly wage and number of hours, and the availability of a new residence, as specified in subsection (1)(b)1 and (c)1 of this section shall be verified in writing.

(6) The start date of ongoing employment, including hourly wage and number of hours and the availability of a new residence as specified in subsection (1)(b)2 and (c)1 of this section, shall be verified in writing.

(7) The cabinet shall provide follow-up case management to assist the family with the transition.

(8) A family not currently receiving KTAP[K-TAP] and eligible to receive FAST[FAD] may receive assistance to relocate pursuant to [as specified in] 921 KAR 2:500.

(9) A KTAP[K-TAP] recipient may refuse without penalty an offer of employment that [which] would require relocation.

Section 3. Hearing Rights. Hearing rights for [the] RAP shall be the same as hearing rights for a KTAP[K-TAP] recipient in accordance with 921 KAR 2:055.

Section 4. Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 5. Incorporation by Reference. (1) The "RA-1, Application for Relocation Assistance", 08/22/22[42/45], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 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: August 2, 2022

FILED WITH LRC: August 4, 2022 at 8:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 17, 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 October 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 and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility criteria for the Relocation Assistance Program (RAP) in Kentucky, which provides assistance to eligible Kentucky families who need to relocate in order to accept or maintain employment, escape a domestic violence situation, or prevent homelessness.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility and benefits criteria for Kentucky's Relocation Assistance Program (RAP).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. This cabinet has responsibility under 45 C.F.R. 260 to implement the TANF program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing eligibility and benefits criteria for the implementation of the TANF-funded Relocation Assistance Program (RAP).

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by increasing the maximum benefit for RAP services provided with federal Temporary Assistance for Needy Families (TANF) Block Grant funds to eligible Kentucky families who need to relocate in order to accept or maintain employment, escape a domestic violence situation, or prevent homelessness. The amendment also updates other program names for consistency with other administrative regulations in process.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding in providing RAP services for more eligible TANF applicants. This amendment is also necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104. The administrative regulation was reviewed for certification and determined to require updating.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for program eligibility, benefit provisions, and compliance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of the TANF-funded Relocation Assistance Program in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services (DCBS) will be impacted by this administrative regulation by administering this program. DCBS administers TANF benefits throughout Kentucky's 120 counties. During the time period from June 2021 to November 2021, RAP was provided to one family statewide. Data indicates there was an increase in participation in this program prior to the Covid-19 pandemic. Historically, RAP has been an under-utilized program; however, the Relocation Assistance Program is a vital lifeline for those experiencing domestic violence.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 increases the benefit amount for the Relocation Assistance Program. No additional

actions are required by this amendment, it is only a resource available to Kentuckians in need.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs associated with the increase in benefit amount for the Relocation Assistance Program (RAP) are funded by the TANF Block Grant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals eligible for RAP payments will see a slightly higher benefit amount. Costs associated with the increase in benefit amount for the Relocation Assistance (RAP) program are funded by the federal TANF Block Grant.

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

(a) Initially: The Relocation Assistance Program (RAP) is an eligible expenditure for federal funding from the TANF Block Grant.

(b) On a continuing basis: The cabinet will ensure that the programs and state administrative activities are funded with the TANF Block Grant.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is funded by the TANF Block Grant.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. Parts 260-265

(2) State compliance standards. KRS 194A.050(1), 205.200(2)

(3) Minimum or uniform standards contained in the federal mandate. Operating a state program consistent with the rules of the Temporary Assistance for Needy Families Block Grant.

(a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(b) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(c) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(d) Encourage the formation and maintenance of two-parent families.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter requirements than those required by the federal mandate. The state meets the requirements of TANF through many different programs.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation through administering this program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. Parts 260-265, KRS 194A.050, 205.200(2)

(3) Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not directly generate revenue for the state or local government, but does provide federally-funded assistance to eligible families for the purpose of relocation that may assist local economies. The amount depends on program participation.

(b) How 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 directly generate revenue for the state or local government, but does provide federally-funded assistance to eligible families for the purpose of relocation that may assist local economies.

(c) How much will it cost to administer this program for the first year? The cabinet will utilize the administrative funds available under the federal TANF Block Grant to administer these programs in the first year although costs are minimal.

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the administrative funds available under the TANF Block Grant to administer these programs in the subsequent years.

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

Revenues (+/-):

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 is necessary to establish the eligibility and benefits criteria for the Relocation Assistance Program. Cost savings are not generated by this administrative regulation, but it also does not require costs from regulated entities

(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? There are no costs to regulated entities associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact or a negative or adverse economic impact on any parties, but rather provides assistance to eligible Kentucky families requiring assistance in relocating.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 2:520. Work Incentive (WIN)[or “WIN”].

RELATES TO: KRS 205.200, 205.211, [205.2003,]45 C.F.R. Parts 260-265, 42 U.S.C. 601-619, Part 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.2003

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. [~~KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the public assistance programs.~~]KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619, and federal regulations. KRS 205.2003 requires the cabinet to promulgate administrative regulations to develop a work program for recipients of public assistance to provide for immediate employment or preparation for employment, and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation establishes requirements for receiving the Work Incentive (WIN)[work incentive] payment in accordance with Temporary Assistance for Needy Families (TANF) provisions established in 45 C.F.R. Parts 260-265.

Section 1. Definitions. (1) "Benefit group" means a group that meets the eligibility requirements established in 921 KAR 2:016.

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) [~~"Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.~~]

(4) [~~"Family Assistance Short Term" or "FAST"[Alternatives Diversion Program" or "FAD"] means the program established in a money payment diversion program for families in need in accordance with] 921 KAR 2:500.~~

(4) [(5)] "Kentucky Transitional Assistance Program" or "KTAP"[~~"K-TAP,"~~] means the program established in 921 KAR 2:006[Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program for a child in accordance with 921 KAR 2:006].

(5) [(6)] "Overpayment" means a Work Incentive[work incentive] payment received by an individual who after an initial determination of eligibility:

(a) Is determined to be ineligible for the program; and

(b) Received erroneous benefits.

(6) [(7)] "Work expense" means costs or charges accumulated as a result of items or services necessary for employment.

Section 2. Eligibility for WIN. (1) To qualify for WIN, a member of the benefit group shall:

(a) Be discontinued from KTAP[K-TAP] with earnings;

(b) Report [~~and provide written verification~~] to the cabinet within ten (10) calendar days of obtaining employment and provide written verification within ten (10) calendar days of the report;

(c) Have an eligible child as defined in 921 KAR 2:006, Section 1;

(d) Be employed;

(e) Have a work expense;

(f) Be a resident of Kentucky; and

(g) Have total gross earned and unearned income at or below 200 percent of the official federal poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 9902(2)[level].

(2) An individual is not eligible for WIN if:

(a) Employment is obtained after the KTAP[K-TAP] case is discontinued; or

(b) The individual has previously received all twelve (12) months

~~off[a] WIN payments[payment].~~

(3) An eligible recipient shall not receive KTAP, FAST[K-TAP, FAD], or WIN concurrently.

Section 3. Eligibility Period. (1)(a) The potential WIN eligibility period for an approved WIN recipient shall be twelve (12) cumulative months,[a nine (9) consecutive month period] beginning with the first month of discontinuance of KTAP[K-TAP].

(b) Eligibility shall be redetermined monthly.

(2) [~~A recipient discontinued from K-TAP shall be eligible for one (1) lifetime WIN eligibility period.]~~

(a) An eligible WIN recipient shall be eligible for up to twelve (12) cumulative[nine (9)] months of WIN payments.

(b) If an eligible recipient loses employment, the WIN payment shall stop unless:

1. New employment is obtained within one (1) month; and

2. Written verification is provided to the cabinet by the last business day of the WIN-eligible month to verify the[within ten (10) calendar days of obtaining] new employment.

(c) If eligibility in accordance with Section 2(1) of this administrative regulation is no longer met, the WIN payment shall stop[~~even if months are remaining in the eligibility period.~~].

(d) If the eligible WIN recipient reapplies and is eligible for KTAP[K-TAP], the WIN payment shall stop[even if months remain in the WIN eligibility period].

(3) If an individual previously received less than twelve (12) WIN payments and regains eligibility for WIN, the eligible recipient may continue to receive the remaining WIN payments.

(4) An eligible recipient shall not waive receipt of the WIN payment in order to receive the payment at a later date.

Section 4. Payment Amount and Authorization. (1) To the extent funds are available, the payment amount shall be \$200[\$430] per month per eligible adult.

(2) The first payment shall be automatically issued on the tenth day of the effective month of the discontinuance of KTAP[K-TAP] benefits.

(3) Each subsequent payment may be issued upon the cabinet receiving:

(a) A completed WIN-1, Work Incentive[INcentive] (WIN) Report, by the last business day of the WIN-eligible month[within ten (10) calendar days of issuance]; or

(b) A completed WIN-2, Second Notice for Work Incentive[INcentive] (WIN) Report, by the last business day of the WIN-eligible month[within ten (10) calendar days of issuance].

Section 5. Overpayments. (1) The cabinet shall recover the amount of an overpayment, including assistance paid pending the outcome of a hearing, from the claimant-payee.

(2) An overpayment shall be recovered through:

(a) Repayment by the claimant-payee to the cabinet; or

(b) Cabinet initiation of a civil action in the court of appropriate jurisdiction after the claimant-payee has exhausted or abandoned the administrative and judicial remedies specified in 921 KAR 2:055.

Section 6. Hearings and Appeals. An applicant or recipient of WIN payments who is dissatisfied with an action or inaction on the part of the cabinet may seek a hearing pursuant to 921 KAR 2:055.

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

(a) "WIN-1, Work Incentive[INcentive] (WIN) Report", 08/22[12/15]; and

(b) "WIN-2, [~~Second Notice for~~]Work Incentive[INcentive] (WIN) Report – Second Notice", 08/22[12/15].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at https://chfs.ky.gov/agencies/dcbcs/Pages/default.aspx.

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

APPROVED BY AGENCY: August 2, 2022

FILED WITH LRC: August 4, 2022 at 8:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 17, 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 October 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 and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility criteria for the Work Incentive (WIN) program in Kentucky, which assists eligible families with paying for costs or charges accumulated as a result of items or services necessary for employment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility and benefits criteria for Kentucky's Work Incentive (WIN) program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. This cabinet has responsibility under 45 C.F.R. 260 to implement the TANF program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing eligibility and benefits criteria for the implementation of the TANF "Work Incentive" program or "WIN."

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by increasing the maximum benefit for WIN services provided with Temporary Assistance for Needy Families (TANF) Block Grant funds – this is assistance paying for costs that are necessary for employment. The amendment also updates program names for consistency with other administrative regulations in process. Material incorporated by reference is also being updated to clarify instructions and add agency contact information.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding in providing WIN services for more eligible TANF applicants. This amendment is also necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104. The administrative regulation was reviewed for certification and determined to require updating.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for program eligibility, benefit provisions, and compliance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of the TANF-funded Work Incentive program in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services (DCBS) will be impacted by this administrative regulation. DCBS administers TANF benefits throughout Kentucky's 120 counties. Through this program, assistance was provided to sixty-eight (68) families per month during the time period of June 2021 to November 2021. Data indicates that there was an increase in program participation prior to the Covid-19 pandemic (approximately 200 families per month).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment increases the benefit amount for the Work Incentive program. No additional actions are required by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs associated with the increase in benefit amount for the Work Incentive (WIN) program are funded by the TANF Block Grant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals eligible for WIN payments will see a slightly higher benefit amount. Costs associated with the increase in benefit amount for the Work Incentive (WIN) program are funded by the TANF Block Grant.

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

(a) Initially: The Work Incentive (WIN) program is an eligible expenditure for federal funding from the TANF Block Grant.

(b) On a continuing basis: The cabinet will ensure that the programs and state administrative activities are funded with the TANF Block Grant.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is funded by the TANF Block Grant.

(7) Provide an assessment of whether an 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 cabinet will implement and enforce this administrative regulation in subsequent years through the federal TANF Block Grant.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. Parts 260-265

(2) State compliance standards. KRS 194A.050(1), 205.200(2), 205.2003

(3) Minimum or uniform standards contained in the federal mandate. Operating a state program consistent with the rules of the Temporary Assistance for Needy Families Block Grant.

(a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(b) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(c) Prevent and reduce the incidence of out-of-wedlock

pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(d) Encourage the formation and maintenance of two-parent families.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter requirements than those required by the federal mandate. The state meets the requirements of TANF through many different programs.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation by administering this program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. Parts 260-265, KRS 194A.050(1), 205.200(2), 205.2003

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 and program do provide assistance to eligible families in paying for costs or charges accumulated as a result of items or services necessary for employment; therefore, it does generate revenue for local economies. The amount depends on program participation.

(b) How 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 and program does provide assistance to eligible families in paying for costs or charges accumulated as a result of items or services necessary for employment; therefore, it does generate revenue for local economies. The amount depends on program participation.

(c) How much will it cost to administer this program for the first year? The cabinet will utilize the administrative funds available under the TANF Block Grant to administer these programs in the first year, but only minor data system costs are anticipated.

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the administrative funds available under the TANF Block Grant to administer these programs in the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation establishes eligibility criteria for the Work Incentive (WIN) program in Kentucky, which provides eligible families with assistance paying for costs or charges accumulated as a result of items or services necessary for employment. Cost savings are not generated by this administrative regulation, but it also does not require costs from regulated entities

(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? There are no costs to regulated entities associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact or a negative or adverse economic impact on any parties, but rather provides assistance to eligible Kentucky families with paying for costs or charges accumulated as a result of items or services necessary for employment.

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](#).

BOARDS AND COMMISSIONS

Board of Pharmacy

(New Administrative Regulation)

201 KAR 2:450. Unprofessional Conduct of a Pharmacy Permit Holder.

RELATES TO: KRS 315.030, 315.025, 315.0351, 315.121, 315.131, 337.355, 337.365

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to ensure that permit holders are provided notice of what may be considered unprofessional conduct. This administrative regulation is required to ensure that the public is protected from pharmacy practices that lead to errors and patient harm, including practices that stem from demands a permit holder places on pharmacists that prevents them from responsibly practicing pharmacy.

Section 1. It shall be unprofessional conduct for a pharmacy permit holder to:

(1) Introduce or enforce policies and procedures related to the provision of pharmacy services in a manner that results in deviation from safe practices;

(2) Unreasonably prevent or restrict a patient's timely access to patient records or essential pharmacy services;

(3) Fail to identify and resolve conditions that interfere with a pharmacist's ability to practice with competency and safety or create an environment that jeopardizes patient care, including by failing to provide appropriately requested rest and meal periods as permitted by KRS 337.355 and KRS 337.365; and

(4) Repeatedly, habitually, or knowingly fail to provide resources appropriate for a pharmacist of reasonable diligence to safely complete professional duties and responsibilities, including, but not limited to:

(a) Drug utilization review;

(b) Immunization;

(c) Counseling;

(d) Verification of the accuracy of a prescription; and

(e) All other duties and responsibilities of a pharmacist under state and federal laws and regulations.

CHRISTOPHER P. HARLOW, Executive Director

APPROVED BY AGENCY: August 8, 2022

FILED WITH LRC: August 8, 2022 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2022 at 10:00 a.m. Eastern Time at the Kentucky Department of Transportation Auditorium, 200 Mero Street, Frankfort, Kentucky 40601 and via zoom teleconference. 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 October 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, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth actions which constitute unprofessional conduct by a pharmacy permit holder.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to place pharmacy permit holders on notice of what constitutes unprofessional conduct.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 315.191(1)(a), establishes actions which constitute unprofessional conduct of a pharmacy permit holder. This conforms to the authorizing statute because the authorizing statute gives the board authority to promulgate regulations to regulate and control pharmacies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure that pharmacy permit holders are placed on notice of what constitutes unprofessional conduct. The Board is authorized to promulgate regulations to regulate and control pharmacies.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates permit holders and licensees will be affected, as permit holders will need to comply with this regulation to ensure safe conditions for the public as well as their employees.

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

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

1. Licensees, permit holders and registrants will have to familiarize themselves with this new regulation.

2. This administrative regulation sets forth actions which constitute unprofessional conduct by a pharmacy permit holder.

3. The board will help educate identified entities of this new regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3).

This new regulation will ensure that the public is protected from unsafe practices. Moreover, pharmacists will be provided sufficient conditions to perform their jobs safely.

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

(a) Initially: No costs will be incurred.

- (b) On a continuing basis: No costs will be incurred.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required because of this new regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
- (9) TIERING: Is tiering applied? Tiering is not applied because this new regulation is applicable to all permit holders.

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 Pharmacy 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 315.191(a)
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the board in the first year.
- (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the board in subsequent years.
- (c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.
- (d) How much will it cost to administer this program for subsequent years? No costs are required 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 this administrative regulation. Not applicable.

Revenues (+/-): 0
Expenditures (+/-): 0
Other Explanation: none

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings from this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no cost to regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to regulated entities for subsequent years.

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

Cost savings (+/-): 0
Expenditures (+/-): 0
Other Explanation: none

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

TOURISM, ARTS AND HERITAGE CABINET Department of Tourism (New Administrative Regulation)

300 KAR 1:020. Process for the distribution of tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

RELATES TO: KRS 91A.350, 148.522, 148.525, Acts Chapter 199 (RS 2022 HB 1)

STATUTORY AUTHORITY: KRS 148.525(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Executive Branch Budget for the 2022-2024 biennium appropriates to the Tourism, Arts and Heritage Cabinet under the budget unit Office of the Secretary a total of \$75,000,000 in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021. KRS 148.522 provides that the Kentucky Department of Tourism, within the Tourism, Arts and Heritage Cabinet, shall have the authority and responsibility for the promotion, development, and support services for the tourism industry within the Commonwealth. KRS 148.525(3) authorizes the Commissioner of the Department of Tourism to promulgate administrative regulations to carry out the provisions of KRS 148.522. This administrative regulation establishes a uniform and consistent process for the distribution of the tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

Section 1. As soon as the funding is available pursuant to the American Rescue Plan Act of 2021, the Kentucky Department of Tourism shall develop and administer the process for distributing tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 to eligible recipients.

Section 2. Definitions.

(1) The "Cabinet" refers to the Kentucky Tourism, Arts and Heritage Cabinet.

(2) The "Department" refers to the Kentucky Department of Tourism.

(3) A "tourism commission" means an organization defined as tourism and convention commission under KRS 91A.350, et. seq., and defined as a designated marketing organization or tourism region committee pursuant to 300 KAR 1:010.

(4) The "State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 (SLFRF)" means the federal funding available as part of the Coronavirus State and Local Fiscal Recovery Fund established under the American Rescue Plan Act (ARPA), Public Law 117-2 (March 11, 2021), as implemented by the Final Rule issued by the U.S. Department of Treasury in 31 C.F.R. Part 35.

(5) "Tourism Marketing Incentive Program" means the Regional Marketing and Matching Funds Program referred to in KRS 91A.390 and 300 KAR 1:010.

(6) "Recipient" means a grantee, tourism commission as defined herein, or other entity eligible to receive funds from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021, as appropriated by the General Assembly in the 2022 Regular Session.

(7) "Program Year" means fiscal year 2022-2023 and fiscal year 2023-2024. Funding allocations will be split between the two fiscal years unless a recipient requests and receives approval to receive

the allocation all in one fiscal year.

(8) “Tranche 1 funding” means the \$15,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(a) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing and promoting tourism in Kentucky.

(9) “Tranche 2 funding” means the \$25,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(b) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing communities in Kentucky.

(10) “Tranche 3 funding” means the \$25,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(c) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for attracting meetings and conventions in Kentucky.

(11) “Tranche 4 funding” means the \$10,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(d) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for multi-jurisdiction collaborative destination marketing in Kentucky.

(12) “Matching funds” means monies received from a funding source other than federal funds.

Section 3. Eligibility. Eligibility for allocations of federal funds available as part of the Coronavirus State and Local Fiscal Recovery Fund established under the American Rescue Plan Act will depend upon which tranche of money a recipient qualifies for in accordance with the parameters set forth in this regulation.

(1) To qualify for Tranche 1 funding, a grant recipient will be eligible for consideration if it markets and promotes Kentucky as a travel destination.

(2) To qualify for Tranche 2 funding, a grant recipient will be eligible for consideration if it is a tourism commission, as defined herein, who markets communities and provides ten (10) percent or more in Matching funds per application and amount awarded.

(3) To qualify for Tranche 3 funding, a grant recipient will be eligible for consideration if it is a tourism commission, as defined herein, whose counties include arenas, conference centers, or other meeting venues with a minimum of 5000 square feet, and if it provides a plan for recruiting and attracting meetings and conventions.

(4) To qualify for Tranche 4 funding for the competitive grant program, a grant recipient will be eligible for consideration if at least five (5) tourism commissions, through a designated primary grantee, submit a marketing plan and budget for multi-jurisdiction collaborative destination marketing and can provide at least ten (10) percent in Matching funds per project.

Section 4. Applications.

(1) Applications submitted by tourism commissions as defined herein are subject to the following schedule for submission:

(a) Tranche 2 funding applications open on August 1, 2022, and must be received by August 26, 2022;

(b) Tranche 3 funding applications open on August 8, 2022, and must be received by September 2, 2022;

(c) Tranche 4 funding applications open September 12, 2022, and must be received by October 7, 2022.

(d) If additional funding remains following this first round of funding, then a second round of applications will issue in FY 2023-2024 pursuant to a schedule that will be posted on the Department's website.

(2) Applications for funds appropriated in Tranches 2, 3 and 4 must include documentation of the following at a minimum:

(a) Establish the entity qualifies as a “tourism commission” as defined herein (i.e., proof of non-profit status, letter from fiscal court that organization is part of city or county government, ordinance establishing commission);

(b) Provide a W-9 (showing Federal ID number and entity name);

(c) Demonstrate that the tourism commission was in business before the COVID-19 pandemic on March 6, 2020, and show the

economic impact of the COVID-19 pandemic to be eligible to receive recovery and investment funds;

(d) Evidence that applicant is a Kentucky based organization such as proof of registration with the Kentucky Secretary of State or as a Special Purpose Governmental Entity through the Department of Local Government; and

(e) Complete Affidavit for Bidders, Offerors and Contractors.

(3) Applications for Tranche 2 and 4 funding must also include a notarized copy of each applicant's most recent fiscal year budget approved by the applicable governing body identifying the funds being used for the ten (10) percent or more in Matching funds.

(4) Applications for Tranche 2 funding shall describe how the funds will be used to market communities.

(a) Eligible expenses for Tranche 2 funding include:

1. Tourism publications and videos;

2. Media advertisements if fifty (50) miles from destination;

3. Press kits;

4. New billboards and signage if twenty (20) miles from destination;

5. Brochure distribution services;

6. Meeting and convention advertising expenses;

7. Group tour marketplace, meeting and conventions, and consumer travel show expenses;

8. Sponsorship or a bid fee of tourism trade shows, conventions, sporting events and other events;

9. Web site design excluding hosting;

10. Research studies and analysis;

11. Photography;

12. Content that is paid to a business for advertising purposes;

13. Influencers' assistance with social media; and

14. Other expenses if consistent with the purpose of the Regional Marketing and Matching Funds Program.

(b) Ineligible expenses for Tranche 2 funding include:

1. Billboards and Signage that does not consist solely of language welcoming a visitor to a community or region;

2. Costs associated with construction of any permanent signage structure;

3. Previously existing signs or maintenance of signs;

4. Postage and freight;

5. Booth space or expenses for county fair or festivals;

6. Booth space or registration expenses at industrial solicitation events;

7. Expenses to attend a conference or meeting without promoting your destination unless expenses are for professional development or hospitality training;

8. Web sites that contain paid advertisements;

9. Sponsorship or bid fees of tourism trade shows, conventions, and other events;

10. Expenditures for in-kind amenities or hospitality events that include alcohol, gratuities, service charges, and tips;

11. Tourism industry events involving Kentucky Tourism Industry Association, Kentucky Association of Convention & Visitor Bureaus, in-state or local events and conferences, and Kentucky association meetings and conferences;

12. Research related to future capital projects;

13. Industrial incentive brochures;

14. General community relocation and development brochures;

15. City or county maps or directories that list businesses and services;

16. Programs, playbills, posters, table tents;

17. Membership and subscription solicitations;

18. Registration and entry forms;

19. Event and contest category or regulation material;

20. Quick print materials such as flyers, handbills, and circulars;

21. Entertainment;

22. Bumper stickers, banners, flags, postcards, lapel pins, or bags;

23. Prizes, trophies, plaques, decorations, paint supplies, and poster board;

24. Items for resale;

25. Amounts paid for Kentucky sales tax;

26. Stationery, letterhead, envelopes, general office supplies

and materials;

27. Salaries or other compensation for the staff or personnel of a tourism commission;

28. General operating and administrative costs;

29. Finance charges or late payment fees;

30. In-kind contributions, which also shall not be included as part of an applicant's match;

31. Expenditures in violation of law; and

32. Other expenses deemed ineligible by the Department if inconsistent with the Regional Marketing and Matching Funds Program.

(5) Applications for Tranche 3 funding shall specify:

(a) the counties within the tourism commission's jurisdictions that include arenas, conference centers, or other meeting venues with a minimum of 5,000 square feet; and

(b) how the funds will be used to attract professionally organized meetings, conventions, conferences, exhibitions, expositions, and trade shows that involve:

1. New events not held in the destination or venue for at least three years;

2. Multi-day events contracted on or after July 1, 2022;

3. Competitive bidding of events; and

4. Attendees from outside the area (100 miles or more).

(c) How the funds will be used to attract amateur and professional competitive sporting events or tournaments that involve:

1. New events not held in the destination or venue for at least three years;

2. Multi-day events contracted on or after July 1, 2022;

3. Competitive bidding of the event;

4. Athletes from outside the area (100 miles or more); and

5. A minimum size of the event of 100+ athletes and coaches.

(d) Local festivals, in-state association meetings that rotate on an annual basis, weddings, fraternal events (unless a national conference), social events, and motor coach/group tours (unless a national conference) are not eligible for Tranche 3 funding.

(e) Eligible expenses for the Tranche 3 funding include:

1. Marketing and advertising such as video, print, digital, sponsorships, on-site events and other expenses related to promoting the destination as a meeting/conference destination;

2. Underwriting incentives for offsetting event expenses such as venue or room rental, transportation costs during events, audio visual rental and services, discount on food and beverage, pipe, drape, tables, and chairs;

3. Per room night confirmed incentives for selection;

4. New research and consultants to build sales strategies;

5. Familiarization trips for meeting planners or board meetings with intent to host larger event;

6. Sales missions for recruiting meetings or conventions;

7. New third party lead generation fees;

8. Refundable bid or RFP fees tied to hosting industry events and conferences;

9. Retention incentives due to increased costs (specifically six (6) percent sales tax on meeting room rentals) for events already contracted but occurring after July 1, 2022; and

10. Other expenses deemed eligible by the Department if consistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(f) Ineligible expenses for the Tranche 3 funding include:

1. Funds used to replace an organization's tourism funding commitment for existing budgets, marketing and/or staffing;

2. Non-refundable bid or RFP fees;

3. Renovations or building permanent structures at facility for event;

4. Expenses from an event that was contracted prior to December 7, 2021;

5. General operating or administrative expenses such as travel reimbursement and salaries;

6. Purchase of permanent equipment;

7. Purchase of alcohol for meetings, events, sponsorships or related functions;

8. Hiring of permanent or temporary staff;

9. Purchase or production of promotional items; and

10. Other expenses deemed ineligible by the Department if inconsistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(6) Applications for Tranche 4 funding shall specify:

(a) The identity of the designated primary grantee, who will be the point of contact for plan and post-plan reporting, and at least four tourist commissions applying for the grants;

(b) A multi-county marketing plan and budget that shows how the plan will assist in recovery from the pandemic, with priority given to initiatives that have the potential for long-term transformational impacts;

(c) The requested dollar amount up to the maximum of \$500,000;

(d) Eligible expenses for the Tranche 4 funding include:

1. Tourism publications and videos;

2. Media advertisements if fifty (50) miles from destination;

3. Press kits;

4. New billboards and signage if twenty (20) miles from destination;

5. Brochure distribution services;

6. Meeting and convention advertising expenses;

7. Group tour marketplace, meeting and conventions, and consumer travel show expenses;

8. Sponsorship or a bid fee of tourism trade shows, conventions, sporting events and other events;

9. Web site design excluding hosting;

10. Research studies and analysis;

11. Photography;

12. Content that is paid to a business for advertising purposes;

13. Influencers' assistance with social media; and

14. Other expenses deemed eligible by the Department if consistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(e) Ineligible expenses for the Tranche 4 funding include:

1. Billboards and Signage that does not consist solely of language welcoming a visitor to a community or region;

2. Costs associated with construction of any permanent signage structure;

3. Previously existing signs or maintenance of signs;

4. Postage and freight;

5. Booth space or expenses for county fair or festivals;

6. Booth space or registration expenses at industrial solicitation events;

7. Expenses to attend a conference or meeting without promoting your destination unless expenses are for professional development or hospitality training;

8. Web sites that contain paid advertisements;

9. Sponsorship or bid fees of tourism trade shows, conventions, and other events;

10. Expenditures for in-kind amenities or hospitality events that include alcohol, gratuities, service charges, and tips;

11. Tourism industry events involving Kentucky Tourism Industry Association, Kentucky Association of Convention & Visitor Bureaus, in-state or local events and conferences and Kentucky association meetings and conferences;

12. Research related to future capital projects;

13. Industrial incentive brochures;

14. General community relocation and development brochures;

15. City or county maps or directories that list businesses and services;

16. Programs, playbills, posters, table tents;

17. Membership and subscription solicitations;

18. Registration and entry forms;

19. Event and contest category or regulation material;

20. Quick print materials such as flyers, handbills, and circulars;

21. Entertainment;

22. Bumper stickers, banners, flags, postcards, lapel pins, or bags;

23. Prizes, trophies, plaques, decorations, paint supplies, and poster board;

24. Items for resale;

25. Amounts paid for Kentucky sales tax;
26. Stationery, letterhead, envelopes, general office supplies and materials;
27. Salaries or other compensation for the staff or personnel of a tourism commission;
28. General operating and administrative costs;
29. Finance charges or late payment fees;
30. In-kind contributions, which also shall not be included as part of an applicant's match;
31. Expenditures in violation of law; and
32. Other expenses deemed ineligible by the Department if inconsistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

Section 5. Approval of Applications.

(1) With respect to the Tranche 2 funding, the Commissioner of Tourism shall administer the grant program by reviewing each application and determining the applicant's eligibility for funding. Applicant's funding amount will be determined by the formula for each county's share of economic impact based on the Department's 2019 Economic Impact of Tourism in Kentucky study conducted by Tourism Economics.

(2) With respect to Tranche 3 funding, the Commissioner of Tourism shall administer the grant program by reviewing each application and determining the applicant's eligibility for funding. Eligible tourism commissions will be awarded grants up to a maximum amount tiered according to the following:

- (a) 125,000 square feet and above up to a maximum \$5 million;
- (b) 75,000 to 124,999 square feet up to a maximum \$3 million;
- (c) 35,000 to 74,999 square feet up to a maximum \$1.5 million;
- (d) 15,000 to 34,999 square feet up to a maximum \$500,000;
- (e) 10,000 to 14,999 square feet up to a maximum \$200,000;
- (f) 5,000 to 9,999 square feet up to a maximum of \$100,000.

(3) With respect to Tranche 4 funding, the Commissioner of Tourism shall develop and administer a competitive grant program that oversees a review committee comprised of state employees within the cabinet. The review committee will utilize a categorical scoring method that considers the following:

- (a) The plan's ability to attract new visitors to Kentucky;
 - (b) The plan's ability to assist in recovery from the COVID-19 pandemic;
 - (c) The plan's potential for long-term transformational impacts and priority will be given to these initiatives;
 - (d) The measurable economic impact to Kentucky;
 - (e) The Applicants' ability to execute and provide required reporting; and
 - (f) New projects that demonstrate a level of creativity.
- (4) Notification of all grant awards will be provided to each grantee or applicant by letter and then memorialized by a "Memorandum of Agreement" stating the amount and terms of the funding grant, which the grantee or applicant shall sign and return to the Kentucky Department of Tourism; or by a letter stating why an applicant's projects have been denied funding.

(5) All projects must be completed on or before December 31, 2024.

Section 6. Reporting. Recipients shall provide a report to the Department of Tourism and the Legislative Research Commission detailing expenditures and outcomes including return on investment for affected areas by September 1 of each year. Such reports shall be in a format designed to allow the Commonwealth of Kentucky to comply with the U.S. Treasury's SLFRF Compliance and Reporting Guidance (treasury.gov), incorporated by reference herein.

Section 7. Forfeited and Unused Funds.

(1) Funds allocated to an approved project shall be forfeited if:

- (a) Documentation required by the provisions of this administrative regulation is not submitted timely;
- (b) An approved project does not materialize; or
- (c) A completed project did not remain in compliance with program requirement.

(2) Funds used in violation of the Program may be subject to

remediation and recoupment. The Department of Tourism may identify funds used in violation through reporting or other sources. Recipients will be provided with an initial written notice of recoupment and an opportunity to submit a request for reconsideration before the Department of Tourism provides a final notice of recoupment. If the Recipient receives an initial notice of recoupment and does not submit a request for reconsideration, the initial notice will be deemed the final notice. The Department of Tourism may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.

(3) At the end of a Program year, funds that are forfeited, subject to recoupment, or unused shall be available for additional rounds of application funding until exhausted or until December 31, 2024.

Section 8. Audits. The department may request the State Auditor to audit a tourism project governed by this administrative regulation.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) U.S. Department of Treasury Final Rule for Coronavirus State and Local Fiscal Recovery Funds, 31 C.F.R. Part 35 (effective April 1, 2022);

(b) U.S. Department of Treasury Compliance and Reporting Guidance for the SLFRF Program (June 17, 2022);

(c) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application -Tranche 2 Application – tourism commissions (July 2022);

(d) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application -Tranche 3 Application – Meetings and Conventions (July 2022);

(e) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application -Tranche 4 Application – Multi-County (July 2022);

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Tourism, 500 Mero Street, 5th Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Department of Tourism's Web site at www.kytourism.com/industry/Programs; or For Tranche 2 Grant (DMO) 502/892-3217 or TAH KDTARPADMO; Tranche 3 Grant (Meetings & Conventions) 502/892-3229 or TAH KDTARPAMEET; Tranche 4 Grant (Multi County) 502/892-3231 or TAH KDTARPAMULTICO.

MICHAEL MANGEOT, Commissioner

MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: July 25, 2022

FILED WITH LRC: July 25, 2022 at 3:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on October 28, 2022, at Kentucky Department of Travel at 500 Mero Street, 5th Floor Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mangeot, Commissioner, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-4270, fax (502) 564-1079, email Michael.mangeot@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael A. Mangeot

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a uniform and consistent process for the distribution of the tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(b) The necessity of this administrative regulation: This regulation is necessary so that those promotional projects within the tourism regional and local nonprofit organizations will be aware of the process for participation in the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 148.522 authorizes the department to promulgate administrative regulations to implement or carry out the purposes of KRS Chapter 148.525(2).

(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 budget appropriation by establishing a process to implement the distribution of tourism recovery and investment 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: n/a

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Tourism anticipates more than one-hundred (100) applicants to participate in this program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulation provides clarification about the process for distributing tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 to eligible recipients.

(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 application cost each of the entities to apply for the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As recognized by the federal government in the American Rescue Plan, the tourism, travel, and hospitality industry was one of the most severely impacted as a result of the COVID-19 pandemic. This regulation provides much needed funding to eligible entities that will market and promote tourism in Kentucky, which will benefit all of the citizens of the Commonwealth.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: The Executive Branch Budget for the 2022-2024 biennium appropriates to the Tourism, Arts and Heritage Cabinet under the budget unit Office of the Secretary a total of \$75,000,000 in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(a) Initially: No expenses or an unknown amount will be incurred.

(b) On a continuing basis: No expenses or an unknown amount will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding available as part of the Coronavirus State and Local Fiscal Recovery Fund established under the American Rescue Plan Act as implemented by the Final Rule issued by the U.S. Department

of Treasury in 31 C.F.R. Part 35.

(7) Provide an assessment of whether an 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 new regulation does not establish or create a fee or increase funding.

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

(9) TIERING: Is tiering applied? Yes. The only tiering applicable in this regulation is in the Tranche 3 funds for meetings and conventions. The maximum grant amounts are tiered according to the square footage of arenas, conference centers, or other meeting venues located within the tourism commissions. All applicants who apply for any other incentives are eligible for general funding.

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 Tourism and local cities and counties located within tourism commissions will be positively 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. The appropriation by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(a) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing and promoting tourism in Kentucky.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures and revenues for the Kentucky Department of Tourism will not change. The current budget of the Department of Tourism funds the administrative costs of the Program. Staff within the Department of Tourism administer the program. The monies that the Program distributes within the tourism regions are for tourism projects and are not used to administer the program. The monies distributed, however, may contribute to the revenues of the tourism commissions.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? No revenue will be generated from the administration of this administrative regulation. However, the Program itself is expected to generate revenue in the tourism industry itself and throughout the Commonwealth in terms of increase tourism dollars. If necessary, estimates can be provided based upon the most recent Compass Longwoods International Travel USA Visitor Profile.

(c) How much will it cost to administer this program for the first year? The Department of Tourism staff will administer the program.

(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 (+/-): \$0 change

Expenditures (+/-): \$0 change

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? unknown

(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?

No additional costs.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: 0

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. Not applicable. There is no additional cost to charge and/or process the fees.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)

704 KAR 3:535. Full-time enrolled online, virtual, and remote learning programs.

RELATES TO: KRS 156.070, 156.160, 160.380, 160.345, 158.6451, 158.4416

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board of Education management and control of programs operated in the common schools. KRS 156.160 authorizes the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of online, virtual and remote learning programs in school districts for grades Kindergarten through grade 12.

Section 1. Definitions. (1) "Full-Time Enrolled Online, Virtual and Remote Learning Program" is defined as a public school district program that enrolls K-12 students on a full-time basis, where teachers and students are not in the same physical location and all or most of the instruction is provided online through a combination of synchronous and asynchronous learning strategies. A full-time enrolled online, virtual and remote learning program shall not be classified as an alternative education program as set forth in 704 KAR 19:002.

(2) "Child with a disability" is defined by 707 KAR 1:002, Section 1.

(3) "Individual education program" or "IEP" is defined by 707 KAR 1:002, Section 1.

(4) "Individual learning plan" or "ILP" is defined by 704 KAR 19.002, Section 1.

(5) "Voluntary placement" means the placement of a student in an online, virtual and remote learning program at the request of the parent or emancipated student and with the approval of the school district to:

(a) Ensure the health and safety of the individual student including the social, emotional, and mental health needs of the learner; and

(b) Meet the educational needs of the student.

(6) "Virtual Performance-Based" means course setup and attendance verification per 702 KAR 7:125, (1)(4)(g); 704 KAR 3:305(7). Performance-Based virtual students included in the exception set forth at 702 KAR 7:125(1)(4)(g) shall not be covered by this administrative regulation.

(7) "Synchronous learning" means forms of education, instruction, and learning that occur at the same time through a variety of strategies and tools.

(8) "Asynchronous learning" means forms of education,

instruction, and learning that do not require interaction with others to occur at the same time through a variety of strategies and tools.

Section 2. Program Requirements. (1) For any full-time enrolled online, virtual and remote program it operates, school districts shall ensure that:

(a) All of the education services and requirements as a physical school to fully support the academic, social, emotional, and mental health needs of the learner are provided.

(b) The online, virtual and remote learning program meets the requirements set forth in 704 KAR 3:305;

(c) The online, virtual and remote learning program is aligned to the academic and curricular requirements of the district.

(d) A student enrolled in a full-time enrolled online, virtual and remote learning program shall be eligible to participate in one (1) or more types of programs to address student learning needs which shall include credit acceleration, credit accumulation, and an innovative path to graduation.

(2) Each local board of education shall adopt and annually review policies and procedures for the operation of each full-time enrolled online, virtual and remote learning program within the district. Locally-adopted policies and procedures shall include the:

(a) Purpose of the program, including the ways the program supports the district's postsecondary readiness goals for students;

(b) Locally defined eligibility criteria, as appropriate;

(c) Procedures for enrolling students in the program, including procedures to ensure voluntary placement;

(d) Procedures for transitioning students out of the program;

(e) Procedures for the development and implementation of student ILPs as required by 704 KAR 3:305; and

(f) Implementation of an application and on-boarding process to ensure students and families understand the expectations for students in a full-time enrolled online, virtual, and remote learning program and a determination of candidacy.

(g) Only students with determined appropriate digital access and support beyond the school campus shall be candidates for enrollment in the virtual school, program, or academy. The district shall ensure all students enrolled in virtual school, program, or academy have appropriate digital access to fully participate in and access the online, virtual, and remote learning program.

(3) Full-time enrolled online, virtual and remote learning program curriculum shall be aligned with the Kentucky Academic Standards established in 704 KAR 3:303, 704 KAR Chapter 8, and the student learning goals in the ILP.

(4) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall be subject to the minimum graduation requirements established in 704 KAR 3:305 and any additional local district graduation requirements.

(5) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall participate in the state-required assessment program and be included in the state accountability system as set forth in 703 KAR Chapter 5.

(6) A full-time enrolled online, virtual and remote learning program shall be subject to all applicable requirements of 703 KAR 5:225 and Kentucky's Consolidated State Plan implementing the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act of 2015, or its successor.

(7) Each student participating in a full-time enrolled online, virtual and remote learning program shall be eligible to access extracurricular activities and programs as allowed by local district and school council policies and by 702 KAR 7:065.

(8) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall have access to instructional and support resources and services available to other students in the district, which shall include instructional materials, tutoring, intervention, and counseling services, in furtherance of each student's educational program as determined through the development of the ILP.

(9) The school district shall document each student enrolled in a full-time enrolled online, virtual, and remote learning program as non-transported in the state student information system for transportation funding purposes.

Section 3. Placement of Students. (1) Enrollment of any student in a full-time enrolled online, virtual and remote learning program shall be a voluntary placement.

(2) A student entering an online, virtual and remote learning program shall meet the eligibility requirements for the program established by the local board pursuant to Section 2 of this administrative regulation.

(3) Voluntary placement of a child with a disability in a full-time enrolled online, virtual, and remote learning program shall be made through the Admissions and Release Committee (ARC) pursuant to 707 KAR 1:320. The ARC shall document the student's voluntary placement in the full-time enrolled online, virtual, and remote learning program in the ARC Conference Summary.

(a) The voluntary placement decisions for a student who has been identified under 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended, shall be made through a team process consistent with the applicable requirements outlined in 34 C.F.R. Part 104.

(b) District shall fully implement any accommodation required by 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended and any IEP for a child with a disability in a full-time enrolled online, virtual and remote learning program. The district shall ensure the Section 504 Team and Admissions and Release Committee (ARC) was involved in determining how all special education, related services, and accommodations shall be implemented for a child with a disability in the full-time enrolled online, virtual and remote learning program.

Section 4. Costs and Expenditures. (1) Each district shall use the statewide financial management system and chart of accounts to track costs and expenditures associated with each full-time enrolled online, virtual and remote learning program operating in the district.

Section 5. Data. (1) Each district shall utilize the student information system to enter data regarding each student in a full-time enrolled online, virtual and remote learning program.

(2) Data collected shall include demographic, programmatic, or other data fields contained in the student information system or required by the department to track and report student enrollment, educational programming, achievement, and transition to and from enrollment in the full-time enrolled online, virtual and remote learning programs.

Section 6. Personnel. (1) Full-time enrolled online, virtual and remote learning program teachers and administrators shall be subject to the teacher certification requirements established in KRS 161.020, and shall comply with the classified and certified assignment restrictions established in KRS 160.380(3).

(2) The district shall ensure a system of high-quality professional learning on the high-quality instructional resources and on evidence-based instructional practices for virtual learning.

Section 7. Class Size. (1) Full-time enrolled online, virtual and remote learning programs shall meet the requirements set forth in KRS 157.360 and 702 KAR 3:190 for maximum class sizes and exemptions thereto.

Section 8. Student Attendance. (1) Students in a full-time enrolled online, virtual, and remote learning program authorized by this regulation shall be counted in attendance.

(2) Attendance for students in a full-time enrolled online, virtual, and remote learning program authorized by this regulation shall be collected as follows:

(a) Attendance shall be recorded at the course level for virtual middle and high school students by certified teachers;

(b) Attendance shall be recorded at least two times each school day for virtual elementary school students with checks three hours apart by certified teachers;

(c) Attendance for each course shall be recorded in the student information system attendance tables;

(d) Courses shall not be set up as virtual/performance-based;
(e) Attendance clerks or other assigned district personnel shall reconcile attendance for each course/period to ensure proper codes are entered for absent students. Attendance event absence codes shall be entered at the office level (i.e. Dr. Excuses/parent excuses); and

(f) District online, virtual, and remote learning program attendance records shall be subject to audit by the Kentucky Department of Education.

(3) Students in a full-time enrolled online, virtual and remote learning program shall be subject to the compulsory attendance laws set forth in KRS 159.150 and 159.180. School districts operating a full-time enrolled online, virtual and remote learning program shall develop and implement policies to address attendance absences, which shall include:

(a) The attendance status of students with an internet outage;
(b) The process to return students to in-person instruction for truancy violations; and

(c) The district process for actions it shall take pursuant to KRS Chapter 159 for truant students.

Section 9. Curriculum, Content, and Instruction. (1) The full-time enrolled online, virtual and remote learning program shall provide instruction aligned to the grade-level expectations established in the Kentucky Academic Standards at 704 KAR 3:303 and 704 KAR Chapter 8, including the selection, vetting, and implementation of high-quality instructional resources aligned to the Kentucky Academic Standards and grade-level appropriate assignments. Districts shall maintain evidence of having systemic formative assessment processes in place to:

(a) Accurately measure student progress on grade-level standards for students enrolled in a full-time enrolled online, virtual and remote learning program; and

(b) Support students enrolled in the full-time enrolled online, virtual and remote learning program needing accelerated learning on grade-level standards within universal instruction as well as those students who need more targeted interventions and supports.

(2) The full-time enrolled online, virtual and remote learning program shall implement synchronous learning strategies and digital platforms for two-way visual and verbal interactions. Additionally, the full-time enrolled online, virtual and remote learning program shall utilize a learning management system (LMS) or other digital platforms that allows teachers to monitor student's progress, interactions and engagement with the teacher and other students online for the review of student work and completion of assignments through both synchronous and asynchronous interactions.

(3) Students in a full-time enrolled online, virtual and remote learning program shall be assigned a schedule that aligns with the standard day of in-person students. Virtual student schedules shall adhere to the standard day and hour requirements set forth at KRS 158.070.

(4) The full-time enrolled online, virtual and remote learning program shall ensure attainment of the declarations and goals set forth by KRS 158.6451.

(5) Students in the full-time enrolled online, virtual and remote learning program shall receive access to the essential workplace ethics programs, including characteristics critical to success in the workplace, as established in KRS 158.1413.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

Jason E. Glass, Ed.D., Commissioner of Education
Lu S. Young, Ed.D., Chairperson Kentucky Board of Education

APPROVED BY AGENCY: August 9, 2022

FILED WITH LRC: August 10, 2022 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held October 25, 2022, at 10am in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to

the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 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 G. 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 G. Allen, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 grants the Kentucky Board of Education the authority over the management and control of programs operated in the common schools. KRS 156.160 grants the Kentucky Board of Education the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of online, virtual and remote learning programs in school districts.

(b) The necessity of this administrative regulation: This regulation ensures Kentucky's public school districts have the ability to create high-quality full-time enrolled online, virtual and remote learning opportunities for students.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.070, 156.160.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Districts will use this regulation as the basis for creating local policies and procedures to establish a full-time enrolled online, virtual and remote learning program.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this new administrative regulation include: All Kentucky public school district-created full-time enrolled online, virtual and remote learning programs for K-12 students and the Kentucky Department of Education.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The establishment of a full-time enrolled online, virtual and remote learning program will be voluntary. Thus, action will only be necessary for those Kentucky public school districts seeking to establish this program. For those districts, the following actions will be taken: Each local board of education shall adopt and annually review policies and procedures for the operation of each full-time enrolled online, virtual and remote learning program within the district for K-12 students. Locally-adopted policies and

procedures shall include the:

(a) Purpose of the program, including the ways the program supports the district's postsecondary readiness goals for students;

(b) Locally defined eligibility criteria, as appropriate;

(c) Process for entering students into the program;

(d) Process for transitioning students out of the program;

(e) Process for development or continuation of students ILP as established in 704 KAR 3:305.

(f) Implementation of an application and on-boarding process to ensure students and families understand the expectations for full-time enrollment in an online, virtual, and remote learning program and a determination of candidacy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be little to no additional costs for public school districts to comply with this new administrative regulation. The Kentucky Department of Education will be impacted by staff time to provide guidance and support.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with the new administrative regulation will ensure high-quality learning opportunities are made available through full-time enrolled online, virtual and remote learning programs for K-12 students. Additionally, the requirements will provide greater uniformity in data collection and reporting from these learning programs enabling the KDE to provide more timely and targeted supports moving forward.

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

(a) Initially: Public school districts choosing to establish a full-time enrolled online, virtual and remote learning program should incur little to no added expense to implement the requirements of this regulation. The KDE will incur no new additional costs to implement this regulation.

(b) On a continuing basis: Public school districts may incur additional costs in support of the established program but are dependent on locally controlled decisions. The KDE incurs an ongoing cost of staff and resources that are already in place. The cost of these resources could be affected in the future by program growth and supports needed to maintain high-quality opportunities for students.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this regulation is funded by the KDE 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 increase in fees or funding will be necessary to implement this new administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

FISCAL NOTE

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and the Kentucky Department of Education will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, KRS 156.160

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

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

fire departments, or school districts) for the first year? No revenue. However, a district offering this program could see new revenue from net new enrollment (for example, homeschooled students that were previously unenrolled in the district).

(b) How 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. However, a district offering this program could see new revenue from net new enrollment (for example, homeschooled students that were previously unenrolled in the district).

(c) How much will it cost to administer this program for the first year? While the exact cost is unknown, public school district budgets may be impacted by the need for new resources in support of the program, as with any newly established program (for example, alternative education program). Kentucky Department of Education staff time will be impacted by the need for implementation guidance and general support.

(d) How much will it cost to administer this program for subsequent years? Little to no additional expenses are expected on an ongoing basis as a result of the new administrative regulation. The Kentucky Department of Education will provide ongoing programmatic support targeting established elements of high-quality.

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

Revenues (+/-): The regulation is not designed for revenue generation for either the KDE or public school districts. However, it is not unreasonable for a district implementing this program to potentially see revenue in the form of SEEK funds through the enrollment of students who were previously unenrolled in the district or program (for example, homeschooled students).

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? 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? Little to no additional expenses are expected as a result of this new administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? Little to no additional ongoing expenses are expected as a result of this new 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 (+/-): 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)] Based on the assessment of the agency, this regulation alone will not have a major economic impact on state or local regulated entities. The regulation is aimed at establishing the minimum requirements for the operation of full-time enrolled online, virtual and remote learning programs. The Commonwealth spends well over \$500,000 providing public education to elementary and secondary education students each year. However, those expenses would continue to exist absent this administrative regulation.

PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(Repealer)

806 KAR 17:351. Repeal of 806 KAR 17:350.

RELATES TO: KRS 304.17B-021(2), 304.17B-023

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17B-031(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-

110 authorizes the Commissioner of the Department of Insurance to promulgate regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. The intent of this administrative regulation is to repeal 806 KAR 17:350. The Department would like to repeal 806 KAR 17:350 Guaranteed Acceptance Program (GAP) reporting requirements, because this administrative regulation does not fall under the Insurance Code (KRS 304) any longer being that KRS 304.17B was repealed in its entirety.

Section 1. 806 KAR 17:350, Guaranteed Acceptance Program (GAP) reporting requirements, is hereby repealed.

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: August 4, 2022

FILED WITH LRC: August 4, 2022 at 3:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on October 28th, 2022 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31st, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email Abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: 806 KAR 17:351 repeals 806 KAR 17:350.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal administrative regulation 806 KAR 17:351.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By repealing 806 KAR 17:350, the appropriate state agency (CHFS) will have the ability to formally adopt their own administrative regulation under their specific code to codify the content of 806 KAR 17:351.

(2) If 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 to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This 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: The department as the implementer.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: There are no necessary actions to comply with the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: There will be less limitation on providers.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: It will cost no money to implement this repealer.

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the Department is repealing an 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 Department of Insurance.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310, KRS 304.2-110.

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

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

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

fire departments, or school districts) for subsequent years? The administrative regulation will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The cost to administer the program is indeterminable.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program is indeterminable.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: The program including receipt and review of annual audited financial statements will be handled by internal personnel. At this point, the Department anticipates all duties will be handled by current personnel.

(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 the repealer.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings associated with the repealer.

(c) How much will it cost the regulated entities for the first year? There are no cost savings associated with the repealer.

(d) How much will it cost the regulated entities for subsequent years? There are no cost savings associated with the repealer.

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)] No, this administrative regulation will not have a "major economic impact"

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(New Administrative Regulation)

906 KAR 1:210. Health care services agencies.

RELATES TO: KRS 216.718 – 216.728, 216.785 – 216.793

STATUTORY AUTHORITY: KRS 216.720(2), 216.728(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.720(2) requires the cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A to establish the application process for registration of health care services agencies. KRS 216.728(2) requires the cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A to establish requirements for health care services agencies to submit quarterly reports. This administrative regulation establishes requirements for health care services agency registration and quarterly reporting.

Section 1. Definitions. (1) "Assisted-living community" is defined by KRS 216.718(1).

(2) "Cabinet" is defined by KRS 216.718(2).

(3) "Controlling person" is defined by KRS 216.718(3).

(4) "Direct care service" is defined by KRS 216.718(4).

(5) "Direct care staff" is defined by KRS 216.718(5).

(6) "Health care services agency" is defined by KRS 216.718.

(7) "Hospital" is defined by KRS 216.718(7).

(8) "Long-term care facilities" is defined by KRS 216.718(8).

Section 2. Registration. A health care services agency that refers direct care staff to assisted-living communities, long-term care facilities, or hospitals in Kentucky shall register with the cabinet as required by KRS 216.720(1).

Section 3. Application and Fees. (1) An applicant for initial registration or annual renewal as a health care services agency shall submit to the Office of Inspector General:

(a) A completed Application for Registration to Operate a Health Care Services Agency; and

(b) In accordance with KRS 216.720(2)(f), an accompanying fee in the amount of \$3,000, made payable to the Kentucky State Treasurer.

(2) As a condition of annual renewal, the application required by subsection (1) of this section shall be submitted to the cabinet at least sixty (60) days prior to the date of expiration of the agency's registration.

(3) In accordance with KRS 216.720(1), each separate location of a health care services agency shall register and obtain a separate registration.

(4)(a) Name change. A health care services agency shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the agency's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A health care services agency shall not change the location where a facility is operated until an Application for Registration to Operate a Health Care Services Agency accompanied by a fee of one hundred (100) dollars is filed with the Office of Inspector General.

(c) Change of ownership.

1. In accordance with KRS 216.720(4), if a controlling person changes, the health care services agency is sold, or the management is transferred, the agency shall submit to the Office of Inspector General a completed Application for Registration to Operate a Health Care Services Agency accompanied by a fee of \$3,000 no later than thirty (30) calendar days from the effective date of the change.

2. A change of ownership shall be deemed to occur if more than twenty-five (25) percent of an existing health care services agency or capital stock or voting rights of the corporation is purchased, leased, or otherwise acquired by one (1) person from another.

Section 4. Scope of Operations. (1) In accordance with KRS 216.722(1), a health care services agency shall:

(a) Retain documentation that each direct care staff contracted with or employed by the agency meets the minimum licensing, certification, training, and continuing education standards for his or her position;

(b) Comply with all pertinent requirements relating to the health and other qualifications of personnel employed in:

1. An assisted-living community;

2. A long-term care facility; or

3. A hospital;

(c) Carry all professional and general liability insurance coverage to insure against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in the provision of direct care services by the health care services agency or any direct care staff;

(d) Carry an employee dishonesty bond in the amount of \$10,000;

(e) Maintain coverage for workers' compensation for all direct care staff; and

(f) Retain all records for five (5) calendar years and make all records immediately available to the cabinet upon request.

(2) A health care services agency shall demonstrate compliance with:

(a) KRS 216.724;

(b) KRS 216.789; and

(c) KRS 216.793.

Section 5. Quarterly Reports. (1) In accordance with KRS 216.728, a health care services agency shall submit quarterly reports to the cabinet that include the following information:

(a) The name, professional licensure or certification, and assigned location for each direct care staff;

(b) The length of time the direct care staff person has been assigned to the assisted-living community, long-term care facility, or hospital and the total hours worked; and

(c) For all long-term care facilities or hospitals that participate in the Medicare and Medicaid programs:

1. Copies of all invoices submitted to the long-term care facility or hospital; and

2. Proof of payment by the long-term care facility or hospital.

(2) The quarterly reports shall be submitted to the cabinet for the preceding calendar quarter by February 1, May 1, August 1, and November 1 of each year.

Section 6. Complaints. In accordance with KRS 216.726, a complaint relating to a health care services agency or direct care staff may be made in accordance with the instructions provided in the complaint information document available for download from the Office of Inspector General's Web site: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/default.aspx>.

Section 7. Denial, Expiration, Revocation, and Fines. (1) The cabinet shall deny an Application for Registration to Operate a Health Care Services Agency if:

(a) The applicant or existing agency knowingly misrepresents or submits false information on the application;

(b) The applicant or existing agency fails to provide the information and fee required by Section 3(1) of this administrative regulation;

(c) The applicant or existing agency fails to comply with Section 4(1) of this administrative regulation; or

(d) A controlling person in the entity applying for registration was a controlling person in a previously registered health care services agency that had its registration revoked for noncompliance during the five (5) year period immediately preceding the filing of the application.

(2)(a) In accordance with KRS 216.720(4), a health care services agency's registration shall expire one (1) year from the date of issuance.

(b) If the health care services agency fails to renew its registration pursuant to Section 3(2) of this administrative regulation:

1. Its registration shall be cancelled effective one (1) day after the expiration date;

2. The Office of Inspector General shall document the agency's registration as inactive; and

3. The agency shall not continue to refer staff to an assisted-living community, long-term care facility, or hospital in Kentucky until its registration is renewed.

(3) Failure to comply with Section 4(1) of this administrative regulation shall result in:

(a) Revocation of registration; and

(b) A monetary penalty in the amount of \$25,000.

(4) The cabinet shall revoke registration if:

(a) In accordance with KRS 216.722(3), the cabinet determines that a health care services agency knowingly provided to an assisted-living community, a long-term care facility, or a hospital direct care staff who have illegally or fraudulently obtained or been issued a diploma, registration, license, certification, or criminal background check; or

(b) The cabinet determines that there has been substantial failure by the health care services agency to comply with the provisions of this administrative regulation or KRS 216.718 – 216.728.

Section 8. Notice of Adverse Action. (1) Except for a violation of KRS 216.722(3), 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 216.722(3), the cabinet shall immediately notify a health care services agency that its registration will be revoked in fifteen (15) days if the cabinet determines that the agency has knowingly provided to an assisted-living community, long-term care facility, or a hospital direct care staff who have illegally or fraudulently obtained or been issued a:

- (a) Diploma, registration, license, or certification; or
- (b) Criminal background check.

(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 health care services agency of 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. Closure of a Health Care Services Agency. If a health care services agency closes voluntarily or as the result of denial or revocation of the registration, the agency shall relinquish to the cabinet its registration to operate as a health care services agency immediately after the effective date of the closure.

Section 10. Appeals. A health care services agency 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 pursuant to KRS 216.722(3), shall be afforded a hearing in accordance with KRS Chapter 13B.

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

- (a) Form OIG 1:210, "Application for Registration to Operate a Health Care Services Agency", August 2022 edition; and
 - (b) Form OIG 1:210-A, "Quarterly Report", August 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: August 2, 2022

FILED WITH LRC: August 4, 2022 at 8:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this hearing shall notify this agency in writing by October 17, 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 October 31, 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 health care services agency registration.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to comply with KRS 216.718 – 216.728 (HB 282).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation conforms to the content of KRS 216.718 – 216.728 (HB 282) by establishing requirements for health care services agency registration.

(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 registration of health care services agencies as required by HB 282 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 entities seeking registration as a health care services agency. It is not known how many entities will apply for 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 282 and this administrative regulation, entities seeking registration as a health care services agency will be required to submit an initial and annual renewal application to the cabinet. The requirements for registration and quarterly reporting are established in KRS 216.720 and 216.722, and Sections 3 through 5 of 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): KRS 216.720(2)(f) establishes an initial and annual registration fee of \$3,000. KRS 216.722(1) requires health care services agencies to carry professional and general liability insurance as well as an employee dishonesty bond in the amount of \$10,000. This administrative regulation also establishes a processing fee of \$25 for a change of name and a processing fee of \$100 for a change of location.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities seeking registration as a health care services agency must demonstrate compliance with this administrative regulation and KRS 216.718 – 216.728.

(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) is seeking to hire one (1) additional grade 15 position to implement and oversee HB 282's new registration program for health care services agencies. The cost of the additional staff person will be approximately \$88,000.

(b) On a continuing basis: The continuing costs will be approximately \$88,000 per year.

(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: KRS 216.720(2)(f) establishes an initial and annual registration fee of \$3,000. In addition, this administrative regulation establishes a processing fee of \$25 for a change of name and a processing fee of \$100 for a change of location.

(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 registration fee of \$3,000 in accordance with KRS 216.720(2)(f). In addition, this administrative regulation establishes a processing fee of \$25 for a change of name and a processing fee of \$100 for a change of location.

(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 health care services agencies and the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.720(2), 216.728(2)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? KRS 216.720(2)(f) establishes an initial and annual registration fee of \$3,000. KRS 216.722(2) authorizes the cabinet to impose a fine of \$25,000 for noncompliance. In addition, this administrative regulation establishes a processing fee of \$25 for a change of name and a processing fee of \$100 for a change of location. It is not known how many entities will apply for registration. Therefore, the cabinet is not able at this time to predict how much additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? KRS 216.720(2)(f) establishes an initial and annual registration fee of \$3,000. KRS 216.722(2) authorizes the cabinet to impose a fine of \$25,000 for noncompliance. In addition, this administrative regulation establishes a processing fee of \$25 for a change of name and a processing fee of \$100 for a change of location. It is not known how many entities will apply for registration. Therefore, the cabinet is not able at this time to predict how much additional revenue will be generated.

(c) How much will it cost to administer this program for the first year? The Office of Inspector General (OIG) is seeking to hire one (1) additional grade 15 position to implement and oversee HB 282's new registration program for health care services agencies. The cost of the additional staff person will be approximately \$88,000.

(d) How much will it cost to administer this program for subsequent years? The continuing costs will be approximately \$88,000 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? In accordance with KRS 216.722(2), this administrative regulation will cost regulated entities a fee of \$3,000 during the first year. In accordance with KRS 216.722(1), regulated entities must carry all professional and general liability insurance and carry an employee dishonesty bond of \$10,000.

(d) How much will it cost the regulated entities for subsequent years? In accordance with KRS 216.722(2), this administrative regulation will cost regulated entities a fee of \$3,000 during subsequent years. In accordance with KRS 216.722(1), regulated entities must carry all professional and general liability insurance and carry an employee dishonesty bond of \$10,000.

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 will apply for registration. Therefore, the cabinet is not able to determine whether this administrative regulation will have a major economic impact on the regulated entities.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of August 9, 2022

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 9, 2022 at 1 p.m. in Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken.

Present were:

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Ralph Alvarado, Julie Raque Adams, and David Yates; and Representatives Randy Bridges, MaryLou Marzian, and Deanna Frazier Gordon.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Nichols.

Guests: Mary Elizabeth Bailey, Rosemary Holbrook, Personnel Cabinet; Travis Mayo, Bethany Atkins Rice, Brian Thomas, Department of Revenue; Carrie Bass, Jessica Beaubien, Kentucky Public Pensions Authority; Cordelia Harbut, Board of Architects; Eddie Slone, John Wood, Department of Emergency Medical Services; Sarah Cronan, B.R. Masters, Craig Potts, Tourism, Arts, and Heritage Cabinet; Todd Allen, Department of Education; Oran McFarlan, Office of Unemployment Insurance; Dale Hamblin, Jr., Scott Wilhoit, Department of Workers' Claims; Shan Dutta, Jamie Eads, Jennifer Wolsing, Kentucky Horse Racing Commission; Amber Ballinger, Angela Billings, Julie Brooks, Paula Goff, Krista Hamilton, Darrin Sevier, Department for Public Health; Fatima Ali, Veronica Judy-Cecil, Jonathan Scott, Department for Medicaid Services; Laura Begin, Holly Davis, Paula Saenz, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, August 9, 2022, and submits this report:

Administrative Regulations Reviewed by this Subcommittee:

PERSONNEL CABINET: Classified

101 KAR 002:066. Certification and selection of eligible applicants for employment. Mary Bailey, commissioner, and Rosemary Holbrook, assistant general counsel, represented the cabinet.

In response to a question by Co-Chair West, Ms. Bailey stated that this package of administrative regulations did not relate directly to employee compensation.

101 KAR 002:102. Classified leave general requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3, 5, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

In response to questions by Co-Chair Hale, Ms. Holbrook stated that an employee who requested voting leave was required to file a voting verification form, which would then be available in the event of an audit. Leave would not be granted to an employee who did not vote. Each employee was required to request the voting leave in advance.

Unclassified

101 KAR 003:015. Leave requirements for unclassified service.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3, 5, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue

103 KAR 043:340E. Excise taxes on gasoline and special fuels; average wholesale price of gasoline and annual survey value. Bethany Atkins – Rice, executive director, Legal Services; Travis Mayo, general counsel to Governor Beshear; and Brian Thomas, general counsel, Finance Cabinet, represented the department.

In response to questions by Co-Chair West, Mr. Mayo stated that this administrative regulation had bipartisan support, including support by Representative Jason Nemes. The General Assembly never intended to impose higher gas taxes at a time of soaring prices. This emergency administrative regulation provided relief from rising gas prices by freezing the gas tax rate at the rate from the past seven (7) years, in order to temporarily prevent automatic increases. Ms. Atkins – Rice stated that the rate was frozen at twenty-six (26) cents for regular automotive fuel and twenty-three (23) cents

for diesel. The first increase would have been two (2) cents. Mr. Mayo stated that, prior to the filing of this emergency administrative regulation, Transportation Cabinet Secretary, Jim Gray, stated that there would be no material impact to road projects, and impact to the road fund was estimated to be \$28.2 million July 1 through mid-January, which was approximately one and six-tenths (1.6) percent of the enacted road fund budget estimated for Fiscal Year 2023. Impact to the road fund was considered throughout the development of this emergency administrative regulation. The market remained volatile, and gas prices could still trend back upward as other prices currently were. While there was no anticipated impact from this emergency administrative regulation pertaining to rebuilding efforts related to the eastern Kentucky flooding, the Transportation Cabinet would be a better source for that information. Providing relief during a time of rising costs helped Kentuckians, and that was the purpose for this emergency administrative regulation. Unaware of the specific average savings per customer per gas-tank fill up, Mr. Mayo stated that his office would follow up to this subcommittee with data. Funding needs to repair bridges and other infrastructure damaged during the flooding in eastern Kentucky continued to be assessed. FEMA and other federal funding was expected to be used to repair at least a portion of the damage.

In response to questions by Senator Alvarado, Mr. Mayo stated that Senate Joint Resolution 99 from the 2022 Regular Session of the General Assembly, which gave the Governor authority related to motor vehicle taxes, prompted this emergency administrative regulation, which was similar in nature as pertains to promulgation authority. Senator Alvarado stated that the Governor's Office should have contacted the General Assembly for guidance regarding this issue. There did not seem to be statutory authority for this emergency administrative regulation, which seemed to represent a usurpation of power.

Co-Chair West stated that the General Assembly had intent when it passed gas tax calculation legislation. There was a significant question regarding statutory authority for this emergency administrative regulation. In response to questions by Co-Chair West, Mr. Mayo stated that he had not discussed with the Governor adding this issue to the call for the expected Special Session of the General Assembly. The current surplus might be used for some of the repairs from the flooding in eastern Kentucky.

In response to a question by Co-Chair Hale, Mr. Mayo stated that the Governor was committed to making local governments financially whole.

Kentucky Retirement Systems

105 KAR 001:450E. Quasi-governmental employer reports on independent contractors and leased employees. Carrie Bass,

attorney, and Jessica Beaubien, policy specialist, represented the systems.

BOARDS AND COMMISSIONS: Board of Architects

201 KAR 019:035. Qualifications for examination and licensure. Cordelia Harbut, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 019:087. Continuing education.

A motion was made and seconded to approve the following amendment: to amend the material incorporated by reference to make a technical correction. Without objection, and with agreement of the agency, the amendment was approved.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services

202 KAR 007:560. Ground vehicle staff. Eddie Slone, interim executive director, and John Wood, counsel, represented the board.

In response to a question by Senator Alvarado, Mr. Slone stated that this administrative regulation decreased requirements for ambulance drivers.

In response to questions by Co-Chair West, Mr. Slone stated that there was insufficient staff, especially in rural areas, to meet the standards prior to this amendment. Kentucky did not have enough paramedics to meet the need. While reduced safety was a concern, this was an attempt to address the current situation that existed.

In response to questions by Senator Yates, Mr. Slone stated that he did not agree that Kentucky's standard of care was lower than other states. While it would be preferable to have a paramedic on every ambulance, there was insufficient staff. Senator Yates stated that public safety should be the highest priority. A request for additional funding would be preferable to a request to decrease standards. Co-Chair West agreed that public safety was important.

TOURISM, ARTS AND HERITAGE CABINET: Heritage Council

300 KAR 006:011E. Historic rehabilitation tax credit certifications. Sarah Cronan, general counsel; B. R. Masters, director of legislative services; and Craig Potts, executive director, represented the council.

EDUCATION AND LABOR CABINET: Board of Education: General Administration

702 KAR 001:140. Student records; hearing procedures. Todd Allen, general counsel, represented the board.

In response to questions by Co-Chair West, Mr. Allen stated that this administrative regulation was being clarified because there had been some confusion regarding the application of state and federal laws. If a student was under eighteen (18) years of age, usually the parent had access to student records. Hearings were held if there was a significant challenge to the records. Typically, the subject of the hearings was disciplinary records. The term, "certified", was being removed because it had created confusion.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Unemployment Insurance

787 KAR 001:360. Overpayment waivers. Oran McFarlan, deputy general counsel, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Workers' Claims

803 KAR 025:195E. Utilization review, appeal of utilization review decisions, and medical bill audit. Dale Hamblin, assistant general counsel, and Scott Wilhoit, commissioner, represented the department.

In response to questions by Co-Chair West, Mr. Hamblin stated that changes to this program included treatment guidelines, deadline changes, and peer-to-peer provisions. Mr. Wilhoit stated that changes consisted of cleanup and clarifications.

PUBLIC PROTECTION CABINET: Horse Racing Commission: Medication Guidelines

810 KAR 008:010. Medication; testing procedures; prohibited practices. Shan Dutta, deputy general counsel, and Jamie Eads, interim executive director, represented the commission.

In response to a question by Co-Chair West, Ms. Eads stated that the commission was responsible for collecting biological samples. This administrative regulation allowed the owner to test a portion of the sample at a lab of the owner's choice. Changes included a new timeline in the interest of transparency.

A motion was made and seconded to approve the following amendments: to amend Sections 16 and 25 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Hearings and Appeals

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

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Maternal and Child Health

902 KAR 004:030. Newborn screening program. Julie Brooks, regulation coordinator, represented the department.

In response to questions by Senator Alvarado, Ms. Brooks stated that the request for this change came from local health departments. This amendment removed a layer of approval, giving local health departments more authority in that the department would not first have to approve compensation requests.

In response to a question by Co-Chair West, Ms. Brooks stated that there was no cap on discretionary pay.

Local Health Departments

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

A motion was made and seconded to approve the following amendments: to amend Sections 5, 6, 9, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sanitation

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

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Early Intervention System

902 KAR 030:120. Evaluation and eligibility.

A motion was made and seconded to approve the following amendments: to amend Sections 1 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.

Department for Medicaid Services: Outpatient Pharmacy Program

907 KAR 023:020E. Reimbursement for outpatient drugs. Jonathan Scott, regulation coordinator, represented the department.

In response to questions by Co-Chair West, Mr. Scott stated that this amendment revised the dispensing fee reimbursement frequency for qualifying medications in order to expedite the reimbursement process.

In response to a question by Senator Alvarado, Mr. Scott stated that reimbursement could be every seven (7) days for a qualifying medication.

Department for Community Based Services: Child Welfare

922 KAR 001:310. Standards for child-placing agencies. Laura Begin, regulation coordinator, represented the department.

In response to a question by Co-Chair Hale, Ms. Begin stated that this change was made for consistency with related administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 8, 10 through 13, and 15 through 19 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 2 to clarify requirements to resume work for an employee under indictment, legally charged with felonious conduct, or subject to a cabinet investigation; and (3) to update material incorporated by reference to clarify information regarding medically complex homes. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 5, 13, and 15 for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

The following administrative regulations were deferred or removed from the August 9, 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.

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.

Forms and Procedures

031 KAR 004:071E. Recanvas procedures.

031 KAR 004:071. Recanvas procedures.

031 KAR 004:131E. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically.

031 KAR 004:131. 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 004:141. Submission of the federal postcard application via electronic mail.

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

031 KAR 004:196E. Consolidation of precincts and precinct election officers.

031 KAR 004:196. Consolidation of precincts and precinct election officers.

031 KAR 004:201E. Chain of custody for records during an election contest.

031 KAR 004:201. Chain of custody for records during an election contest.

031 KAR 004:210E. Establishment of risk-limiting audit pilot program.

031 KAR 004:210. Establishment of risk-limiting audit pilot program.

Voting

031 KAR 005:011E. Use of the federal write-in absentee ballot.

031 KAR 005:011. Use of the federal write-in absentee ballot.

031 KAR 005:026E. Ballot standards and election security.

031 KAR 005:026. Ballot standards and election security.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems

105 KAR 001:450. Quasi-governmental employer reports on independent contractors and leased employees.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:015. Continuing education.

Board of Licensure for Long-Term Care Administrators

201 KAR 006:060. Fees.

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 006:011. 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.

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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 LABOR CABINET: Department of Workforce Investment: Employment Services

787 KAR 002:040. Local workforce development area governance.

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 025:195. Utilization review, appeal of utilization review decisions and medical bill audit.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

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

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: Office of Human Resource Management: Administration

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

Department for Public Health: Communicable Diseases

902 KAR 002:020. Reportable disease surveillance.

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

Department for 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.

Department for Community Based Services: Child Welfare

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

The subcommittee adjourned at 2:10 p.m. The next meeting of this subcommittee was tentatively scheduled for, September 13, 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.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of July 19, 2022

The Interim Joint Committee on State Government met on July 19, 2022, and a quorum was present. The following administrative regulation was available for consideration, having been referred to the Committee on June 1, 2022, pursuant to KRS 13A.290(6):

009 KAR 1:070

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the July 19, 2022, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of August 16, 2022

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 08/18/22 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The Interim Joint Committee on Transportation met on August 16, 2022 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on July 14, 2022, pursuant to KRS 13A.290(6):

502 KAR 010:010
502 KAR 010:020
502 KAR 010:030
502 KAR 010:035
502 KAR 010:040
502 KAR 010:050
502 KAR 010:060
502 KAR 010:070
502 KAR 010:080
502 KAR 010:090
502 KAR 010:110
502 KAR 010:120

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 16, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON NATURAL RECOURCES AND ENERGY
Meeting of August 18, 2022

The Interim Joint Committee on Natural Resources and Energy met on 08/18/22 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on July 6, 2022, and August 3, 2022, pursuant to KRS 13A.290(6):

301 KAR 002:221
301 KAR 002:172
301 KAR 002:132
301 KAR 001:201
301 KAR 004:001

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

301 KAR 004:001

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 08/18/22 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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**SENATE STANDING COMMITTEE ON HEALTH, WELFARE,
AND FAMILY SERVICES
Meeting of August 25, 2022**

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of August 25, 2022, having been referred to the Interim Joint Committee on Health, Welfare, and Family Services on July 6, 2022 and August 3, 2022, pursuant to KRS 13A.290(6):

July 6, 2022

201 KAR 020:070 Emergency
201 KAR 020:085 Proposed
201 KAR 020:110 Proposed
201 KAR 020:370 Proposed
202 KAR 007:545 Emergency
902 KAR 020:018 Proposed

August 3, 2022

201 KAR 002:020 Proposed
201 KAR 002:050 Proposed
201 KAR 002:225 Proposed
201 KAR 020:070 Proposed
201 KAR 020:240 Proposed
202 KAR 007:545 Proposed
202 KAR 007:560 Emergency
900 KAR 005:020 Emergency
900 KAR 005:020 Proposed
900 KAR 006:075 Emergency
900 KAR 006:075 Proposed
900 KAR 014:010 Emergency
900 KAR 014:010 Proposed
902 KAR 002:020 Emergency
902 KAR 020:016 Proposed
902 KAR 020:106 Proposed
906 KAR 001:110 Proposed

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

922 KAR 005:070 Proposed

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

908 KAR 003:010 Proposed

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 25, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**HOUSE STANDING COMMITTEE ON HEALTH, WELFARE, AND
FAMILY SERVICES
Meeting of August 25, 2022**

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Family Services for its meeting of August 25, 2022, having been referred to the Interim Joint Committee on Health, Welfare, and Family Services on July 6, 2022 and August 3, 2022, pursuant to KRS 13A.290(6):

July 6, 2022

201 KAR 020:070 Emergency
201 KAR 020:085 Proposed

201 KAR 020:110 Proposed
201 KAR 020:370 Proposed
202 KAR 007:545 Emergency
902 KAR 020:018 Proposed

August 3, 2022

201 KAR 002:020 Proposed
201 KAR 002:050 Proposed
201 KAR 002:225 Proposed
201 KAR 020:070 Proposed
201 KAR 020:240 Proposed
202 KAR 007:545 Proposed
202 KAR 007:560 Emergency
900 KAR 005:020 Emergency
900 KAR 005:020 Proposed
900 KAR 006:075 Emergency
900 KAR 006:075 Proposed
900 KAR 014:010 Emergency
900 KAR 014:010 Proposed
902 KAR 002:020 Emergency
902 KAR 020:016 Proposed
902 KAR 020:106 Proposed
906 KAR 001:110 Proposed

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

922 KAR 005:070 Proposed

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

908 KAR 003:010 Proposed

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 25, 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

C - 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

C - 10

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

C - 14

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

C - 15

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

C - 16

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 prior *Registers*, 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
 # Emergency withdrawn pursuant to KRS 13A.190(12).
 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 009:011E	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	49 Ky.R. 243	6-28-2022
105 KAR 001:450E	48 Ky.R. 2921	5-5-2022
Withdrawn	#	8-15-2022
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 002:380E	49 Ky.R. 523	8-8-2022
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 001:020E	49 Ky.R. 525	7-25-2022
Withdrawn		8-25-2022
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	49 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
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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
- # Emergency withdrawn pursuant to KRS 13A.190(12).
- 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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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
301 KAR 001:122	08-04-2022	To be amended, filing deadline 02-04-2022
301 KAR 001:146	08-04-2022	To be amended, filing deadline 02-04-2024
601 KAR 009:135	06-02-2022	Remain in Effect without Amendment
603 KAR 005:155	07-26-2022	Remain in Effect without Amendment
702 KAR 001:170	08-09-2022	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
907 KAR 010:014	08-10-2022	Remain in Effect without Amendment
907 KAR 010:016	08-10-2022	Remain in Effect without Amendment
907 KAR 015:085	8/10/2022	Remain in Effect without Amendment
910 KAR 001:170	06-09-2022	To be Amended, Filing deadline 12-09-2023
910 KAR 001:270	08-11-2022	To be amended, filing deadline 02-11-2024

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).

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201 KAR 012:010	07-14-2022		
201 KAR 020:390	07-12-2022		
201 KAR 020:600	07-12-2022		
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