



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon October 14, 2022.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on November 9, 2022, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - [969](#) [Online agenda updated as needed](#)

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

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**Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Wednesday, November 9, 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 009:110. Expedited route to certification. (Filed with Emergency)

STATE BOARD OF ELECTIONS

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101 KAR 002:210E. 2023 Plan year handbook for the Public Employee Health Insurance Program. (Filed with Ordinary) ("E" expires 06-12-2023)

FINANCE AND ADMINISTRATION CABINET

Kentucky Retirement Systems

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105 KAR 001:415. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer. (Filed with Emergency) (Amended After Comments)

105 KAR 1:451E. Quasi-governmental employer reports on independent contractors and leased employees. (Filed with Ordinary)

GENERAL GOVERNMENT CABINET

Department of Military Affairs

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) (Deferred from September)

200 KAR 017:111. Guidelines for Kentucky Infrastructure Authority drinking water and wastewater grant program. (Filed with Emergency) (Deferred from October)

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:380E. Board authorized protocols. ("E" expires 06-05-2023) (Filed with Ordinary) (Deferred from October)

201 KAR 002:380. Board authorized protocols. (Filed with Emergency)

201 KAR 002:450. Unprofessional conduct of a pharmacy permit holder.

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)

Board of Physical Therapy

201 KAR 022:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

TOURISM, ARTS AND HERITAGE CABINET

Department of Tourism

300 KAR 001:021E. 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. (Filed with Ordinary) ("E" Expires 05-22-2023)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Criminal Justice Training

General Training Provision

503 KAR 003:130E. Online basic and in-service training. (Filed with Ordinary) ("E" expires 05-15-2023)

TRANSPORTATION CABINET

Office for Civil Rights and Small Business Development

Office of Minority Affairs

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603 KAR 005:350. Off-highway vehicles, safety, and routes. (Not Amended After Comments)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

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702 KAR 007:125. Pupil attendance.

Office of Learning Programs Development

704 KAR 003:305. Minimum requirements for high school graduation. (Amended After Comments)

704 KAR 003:535. Full-time enrolled online, virtual, and remote learning programs.

Office of Special Instructional Services

705 KAR 004:041. Work-based learning program standards.

Department of Workplace Standards

Labor Standards; Wages and Hours

803 KAR 001:090. Workers with disabilities and work activity centers' employee's wages. (Not Amended After Comments) (Deferred from November 2021)

Department of Workers' Claims

803 KAR 025:089. Workers' Compensation medical fee schedule for physicians. (Filed with Emergency) (Deferred from October)

PUBLIC PROTECTION CABINET

Department of Insurance

Health Insurance Contracts

806 KAR 017:531. Repeal of 806 KAR 17:350.

ENERGY AND ENVIRONMENT CABINET

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807 KAR 005:001E. Rules of procedure. ("E" expires 06-1-2023)

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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

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900 KAR 010:120. KHBE eligibility and enrollment in qualified health plan, SHOP, and SHOP formal resolution process. (Not Amended After Comments)

Office of Inspector General

Telehealth

900 KAR 012:005. Telehealth terminology and requirements. (Filed with Emergency)

Office of Inspector General

906 KAR 001:210. Health care services agencies.

Department for Medicaid Services

Medicaid Services

907 KAR 001:008. Ambulatory surgical center services and reimbursement. (Amended After Comments)

907 KAR 001:082. Coverage provisions and requirements regarding rural health clinic services. (Amended After Comments) (Deferred from October)

Kentucky Children's Health Insurance Program

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907 KAR 004:030. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act. (Filed with Emergency)

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

907 KAR 020:100. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards. (Filed with Emergency)

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908 KAR 001:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.

Department for Aging and Independent Living

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VOLUME 49, NUMBER 5– NOVEMBER 1, 2022

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- 921 KAR 002:006. Technical requirements for the Kentucky Transitional Assistance Program (KTAP).
- 921 KAR 002:016. Standards of need and amount for the Kentucky Transitional Assistance Program (KTAP).
- 921 KAR 002:500. Family Assistance Short Term (FAST).
- 921 KAR 002:510. Relocation Assistance Program (RAP).
- 921 KAR 002:520. Work Incentive (WIN).

Department for Community Based Services

Child Welfare

- 922 KAR 001:290. Background checks for private child-caring or child-placing staff members. (Amended After Comments) (Deferred from October)
- 922 KAR 001:300. Standards for child-caring facilities. (Amended After Comments)

3. REGULATIONS REMOVED FROM NOVEMBER'S AGENDA

TOURISM, ARTS AND HERITAGE CABINET

Department of Tourism

- 300 KAR 001:020. 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. (Filed with Emergency) (Withdrawn by Agency, 08-25-2022)

BOARDS AND COMMISSIONS

Board of Dentistry

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Vital Statistics

- 901 KAR 005:120. Abortion reporting. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2022)
- 901 KAR 005:130. Certificate of abortion. (Comments Received; SOC ext., due 11-15-2022)
- 901 KAR 005:140. Permit to transport fetal remains. (Comments Received; SOC ext., due 11-15-2022)

Office of Inspector General

Health Services and Facilities

- 902 KAR 020:365. Kentucky abortion-inducing drug certification program and registration of qualified physicians. (Comments Received; SOC ext., due 11-15-2022)

Department for Medicaid Services

Medicaid Services

- 907 KAR 001:065. Payments for price-based nursing facility services. (Filed with Emergency) (Comments Received; SOC ext., due 11-15-2022)

Department for Community Based Services

Child Welfare

- 922 KAR 001:350. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers. (Comments Received; SOC ext. due 11-15-2022)

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.

REPRINT

NOTE: A change in Section 3(1) was inadvertently left out of the version that was originally published in October's *Administrative Register of Kentucky*, 49 Ky.R. 813.

PUBLIC PROTECTION CABINET
Department of Insurance
(As Amended at ARRS, September 13, 2022)

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, 45 C.F.R. 146.136, 45 C.F.R. 147.160, 42 U.S.C. 300gg-26

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, 42 U.S.C. 300gg-26, related to nonquantitative treatment limitations between medical and surgical benefits and mental health substance use disorder benefits, to demonstrate that ~~these~~*[such]* treatment limitations are applied comparably and requires the commissioner to establish a form for this purpose. This administrative regulation ~~establishes~~*[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) The report shall be submitted electronically through:

(a) Email; or

(b) A portal designated for this purpose[in an electronic format prescribed by the Commissioner].

Section 3. Material Incorporated by Reference.

(1) "Nonquantitative Treatment Limitation (NQTL) Reporting Submission Form", 8/5/2022 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>.

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.

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
102 KAR 1:361E

On December 28, 2021, an emergency administrative regulation was promulgated pursuant to the requirements of House Bill 258 (2021 RS) to provide individuals who become members of Teachers' Retirement System after January 1, 2022, also known as TRS 4 members, legal guidance in the event they became disabled and entitled to disability retirement benefits before they accumulate five (5) years of service. That administrative regulation expires on September 24, 2022. This emergency administrative regulation provides the same disability retirement benefits for the same TRS 4 members as the previous emergency regulation and differs only in that it identifies the forms necessary to apply for the benefit and incorporates them by reference, and further provides the details omitted in the original emergency regulation of the process for review of the disability retirement application and payment of the first benefits as well incorporating the requirement that these TRS 4 members are subject, just as other TRS members already are, to providing ongoing and current medical reports upon request by TRS to confirm that the conditions for disability benefits eligibility remain in place. This subsequent emergency administrative regulation will provide continued legal guidance upon lapse of the original emergency administrative regulation so that that guidance can continue without interruption. This will provide time for an identical ordinary administrative regulation, which has also been filed, to begin the process under KRS Chapter 13A with ultimate consideration by the Administrative Regulation Review Subcommittee and any subject matter committee.

ANDY BESHEAR, Governor
BRENDA MCGOWN, Chair

FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(New Emergency Administrative Regulation)

102 KAR 1:361E. Disability retirement for TRS 4 members with less than five (5) years of service.

EFFECTIVE: September 22, 2022

RELATES TO: KRS 161.661(19)

STATUTORY AUTHORITY: KRS 161.310, 161.661(19)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Teachers' Retirement System of the State of Kentucky (TRS) to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.661(19) authorizes the board to promulgate administrative regulations regarding disability benefits for individuals in TRS 4, which consists of those who became members on or after January 1, 2022. This administrative regulation establishes the eligibility requirements and sets guidelines for filing an application for disability retirement benefits for those new members.

Section 1. For TRS 4 members who have less than five (5) years of creditable Kentucky service, the disability retirement benefits, including all eligibility and other conditions, shall be those disability retirement benefits for non-hazardous positions provided under KRS 61.621 (the Fred Capps Memorial Act).

Section 2. (1) The members described in Section 1 shall not be eligible for benefits provided by KRS 161.661 or 161.663.

Section 3. Administrative Provisions. (1) An application for duty-related injury disability Benefits shall be filed on the TRS 4

Disability Retirement Application – Less than Five Years of Service (application) and shall include:

- (a) A photocopy of the member's certified birth certificate;
- (b) A photocopy of the member's signed Social Security card;
- (c) A voided or cancelled check from the institution where monthly disbursements shall be electronically transmitted;
- (d) The Physician's Disability Evaluation Report and supporting documentation regarding the member's duty-related injury;
- (e) The Applicant's Disability Statement; and
- (f) If the duty-related injury was the result of violence, a copy of any incident or police report filed at the time of the incident.

(2) TRS shall submit the application and supporting documentation to the medical review committee for evaluation and written disposition as required by KRS 161.661(14).

(3) If the application is approved, payment of disability benefits shall be effective on the applicable date set forth in KRS 161.661(11).

Section 4. A member described in Section 1 of this regulation shall be subject to providing ongoing and current medical reports upon request by TRS to confirm that the conditions for disability benefits eligibility remain in place.

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

(a) "TRS 4 Disability Retirement Application-Less Than Five Years of Service", September 2022;

(b) "Physician's Disability Evaluation Report", September 2022; and

(c) "Applicant's Disability Statement", September 2022.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

BRENDA MCGOWN, Chair

APPROVED BY AGENCY: September 14, 2022

FILED WITH LRC: September 22, 2022 at 1:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, 23 November 2022, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, 16 November 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on Wednesday, 30 November 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: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, or email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes that

new members who enter the retirement system after January 1, 2022, who have less than five (5) years of service credit, shall be provided disability retirement.

(b) The necessity of this administrative regulation: This administrative regulation is being filed as an emergency as a result of legislation enacted during the 2021 session requiring the board to promulgate an administrative regulation to provide duty-related injury disability benefits for new members. The potential exists for a member to incur a duty-related injury, become disabled and be entitled to benefits that would be ongoing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation conforms KRS 161.661 as amended by HB 258 (2021 RS) which requires the board to promulgate an administrative regulation to provide disability retirement for new TRS 4 members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation will identify for members entering the retirement system after January 1, 2022, who have less than five (5) years of service credit that disability retirement shall be provided to them.

(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: NA

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Members who enter the retirement system after January 1, 2022, who have less than five (5) years of service credit and become disabled. TRS has had less than twenty (20) individuals become disabled for at least ten (10) years.

(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: New members will file an application for disability benefits under KRS 61.621(2).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to the new members is part of the retirement contribution they make to TRS.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): New members who sustain a duty-related injury after January 1, 2022, will be eligible to file for, and receive, duty-related injury disability retirement.

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

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

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

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? Teachers' Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310, 161.661

(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. None.

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

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

(c) How much will it cost to administer this program for the first year? Administrative costs will be dependent upon the number of applications processed and cannot be quantified at this time. Given the very small number of members that will likely be impacted, however, administrative costs will be very low.

(d) How much will it cost to administer this program for subsequent years? Administrative costs incurred will be dependent upon the number of applications processed and cannot be quantified at this time. Given the very small number of members that will likely be impacted, however, administrative costs will be very low.

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:

(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 regulation provides disability retirement provisions for new tier members as required by law and does not result in any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This regulation provides disability retirement provisions for new tier members as required by law and does not result in any cost savings.

(c) How much will it cost the regulated entities for the first year? This regulation provides disability retirement provisions for new tier members as required by law and does not result in any cost to regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This regulation provides disability retirement provisions for new tier members as required by law and does not result in any cost to regulated entities.

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

Cost Savings (+/-):

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 provides disability retirement provisions for new tier members as required by law and does not result in a major economic impact as defined by this question.

STATEMENT OF EMERGENCY
201 KAR 23:016E

This emergency administrative regulation is being promulgated pursuant to KRS 335.070(3) and KRS 13A.190(1)(a)(1) to meet an imminent threat to public health, safety, or welfare. This regulation is necessary to mitigate the shortage of social work professionals in the Commonwealth of Kentucky at this time. The need for care continues to increase while the availability of practitioners to provide that care lags behind. Specifically, this regulation allows individuals that meet the appropriate educational requirements to practice social work under a temporary permit, under the appropriate supervision of a licensed clinical social worker, until such time as they are able to obtain licensure pursuant to KRS 335.080, KRS 335.090 or KRS 335.100. Access to temporary licensure would create a significant increase in access to services to the citizens of the Commonwealth and provide new social workers access to employment opportunities shortly after graduation. This regulation will be replaced with an ordinary regulation in due course. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ANNE ADCOCK, DWS, MSW, CSW, Board Chair
ANDY BESHEAR, Governor

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

201 KAR 23:016E. Temporary permission to practice.

EFFECTIVE: October 3, 2022

RELATES TO: KRS 39A.180, 39A.190, 335.080, 335.090, 335.100

STATUTORY AUTHORITY: KRS 39A.180, 335.070(1), (3), (9), 335.190,

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.180 and 39A.190 allow agencies to promulgate administrative regulations necessary for disaster and emergency response purposes during a state of emergency. KRS 335.070(1) requires the board to evaluate and approve the qualifications of the applicants for licensure. KRS 335.070(3) authorizes the board to promulgate administrative regulations. KRS 335.070(9) authorizes the board to establish requirements for temporary permits to practice social work. This administrative regulation establishes the requirements for granting of temporary permission to engage in the practice of social work.

Section 1. (1) A temporary permit to engage in the practice of social work shall be granted, if requested, to an applicant who has completed all of the requirements for licensure except the examination and has applied for licensure under the provisions of KRS 335.080, 335.090, or 335.100.

(2) A person practicing under a temporary permit as a certified social worker shall not accumulate hours toward the supervision requirements of KRS 335.100(1)(b).

(3) A certified social worker or licensed clinical social worker practicing clinical social work under a temporary permit shall be under the supervision of a licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070, Section 3(1).

(4) The request for a temporary permit shall be accompanied by a letter from the proposed supervisor acknowledging the responsibility for supervision and for the practice of the person holding the temporary permit.

(5) A licensee shall not serve as the supervisor for more than two (2) persons holding a temporary permit at any one (1) time.

(6) Supervision during the period of temporary permission to practice shall be a minimum of one (1) hour of individual, face-to-face supervision per week.

(7)(a) Except as provided in paragraph (b) of this subsection, the temporary permit shall be valid until the applicant for licensure

is issued or denied licensure under the provisions of KRS 335.080, 335.090, or 335.100.

(b) A temporary permit shall not extend for more than 240 days after the temporary permit was approved.

(c) Active temporary permits existing at the time of the promulgation of this emergency administrative regulation shall be reissued as of the date of the filing of this regulation and shall be valid for not more than 240 days from the date of issuance.

(8) Any changes to the terms of the temporary permit shall be submitted to the board and approved by the board before the temporary permit holder continues social work practice.

ANNE ADCOCK, DSW, MSW, CSW, Board Chair

APPROVED BY AGENCY: September 30, 2022

FILED WITH LRC: October 3, 2022 at 1:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022, at 10:00 a.m. ET at the Justice and Public Safety Building, Third Floor Board Room, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2022. Send written notice of intent to be heard or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Marc Kelly, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, phone (502) 564-2350 or (502) 782-2856, email marc.kelly@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation is being promulgated pursuant to KRS 13A.180 and KRS 13A.190(1)(a)(1) to meet an imminent threat to public health, safety, or welfare. This regulation is necessary to mitigate the shortage of social work professionals in the Commonwealth of Kentucky at this time. The need for care continues to increase while the availability of practitioners to provide that care lags behind. Specifically, this regulation allows individuals that meet the appropriate educational requirements to practice social work under a temporary permit, under the appropriate supervision of a licensed clinical social worker, until such time as they are able to obtain licensure pursuant to KRS 335.080, KRS 335.090 or KRS 335.100. Access to temporary licensure would create a significant increase in access to services to the citizens of the Commonwealth and provide new social workers access to employment opportunities shortly after graduation. This regulation will be replaced with an ordinary regulation in due course.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary to address the shortage of social work professionals in the Commonwealth of Kentucky at this time.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out of the provisions of KRS 335.101 to 335.160 and KRS 335.990. KRS 39A.180(2) permits the board to suspend its written administrative regulations during a period of emergency, KRS 13A.190(1)(a)(1) authorizes the board to promulgate an emergency administration regulation to meet an imminent threat to public health, safety, or welfare, and KRS 335.070(9) authorizes the board to establish requirements for

temporary permits to practice social work.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation will assist the board in lawfully addressing the ability of individuals who meet certain educational requirements to practice social work under a temporary permit until they are able to obtain appropriate licensure pursuant to KRS 335.080, 335.090 or 335.100.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation will affect approximately 5,000 licensed clinical social workers and certified social workers in Kentucky, public schools, community mental health centers, public and private agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals meeting the appropriate educational requirements will be able to apply for a temporary permit immediately upon filing of the emergency administrative regulation or will have their prior issued temporary permit reissued.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate that there will be a cost increase to any of the entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board believes that the entities will benefit from the ability to provide services to clients more efficiently and quickly with a temporary permit to practice social work prior to obtain licensure should they meet the requirements to do so.

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

(a) Initially: The board estimates that it will incur no additional costs to implement this emergency administrative regulation.

(b) On a continuing basis: The board estimates that it will incur no additional costs to implement this emergency administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? No, tiering was not applied. This emergency administrative regulation is applied uniformly to each certified social worker practicing clinical social work under board-approved supervision.

FISCAL NOTE

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

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

regulation KRS 39A.180, 13A.190, 335.070(3) and (9) and 335.158(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. None.

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

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

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

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

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

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)].

STATEMENT OF EMERGENCY 201 KAR 26:175E

Pursuant to KRS 13A.190(1)(a)1., this emergency regulation is being promulgated to meet an imminent threat to the public health, safety, or welfare. On September 19, 2022, approximately 180 licenses under KBEP jurisdiction expired due to the licensees' inability to satisfy regulatory continuing education requirements. 201 KAR 26:175 requires licensees to obtain thirty-nine (39) total continuing education hours each renewal cycle, and three (3) of those hours must be face-to-face. However, over the last two and a half (2.5) years, continuing education providers have primarily offered only online training, making it difficult, if not impossible, for licensees to obtain the in-person hours needed to meet the regulatory requirements. The Kentucky Board of Examiners of Psychology provided notice of the end of the state of emergency in its Spring Newsletters and advised licensees of the reinstatement of the in-person, face-to-face continuing education requirement for license renewal. The Kentucky Board of Examiners of Psychology did not anticipate the lack of in-person programming that would be available and its impact on licensees' ability to renew. The Kentucky Board of

Examiners of Psychology believes that without this emergency regulation, these psychologists will be further delayed in meeting reinstatement requirements due to the very limited availability of face-to-face or in-person programs. The number of suspended licenses constitutes more than 10% of the psychology workforce in Kentucky. During the period of licensure suspension, these psychologists are prohibited from providing mental health services to clients, so time is of the essence to ensure this population does not go unserved. This emergency regulation is being filed to allow all thirty-nine (39) hours of continuing education to be earned through any format, so that these psychologists can have their licenses reinstated and can continue caring for their clients with minimal lapse and disruption to mental health services that are necessary for a vulnerable population across the Commonwealth. An ordinary amendment to this administrative regulation would not be sufficient, as the licenses expired on September 19, 2022, and the ordinary amendment process will further delay services to vulnerable clients. The emergency regulation would help stave off a public health crisis, as it will assist in preventing potentially thousands of clients from going without services for months. This emergency regulation will expire on October 31, 2022 and will allow the Kentucky Board of Examiners of Psychology the opportunity to alert licensees that they can submit for reinstatement using 39 hours in any format. This emergency regulation will not be replaced by an ordinary administrative regulation since the regulation requires additional revisions to other continuing education requirements, such as the addition of training on social and cultural factors that affect health, functioning, and quality of life, which will be required after June 30, 2024, pursuant to HB 237 (2022 R.S.). An ordinary regulatory amendment will therefore be submitted at a later date.

DR. BRENDA FUTRELL NASH, Board Chair
ANDY BESHEAR, Governor

PUBLIC PROTECTION CABINET
Department of Professional Licensing
Board of Examiners of Psychology
(Emergency Amendment)

201 KAR 26:175E. Continuing education.

EFFECTIVE: September 30, 2022

RELATES TO: KRS 210.366, 319.032(1)(f), 319.050, 319.053, 319.064, 319.071

STATUTORY AUTHORITY: KRS 319.032(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

Section 1. Definitions.

(1) "Continuing education" means participation in an approved program of professional education beyond the basic educational requirements that meets the requirements established in Section 2(1) of this administrative regulation.

(2) "Continuing education hour" means a fifty-five (55) minute clock hour of instruction.

Section 2.

(1) Each credential holder shall document the completion of at least thirty-nine (39) continuing education hours approved by the board pursuant to this administrative regulation within each three (3) year renewal period.

(2) A credential holder shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management within the first year of licensure and every six (6) years thereafter as required by KRS 210.366.

(a) A credential holder shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management for the credential holder's first six (6)

years of licensure if the credential holder completes a three (3) semester hour graduate course in suicide and crisis assessment, prevention, and intervention during the course of the credential holder's graduate education.

(b) A credential holder shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management from the six (6) year continuing education if, during the six (6) year period, the credential holder:

1. Is primarily employed in a clinical setting accredited by the Joint Commission or another nationally accrediting healthcare entity that requires the completion of a suicide risk assessment with each patient being seen within the setting;

2. Teaches a graduate-level psychology course in suicide assessment, training, and management; or

3. Teaches a continuing education course in suicide assessment, training, and management at least once during the six (6) year period.

(c) The continuing education course in suicide assessment, treatment, and management shall be approved in accordance with Section 5 of this administrative regulation.

(3) The continuing education shall:

(a) Provide specific content planned and evaluated to improve the credential holder's professional competence;

(b) Make possible the acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the habits of critical inquiry and balanced judgment; and

(d) Include a minimum of three (3) hours in either ethical practice or risk management with each three (3) year renewal period.

(4)

(a) Except as provided in paragraph (b) of this subsection, a licensed psychologist with the health service provider designation who provides supervision to an applicant for licensure, or a certified psychologist or a licensed psychological associate shall include as part of the thirty-nine (39) hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques for each three (3) year renewal period.

(b) The requirement established in paragraph (a) of this subsection shall begin with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received.

Section 3.

(1) Hours required to satisfy the continuing education requirement shall be completed prior to the renewal date of a license.

(2) The credential holder shall:

(a) Maintain and provide adequate records including certificates of attendance and documentation of completion of the required continuing education hours; or

(b) Provide documentation through a board-approved registry, which shall certify the name and license number of the license holder, date and title of each program and the number of hours earned, and confirmation that the programs were given by a board-approved provider.

Section 4. Only continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a license.

Section 5. Approved Sponsoring Organizations and Approved Programs.

(1) Participation in a continuing education program that is approved, offered, or sponsored by an organization listed in this subsection shall be accepted toward the requirement for continuing education established in Section 2(1) of this administrative regulation:

(a) An affiliated state chapter of the American Psychological Association, American Medical Association, American Psychiatric Association, or National Association of Social Workers;

(b) A recognized state, regional, national, or international

psychological association;

(c) A state or provincial psychology licensure board; and

(d) A course for graduate-level academic credit in psychology or psychiatry offered by a national, regional, or state accredited academic institution.

(2)

(a) The board may approve an organization that is not listed in subsection (1) of this section as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a completed Continuing Education Sponsorship Application;

2. Pays an initial application fee of \$250; and

3. Proposes to sponsor continuing education programs that meet the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a \$150 renewal fee annually.

(d) A workshop in psychology or psychiatry offered by a national, regional, or state accredited academic institution's medical center or affiliated hospital shall comply with paragraph (a)1 of this subsection. The fees required under paragraphs (a)2 and (c) of this subsection are waived.

(3)

(a) The board may approve a specific continuing education program that is not approved, offered, or sponsored by an organization listed in subsection (1) of this section or an approved organization under subsection (2) of this section if the sponsor or a participant of the program:

1. Files a completed Continuing Education Program Application at least thirty (30) days before the program. The failure to abide by this deadline may be a reason for denial of the application;

2. Pays an application fee of fifty (50) dollars; and

3. Provides information about a continuing education program that it proposes to sponsor which meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the sponsor to offer the program one (1) time. The sponsor shall submit a request for renewal and a ten (10) dollar renewal fee for each subsequent request to offer the same approved program.

Section 6.

(1) A continuing education program that satisfies the requirements for license renewal shall be:

(a) Approved, offered, or sponsored by an organization that has been approved by the board; or

(b) A specific program approved by the board;

(2)

(a) Have a clearly stated purpose and defined content area; and

(b) Be consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) Have a presenter who is a professional qualified in the defined content area;

(4) Clearly state the program's time. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) Include attendance recorded by the program's sponsor;

(6) Documentation of completion shall be provided to the participant only after approval is granted; and

(7) Include each participant's evaluation of the program.

Section 7. Equivalencies.

(1) A graduate-level psychology course taken at an accredited academic institution shall earn continuing education hours pursuant to paragraphs (a) and (b) of this subsection.

(a) Each one (1) hour semester course shall be the equivalent of fifteen (15) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(b) Each one (1) hour quarter course shall be the equivalent of

nine (9) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:

(a) Earn six (6) continuing education hours for teaching the course; and

(b) Not receive credit more than once for teaching a particular course during a renewal period;

~~1. Credit more than once for teaching a particular course during a renewal period; and~~

~~2. More than nine (9) total continuing education hours for these teaching activities.~~

(3) A person who teaches an approved continuing education workshop or program shall:

(a) Earn continuing education hours on a one (1) to one (1) basis; and

(b) Not receive credit more than once for teaching a particular workshop or program during a renewal period;

~~1. Credit more than once for teaching a particular workshop or program during a renewal period; and~~

~~2. More than nine (9) total continuing education hours for these teaching activities.~~

(4) A person who completes home study or internet-based courses approved, offered, or sponsored by an organization listed in Section 5(1) shall ~~not receive~~:

(a) Earn continuing education hours on a one (1) to one (1) basis~~Credit for repeating a specific study course during a renewal period~~; and

(b) Not receive credit for repeating a specific study course during a renewal period~~More than twelve (12) total continuing education hours through home study or internet-based courses in a renewal period~~.

(5) A person who participates in videoconferencing in an interactive setting shall:

(a) Earn one (1) continuing education hour for each clock hour of participation; and

(b) Not receive credit for repeating a specific videoconferencing education course during a renewal period~~Not receive more than twenty-four (24) continuing education hours through interactive videoconferencing participation~~.

Section 8. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 2 of this administrative regulation into the immediately following renewal period.

Section 9. The board shall audit a minimum of ten (10) percent of all credential holders' documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Continuing Education Program Application", October 2021; and

(b) "Continuing Education Sponsorship Application", October 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the board's Web site and the address is: <https://psy.ky.gov>.

DR. BRENDA FUTRELL NASH, Board Chair

APPROVED BY AGENCY: September 27, 2022

FILED WITH LRC: September 30, 2022 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held at 10:00 a.m. on November 22, 2022, at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at

this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 emergency administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed emergency administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed emergency administrative regulation to the contact person below. ***ADDITIONAL PUBLIC HEARING*** Pursuant to KRS 13A.270(1)(b), an additional public a.m. on October 24, 2022, at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 emergency administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed emergency administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed emergency administrative regulation to the contact person below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney for the Board of Examiners of Psychology, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-782-2709, fax 502-564-4818, email Sara.Janes@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes that continuing education requirements for renewal of a license can be obtained through any platform (in-person or videoconferencing) until October 31, 2022.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032(1)(f), and an emergency administrative regulation is necessary in this instance to avoid an imminent threat to the public health, safety, or welfare.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the continuing education requirements for renewal of a license and will allow the licensee to satisfy continuing education requirements for renewal with 39 hours attained through in-person or online courses without restriction. The statute does not limit or restrict the teaching delivery method.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statute by authorizing the continuing education requirements for renewal of a license to include any non-duplicate course taken regardless of the venue offered (in-person or online) without restriction.

(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 allow the 39 hours of continuing education to be earned through any format (either face-to-face, in-person or virtual, or online).

(b) The necessity of the amendment to this administrative regulation: Approximately 180 licensed psychologists' licenses expired on September 19, 2022, due to the lack of availability of courses that would allow them to satisfy the requirement of 3-hours of in-person, face-to-face continuing education. This amendment will allow those licensees to renew their licenses utilizing 39 hours of continuing education obtained through on-line programs. This is essential to ensure a minimal lapse in those licenses, so that the

delivery of mental health services to vulnerable patient populations is not unnecessarily delayed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032(1)(f) authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations establishing the requirements for continuing education. The amendment conforms with KRS 319.021(1)(f), which does not limit the format of continuing education methods of delivery.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes. This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for continuing education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,740 active, inactive, or expired licensees in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 licensees will have to submit 39 hours of continuing education obtained during their renewal period along with a renewal application.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees applying for renewal will receive credit for required continuing education obtained, without any limit or restriction for approval based upon the method of delivery of the program.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No increases in fees or funding are necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the

first full year the administrative regulation is to be in effect.

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

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

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will not have any fiscal impact, as it will simply allow licensees to renew a license without restriction on the method or mode through which they obtain their required thirty-nine (39) hours of continuing education.

(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 does not have any effect on the expenditures and cost savings of regulated entities.

(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? There are no additional costs to the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? See 4.c. above.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will not have any fiscal impact, as it will simply allow licensees to renew a license without restriction on the method or mode through which they obtain their required thirty-nine (39) hours of continuing education.

(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 any major economic impact, as it will simply allow licensees to renew a license without restriction on the method or mode through which they obtain their required thirty-nine (39) hours of continuing education.

STATEMENT OF EMERGENCY 201 KAR 26:225E

Pursuant to KRS 13A.190(1)(a)1., this emergency regulation is being promulgated to meet an imminent threat to the public health, safety, or welfare. On September 19, 2022, approximately 180 licenses under KBEP jurisdiction expired due to the licensees' inability to satisfy regulatory continuing education requirements. 201 KAR 26:225 requires licensees, through an incorporated form, to obtain thirty-nine (39) total continuing education hours each renewal cycle, and three (3) of those hours must be face-to-face. However, over the last two and a half (2.5) years, continuing education providers have primarily offered only online training, making it difficult, if not impossible, for licensees to obtain the in-person hours needed to meet the regulatory requirements. The Kentucky Board of Examiners of Psychology provided notice of the end of the state of emergency in its Spring Newsletters and advised licensees of the reinstatement of the in-person, face-to-

face continuing education requirement for license renewal. The Kentucky Board of Examiners of Psychology did not anticipate the lack of in-person programming that would be available and its impact on licensees' ability to renew. The Kentucky Board of Examiners of Psychology believes that without this emergency regulation, these psychologists will be further delayed in meeting reinstatement requirements due to the very limited availability of face-to-face or in-person programs. The number of suspended licenses constitutes more than 10% of the psychology workforce in Kentucky. During the period of licensure suspension, these psychologists are prohibited from providing mental health services to clients, so time is of the essence to ensure this population does not go unserved. This emergency regulation is being filed to amend the incorporated Renewal Application form, in order to allow all thirty-nine (39) hours of continuing education to be earned through any format, so that these psychologists can have their licenses reinstated and can continue caring for their clients with minimal lapse and disruption to mental health services that are necessary for a vulnerable population across the Commonwealth. An ordinary amendment to this administrative regulation would not be sufficient, as the licenses expired on September 19, 2022, and the ordinary amendment process will further delay services to vulnerable clients. The emergency regulation would help stave off a public health crisis, as it will assist in preventing potentially thousands of clients from going without services for months. This emergency regulation will expire on October 31, 2022 and will allow the Kentucky Board of Examiners of Psychology the opportunity to alert licensees that they can submit for reinstatement using 39 hours in any format. This emergency regulation will not be replaced by an ordinary administrative regulation, as the regulation's incorporated form will require additional revisions to other continuing education requirements, such as the addition of training on social and cultural factors that affect health, functioning, and quality of life, which will be required after June 30, 2024, pursuant to HB 237 (2022 R.S.). An ordinary regulatory amendment will therefore be submitted at a later date.

DR. BRENDA FUTRELL NASH, Board Chair
ANDY BESHEAR, Governor

PUBLIC PROTECTION CABINET Department of Professional Licensing Board of Examiners of Psychology (Emergency Amendment)

201 KAR 26:225E. Renewal and reinstatement.

EFFECTIVE: September 30, 2022

RELATES TO: 319.071

STATUTORY AUTHORITY: KRS 319.032(1)(c), 319.032(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(c) requires the Board of Examiners of Psychology to promulgate an administrative regulation setting the requirements for issuing and denying an applicant for licensure. KRS 319.032(2) authorizes the board to promulgate administrative regulations as it deems necessary for the proper administration of KRS Chapter 319. This administrative regulation establishes the renewal and reinstatement processes.

Section 1.

(1) To apply for renewal, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5); and

(c) Have completed thirty-nine (39) continuing education hours established in 201 KAR 26:175E, Section 2(1).

(2) After the renewal date but during the three (3) month grace period, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:

(a) Submit a completed Renewal Application to the board;

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(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5);

(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2; and

(d) Have completed thirty-nine (39) continuing education hours established in 201 KAR 26:175E, Section 2(1).

(3) After the three (3) month grace period but less than three (3) years of cancellation, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5);

(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2;

(d) Pay to the board a reinstatement fee established in 201 KAR 26:160, Section 3; and

(e) Complete thirty-nine (39) continuing education hours obtained within the three (3) years prior to the date of application for reinstatement.

(4) After three (3) years of cancellation, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:

(a) Submit a new completed application to the board;

(b) Pay to the board the appropriate fee established in 201 KAR 26:160, Section 1; and

(c) Successfully complete the oral and structured examinations on Kentucky mental health law, ethical principles, and professional practice established in 201 KAR 26:230, Section 3(1)(b) and (4).

Section 2.

(1) To apply for renewal, a certified psychologist or licensed psychological associate shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(6); and

(c) Have completed thirty-nine (39) continuing education hours established in 201 KAR 26:175E, Section 2(1).

(2) After the renewal date but during the three (3) month grace period, a certified psychologist or licensed psychological associate shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(6);

(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2; and

(d) Complete thirty-nine (39) continuing education hours established in 201 KAR 26:175E, Section 2(1).

(3) After the three (3) month grace period but less than three (3) years of cancellation, a certified psychologist or licensed psychological associate shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5);

(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2;

(d) Pay to the board a reinstatement fee established in 201 KAR 26:160, Section 3; and

(e) Complete thirty-nine (39) continuing education hours obtained within the three (3) years prior to the date of application for reinstatement.

(4) After three (3) years of cancellation, a certified psychologist or licensed psychological associate shall:

(a) Submit a new completed application to the board; and

(b) Pay to the board the appropriate fee established in 201 KAR 26:160, Section 1.

Section 3. A person who previously held a credential issued by the board and applies three (3) years or more beyond the date of cancellation shall be required to meet current initial licensure requirements.

Section 4. A credential holder may continue to practice during

the grace period.

Section 5. A person shall not engage in the practice of psychology after a license has been canceled.

Section 6. Incorporation by Reference.

(1) "Renewal Application", September 2022~~[October 2021]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the Board's website and the address is: <https://psy.ky.gov>.

DR. BRENDA FUTRELL NASH, Board Chair

APPROVED BY AGENCY: September 27, 2022

FILED WITH LRC: September 30, 2022 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held at 10:00 a.m. on November 22, 2022, at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 emergency administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed emergency administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed emergency administrative regulation to the contact person below. ***ADDITIONAL PUBLIC HEARING*** Pursuant to KRS 13A.270(1)(b), an additional public hearing on this emergency administrative regulation will be held at 8:00 a.m. on October 24, 2022, at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 emergency administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed emergency administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed emergency administrative regulation to the contact person below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney for the Board of Examiners of Psychology, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-782-2709, fax 502-564-4818, email Sara.Janes@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation revises the incorporated renewal application form to establish that continuing education requirements for renewal of a license can be obtained through any platform (in-person or videoconferencing) until October 31, 2022.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032(1)(f), and an emergency amendment is necessary in this instance to avoid an imminent threat to the public health, safety, or welfare.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the renewal application process for licensees and

incorporates a renewal application form which is being revised to allow licensees to satisfy continuing education requirements for renewal with 39 hours attained through in-person or online courses without restriction. The statute does not limit or restrict the teaching delivery method.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statute by authorizing the continuing education requirements for renewal of a license to include any non-duplicate course taken regardless of the venue offered (in-person or online) without restriction.

(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 allow the 39 hours of continuing education to be earned through any format (either face-to-face, in-person or virtual, or online).

(b) The necessity of the amendment to this administrative regulation: Approximately 180 licenses under KBEP jurisdiction expired on September 19, 2022, due to the lack of availability of courses that would allow them to satisfy the requirement of 3-hours of in-person, face-to-face continuing education. This amendment will allow those licensees to renew their licenses utilizing 39 hours of continuing education obtained through on-line programs. This is essential to ensure a minimal lapse in those licenses, so that the delivery of mental health services to vulnerable patient populations is not unnecessarily delayed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032(1)(f) authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations establishing the requirements for continuing education. The amendment conforms with KRS 319.021(1)(f), which does not limit the format of continuing education methods of delivery.

(d) How the amendment will assist in the effective administration of the statutes: This emergency regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for renewal applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,740 active, inactive, or expired licensees in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 licensees will have to submit 39 hours of continuing education obtained during their renewal period along with the revised renewal application.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees applying for renewal will use the newly revised form and receive credit for required continuing education obtained, without any limit or restriction for approval based upon the method of delivery of the program.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increases in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No increases in fees or funding are necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will not have any fiscal impact, as it will simply amend the renewal application form to allow licensees to renew a license without restriction on the method or mode through which they obtain their required thirty-nine (39) hours of continuing education.

(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 does not have any effect on the expenditures and cost savings of regulated entities.

(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? There are no additional costs to the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? See 4.c. above.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will not have any fiscal impact, as it will simply amend the renewal application to allow licensees to renew a license without restriction on the method or mode through which they obtain their required thirty-nine (39) hours of continuing education.

(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 any major economic impact, as it will simply amend the renewal application to allow licensees to renew a license without restriction on the method or mode through which they obtain their required thirty-nine (39) hours of continuing education.

STATEMENT OF EMERGENCY
701 KAR 8:010E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(3) to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute or federal law. This emergency administrative regulation is necessary in order to meet statutory deadlines outlined in KRS 160.1590 to KRS 160.1599 as amended by House Bill 9 (2022). Pursuant to KRS 160.15911, Kentucky public charter school pilot project, Charter Authorizers are required to "solicit, review, and approve at least one (1) charter application for a public charter school" before July 1, 2023. As the Kentucky Board of Education (KBE) is directed by KRS 160.1591 to promulgate regulation related to the student application, lottery, and enrollment process for public charter schools, an emergency regulation is necessary to allow authorizers to meet the deadlines outlined in KRS 160.15911. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation other than technical amendments. This emergency amendment exclusively incorporates amendments to the existing administrative regulation made by and necessary to comply with House Bill 9 (R.S. 2022).

ANDY BESHEAR, Governor
LU S. YOUNG, Board Chair

BOARD OF EDUCATION
Department of Education
(Emergency Amendment)

701 KAR 8:010E. Charter school student application, lottery, and enrollment.

EFFECTIVE: October 13, 2022

RELATES TO: KRS 157.196, 157.200, 158.030, 158.050, 158.070, 158.100, 158.281, 159.010, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 160.346, 161.141, 387.010(2), 20 U.S.C. 1400 et seq., 1681, 29 U.S.C. 794, 42 U.S.C. 1981-2000h-6

STATUTORY AUTHORITY: KRS 160.1591

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1591(6)(7) requires the Kentucky Board of Education to promulgate an administrative regulation to guide student application, lottery, and enrollment in public charter schools. This administrative regulation establishes the requirements for charter school student application, lottery, and enrollment.

Section 1. Definitions. (1) "Academically behind" means at risk of academic failure.

(2) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(3) "Applicant" is defined by KRS 160.1590(2)(3).

(4) "At risk" means at risk of academic failure.

(5) "At risk of academic failure" means:

(a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support or intervention;

(b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;

(c) Current achievement two (2) or more grade levels below the student's age group;

(d) Demonstration of poor academic skills, such as failure of

two (2) or more subjects in two (2) of the past four (4) school years;

(e) Consistent absence or tardy and absence twenty-five (25) or more unexcused "student attendance days", as defined by KRS 158.070, in the last two (2) school years and an overall grade average below a C;

(f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;

(g) Family history of dropping out or lack of family support for the student in the completion of school;

(h) Little or no participation in school cocurricular or extracurricular programs;

(i) Below grade level in reading or math skills;

(j) Indication of being socially isolated; or

(k) An applicant's definition for this term in the applicant's authorizer approved charter application, pursuant to KRS 160.1594(2).

(6) "Authorizer" or "public charter school authorizer" is defined by KRS 160.1590(13)(15).

(7) "Charter application" is defined by KRS 160.1590(4)(3).

(8) "Charter contract" or "contract" is defined by KRS 160.1590(6)(4).

(9) "Charter school" means a public charter school as defined by KRS 160.1590(14).

(10) "Charter school board of directors" is defined by KRS 160.1590(6)(5).

(11) "Cocurricular programs" means school programs that have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(12) "Computerized randomization" means use of a computer software program for randomization.

(13) "Conversion public charter school" is defined by KRS 160.1590(7)(6).

(14) "Days" means calendar days calculated pursuant to KRS 446.030.

(15) "Education service provider" is defined by KRS 160.1590(8).

(16) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(17) "Enrollment" means the process for the charter school to register a student for attendance at the charter school.

(18) "Enrollment preference" means the priority of the student application from other students applications pursuant to KRS 160.1591(5)(4).

(19) "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.

(20) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(21) "Human randomization" means randomization without the use of computer randomization.

(22) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(23) "Local school district" is defined by KRS 160.1590(10).

(24) "Lottery" means the transparent, open, equitable, and impartial process that is competently conducted with randomization in accordance with the targeted student population and service community as established in KRS 160.1593(3) for the charter school to choose students for enrollment and attendance at the charter school if the student applications received by the charter school exceed the charter school's capacity.

(25) "Multiple" means a person who was born as a result of the same pregnancy as at least one (1) other sibling.

(26) "Notice" means written notice.

(27) "Notify" means provide written notice.

(28) "Parent" is defined by KRS 160.1590(11).

(29) "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter public schools identified for comprehensive support and improvement

pursuant to KRS 160.346.

(30) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition for "interested person or entity" as defined by KRS 387.010(2) for interested person or entity and with whom the student resides.

(31) "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.

(32) "Public charter school" is defined by KRS 160.1590[(42)](14).

(33) "Randomization" means to leave to chance alone and eliminate bias and interference.

(34) "Secondary enrollment preference" means the priority of a resident student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school's capacity has not been exceeded for that school year.

[(35)] "Start-up public charter school" is defined by KRS 160.1590(47).]

[(35)](36) "Student" is defined by KRS 160.1590[(49)](18) and includes any person who is entitled to enrollment and attendance at a school program as established in KRS 158.030 and 158.100.

[(36)](37) "Student application" means an application submitted to a charter school for student enrollment in the charter school.

[(37)](38) "Students with special needs" or "Special needs students" means:

(a) An "exceptional children and youth student", as defined by KRS 157.200, who is eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. for an individual education plan, as established in KRS 157.196, or an individual education program, as defined by KRS 158.281; or

(b) A student who is eligible for services pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to prevent substantial limitation of one (1) or more major life activities.

[(39)] "Traditionally underperforming" means at risk of academic failure.]

[(38)](40) "Year", "academic year," or "school year" means school year as established in KRS 158.050.

Section 2. Student Application. (1) Any parent, person with custody or charge, adult student, or emancipated youth student who has the ability to enroll the student pursuant to Kentucky law may initiate a student application to a charter school for the student who is eligible for attendance at the charter school pursuant to KRS 158.030, 158.100, or 160.1591(5)[-or-(6)].

(2) Any adult student or emancipated youth student may initiate the student's own application to a charter school.

(3)(a) A student application for enrollment in a charter school shall list the grade level the parent, person with custody or charge, adult student, or emancipated youth student understands to be the most appropriate grade level for the student based on available information.

(b) Any future determination by the resident local school district or the charter school that the student should be placed in a different grade level shall not invalidate the student's application unless the charter school determines that the parent, person with custody or charge, adult student, or emancipated youth student knowingly misrepresented the grade level most appropriate for the student on the student application.

(4) Consent of the parent, person with custody or charge, adult student, or emancipated youth student to serve on the charter school board of directors shall not be a condition for student application to the charter school.

(5) The charter school shall not limit the number of applications that it accepts from students based on ethnicity, national origin, religion, sex, income level, disabling condition, proficiency in the English language, or academic or athletic ability, in violation of the Civil Rights Act of 1964, 42 U.S.C. secs. 1981 to 2000h-6, as amended, Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, as amended, KRS 160.1591(5), or [KRS] 160.1592(19).

[(6)] For a start-up charter school, the enrollment preference described in KRS 160.1591(5)(d) shall only be available to:

~~(a) A child of a Kentucky resident who is on the board of directors and resides within the charter school's enrollment boundaries; or~~

~~(b) A child of a Kentucky resident who will be a full-time employee of the charter school and resides within the charter school's enrollment boundaries.]~~

[(6)](7) The charter school shall utilize a uniform application process for all student applications, including use of the Kentucky Charter School Student Application.

Section 3. Lottery. (1) A charter school board of directors shall create and publish policies and procedures on its Web site for conducting the lottery that include:

(a) Identification and designation of duties for charter school board members, any education service provider, charter school staff, and volunteers prior to the lottery event;

(b) Segregation of duties to decrease the likelihood of errors, mitigate the risk of interference, and increase the public perception that the lottery is a randomized, transparent, open, equitable, and impartial process that is competently conducted;

(c) Provision for breaks during the lottery;

(d) Retention of records from the lottery for at least the length of the charter contract;

(e) Creation of minutes from the lottery; and

(f) Procedures for receipt, investigation, and handling of written complaints regarding the lottery with concurrent provision of all documents to the authorizer, the commissioner of education, and the Kentucky Board of Education. Procedures shall include:

1. Any remedies the charter school shall provide upon determination that student selection during the lottery was affected by an error committed by individuals acting on behalf of the charter school during the application or lottery processes;

2. Transparency in the charter school's remedying of an error; and

3. Actions to prevent reoccurrence of errors in the application and lottery processes in future years.

(2) A charter school shall conduct the lottery in compliance with the requirements of KRS 160.1591, 160.1592, 701 KAR Chapter 8, and its policies and procedures as established in subsection (1) of this section, which may include, as allowed by the authorizer:

(a) Selection of numbers assigned to individual students; and

(b) Human randomization or computerized randomization.

(3) The charter school shall offer primary enrollment preferences and secondary enrollment preferences only to students as established in:

(a) KRS 160.1591, 160.1592, and this administrative regulation;

(b) The charter application; and

(c) The charter contract.

(4) A charter school shall not conduct a lottery for enrollment if the number of student applications does not exceed the capacity of the charter school for that school year, as stated in the charter school's charter contract.

(5) If the number of student applications exceeds the capacity of the charter school for the school year, then pursuant to KRS 160.1591(5)(c), the charter school shall reserve space for enrollment of returning students and then conduct the lottery for the other student applications.

(6) If the number of student applications with enrollment preferences meeting the requirements of subsection (3) of this section exceeds the capacity of the charter school for the school year, the charter school shall include in the lottery for enrollment only those students with enrollment preferences.

(7) Selection in the lottery of a student who is a multiple shall also result in:

(a) The automatic selection of the student's multiple sibling or siblings who have submitted a student application to that charter school for attendance that school year, unless this would exceed the capacity of the charter school; or

(b) If the automatic selection of the student's multiple sibling or siblings would exceed the capacity of the charter school for that school year, the automatic placement of the student's multiple siblings at the top of the wait list.

(8) At least thirty (30) days prior to conducting a lottery, the charter school shall publish on its Web site, and provide to parents, persons with custody or charge, adult students, and emancipated youth students who have submitted student applications to the charter school, notice of the lottery and information on the lottery. The Web site publication and notice shall include:

(a) The date and location of the lottery and the information meeting to be held prior to the lottery pursuant to subsection (9) of this section;

(b) Information on the legal requirements and policies and procedures for holding the lottery;

(c) Information for filing a written complaint regarding the lottery monitor;

(d) Information for filing a written complaint regarding an error committed by individuals acting on behalf of the charter school during the application or lottery processes; and

(e) Identification of the charter school for the lottery.

(9) At least twenty (20) days prior to conducting a lottery, the charter school shall hold a meeting to provide the lottery information in subsection (8) of this section to parents, persons with custody or charge, adult students, and emancipated youth students.

(10) The authorizer may include in the charter contract a requirement for the charter school to conduct a practice lottery, in the presence of the lottery monitor, to:

(a) Reduce charter school community shareholder concerns;

(b) Identify potential issues and perceptions with the selected lottery method; and

(c) Build the charter school's capacity to conduct the lottery.

(11) The charter school shall not require the presence of the parent, person with custody or charge, adult student, or emancipated youth student at the lottery for inclusion in the lottery or for eligibility for enrollment.

(12) The charter school shall not require the consent of the parent, person with custody or charge, adult student, or emancipated youth student to serve on the charter school board of directors for inclusion in the lottery or for eligibility for enrollment.

(13) If a charter school determines capacity by grade level, then the charter school shall hold lotteries only in those grade levels for which student applications exceeded the charter school's capacity and shall hold separate lotteries, which may occur on the same date, for each of those grade levels. A student shall be eligible for the lottery for the grade level listed on the student's application, unless the charter school and the parent, persons with custody or charge, adult student, or emancipated youth student agree otherwise.

(14) The lottery and the information meeting required in subsection (9) of this section shall each be held in accordance with the Open Meetings Act, KRS 61.800 et seq., at a time and location convenient to parents, persons with custody or charge, adult students, and emancipated youth students who have submitted a student application for enrollment in the charter school.

(15) The lottery shall be monitored by a competent, independent, impartial party, the lottery monitor, who shall be selected by the charter school, to ensure compliance with KRS 160.1591 and 160.1592.

(a) The charter school shall include the identity, qualifications, and affiliations of the lottery monitor in the information provided to the public by the deadline established in subsection (8) of this section, and in the lottery information meeting held pursuant to subsection (9) of this section.

(b) Complaints regarding the competence, independence, or impartiality of the lottery monitor shall be provided in writing to the commissioner of education, who shall conduct an investigation and render a decision within seven (7) days of receipt of the written complaint.

(c) If the lottery monitor is determined by the commissioner of education to lack competence, independence, or impartiality, the commissioner of education shall appoint an individual who does meet these requirements to serve as a monitor for the lottery selection process.

(16) In the lottery, the charter school shall select students for enrollment up to the capacity of the school for that school year, and

then the charter school shall select students for inclusion on the wait list above the school capacity as established in paragraphs (a) through (g) of this subsection. A charter school shall:

(a) Continue to select students for placement on the wait list until the charter school has exhausted the student applications for that school year;

(b) Ensure that lottery drawing for the wait list shall be separate from the lottery for selection of students for enrollment and that each parent, person with custody or charge, adult student, and emancipated youth student, who submitted a student application to the charter school and is placed on a wait list, shall be notified in writing of the student's inclusion on the wait list and the student's position on the wait list after the conclusion of the wait list lottery process;

(c) Place students on the wait list in the order the students are drawn during that portion of the lottery process;

(d) Maintain and continuously update accurate records of the order of the wait list;

(e) Update the wait list as students are admitted;

(f) Weekly publish on its Web site updated information on each student's position on the wait list as well as the last date for enrollment for that year. The charter school shall weekly provide each parent, person with custody or charge, or student with notice of the student's updated position on the wait list as well as the last date for enrollment for that year; and

(g) Place student applications received after the lottery on the wait list, in the order received, after the students placed on the wait list through the lottery process in this section.

Section 4. Student Enrollment. (1) A charter school shall include in its policies and procedures on student enrollment:

(a) The status of an enrollment preference and eligibility for enrollment and attendance for a student if the student ceases to reside within the charter school's enrollment boundaries prior to or during the school year;

(b) The status of an enrollment preference for a sibling pursuant to KRS 160.1591(5)(b) if the student who was enrolled the previous school year withdraws from the charter school;

(c) The status of an enrollment preference for a student pursuant to KRS 160.1591(5)(c) if the student ceases to reside within close proximity to the school, as governed by the charter contract.

(d)(e) The status of an enrollment preference for a student pursuant to KRS 160.1591(5)(d) if the resident ceases to be a member of the board of directors or ceases to be a full-time employee of the charter school prior to or during the school year;

(e)(d) The status of an enrollment preference for a student pursuant to KRS 160.1591(5)(e) if the student ceases to be eligible for free or reduced price meals prior to or during the school year; and

(f)(e) The status of an enrollment preference for a student pursuant to KRS 160.1591(5)(e) if the student's former school ceases to be a persistently low-achieving public school or a persistently low-achieving noncharter public school prior to the school year the student shall attend the charter school.

(2) A charter school shall accept student applications for enrollment and attendance from all local school district resident students who are eligible for enrollment based on KRS 158.030, 158.100, 160.1591(5) ~~or (6)~~.

(a) Only a student who resides within the boundaries established by the charter school's [enrollment boundaries]resident and non-resident enrollment policy by the student's first day of student attendance shall be eligible for enrollment and attendance at the charter school that school year.

(b) A student who attended the public charter school the previous year shall be automatically re-enrolled for attendance each school year unless:

1. The student has been awarded a high school diploma after meeting or exceeding the minimum requirements for high school graduation established by the Kentucky Board of Education pursuant to 704 KAR 3:305;

2. The charter school has expelled the student pursuant to

KRS 158.150;

3. A court has ordered placement of the student in another school or a local school district outside the charter school's enrollment boundaries;

4. The student has voluntarily withdrawn from enrollment in the charter school; or

5. The student no longer resides within the charter school's enrollment boundaries.

(3) In addition to the requirements of KRS 160.1592(14), a charter school shall not discourage, restrict, or prohibit enrollment of a student, including based on:

(a) Whether the emancipated youth student, adult student, parent, or person with custody or charge gives consent for the charter school unilaterally to unenroll or withdraw the student from the charter school without providing the due process protections established in KRS 158.150;

(b) The student's disability, academic performance, athletic ability, or the ability of the parent or person with custody or charge to volunteer at the charter school;

(c) The student's ability to meet academic minimum requirements;

(d) The student's English competence;

(e) The student's status as a student with special needs or special needs student;

(f) The student's status as a student at risk of academic failure, at risk, academically behind, ~~or traditionally underperforming;~~

(g) The student's status as a homeless child or youth, under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11301 et seq.; or

(h) The student's eligibility for free or reduced price meals, under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.

(4) In addition to the requirements of KRS 160.1592(14), a charter school shall not:

(a) Require or request

1. An interview prior to enrollment;

2. Letters of recommendation;

3. Essays;

4. Resumes or information regarding a student's school or community activities;

5. Grades;

6. Test scores;

7. Attendance records;

8. Special needs student status or special needs student disability information, at risk student information, free or reduced price lunch student eligibility information, or other education record information, except to the extent allowed by the authorizer in the charter contract for the purpose of confirming and providing an enrollment preference to the student pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

9. Disciplinary history except pursuant to KRS 158.155;

10. Proof of a Social Security card or number, U.S. birth certificates, visa, or citizenship;

11. Information on the legal residence or presence in the United States of the student, parent, or person with custody or charge; or

12. Information regarding the cause of any student's residency with a person other than the parent;

(b) Require a family member or person with custody or charge of the student to volunteer at the charter school or provide payment to the school, except:

1. As allowed in KRS 160.1592(14) for fees required on the same basis and to the same extent as other public schools; and

2. The charter school may encourage involvement by parents, persons with custody or charge, adult students, and emancipated youth students in the charter school if involvement is not required and there are no adverse consequences for the family or student who cannot be involved; or

(c) Require or request a parent, person with custody or charge, adult student, or emancipated youth student to consent to the charter school's withdrawal or unenrollment of the student from the charter school without providing the due process protections established in KRS 158.150.

(5) A charter school shall enroll a student in compliance with KRS 158.032 and KRS 159.010.

(6) By the first day of a student's attendance, a charter school shall verify the residence of the student within the local school district and use methods similar to those employed by a local school district to verify residence.

(7) A conversion public charter school shall accept for enrollment student applications with secondary enrollment preference after accepting student applications with primary enrollment preference, if the conversion public charter school's capacity has not been exceeded for that school year. After complying with the primary enrollment preference requirement in KRS 160.1591(5)(b)(a), a conversion public charter school may utilize the enrollment preferences in KRS 160.1591(5)(e)(b) through (e) in enrolling additional local school district resident students pursuant to KRS 160.1591(5)(b)(a).

(8) A charter school shall conduct enrollment as follows:

(a) A charter school shall establish and publish on its Web site an open enrollment period during which the charter school shall accept applications for enrollment of new students;

(b) A charter school shall establish and publish on its Web site a specific deadline for notification to parents, persons with custody or charge, adult students, or emancipated youth students of the charter school's acceptance of the student's application for enrollment;

(c) A charter school shall notify parents, persons with custody or charge, adult students, and emancipated youth students with accepted applications of their opportunity to enroll in the charter school and the deadlines and required documentation for enrollment;

(d) A charter school shall establish and publish on its Web site a specific deadline during the open enrollment period for parents, persons with custody or charge, adult students, or emancipated youth students with accepted applications to notify the school of their enrollment decision and to initiate enrollment of the student in the charter school. Failure of the parent, person with custody or charge, adult student, or emancipated youth student to accept the enrollment offer and enroll the student by the deadline established by the charter school during the open enrollment period may result in the forfeiture of an enrollment preference and result in enrollment of the student that school year only if capacity of the school has not been exceeded for that school year. Prior to forfeiture of the student's enrollment offer, a charter school shall attempt to enroll the student by again contacting the parent, person with custody or charge, adult student, or emancipated youth student through at least two (2) of the following methods, until the charter school is successful in contacting the parent, person with custody or charge, adult student, or emancipated youth student:

1. Phone;

2. Email;

3. Mailed correspondence; or

4. Home visit; and

(e) A charter school shall allow a parent, person with custody or charge, adult student, or an emancipated youth student to enroll the student for attendance at the charter school in the grade level the parent, person with custody or charge, adult student, or emancipated youth student understands to be the most appropriate grade level based on available information. Any future determination by the resident local school district or the charter school that the student should be placed in a different grade level shall not invalidate the student's enrollment.

(9) A charter school shall only require the following documentation or information for student enrollment:

(a) Proof of the student's identity and age, as required pursuant to KRS 158.032;

(b) Immunization records, as required by KRS 158.035;

(c) Proof of residency in the local school district, as required by the resident local school district;

(d) Home language survey, as required by 703 KAR 5:070, as a first screening process to identify students who are English learners; and

(e) Proof of the student's current grade level.

(10) A charter school may request additional information with

the consent of the authorizer only to process the student applications, conduct the lottery, or enroll the charter school students, but the refusal or failure to provide additional information shall not be a cause for denial of enrollment or for withdrawal of a student.

(11) A charter school shall accept student applications from students who reside within the charter school's enrollment boundaries and enroll additional students who reside within the charter school's enrollment boundaries for that school year after the end of the open enrollment period if the charter school has capacity to educate additional students at that grade level for that school year.

Section 5. Incorporation by Reference. (1) "Kentucky Charter School Student Application", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal—Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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., Board Chairperson

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:42 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 30, 2022, at 1 p.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 November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd 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 regulation outlines the procedures to be used by public charter schools in accepting student applications for enrollment.

(b) The necessity of this administrative regulation: This administrative regulation is required under KRS 160.1591.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administration outlines the required elements of a student application for enrollment to a public charter school.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by KRS 160.1591. It provides clarity to charter authorizers related to the requirements for student applications for enrollment.

(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 regulation amendments include those changes required by House Bill 9 (2022). It includes updated definitions, updated enrollment preference requirements, and makes technical amendments to conform to the amended statute.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to conform to statutory amendments made by House Bill 9 (2022).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment includes updates prompted by House Bill 9 (2022) including updated definitions, updated enrollment preferences, and technical amendments as required to conform to the statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is required to ensure that public charter school authorizers remain in compliance with KRS 160.1590 through 160.1599 as amended by House Bill 9 (2022).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, public charter school authorizers, parents, students.

(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: Charter schools shall ensure compliance with this administrative regulation for all student application and enrollment activities. Parents and students will likewise be required to submit applications in compliance with the language in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes to this administrative regulation will not result in any additional cost to any of the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation ensures compliance with KRS 160.1590 to 160.1599. It also ensures and equitable student enrollment process for all public charter schools.

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

(a) Initially: This regulation will not increase costs.

(b) On a continuing basis: This regulation will not create continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation does not create new costs or continuing costs; as such, 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: This administrative regulation will not result in the collection of fees.

(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.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation as it applies equally to all public charter school authorizers.

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 public charter school authorizers, which may include public school districts or state universities, and public charter schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 157.196, 157.200, 158.030, 158.050, 158.070, 158.100, 158.281, 159.010, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 160.346, 161.141, 387.010(2), 20 U.S.C. 1400 et seq.,

1681, 29 U.S.C. 794, 42 U.S.C. 1981-2000h-6

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

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

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

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

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

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

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 result in cost savings.

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

(c) How much will it cost the regulated entities for the first year? There is no additional cost to implement this administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? There is no additional cost to implement this administrative regulation.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): \$0.00

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 as defined by KRS 13A.010(13).

STATEMENT OF EMERGENCY

701 KAR 8:020E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(3) to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute or federal law. This emergency administrative regulation is necessary in order to meet statutory deadlines outlined in KRS 160.1590 to KRS 160.1599 as amended by House Bill 9 (2022). Pursuant to KRS 160.15911, Kentucky public charter school pilot project, Charter Authorizers are required to "solicit, review, and approve at least one (1) charter application for a public charter school" before July 1, 2023. As the preceding regulation requires that the Boards of Directors of public charter schools use the Kentucky standardized application process, an emergency regulation is necessary to allow authorizers to meet the

deadlines outlined in KRS 160.15911. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation other than technical amendments. This emergency amendment exclusively incorporates amendments to the existing administrative regulation made by and necessary to comply with House Bill 9 (R.S. 2022).

ANDY BESHEAR, Governor

LU S. YOUNG, Board Chair

EDUCATION AND LABOR CABINET

Board of Education

Department of Education

(Emergency Amendment)

701 KAR 8:020E. Evaluation of charter school authorizers.

EFFECTIVE: October 13, 2022

RELATES TO: KRS 158.070, 158.649, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.141

STATUTORY AUTHORITY: KRS 160.1596

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1596 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance. This administrative regulation establishes requirements for the competence, performance, and evaluation process for charter school authorizers.

Section 1. Definitions. (1) "Academically behind" means at risk of academic failure.

(2) "Achievement gap" is defined by KRS 160.1590[(2)](1) and [KRS]158.649(1).

(3) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(4) "Applicant" is defined by KRS 160.1590[(3)](2).

(5) "Areas of exceptionality" means categories of disabilities of students with special needs.

(6) "At risk" means at risk of academic failure.

(7) "At risk of academic failure" means:

(a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support and improvement;

(b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;

(c) Current achievement two (2) or more grade levels below the student's age group;

(d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of the past four (4) school years;

(e) Consistent absence or tardy and absence twenty-five (25) or more unexcused student attendance days in the last two (2) school years and an overall grade average below a C;

(f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;

(g) Family history of dropping out or lack of family support for the student in the completion of school;

(h) Little or no participation in school cocurricular or extracurricular programs;

(i) Below grade level in reading or math skills;

(j) Indication of being socially isolated; or

(k) An applicant's definition for this term in the applicant's authorizer approved charter application, pursuant to KRS 160.1594(2).

(8) "Authorizer" or "public charter school authorizer" is defined by KRS 160.1590[(43)](15).

(9) "Authorizer's board of directors" means:

(a) The board of education for the local school district for an authorizer defined by KRS 160.1590[(43)](15)(a); and

(b) The boards of education that have collaborated to set up a regional public charter school for an authorizer defined by KRS 160.1590[(43)](15)(b).

(10) "Bilingual students" means students who are fluent in English and a foreign language, which can include American Sign Language.

(11) "Charter" means charter contract.

(12) "Charter application" is defined by KRS 160.1590[(4)](3).

(13) "Charter contract" or "contract" is defined by KRS 160.1590[(5)](4).

(14) "Charter school" means a public charter school.

(15) "Charter school board of directors" is defined by KRS 160.1590[(6)](5).

(16) "Cocurricular programs" means school programs that have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(17) "Comprehensive learning experiences" or "Expanded learning opportunities" means daily, rigorous learning experiences that build on a student's talents, challenge the student's skills and understandings, and develop the student's ability to reason, problem solve, collaborate, and communicate to prepare the student for success in postsecondary.

(18) "Conversion public charter school" or "conversion charter school" is defined in KRS 160.1590[(7)](6).

(19) "Days" means calendar days calculated pursuant to KRS 446.030.

(20) "District of location" is defined by KRS 160.1590(7).

(21)[(20)] "Education service provider" is defined by KRS 160.1590(8).

(22)[(24)] "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(23)[(22)] "Enrollment preference" means the priority of the student application from other students' applications pursuant to KRS 160.1591(5).

(24)[(23)] "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.

(25)[(24)] "Fiscal year" is defined by KRS 160.450.

(26)[(25)] "Foreign entity" is defined by KRS 14A.1-070(10).

(27)[(26)] "Gifted" means a gifted and talented student as defined by KRS 157.200(1)(n).

(28)[(27)] "Governing board of the authorizer" means the authorizer's board of directors.

(29)[(28)] "Governing body of the authorizer" means the authorizer's board of directors.

(30)[(29)] "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(31)[(30)] "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(32)[(31)] "Local school district" is defined by KRS 160.1590(10).

(33)[(32)] "Parent" is defined by KRS 160.1590(11).

(34)[(33)] "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter schools identified for comprehensive support and improvement pursuant to KRS 160.346.

(35)[(34)] "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition for interested person or entity as defined by KRS 387.010(2) for an interested person or entity and with whom the student resides.

(36)[(35)] "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.

(37)[(36)] "Public charter school" is defined by KRS 160.1590[(12)](14).

[(37)] "Regional achievement academy" is defined by KRS 160.1590(15).

[(38)] "Regional achievement zone" is defined by KRS

160.1590(16).

(38)[(39)] "School level" or "Level" or "Educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(39)[(40)] "Secondary enrollment preference" means the priority of a [resident]-student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school's capacity has not been exceeded.

(40)[(41)] "Start-up public charter school" [is defined by KRS 160.1590(17)] means a public charter school that did not exist as a noncharter public school prior to becoming a public charter school.

(41)[(42)] "Student" is defined by KRS 160.1590[(49)](18) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(42)[(43)] "Student attendance day" is defined by KRS 158.070(1)(e).

(43)[(44)] "Students with special needs" or "Special needs students" means:

(a) Exceptional children and youth students, as defined in KRS 157.200, who are eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. for an individual education plan, as described in KRS 157.196, or an individual education program, as described in KRS 158.281; or

(b) Students who are eligible for services under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 794, to prevent substantial limitation of one (1) or more major life activities.

(44)[(45)] "Substantial hardship" means a significant, unique, and demonstrable economic, technological, legal, or other impact on a local school district that impairs the district's ability to continue to successfully meet the requirements of educational programs or services for the district's students.

(45)[(46)] "Superintendent" means the local school district employee tasked with the duties established in KRS 160.370.

(46)[(47)] "Traditionally underperforming" means at risk of academic failure.

(47)[(48)] "Unilateral imposition of conditions" means the authorizer has placed or attempted to place conditions or requirements that are not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(48)[(49)] "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places or attempts to place:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(49) "Urban academy" is defined by KRS 160.1590(19).

(50) "Year", "academic year", or "school year" means school year as established in KRS 158.050.

Section 2. Policies and Procedures. Pursuant to KRS 160.1594, an authorizer shall create policies and procedures governing the authorizer's performance of its duties under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and shall include in its policies and procedures:

(1) The authorizer's strategic vision for chartering, including a clear statement of any preference for a charter application that demonstrates the intent, capacity, and capability to provide comprehensive learning experiences or expanded learning opportunities to students identified in KRS 160.1594(2) or [KRS 160.1592(19)];

(2) Identification of any charter application preferences of the authorizer pursuant to KRS 160.1594(2);

(3) Information on the authorizer's performance contracting requirements, including:

(a) Academic, financial, and operational measures, and the

performance frameworks, that the authorizer has developed for public charter school oversight and evaluation and with which the authorizer shall evaluate the charter school's performance under the charter contract, in accordance with KRS 160.1594 and 701 KAR Chapter 8; and

(b) Requirements for executing a contract with a charter school board of directors that articulates:

1. The rights and responsibilities of each party regarding school autonomy;
2. Funding;
3. Administration and oversight;
4. Outcomes;
5. Measures for evaluating success or failure;
6. Performance consequences; and
7. Other material terms;

(4) The evidence the authorizer shall require, the evaluation the authorizer shall conduct using the performance framework, and other aspects of the authorizer's ongoing monitoring of the charter school including:

- (a) Ensuring a charter school's legally entitled autonomy;
- (b) Protecting student's civil, disability, safety, and educational rights;

(c) Ensuring the establishment of a food program as required by KRS 160.1592(3)(r).

(d) Informing intervention, revocation, and renewal decisions; and

(e) Providing annual reports as required by [KRS 160.1597(5)]KRS 160.1596;

- (5) The requirements for reporting to the public;
- (6) The authorizer's authority to intervene in charter schools, if necessary;

(7) Guidelines concerning the format and content essential for an applicant to demonstrate the capacities necessary to establish and operate a public charter school, pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(8) The timeline for submission, acceptance, review, decision, and appeal for a charter application, and a request for renewal which includes clear deadlines. An authorizer described in KRS 160.1590[(43)](15)(c) and (d) shall consult with the superintendent of the resident local school district if planning this timeline;

(9) A template of the assurances an authorizer shall require in a charter contract;

(10) The following evidence sufficiency requirements for the charter application:

(a) The charter school board of directors' ability to meet the financial solvency and sustainability demands of their proposed budget;

(b) Competent and timely charter school start-up and operation;

(c) Foreseen and unforeseen closure; and

(d) All debts and obligations during each fiscal year of the charter contract and during the entire contract term;

(11) The financial transparency requirements that shall apply to a charter school, including specific provisions regarding publication on the authorizer's website and the charter school's Web site;

(12) The charter school closure protocol and requirements;

(13) A description of the authorizer's organizational capacity, including its commitment of human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(14) The authorizer's requirements for solicitation and evaluation of a charter application, including its implementation of a comprehensive application process that includes use of the Kentucky Charter School Application and Addendum, and rigorous criteria, and approval of only a charter application that demonstrates a strong capacity to establish and operate a charter school;

(15) The authorizer's charter renewal and revocation processes and rigorous criteria, including its design and implementation of a transparent and rigorous process that uses comprehensive academic, financial, and operational performance data to make merit-based renewal and revocation decisions; and

(16) The requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for an applicant, a board of directors, an

education service provider, a charter school, and their employees.

Section 3. Standards of Authorizer Performance Generally.

(1) Prior to authorizing a charter school, an authorizer as established in KRS 160.1590[(43)](15)(c) and (d) shall file the Notice of Intent with the Kentucky Board of Education.

(2) An authorizer shall restrict the expenditure of funds received as a result of charter authorization and oversight to the purpose of fulfilling authorizing obligations pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(3) Pursuant to KRS 160.1596[(5)](17)(e), an authorizer shall include in its report and place in a publicly accessible location on its website information on the following:

(a) The oversight and any services provided by the authorizer to the public charter schools under the authority of the authorizer;

(b) The authorizing functions provided by the authorizer to the public charter schools under its jurisdiction, including the operating costs and expenses of the authorizer as detailed in annual audited financial statements that conform to generally accepted accounting principles;

(c) All use of charter authorizing revenue including expenditures, contracts, and revenues, in the format required by the commissioner of education; and

(d) The reports that an authorizer is required to make pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) (a) Pursuant to KRS 160.1594 and except as specified in Section 3(4)(b) of this administrative regulation, prior to evaluating a charter application, each authorizer or member of the authorizer's board of directors or governing board shall complete six (6) hours of training, as approved by the Commissioner of Education, that shall include the following topics pertinent to authorizer responsibility and charter school formation and operation:

1. Financial governance and transparency;
2. Conflict of interest;
3. Charter application;
4. Charter school contracting;
5. Charter school monitoring;
6. Charter school renewal, nonrenewal, and revocation;
7. Charter school closure;
8. Ethics;
9. Curriculum and instruction;
10. Educational services provided for special needs, at risk, English learner, gifted, and other special population students; and
11. Physical restraint and seclusion of students; and

(b) An authorizer or member of the authorizer's board of directors or governing board that completed all training requirements pursuant to Section 3(4)(a) of this administrative regulation in the immediately preceding twelve (12) months prior to receipt of a charter school application shall be exempt from completing training pursuant to Section 3(4)(a) of this administrative regulation prior to evaluating that charter school application.

(5) An authorizer shall submit to the department a written assurance of a charter school's compliance with the pre-operating requirements in this administrative regulation and in the charter contract before the opening of the charter school.

(6) An authorizer shall require the sharing of best practices between the charter school and the resident local school district.

Section 4. Standards of Authorizer Performance Concerning Charter Applications. (1) Pursuant to KRS 160.1591 and 160.1594(1)(e)2., and to the extent not prohibited by federal law, an authorizer shall not approve a charter application that is:

(a) From an applicant that is or includes:

1. A for-profit organization, or its designee;
2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A; or

(b) That has in the proposed board of directors:

1. A for-profit organization, or its designee;
2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A.

(2) An authorizer shall require a charter application to be submitted on the Kentucky Charter School Application and Addendum and may require additional information from the applicant.

(3) An authorizer shall publish a copy of a submitted charter application on its website within three (3) days of submission by the applicant to the authorizer.

(4) An authorizer shall provide a copy of a submitted charter application to the resident local school district superintendents and to any other authorizer of charter schools in that local school district within three (3) days of submission by the applicant to the authorizer.

~~[(5) An authorizer established in KRS 160.1590(13)(a) or (b) shall provide a copy of a submitted charter application for a regional achievement academy within a regional achievement zone to the superintendents of the other local school districts of the regional achievement zone within three (3) days of submission by the applicant to the authorizer.]~~

~~[(5)][(6)] An authorizer shall allow a resident local school district superintendent to file a letter with supporting evidence objecting to the approval of the charter application on the basis of the substantial hardship that may result for the students of the resident local school district who do not attend the charter school. An authorizer shall publish a copy of the letter and supporting evidence from the resident local school district superintendent on the authorizer's website within three (3) days of submission by the superintendent to the authorizer and the authorizer shall review this evidence prior to approving a charter application.~~

~~[(6)][(7)] An authorizer shall allow a resident local school district superintendent to file a letter of support for a charter application and shall publish a copy of the resident local school district superintendent letter on the authorizer's website within three (3) days of submission by the superintendent to the authorizer.~~

~~[(7)][(8)] An authorizer shall require a resident local school district superintendent to provide information and evidence regarding the academic performance of the students identified in the charter application as the targeted student body or community. An authorizer shall publish a copy of this information on the authorizer's Web site[website] within three (3) days of submission by the superintendent to the authorizer, to the extent not prohibited by confidentiality laws.~~

~~[(8)][(9)] An authorizer shall comply with the following requirements in reviewing the charter application:~~

~~(a) Request and secure a certificate of existence from the Secretary of State, pursuant to KRS 14A.2-130, for any business entity or its designee included in the applicant or in the proposed charter school board of directors; and~~

~~(b) If the applicant or the board of directors includes a foreign entity, request and secure a certificate of authorization for the foreign entity from the Secretary of State, pursuant to KRS 14A.2-140.~~

~~[(9)][(40)] An authorizer shall require an applicant or proposed board of directors for a charter school to include in the charter application:~~

~~(a) Performance information, financial information, and closure information for any charter school under the applicant or board of directors;~~

~~(b) Details and documentation of the outreach the applicant or proposed board of directors has had with the students or community that is the focus of the charter application;[and]~~

~~(c) Details of whether the charter application replicates or substantially replicates:~~

1. A charter application that the applicant, the proposed board

of directors, or another entity previously withdrew from consideration and the reasons the charter application was withdrawn;

2. A charter application that was rejected by an authorizer and the reasons the charter application was rejected; or

3. A charter school that was previously closed and the reasons for the closure; and[-]

~~[(d) A memorandum of understanding as required by KRS160.1593(3)(f)(3).]~~

~~[(10)][(44)] An authorizer shall provide on the authorizer's website the names of all persons, and their roles, who are involved in the review of charter applications. Review of charter applications shall be conducted pursuant to the requirements of the Open Meetings Act, KRS 61.800 et seq.~~

~~[(11)][(42)] An authorizer shall not approve a charter application that does not meet the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.~~

~~[(12)][(43)] Within five (5) days of the authorizer's approval, the authorizer shall submit an approved charter application to the commissioner of education[for review and approval in accordance with Section 5(14) of this administrative regulation].~~

Section 5. Standards of Authorizer Performance Concerning Charter Contracts. (1) Prior to negotiating a charter contract with a board of directors, an authorizer shall verify the charter school board of directors' registration as a non-profit business entity with the Kentucky Secretary of State pursuant to KRS Chapter 14A.

(2) An authorizer shall negotiate and enter a charter contract with a charter school board of directors in compliance with KRS 160.1590~~[(5)]~~(4) and ~~[(6)]~~(5); 160.1591(2); 160.1592(3), (7), (8), (9), (10), (11), and (20); 160.1593(3); 160.1594(1); 160.1596(1); 160.1597(1), (2), and (6); and 160.1598(1), (5), (6), and (7).

(3) An authorizer shall include pre-opening requirements or conditions in the charter contract as follows:

(a) An authorizer shall establish mutually agreed upon pre-opening requirements or conditions to:

1. Monitor the start-up progress of a newly approved public charter school;

2. Ensure that the charter school is prepared to open timely and smoothly on the date agreed; and

3. Ensure that the charter school meets all benchmarks related to facilities, health, safety, insurance, school personnel, enrollment, curriculum and instruction, operations and fiscal management, governance, and other legal requirements for the charter school opening; and

(b) Failure by the charter school to comply with the pre-opening requirements or conditions may result in the immediate revocation of the charter contract and:

1. May result in the delay in the opening of the charter school by up to one (1) year if the authorizer does not determine that the charter school is more likely than not to close during the school year; or

2. Shall result in the delay in the opening of the charter school by up to one (1) year if the authorizer does determine that the charter school is more likely than not to close during the school year.

(4) An authorizer shall include in the charter contract with the charter school board of directors provisions for charter school financial solvency and sustainability, including:

(a) A requirement that no member of the charter school board of directors, no education service provider, and no charter school employee shall knowingly recommend and no member of the charter school board of directors shall knowingly vote for an expenditure in excess of the charter school's income and revenue of any fiscal year, as shown by the budget adopted by the charter school board of directors and approved by the authorizer;

(b) A requirement that a member of the charter school board of directors, an education service provider, or a charter school employee who knowingly expends or authorizes the expenditure of charter school funds or who knowingly authorizes or executes any employment, purchase, or contract, in violation of this section, shall be jointly and severally liable in person and upon any official fidelity bond given to the authorizer to the extent of any payments on the

void claim; and

(c) A requirement that, if at any time during any fiscal year of the charter school's existence, a member of the charter school board of directors, an education service provider, or a charter school employee knows or reasonably should know that the charter school has or will become unable to pay in full its projected expenses as they fall due, the charter school shall immediately so advise the department and the authorizer, and shall provide the department and the authorizer with all financial information relating to revenues and expenses of the charter school necessary for the department and the authorizer to determine the extent and cause of any potential operating deficit. If the member of the charter school board of directors, the education service provider, or the charter school employee fails to provide the notice to the department and the authorizer required by this subsection or fails to cooperate with the department and the authorizer in the production of financial information pursuant to this subsection:

1. The authorizer shall determine if grounds exist to revoke the charter contract; and

2. The knowingly acting member of the charter school board of directors, the education service provider, or the charter school employee may be subject to the liability established in paragraph (4)(b) of this section.

(5) An authorizer shall include in the charter contract the specific, exclusive reasons and timelines for closure initiated by the charter school board of directors and the closure protocol and policies and procedures applicable to closure of the charter school.

(6) An authorizer shall require in the charter contract the closure requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(7) An authorizer shall require in the charter contract that the charter school shall not prohibit a student from attending and shall not unenroll or withdraw a student unless the charter school has complied with KRS 158.150.

(8) An authorizer shall require in the charter contract that the charter school board of directors maintain separate accountings of all funds received and disbursed by each charter school under the charter school board of directors.

(9) An authorizer shall require in the charter contract that any contract the charter school board of directors enters with an education service provider has to be approved by the authorizer prior to execution and that any contract the charter school board of directors enters with an education service provider shall comply with the following:

(a) Clearly establish the primacy of the charter contract over the contract between the charter board of directors and the education service provider;

(b) Clearly identify the charter school board of directors as the party ultimately responsible for the success or failure of the charter school, and clearly define the education service provider as a vendor of services;

(c) Prohibit the education service provider from selecting, approving, employing, compensating, or serving as members of the charter school board of directors;

(d) Require the charter school board of directors to directly select, retain, and compensate the charter school's legal counsel, finance staff, audit firm, and school leader;

(e) Provide for payments to the charter school to be made to an account controlled by the charter school board of directors, not the education service provider;

(f) Require all instructional materials, furnishings, and equipment purchased or developed with charter school funds be the property of the charter school, not the education service provider;

(g) Identify and describe the roles and responsibilities of the charter school board of directors and the education service provider, including all services to be provided under the contract between the charter school board of directors and the education service provider;

(h) Identify and describe the performance measures and consequences by which the charter school board of directors shall hold the education service provider accountable for performance, aligned with the performance measures in the charter contract;

(i) Identify and describe with specificity all compensation to be paid to the education service provider, including all fees, bonuses, and the conditions, consideration, and restrictions on the compensation;

(j) Identify and describe the terms of any facility agreement that may be part of the relationship between the charter school board of directors and the education service provider;

(k) Identify and describe financial reporting requirements and provisions for the charter school board of directors' financial oversight of the education service provider and the charter school;

(l) Identify and describe all other financial terms of the contract, including disclosure and documentation of all loans or investments by the education service provider to the charter school board of directors, and provision for the disposition of assets upon closure in accordance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(m) Include assurances that the charter school board of directors, at all times, shall maintain independent fiduciary oversight and authority over the charter school budget and ultimate responsibility for the charter school's performance;

(n) Include provisions for contract termination without penalties for the charter school and without costs beyond the pro-rated value of the services provided by the education service provider;

(o) Assure:

1. That the charter school board of directors shall be structurally independent from the education service provider and shall set and approve charter school policies;

2. That the terms of the contract between the charter school board of directors and the education service provider are reached through arm's-length negotiations in which the charter school board of directors is represented by legal counsel that does not also represent the education service provider; and

(p) Identify and describe the respective responsibilities of the charter school board of directors and the education service provider in the event of school closure.

(10) An authorizer shall prohibit a charter school board of directors, in the charter contract, from delegating the charter school board of directors' responsibilities in subsection (9) of this section to the education service provider.

~~[(11) An authorizer shall not enter a charter contract for start-up, conversion, or renewal of a charter school, or agree to any charter contract amendment, unless the charter contract or amendment is approved by the commissioner of education as follows:~~

~~(a) An authorizer shall provide the commissioner of education a copy of a proposed charter contract or proposed amendment;~~

~~(b) Within fifteen (15) days of receipt of the proposed charter contract or amendment from the authorizer, pursuant to KRS 160.1594(9), the commissioner of education shall provide to an authorizer and the charter school board of directors approval of the contract or:~~

~~1. The reasons for a denial and any suggestions for remedy of these reasons; and~~

~~2. Notice of the opportunity for resubmission of the remedied contract or amendment to the commissioner of education; and~~

~~(c) Any failure to meet the commissioner of education's requirements for approval shall render the charter contract or its amendment void.]~~

Section 6. Standards of Authorizer Performance Concerning Charter School Monitoring. (1) An authorizer that determines a charter school board of directors has governance over more than one (1) charter school and has failed to meet the requirements of KRS 160.1592, shall commence an investigation to determine if the charter school board of directors is in compliance with the charter contracts for every other charter school under the authorizer's jurisdiction.

(2) An authorizer shall monitor the performance of the charter contract by a charter school board of directors, and any educational service provider. If the authorizer believes there is an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, the authorizer shall

commence an investigation.

(3) An authorizer that verifies an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the commissioner of education and may request assistance from the commissioner of education in addressing and remedying the issue.

(4) An authorizer that verifies an issue with any aspect of the performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the charter school of the issue and take necessary action, including unilateral imposition of conditions on the charter school, revocation, or nonrenewal of the charter contract, to resolve the issue and to provide notice of the issue and the resolution to the charter school's adult students, emancipated youth students, parents, persons with custody or charge, and the department.

(5) An authorizer shall at least monthly review the financial budget reports of the charter school and take the following action:

(a) If the budget projections indicate that the charter school's annual operating expenses may at any time during the school year cause the annual operating ~~revenues to fall below two (2) percent~~ expenses to exceed ninety-eight (98) percent of the total projected annual operating revenues included in the school's approved budget, the charter school shall provide specific notice of this to the authorizer and the authorizer shall:

1. Require the charter school to implement a cash management plan approved by the authorizer;
2. Commence a more in-depth review, and an audit if necessary, of the charter school's financial budget reports, expenditures, and revenues;
3. Request financial management assistance for the charter school from the department; and
4. Restrict the charter school's expenditures and require the authorizer's approval prior to expenditure of charter school funds for the remainder of the school year; and

(b) If the charter school defaults on a financial obligation or if the authorizer otherwise suspects the charter school may close prior to the end of the school year or the charter contract term, the authorizer shall:

1. Consult with the commissioner of education;
2. Communicate with the charter school board of directors to determine the need for charter contract revocation;
3. Commence actions under paragraph (a) of this subsection;
4. Review the closure protocol;
5. Review the charter contract termination provisions;
6. Communicate with the charter school board of directors regarding the closure protocol and contract provisions for termination; and
7. Notify students and resident local school districts, as soon as necessary to ensure all students and resident local school districts are provided adequate time to prepare for the student transitions and to provide free and appropriate public education to any returning students.

(6) An authorizer shall revoke the charter contract and determine the timeline for closure if the authorizer determines the charter school:

- (a) Is financially insolvent;
- (b) Is financially unsustainable for the remainder of the school year or the charter contract term; or
- (c) Has violated or threatened the health and safety of the students of the public charter school, pursuant to KRS 160.1598(7).

(7) The department shall develop a charter contract performance framework that an authorizer may utilize in developing a charter contract performance framework. In addition to the requirements of KRS 160.1596, the authorizer's charter contract performance framework shall include academic, financial, and organizational performance frameworks, and targets in the following areas:

- (a) Student assessment and accountability;
- (b) Student graduation rates;
- (c) Student promotion rates;

- (d) Student attendance rates;
- (e) Student admission and enrollment in postsecondary institutions; and
- (f) Other outcomes.

Section 7. Standards of Authorizer Performance Concerning Charter Approval, Revocation, Renewal, and Nonrenewal. (1) An authorizer shall not approve a charter application, contract with, or renew a contract with a charter school board of directors for a charter school that:

- (a) Does not operate:
 1. A breakfast program under the Child Nutrition Act of 1966, 42 U.S.C. 1773, as amended (CNA), and a lunch program under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq. (NSLA); or
 2. A breakfast and lunch program with provision of meals at no cost to students who qualify for free meals under the CNA and NSLA and with the provision of meals at a reduced cost to students who qualify for reduced price meals under the CNA and NSLA; or
- (b) Does not provide initial and continuing evidence and assurances of the charter school's financial solvency and financial sustainability, as demonstrated initially by the financial plan in the charter application, to cover the expenses of start-up or conversion, operation, and any foreseen or unforeseen closure of the charter school during the fiscal year or during the contract term.
- (2) An authorizer shall require for approval of a charter application, for contracting with a charter board of directors, for performance of a charter contract, and for renewal of a charter contract, the following:
 - (a) Inclusion of at least two (2) local school district resident parents or persons with custody or charge of local school district resident students who will attend the charter school in a charter school board of directors;
 - (b) Exercise by a charter school board of directors of their authority in KRS 160.1592(3)(p)4 and 5 only as allowed for a local board of education in KRS 160.540;
 - (c) Participation of all members of a charter school board of directors in annual training, approved by the commissioner of education, on topics of charter school governance and operation including financial governance and transparency; conflict of interest; curriculum and instruction; educational services provided for special needs, at risk, English learner, gifted, and other special population students; physical restraint and seclusion of students; and ethics. Fulfillment of this requirement shall occur through:
 1. Twelve (12) hours of annual training for a new charter school board member or a member with zero to eight (8) years of experience as a charter school board member and eight (8) hours for a charter school board member with more than eight (8) years of experience as a charter school board member; or
 2. Competency-based annual training;
 - (d) Attendance by the authorizer, or its designee for authorizing, or at least one (1) member of the authorizer's board of directors at any due process hearing conducted pursuant to KRS 158.150 to suspend or expel a charter school student. A charter school board of directors, with the consent of the parent, person with custody or charge, adult student, or emancipated youth student, and as otherwise allowed by confidentiality laws, may invite the resident local district superintendent to attend the due process hearing and to provide information to the charter school board of directors as to the educational services the resident local school district would provide the student:
 1. If the student is expelled from the charter school; and
 2. If the charter school board of directors determines, on the record and supported by clear and convincing evidence, that the charter school cannot provide or assure that educational services are provided to the student in an appropriate alternative program or setting because the expelled student posed a threat to the safety of other students or school staff and could not be placed into a state-funded agency program;
 - (e) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of the Individual with Disabilities Education Act dispute resolution procedures, 707 KAR 1:340,

regarding a student attending a charter school or the services provided by a charter school;

(f) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of physical restraint or seclusion of charter school students;

(g) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of allegations received or substantiation of violation of any health, safety, civil rights, and disability rights of students, staff, or parents or persons with custody or charge;

(h) Pursuant to KRS 160.1592(14), adherence by the charter school board of directors, and any education service provider, to the requirements of KRS 160.330 and 702 KAR 3:220 for the waiver of fees for students eligible for free or reduced price lunch;

(i) Provision, to the authorizer and to the public by the charter school board of directors and any education service provider, updates on the charter school's performance of the charter contract, according to the charter contract and performance framework;

(j) Restriction on expenditure of charter school resources and funds for school purposes only;

(k) Prohibition on the expenditure of charter school resources and funds in excess of the fair market value of the product, service, or consideration received;

(l) Prohibition on the disposal of charter school resources for less than the fair market value of the resource disposed;

(m) Restriction on the addition or moving of any location of the charter school without the written consent of the authorizer and amendment of the charter contract; and

(n) Provision, to the authorizer by the charter school board of directors and any education service provider, of student enrollment and attendance records and data at least monthly during the school year.

(3) An authorizer shall revoke, effective at the end of the school year, a charter contract for any of the reasons in KRS 160.1598(6).

(4) An authorizer shall require continuous enrollment at a charter school of at least eighty (80) percent of the charter contract minimum student enrollment requirements and shall monitor and take action as follows if that minimum is not met:

(a) The charter school shall provide reports to the authorizer on student enrollment and attendance at least twice a month; and

(b) Failure of the charter school to maintain this continuous, minimum student enrollment shall result in an immediate review by the authorizer of:

1. The charter school's operations;
2. The charter school's financial solvency;
3. The charter school's financial sustainability through the end of the school year and the end of the charter contract term;
4. The potential for closure;
5. Violation of the charter contract; and
6. The need for imposition of unilateral conditions, amendment, nonrenewal, or revocation of the charter contract, or immediate revocation of the charter contract pursuant to KRS 160.1598(7).

(5) An authorizer shall not approve a charter application for a start-up public charter school or conversion charter school if the applicant or proposed member of the board of directors has been previously found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, and the authorizer shall ensure compliance with this requirement as follows:

(a) The authorizer shall consult with the Kentucky Board of Education's designated agency to ensure compliance with this requirement;

(b) The Kentucky Board of Education's designated agency may provide copies of its relevant written reports described in 702 KAR 7:065 Section 3(17) to the authorizer; and

(c) If the authorizer does determine a member of the applicant or the proposed board of directors has previously been found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or

its designated agency, the authorizer may only approve a charter application, contract with, or renew a charter for a start-up public charter school or conversion charter school that does not sponsor interscholastic athletic activities, unless the charter school's sponsorship of interscholastic athletic activities is approved by the Kentucky Board of Education.

(6) An authorizer shall remove a member of a board of directors that has been convicted of a crime described in KRS 61.040 and remove any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure when the member or members threaten the health, safety, civil rights, or disability rights of the students or the community pursuant to KRS 160.1598(11).

(7) An authorizer shall revoke or nonrenew a charter school contract if the commissioner of education has determined a member of the board of directors, or an education service provider at the direction of a member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Assessment Program or KRS 160.1592(3)(g), for a student assessment included in:

- (a) The performance framework of the charter contract; or
- (b) The state accountability system.

(8) For issues in a charter school's performance that do not require immediate action by the authorizer, as stated in KRS 160.1590 to 160.1599, and 701 KAR Chapter 8, or otherwise to protect the health, safety, civil rights, disability rights, and well-being of students and the community, an authorizer may utilize a progressive system of monitoring consequences including notices of deficiencies or conditions unilaterally imposed on the charter school prior to revocation or nonrenewal. An authorizer shall share publicly a notice of deficiency or a condition unilaterally imposed on the charter school as well as the underlying charter school performance issue and shall provide a copy to the commissioner of education and to the Kentucky Board of Education.

(9) An authorizer shall comply with the following prior to approving a charter application for a charter school or renewing a charter school contract:

(a) Holding in the resident local school district a public hearing to allow for public comment on the charter application; and

(b) Allowing public comment to be submitted in writing prior to the hearing, or oral or written public comment at the hearing and allowing comment at the public hearing by a resident superintendent who has filed an objection to the charter application.

Section 8. Standards of Authorizer Performance Concerning Charter Closure. (1) An authorizer's charter school closure protocol shall include the following:

(a) Provision, to the authorizer by the charter school, of contact information and resident local school district information for all parents, persons with custody or charge, adult students, and emancipated youth students;

(b) Notification to all parents, persons with custody or charge, adult students, and emancipated youth students of:

1. The closure decision;
2. The closure process;
3. Information on student instruction and reassignment;
4. Information on courses, levels, and credits completed by the student;
5. Information on the process for obtaining a copy of the student's education records; and
6. Contact information for additional information;

(c) Notification to the resident local school districts and the department of:

1. The closure decision;
2. The closure date;
3. The closure process;
4. Availability and timeline for appeals and their intersection with the closure protocol;
5. A copy of the notification provided to charter school parents, persons with custody or charge, adult students, and emancipated youth students;

6. Information on student instruction and reassignment; and
 7. Contact information for additional information;
 (d) Budget review and revision to limit expenditures to only those in the approved budget required for fulfilling the obligations through closure;
 (e) Communication of the budget information to parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and the Kentucky Board of Education;
 (f) Meeting of the authorizer with the charter school board of directors and charter school employees to notify and coordinate:
 1. The closure;
 2. The closure process;
 3. The closure timeline and dates;
 4. Information on student instruction and reassignment;
 5. Employment, payroll, and benefits information;
 6. Transfer of federal and state funds and assets according to the federal and state requirements; and
 7. Contact information for additional information;
 (g) Additional and final notification to parents and resident local school districts, including:
 1. Information on the existence and role of any appeal of the closure;
 2. Identifying the last student attendance day;
 3. Detailing end of the year activities and transition activities for students; and
 4. Providing information and assistance for reassignment of students;
 (h) Procedures and requirements for establishment of transition teams, development of closure plan, and assignment of roles for closure;
 (i) Procedures and requirement for scheduling closure meetings with the transition team, parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and employees;
 (j) Procedures and requirements for a final report from the charter school board of directors to the authorizer and the department detailing completion of the closure plan;
 (k) Maintenance of the charter school facilities;
 (l) Identification and notification of all creditors and debtors of the board of directors and the Teachers' Retirement System and the County Employees Retirement System;
 (m) Notification of federal, state, local, and private grantors;
 (n) Termination of any contract with an education service provider;
 (o) Accounting, inventory, and protection of assets;
 (p) Notification of employee benefit providers;
 (q) Notification of all contractors and termination of all contracts;
 (r) Transfer of student and personnel records;
 (s) Notification of the IRS;
 (t) Issuance of final grades to students;
 (u) Dissolution of the charter school;
 (v) Maintenance of records; and
 (w) Completion of an independent final audit within six (6) months of the closure of the charter school that may function as the annual audit, and that includes at least:
 1. An accounting of all financial assets, including cash and accounts receivable and an inventory of property, equipment, and other items of material value;
 2. An accounting of the liabilities, including accounts payable and any reduction in apportionments as a result of audit findings or other investigations, loans or grants, and unpaid staff compensation; and
 3. An assessment of the disposition of any restricted funds received by or due to the charter school.
 (2) An authorizer's charter school closure protocol shall include the following regarding distribution of assets upon closure:
 (a) The assets of the charter school, if sufficient to satisfy all the outstanding debts of the charter school, shall be distributed in the following order:
 1. To satisfy outstanding payroll obligations for employees of the public charter school;

2. To creditors of the charter school; and
 3. To the resident local school districts, in direct proportion to the percentage of the charter school student body that will be returning to each resident local school district after closure;
 (b) If the assets of the public charter school are insufficient to satisfy all debts of the charter school, the prioritization of the distribution of assets may be determined by a court of law; and
 (c) A charter school board of directors shall distribute its assets within six (6) months of closure of the charter school, unless granted an extension by the authorizer or ordered otherwise by a court of law.
 (3) The commissioner of education, upon request by the authorizer, may appoint an independent third-party, paid from the charter school's funds, to manage the closure with assistance from the department. The commissioner of education may remove an appointed independent third-party for cause and appoint a replacement.
 (4) The department shall develop a charter closure protocol guide that an authorizer may utilize in developing the closure protocol.

Section 9. Investigation of an Authorizer. (1) The Kentucky Board of Education shall conduct a special review of an authorizer as follows:

(a) If there is persistently unsatisfactory performance of the portfolio of the public charter schools of the authorizer;
 (b) If there is a pattern of well-founded complaints about the authorizer or its public charter schools; or
 (c) If the Kentucky Board of Education finds other objective circumstances warranting investigation.
 (2) The Kentucky Board of Education shall request investigation by the commissioner of education.
 (3) In reviewing and evaluating the performance of an authorizer, the Kentucky Board of Education shall apply nationally recognized standards for quality in charter authorizing, in addition to the standards of performance included in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.
 (4) If at any time the Kentucky Board of Education determines that an authorizer is not in compliance with an existing charter contract or the requirements for an authorizer, the Kentucky Board of Education shall either:
 (a) Notify the authorizer in writing of any identified problem and the authorizer shall have a reasonable opportunity to respond and remedy the problem; or
 (b) If deemed necessary, take action against the authorizer under Section 10.

Section 10. Consequences. (1) The Kentucky Board of Education may, in addition to its authority over authorizers and their action on a charter application, renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter school pursuant to KRS 160.1595(1)(2), place an authorizer on probation and require the following during probation of an authorizer:

(a) Additional training for the authorizer;
 (b) Meeting with the commissioner of education to provide status reports and solicit feedback on charter school performance during a charter contract;
 (c) Written and in-person status reports to the Kentucky Board of Education on the authorizer's monitoring of charter schools and other authorizing activity;
 (d) Approval by the commissioner of education on the authorizer's monitoring activities, imposition of unilateral conditions, and revocation decisions;
 (e) Approval of the Kentucky Board of Education for any renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter contract; and
 (f) Any other consequences the Kentucky Board of Education deems necessary to ensure compliance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.
 (2) The Kentucky Board of Education shall establish the length and extent of the probation of the authorizer's authority and reporting requirements for the authorizer to report on the progress

of the charter schools authorized by the authorizer.

(3) The Kentucky Board of Education shall state in its order probating the authority of the authorizer:

(a) The extent of the probation of the authorizer's authority;

(b) The length of the probation of the authorizer's authority;

(c) The grounds under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for the probation of the authorizer's authority; and

(d) The anticipated changes that would have to occur for the Kentucky Board of Education to consider ending the probation of the authorizer's authority under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) The Kentucky Board of Education may entertain a request by the authorizer for termination of the probation if the authorizer submits, at least forty-five (45) days prior to the Kentucky Board of Education's regular meeting, the following:

(a) The authorizer's request for ending the probation; and

(b) The authorizer's evidence of:

1. Its efforts to correct the grounds for the probation of its authorizing authority;

2. The changes required in the Kentucky Board of Education's order; and

3. Its plan to ensure future compliance with the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

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

(a) "Kentucky Charter School Application and Addendum", October 2022~~[February 2018]~~; and

(b) "Notice of Intent", February 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Legal Services, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:42 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 30, 2022, at 1 pm 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 November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd 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 regulation

outlines the procedures to be used by public charter school authorizers as they solicit, review, approve, and monitor charter schools.

(b) The necessity of this administrative regulation: This administrative regulation is required under KRS 160.1598.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation outlines the procedures to be used by public charter school authorizers as they solicit, review, approve, and monitor charter schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by KRS 160.1598. This regulation outlines the procedures to be used by public charter school authorizers as they solicit, review, approve, and monitor charter schools.

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

(a) How the amendment will change this existing administrative regulation: The regulation amendments include those changes required by House Bill 9 (2022). It includes updated definitions, updated enrollment preference requirements, and makes technical amendments to conform to the amended statute.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to conform to statutory amendments made by House Bill 9 (2022).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment includes updates required by House Bill 9 (2022) including updated definitions, updated enrollment preferences, and technical amendments as required to conform to the statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is required to ensure that public charter school authorizers remain in compliance with KRS 160.1590 through 160.1599 as amended by House Bill 9 (2022).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, public charter school authorizers, charter school boards, parents, students.

(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 regulation outlines the procedures to be used by public charter school authorizers as they solicit, review, approve, and monitor charter schools. The regulation identifies required policies and documents that are part of the application process, dictates that authorizers must use Kentucky's standardized charter school application, and outlines the steps necessary to review, accept or deny, and appeal a charter decision.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes to this administrative regulation will not result in additional costs to any of the identified entities. Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation ensures compliance with KRS 160.1590 to 160.1599.

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

(a) Initially: This regulation amendment will not increase costs to the administrative body. The administrative body will experience costs in the form of staff time and resources to provide technical assistance.

(b) On a continuing basis: This regulation amendment will not increase costs to the administrative body. The administrative body will experience costs in the form of staff time and resources to provide technical assistance.

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

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

(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.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation as it applies equally to all public charter school authorizers.

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 public charter school authorizers, which may include public school districts or state universities, and the Kentucky Department of Education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.070, 158.649, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.141

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

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

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

(c) How much will it cost to administer this program for the first year? Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal. The administrative body will experience costs in the form of staff time and resources to provide technical assistance.

(d) How much will it cost to administer this program for subsequent years? Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal. The administrative body will experience costs in the form of staff time and resources to provide technical assistance.

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

Revenues (+/-): \$0.00

Expenditures (+/-): Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal. The administrative body will experience costs in the form of staff time and resources to provide technical assistance. Costs are dependent upon the number of applications and requests for technical assistance.

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 result in cost savings.

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

(c) How much will it cost the regulated entities for the first year? Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal. Costs are dependent upon the number of applications received by an authorizer.

(d) How much will it cost the regulated entities for subsequent years? Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal. Costs are dependent upon the number of applications received by an authorizer.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal. Costs are dependent upon the number of applications received by an authorizer.

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)] Whether this administrative regulation will have a major economic impact as defined by KRS 13A.010(13) is dependent on the number of applications for charter schools received by authorizers throughout the state. If a substantial number of applications are received, then there will be a major economic impact in the form of time and expenses (including legal fees) related to applications and appeals in the aggregate for all public school districts. However, if a de minimis number of applications are received, there will be no major economic impact as defined by KRS 13A.010(13).

STATEMENT OF EMERGENCY 701 KAR 8:030E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(3) to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute or federal law. This emergency administrative regulation is necessary in order to meet statutory deadlines outlined in KRS 160.1590 to KRS 160.1599 as amended by House Bill 9 (2022). Pursuant to KRS 160.15911, Kentucky public charter school pilot project, Charter Authorizers are required to "solicit, review, and approve at least one (1) charter application for a public charter school" before July 1, 2023. This administrative regulation outlines the appeals process for a public charter school that wishes to appeal the decision of an authorizer. As authorizers are required to begin making decisions before July 1, 2023, this regulation must be updated in time to allow appeals processes to take place. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation other than technical amendments. This emergency amendment exclusively incorporates amendments to the existing administrative regulation made by and necessary to comply with House Bill 9 (R.S. 2022).

ANDY BESHEAR, Governor
LU S. YOUNG, Chair Kentucky Board of Education

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Emergency Amendment)

701 KAR 8:030E. Charter school appeal process.

EFFECTIVE: October 13, 2022

RELATES TO: KRS Chapter 13B, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599

STATUTORY AUTHORITY: KRS 13B.170, 160.1598

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1598 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to appeal a decision of an authorizer denying a charter application or a charter contract amendment request, unilaterally imposing conditions on the applicant or charter school, or revoking or nonrenewing a charter contract. This administrative regulation establishes the requirements for the appeal process.

Section 1. Definitions. (1) "Appellant" means the applicant or charter school board of directors filing the appeal of an authorizer's decision denying a charter application or a charter contract amendment request, unilaterally imposing conditions on the applicant or charter school, or revoking or nonrenewing a charter contract.

(2) "Applicant" is defined by KRS 160.1590[(3)](2).

(3) "Authorizer" or "public charter school authorizer" is defined by KRS 160.1590[(13)](15).

(4) "Charter" means charter contract.

(5) "Charter application" is defined by KRS 160.1590[(4)](3).

(6) "Charter contract" or "contract" is defined by KRS 160.1590[(5)](4).

(7) "Charter school" means a public charter school.

(8) "Charter school board of directors" is defined by KRS 160.1590[(6)](5).

(9) "Days" means calendar days calculated pursuant to KRS 446.030.

(10) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(11) "Local school district" is defined by KRS 160.1590(10).

(12) "Notice" means written notice.

(13) "Public charter school" is defined by KRS 160.1590[(12)](14).

(14) "Unilateral imposition of conditions" means the authorizer has placed or attempted to place conditions or requirements that are not required by KRS 160.1590 through 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(15) "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 through 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places or attempts to place:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

Section 2. Policies and Procedures. The authorizer shall create and publish on its website policies and procedures for its implementation of KRS 160.1595 and 160.1598 as ~~established~~established in subsections (1) through (5) of this section. The authorizer shall include in its policies and procedures:

(1) A rubric for its evaluation of a charter application and its rubric for evaluation of charter contract performance for renewal pursuant to KRS 160.1598;

(2) The circumstances that shall result in automatic revocation

or nonrenewal of a charter contract, only as allowed in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(3) The requirements and timeline for timely notification of the prospect of revocation or nonrenewal of the charter contract and of the reasons for the possible closure;

(4) The reasonable deadline and requirements for a charter school's opportunity to respond to the authorizer's notice of the prospect of revocation or nonrenewal of the charter contract; and

(5) The requirements for appeal of an authorizer decision denying a charter application or a charter amendment request, nonrenewing or revoking a charter contract, or imposing unilateral conditions on an applicant or charter school.

Section 3. Appeal. (1) The appellant shall submit its appeal of an authorizer's decision denying a charter application or a charter amendment request, nonrenewing or revoking a charter contract, or imposing unilateral conditions on an applicant or charter school to the commissioner of education, to receive the appeal on behalf of the Kentucky Board of Education, as established in paragraphs (a) through (d) of this subsection.

(a) The deadline for appeals to the Kentucky Board of Education under KRS 160.1595 shall be thirty (30) days, as evidenced by the face of the authorizer's notice to the charter school or applicant of the decision to deny a charter application or charter contract amendment request, to impose unilateral conditions on the applicant or the charter school, or to revoke or nonrenew the charter contract.

(b) The appeal shall include the name, phone number, mailing address, and email address of the contact for the appellant and any legal counsel.

(c) The appeal shall include a statement from the appellant whether there is a request for a hearing, and whether the hearing is requested to be held in the local school district in which the charter school lies or would lie.

(d) The appeal shall be submitted on the Notice of Appeal and include any necessary additional documentation.

(2) The Kentucky Board of Education shall affirm the decision of the authorizer based on the appellant's failure to timely file the appeal, pursuant to KRS 160.1595(2) and subsection (1)(a) of this section, and may affirm the decision of the authorizer based on the failure of an appellant to meet any of the other deadlines of this administrative regulation or the hearing process.

(3) Within five (5) days of the commissioner's receipt of the appeal, the commissioner of education on behalf of the Kentucky Board of Education shall provide notice to the appellant and the authorizer acknowledging receipt of the appeal, and:

(a) If a hearing is requested in the appeal, the commissioner of education shall designate a hearing officer to set the prehearing schedule, to conduct a KRS Chapter 13B public hearing before the Kentucky Board of Education on the appeal, and to set the location of the public hearing; or

(b) If a hearing is not requested in the appeal or if the appellant waives its right at any time to a hearing by providing written notice of its waiver to the commissioner of education or to any previously appointed hearing officer, the hearing officer shall set the schedule for written pleadings under KRS 13B.090(2) to be submitted to the Kentucky Board of Education without a hearing.

(4) The written decision of the Kentucky Board of Education shall be issued no later than forty-five (45) days following receipt of the notice of appeal as required by KRS 160.1595(2)(c)~~seven (7) days after the conclusion of the hearing or the meeting to decide upon the written pleadings, which shall be held within the time allowed in KRS 160.1595(3)(a)]~~.

Section 4. Emergency Action. Emergency action taken by the authorizer pursuant to KRS 160.1598(7) shall be taken in accordance with KRS 13B.125.

Section 5. Automatic Revocation or Nonrenewal. The Kentucky Board of Education shall affirm revocation or nonrenewal of a charter school for whom the commissioner of education has determined a member of the charter school board of directors, or an education service provider at the direction of a

member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Educational Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in the performance framework of the charter contract or the state accountability system after:

(1) The department's presentation of a preponderance of evidence at a KRS Chapter 13B hearing before the Kentucky Board of Education that a member of the charter school board of directors, or an education service provider at the direction of a member of the charter school board of directors, or an employee at the direction of a member of the charter school board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Educational Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in:

- (a) The performance framework of the charter contract; or
- (b) The state accountability system; or

(2) The charter school board of directors waives its right to a KRS Chapter 13B hearing under this section.

Section 6. Incorporation by Reference.

(1) "Notice of Appeal", October 2022~~[February 2018]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal~~[-Legislative and Communication]~~ Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:42 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 30, 2022, at 1 pm 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 November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd 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 regulation outlines the procedures to be used by public charter schools that wish to appeal a decision made by a charter authorizer.

(b) The necessity of this administrative regulation: This administrative regulation is required under KRS 160.1598.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation outlines the procedures to be used by public charter schools that wish to appeal a decision made by a charter authorizer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by KRS 160.1598. This regulation outlines the procedures to be used by public charter schools that wish to appeal a decision made by a charter authorizer.

(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 regulation amendments include those changes required by House Bill 9 (2022). It includes updated timelines and technical amendments.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to conform to statutory amendments made by House Bill 9 (2022).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment includes updates prompted by House Bill 9 (2022). It includes updated timelines and technical amendments.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is required to ensure that public charter school authorizers remain in compliance with KRS 160.1590 through 160.1599 as amended by House Bill 9 (2022).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, public charter school authorizers, parents, students.

(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 regulation outlines the procedures to be used by public charter schools in the event that they wish to appeal a decision made by an authorizer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes to this administrative regulation will not result in any additional cost to any of the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation ensures compliance with KRS 160.1590 to 160.1599.

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

(a) Initially: Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not increase those costs.

(b) On a continuing basis: Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not create additional continuing costs.

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

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

(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.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation as it applies equally to all public charter school authorizers.

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 public charter school authorizers, which may include public school districts or state universities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599

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

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

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

(c) How much will it cost to administer this program for the first year? Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not create additional costs.

(d) How much will it cost to administer this program for subsequent years? Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not create additional costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not create additional costs. The actual costs will be dependent on the number of appeals to the Kentucky Board of Education.

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 result in cost savings.

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

(c) How much will it cost the regulated entities for the first year? There is no direct cost to implement this administrative regulation, but indirect costs such as legal fees for appeal representation are possible.

(d) How much will it cost the regulated entities for subsequent years? There is no direct cost to implement this administrative regulation, but indirect costs such as legal fees for appeal representation are possible.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): There is no direct cost to implement this administrative regulation, but indirect costs such as legal fees for appeal representation are possible.

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)] Whether this

administrative regulation will not a major economic impact as defined by KRS 13A.010(13) is dependent on the number of appeals received by the Kentucky Board of Education. If a substantial number of appeals are received, then there will be a major economic impact in the form of time and expenses (including legal fees) related to appeals. However, if a de minimis number of appeals are received, there will be no major economic impact as defined by KRS 13A.010(13).

STATEMENT OF EMERGENCY 701 KAR 8:040E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(3) to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute or federal law. This emergency administrative regulation is necessary in order to meet statutory deadlines outlined in KRS 160.1590 to KRS 160.1599 as amended by House Bill 9 (2022). Pursuant to KRS 160.15911, Kentucky public charter school pilot project, Charter Authorizers are required to "solicit, review, and approve at least one (1) charter application for a public charter school" before July 1, 2023. This regulation outlines the procedures for converting an existing public school to a public charter school. As this option may be deployed before the July 1, 2023 deadline, the emergency update is necessary. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation other than technical amendments. This emergency amendment exclusively incorporates amendments to the existing administrative regulation made by and necessary to comply with House Bill 9 (R.S. 2022).

ANDY BESHEAR, Governor
LU S. YOUNG, Chair

EDUCATION AND LABOR CABINET Kentucky Board of Education Department of Education (Emergency Amendment)

701 KAR 8:040E. Conversion charter school petition, conversion, and operation.

EFFECTIVE: October 13, 2022

RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.011, 161.141, 161.800

STATUTORY AUTHORITY: KRS 160.1599

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1599 requires the Kentucky Board of Education to promulgate an administrative regulation to govern the processes and procedures for the petition, the conversion, and the operation of a conversion public charter school. This administrative regulation establishes requirements for conversion public charter schools.

Section 1. Definitions. (1) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(2) "Applicant" is defined by KRS 160.1590[(3)][2].

(3) "Charter application" is defined by KRS 160.1590[(4)][3].

(4) "Charter contract" or "contract" is defined by KRS 160.1590[(5)][4].

(5) "Charter school" means a public charter school.

(6) "Charter school board of directors" is defined by KRS 160.1590[(6)][5].

(7) "Conversion public charter school" or "conversion charter school" is defined by KRS 160.1590[(7)][6].

(8) "Days" means calendar days calculated pursuant to KRS 446.030.

(9) "Emancipated youth" means a student under the age of

eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(10) "Enrollment" means the process for the charter school to register a student for attendance at the charter school.

(11) "Grade" or "grade level" means a single elementary, middle, or high school grade of school.

(12) "Local board of education" means local school board as defined by KRS 160.1590(9).

(13) "Local school district" is defined by KRS 160.1590(10).

(14) "Lottery" means the transparent, open, equitable, and impartial process that is competently conducted with randomization in accordance with the targeted student population and service community as established in KRS 160.1593(3) for the charter school to choose students for enrollment and attendance at the charter school if the student applications received by the charter school exceed the charter school's capacity.

(15) "Notice" means written notice.

(16) "Notify" means provide written notice.

(17) "Parent" is defined by KRS 160.1590(11).

(18) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition for "interested person or entity" as defined by KRS 387.010(2) for an interested person or entity and with whom the student resides.

(19) "Petitioner" means the persons or organizations initiating and circulating a petition to convert an existing public school to a charter school.

(20) "Public charter school" is defined by KRS 160.1590~~(12)~~(14).

(21) "School level", "level", or "educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(22) "Student" is defined by KRS 160.1590~~(19)~~(18) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(23) "Student application" means an application submitted to a charter school for student enrollment in the charter school.

(24) "Superintendent" means the local school district employee tasked with the duties established in KRS 160.370.

(25) "Year", "academic year", or "school year" means school year as defined by KRS 158.050.

Section 2. Conversion Petition and Charter Application. (1) The department shall annually publish on its website a list of noncharter public schools, by school level, level, or educational level, that are eligible for charter school conversion through the petition process pursuant to KRS 160.1599(2)(a).

(2) Prior to circulation of a petition to convert an existing public school to a charter school, a petitioner shall file a notice of intent with the resident board of education.

(3) If a charter application proposes that a newly converted charter school is to be established and prepared to enroll students for the next school year, both the charter application and the petition, determined to be valid pursuant to subsection (9) of this section, proposing the conversion of an existing public school to a charter school shall be submitted to the authorizer on or before October 30.

(4) A petitioner shall utilize the Public Charter School Conversion Petition and shall include the following information in a petition to convert an existing public school to a charter school:

(a) A written statement that the petition seeks to convert the existing public school to a charter school;

(b) A written statement of the reasons the petitioner believes the existing public school should be converted to a charter school, including descriptions of how the conversion public charter school shall accomplish the purposes of KRS 160.1591(2); and

(c) Information for filing a written complaint to the commissioner of education regarding the petition or the petitioner.

(5) For the signatures on the petition to count toward the requirements of KRS 160.1599(2)(a) or (b), a petitioner shall ensure inclusion of the following from each of the existing public school's resident parents, persons with custody or charge, adult students, or emancipated youth students signing the petition:

(a) Their printed names;

(b) Their mailing and street address, phone number, and email address, as available; and

(c) Their signature in ink or indelible pencil;

(6) The inclusion of signatures, from adult students, emancipated youth students, or parents or persons with custody or charge, on behalf of students who do not attend the existing public school as residents of the local school district and under the attendance zone boundary policies and procedures of the local board of education for the local school district, shall not count toward the requirements of KRS 160.1599(2)(a) or (b).

(7) Signatures from parents, persons with custody or charge, adult students, and emancipated youth students shall count toward the requirements of KRS 160.1599(2)(a) or (b) up to but not in excess of the number of students attending the existing public school for whom those individuals are parents or persons with custody or charge or the students themselves.

(8) The inclusion of an invalid signature on the petition shall not invalidate the entire petition, but shall instead result in the invalid signature being stricken and not counted.

(9) Within thirty (30) days of receipt of a petition for conversion of an existing public school, a local school district designee of the local board of education shall conduct and complete an examination of the signatures on the petition and any necessary investigation to make a determination of whether the petition contains enough signatures of qualified resident adult students, emancipated youth students, and parents and persons with custody or charge of students attending the existing public school to meet the requirements of KRS 160.1599(2)(a) or (b).

(10) Within three (3) days of making the determination in subsection (9) of this section, the local school district designee of each local board of education that has authority over the existing public school shall provide notice as to whether the petition met the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b):

(a) On the local school district website; and

(b) To the following:

1. The petitioner;

2. The existing public school's principal;

3. Any school-based decision making council of the existing public school established under KRS 160.345; and

4. Each local board of education with authority over the existing public school.

(11) For a petition under KRS 160.1599(2)(b), each local board of education's majority vote to convert the existing public school to a charter school shall be conducted at its next regular meeting or an earlier special meeting.

(12) Any person who has reason to believe that the petition process was not conducted pursuant to the requirements of this administrative regulation or that the signatures on the petition were procured through fraud, intimidation, bribery, or harassment, may file a written complaint with the commissioner of education and the commissioner of education shall:

(a) Cause an investigation to determine the validity of the petition;

(b) Ensure the investigation is completed within thirty (30) days of receipt of the complaint; and

(c) Render a determination as to the validity of the petition.

(13) If the petition fails to meet the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b) or if the commissioner of education determines the petition to be invalid, the existing public school shall not be eligible for conversion to a charter school unless:

(a) Each local board of education with authority over the existing public school acts pursuant to KRS 160.1599(2)(c); or

(b) Another petition is circulated and determined to be valid pursuant to KRS 160.1599(a) or (b) and this administrative regulation.

(14) After any vote by each local board of education required pursuant to KRS 160.1599(2)(a), (b) or (c), an applicant shall submit to the authorizer a charter application to convert an existing public school to a charter school during the same school year as:

(a) Each local board of education's vote to convert an existing

public school to a charter school pursuant to KRS 160.1599(2)(c); or

(b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each local board of education with authority over the existing public school, if required by KRS 160.1599(2)(b).

(15) After any vote by each local board of education required pursuant to KRS 160.1599(2)(b) or (c), the authorizer shall allow submission of a charter application to convert the existing public school to a charter school during the same school year as:

(a) Each local board of education's vote to convert the existing public school to a charter school, pursuant to KRS 160.1599(2)(c); or

(b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each local board of education with authority over the existing public school, if required by KRS 160.1599(2)(b).

(16) The authorizer shall commence the charter application review and approval process pursuant to KRS 160.1594 and 701 KAR Chapter 8 upon receipt of a charter application to convert an existing public school to a charter school within the same school year as either:

(a) Each local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or

(b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each local board of education, if required by KRS 160.1599(2)(b).

(17) The authorizer shall review the petition and a submitted charter application and only approve the conversion of an existing public school if the charter application meets the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and if:

(a) The petition meets the requirements of KRS 160.1599 and this administrative regulation during the same school year as the filing of the charter application, and if the commissioner of education has not determined the petition to be invalid; or

(b) Each local board of education with authority over the existing public school has voted within the same school year to convert an existing public school to a charter school.

(18) The department shall create a charter school conversion petition and application guidance document that petitioners, applicants, authorizers, and local boards of education may utilize.

Section 3. Conversion. (1) No conversion public charter school shall begin operation after the beginning of a school year.

(2) After each local board of education's vote to convert an existing public school to a charter school or completion of the petition process requirements of KRS 160.1599(2)(a) or (b) and this administrative regulation, and after the authorizer's approval of a charter application to establish a conversion public charter school, each superintendent of a district with authority over the existing public school shall:

(a) Notify resident students of the conversion of the existing public school and provide information for student application to the conversion charter school during the time that information on other school programs in the local school district is provided;

(b) Create with the conversion charter school board of directors a plan for conversion of the existing public school that shall include, at a minimum, timelines, roles, responsibilities, and notification requirements for the following:

1. Coordination of student application, lottery, enrollment, and transfer to and from the conversion charter school; and

2. Transfer of management and operation of the conversion

charter school in the same public school facility for the school years included in the conversion charter school's operation under the charter contract;

(c) Meet during the first year of the charter contract with the charter school board of directors to coordinate student application, lottery, enrollment, and transfer of students; and

(d) Meet throughout the charter contract with the charter school board of directors regarding the usage and maintenance of the facility by the charter school board of directors.

(3) Each local board of education with authority over the existing public school and the conversion charter school board of directors shall execute a lease for the public school facility prior to the operation of a conversion public school.

(4) The department shall create a charter school conversion process guidance document that an authorizer, local board of education, and a charter school board of directors may utilize.

Section 4. Employees. (1) Local school district employees placed in the existing public school prior to conversion, who are not hired by the conversion charter school board of directors to work in the converted charter school, shall retain their employment rights with the local school district, pursuant to KRS Chapter 161 and under the provisions of any collective bargaining agreement with the local school district. Conversion of an existing public school of the local school district may result in the circumstances described in KRS 161.800 and 161.011 necessitating the local school district superintendent's review of the necessity for a reasonable reduction in the number of teachers and classified employees employed by the local school district under KRS 161.800 and 161.011.

(2) A teacher, with continuing status pursuant to KRS Chapter 161, who is employed by a Kentucky local school district, who is hired by the conversion charter school board of directors to work in the converted charter school, and who is granted leave by the employing local board of education pursuant to ~~[KRS 160.1593(22)]~~KRS 160.1592(22), shall notify the local school district of the teacher's intent to work in the converted charter school or to return to employment with the local school district the next school year by April 15 of each year of the granted leave.

(3) The department shall create a charter school conversion employee transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 5. Students. (1) Each local school district with authority over the existing public school shall provide, to the students and parents and persons with custody or charge of students who attend an existing public school that has been approved for conversion to a charter school, information and any plan the local school district shall use to address the educational needs and placements of students who choose not to attend or who otherwise shall not be attending the conversion charter school.

(2) The department shall create a charter school conversion student transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 6. Operation and Reversion of a Conversion Charter School.

(1) An authorizer may otherwise renew, non-renew, revoke, or take other action regarding a conversion public charter school as provided in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) If a closed conversion charter school is reverting back to its noncharter status, each local board of education with authority over the existing public school shall solicit feedback on the future of the school from parents, persons with custody or charge, adult students, and emancipated youth students of the school prior to the reversion.

Section 7. Incorporation by Reference. (1) "Public Charter School Conversion Petition", October 2022~~[February 2018]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal~~[-Legislative and Communication]~~ Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort,

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

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., Board Chairperson

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:42 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 30, 2022, at 1 pm 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 November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd 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 regulation outlines the procedures to be used to convert an existing public school to a public charter school. It outlines the requirements and processes for petitioning a local board of education and managing a conversion.

(b) The necessity of this administrative regulation: administrative regulation is required under KRS 160.1598.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation outlines the procedures to be used to convert an existing public school to a public charter school. It outlines the requirements and processes for petitioning a local board of education and managing a conversion.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by KRS 160.1598. It outlines the procedures to be used to convert an existing public school to a public charter school. It outlines the requirements and processes for petitioning a local board of education and managing a conversion.

(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 regulation amendments include those changes required by House Bill 9 (2022). It outlines the procedures to be used to convert an existing public school to a public charter school. It outlines the requirements and processes for petitioning a local board of education and managing a conversion.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to conform to statutory amendments made by House Bill 9 (2022).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment includes updates prompted by House Bill 9 (2022) including updated definitions, updated enrollment preferences, and technical amendments as required to conform to the statute.

(d) How the amendment will assist in the effective

administration of the statutes: This amendment is required to ensure that public charter school authorizers remain in compliance with KRS 160.1590 through 160.1599 as amended by House Bill 9 (2022).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, public charter school authorizers, parents, students.

(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 regulation outlines the procedures to be used to convert an existing public school to a public charter school. It outlines the requirements and processes for petitioning a local board of education and managing a conversion.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes to this administrative regulation will not result in any additional cost to any of the identified entities. In the event of a conversion pursuant to the regulation, substantial cost to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation ensures compliance with KRS 160.1590 to 160.1599.

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

(a) Initially: This regulation amendment will not increase costs to the administrative body.

(b) On a continuing basis: This regulation amendment will not create continuing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation amendment does not create new costs or continuing costs to the administrative body. In the event of a conversion pursuant to the regulation, substantial cost to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

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

(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.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation as it applies equally to all public charter school authorizers.

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 public charter school authorizers, which may include public school districts or state universities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.011, 161.141, 161.800

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

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

counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local governments.

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

(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 administrative body. Costs to local school districts will depend on whether they receive a petition for conversion. In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administer this program for the administrative body. Costs to local school districts will depend on whether they receive a petition for conversion. In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? Costs to local school districts will depend on whether they receive a petition for conversion. In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

(d) How much will it cost the regulated entities for subsequent years? Costs to local school districts will depend on whether they receive a petition for conversion. In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): Costs to local school districts will depend on whether they receive a petition for conversion. In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State

and local funds will be utilized to cover these costs.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Whether this administrative regulation will result in a major economic impact as defined by KRS 13A.010(13) is dependent on whether conversion petitions are received. In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion, which may result in a major economic impact as defined by KRS 13A.010(13).

STATEMENT OF EMERGENCY 701 KAR 8:050E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(3) to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. This emergency administrative regulation is necessary to meet statutory deadlines outlined in KRS 160.1591 and KRS 160.15911. Due to promulgation time, an ordinary regulation would not be effective in time to meet these statutory deadlines. Pursuant to KRS 160.1591, "beginning in academic year 2022-2023, any authorizer may authorize an unlimited number of public charter schools." Further, KRS 160.15911, the Kentucky public charter school pilot project, requires certain authorizers located in the pilot project to "solicit, review, and approve at least one (1) charter application for a public charter school" before July 1, 2023." This regulation is necessary to establish the calculation and distribution of funds due to public charter schools from school districts, the schedule of distribution of funds, and the imposition of fines for late distribution of funds as required pursuant to KRS 160.1596. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation is promulgated exclusively to comply with House Bill 9 (R.S. 2022).

ANDY BESHEAR, Governor

LU S. YOUNG, Board Chair

EDUCATION AND LABOR CABINET Board of Education Department of Education (New Emergency Administrative Regulation)

701 KAR 8:050E. Charter school funding.

EFFECTIVE: October 13, 2022

RELATES TO: KRS 160.1590, 160.1591, 160.15911, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599

STATUTORY AUTHORITY: KRS 156.070, 160.1596

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1596 requires the Kentucky Board of Education to promulgate administrative regulations governing the calculation and distribution of funds due to public charter schools from school districts, the schedule of distribution of funds, and the imposition of fines for late distribution of funds. This administrative regulation establishes the requirements for the calculation and distribution of funds to a public charter school, the schedule of distribution of funds, and the fines for failure to timely transfer funds.

Section 1. Definitions. (1) "Authorizer or "public charter school authorizer" is defined by KRS 160.1590(15).

(2) "Charter contract" or "contract" is defined by KRS 160.1590(4).

(3) "District of location" is defined by KRS 160.1590(7).

(4) "Public charter school" is defined by KRS 160.1590(14).

Section 2. Calculation of Charter School Funds. (1) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), for the first school year of operation of a charter school, the district of location shall calculate funds due to the charter school as set forth in KRS 160.1596(9) and (13).

(2) For years subsequent to a charter school's first school year of operation, unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), the district of location shall calculate funds due to a charter school as set forth in KRS 160.1596(5), (6), and (13).

Section 3. Distribution of Funds for the First School Year of Public Charter School Operation. (1)(a) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), during a public charter school's first school year of operation, the district of location shall transfer to the public charter school the funds required pursuant to KRS 160.1596(6)(a), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt of funds distributed pursuant to KRS 157.410.

(b) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), during a public charter school's first school year of operation, the district of location shall transfer the funds required pursuant to KRS 160.1596(6)(b) and (c), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt.

(c) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), during a public charter school's first school year of operation, the district of location shall transfer to the public charter school the funds required pursuant to KRS 160.1596(13), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt.

(2) As a condition of receiving funding beginning with the 2024-2025 school year, the charter school shall have an approved contract prior to February 1 preceding the charter school's first instructional school year.

(3) The district of location with the assistance of the Kentucky Department of Education shall provide the public charter school with a written estimate of the projected amounts of funding that will be due to the charter school through December of the first instructional school year on or before February 1 preceding the charter school's first instructional year.

Section 4. Distribution of Funds for Subsequent School Years of Public Charter School Operation.

(1) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), the district of location shall transfer to the public charter school the funds required pursuant to KRS 160.1596(6)(a), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt of funds distributed pursuant to KRS 157.410.

(2) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), the district of location shall transfer to the public charter school the funds required pursuant to KRS 160.1596(6)(b) and (c), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt.

(3) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), the district of location shall transfer to the public charter school the funds required pursuant to KRS 160.1596(13), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt.

Section 5. Authorizer's Fees. (1) Any authorizer's fee under KRS 160.1596(10) shall be retained by the district of location if it is the authorizer or remitted to the authorizer at the time of the transfer of funds to the public charter school if the district of location is not the authorizer.

(2) Any authorizer fee due to the Kentucky Board of Education resulting from the appeal of an authorization shall be remitted to the Kentucky Board of Education by the district of location at the

time of the transfer of funds to the public charter school.

Section 6. Fines. (1) Failure of the district of location to transfer required funds to the public charter school shall result in the district of location incurring a fine as set forth in KRS 160.1596(11). The fine shall be five (5) percent of the total funds per funding period due to be transferred.

(2) The district of location shall include the fine payment at the time of transfer of outstanding funds to the public charter school.

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., Board Chairperson

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:42 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 30, 2022, at 1 p.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 November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd 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 establishes the requirements for the calculation and distribution of funds to a charter school, the schedule of distribution of funds, and the fines for failure to timely transfer funds.

(b) The necessity of this administrative regulation: This regulation is required pursuant to KRS 160.1596.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements for the calculation and distribution of funds from a district of location to a charter school, the schedule of distribution of funds, and the fines for failure to timely transfer funds as required by KRS 160.1596.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for the calculation and distribution of funds from a district of location to a charter school, the schedule of distribution of funds, and the fines for failure to timely transfer funds as required by KRS 160.1596.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts and public charter schools.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts serving as a district of location for a public charter school will have to transfer funds to the charter school pursuant to the requirements of KRS 160.1596 and this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): School districts acting as districts of location for a charter school are required to transfer a proportionate per pupil share of funding due to the charter school pursuant to KRS 160.1596. The amount will vary depending on the district and the number of pupils attending the charter school.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The charter school will receive funding to operate within the district of location.

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

(a) Initially: The implementation will have an unknown minimal cost to the administrative body relating to assisting school districts in calculating the amount of funds for transfer to a public charter school.

(b) On a continuing basis: Those costs will continue dependent on the number of charter applications received.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation establishes a fine for late payments of 5% of the total payment due. However, this fine is only mandatory in the event of a late payment as required by HB 9 (2022).

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation establishes a fine for late payments of 5% of the total payment due. However, this fine is only mandatory in the event of a late payment as required by HB 9 (2022).

(9) TIERING: Is tiering applied? Tiering is not applied. This regulation applies 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 156.070 and KRS 160.1596

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

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

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

(c) How much will it cost to administer this program for the first year? Unknown.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Pursuant to KRS 160.1596, this regulation provides for the calculation and distribution of funds required to be transferred from a school district to a charter school located in the district. The school district will transfer a per pupil proportionate share for students attending the charter school. The amount of transfer is dependent on the district and the number of students attending the charter school.

(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. Any cost saving will be because the school district is serving less students. The extent is determined by the number of former district students attending the charter school. A loss of attendance will also result in a loss of funding for the district's non-charter schools.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Unknown. Any cost saving will be because the school district is serving less students. The extent is determined by the number of former district students attending the charter school. A loss of attendance will also result in a loss of funding for the district's non-charter schools.

(c) How much will it cost the regulated entities for the first year? Unknown.

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: Pursuant to KRS 160.1596 and this regulation, school districts serving as a district of location for a public charter school are required to transfer funds to a charter school on a proportionate per pupil basis. The amount of funds will depend on the number of students attending the charter school and the amount of state and local funding received by the district. This will vary by district. A district that loses students to a charter school will see a cost savings related to no longer serving those students. Correspondingly, the district will lose the revenue generated by the lost students. The costs savings to lost revenue may not be equal.

(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 regulation will have a major economic impact on school districts serving as districts of location for charter schools. KRS 160.1593 requires charter school applications to contain a plan for recruiting one hundred (100) students. A 100-student charter school will result in a district of location having to transfer an estimated \$500,000 to \$1,000,000,000 or more in funding to the charter. The exact amount will depend on the specific district and number of students enrolled in the charter school. Districts will realize some savings in no longer having to provide educational services to students that leave the district to attend the charter school. It is unknown whether the loss of revenue equals the reduction in costs when a district's former student attends a charter school.

**STATEMENT OF EMERGENCY
907 KAR 3:160E**

This emergency administrative regulation is being promulgated to establish and fully implement reimbursement and provider changes required by 2022's Senate Bill 8. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to comply with the legislative mandate established in 2022's SB 8 to reorganize and modify reimbursement for children's advocacy centers. This emergency administrative regulation is also needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding to coincide with federal funding approvals. Finally, DMS needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients. Emergency implementation of this administrative regulation is necessary to stabilize and enhance the services that are provided by children's advocacy centers by various provider types to additional Medicaid recipients. 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 3:160E. Specialized children's services clinics.

EFFECTIVE: September 30, 2022

RELATES TO: KRS 205.560, 205.557(1)(c), 314.011(14), 620.020(4), 620.050

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), ~~EO 2004-726~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.]~~The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the requirements for providers and reimbursement by the Medicaid program for services provided by a specialized children's services clinic.

Section 1. Definitions. (1) "Affiliation agreement" means a written agreement between a provider and a children's advocacy center to perform a child ~~[sexual abuse]~~ medical evaluation~~[examination]~~.

(2) "Approved behavioral health practitioner" means an independently licensed practitioner who is:

- (a) A physician;
- (b) A psychiatrist;
- (c) An advanced practice registered nurse;
- (d) A physician assistant;
- (e) A licensed psychologist;
- (f) A licensed psychological practitioner;
- (g) A certified psychologist with autonomous functioning;
- (h) A licensed clinical social worker;
- (i) A licensed professional clinical counselor;
- (j) A licensed marriage and family therapist;
- (k) A licensed professional art therapist;
- (l) A licensed clinical alcohol and drug counselor; or
- (m) A licensed behavior analyst."~~"Child sexual abuse medical examination" means an examination to determine child sexual abuse that includes:~~

- (a) A medical history taken from the child and a nonimplicated

parent, guardian or primary caretaker;

(b) A physical examination with detailed attention to the anogenital area;

(c) If clinically indicated, a colposcopic examination; and

(d) A mental health screening, provided on the same day and at the same location as the physical examination, to determine the impact of the alleged abuse on the mental health status of the child and the need for mental health services.]

(3) "Approved behavioral health practitioner under supervision" means an individual under billing supervision of an approved behavioral health practitioner who is:

(a)1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

2. A certified psychologist working under the supervision of a board-approved licensed psychologist;

3. A marriage and family therapy associate;

4. A certified social worker;

5. A licensed professional counselor associate;

6. A licensed professional art therapist associate;

7. A licensed clinical alcohol and drug counselor associate;

8. A certified alcohol and drug counselor; or

9. A licensed assistant behavior analyst; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(4) "Child medical evaluation" is defined by KRS 205.557(1)(c).

(5)[(3)] "Children's advocacy center" is defined in KRS 620.020(4).

(6)[(4)] "Department" means the Department for Medicaid Services or its designated agent.

(7)[(5)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(8) "Sexual assault nurse examiner" or "SANE" is defined in KRS 314.011(14).

[(6)] "Mental health professional" means:

(a) A psychologist as defined in KRS 319.010(8);

(b) A licensed clinical social worker in accordance with KRS 335.100;

(c) An advanced registered nurse practitioner as defined in KRS 314.011(7);

(d) A licensed marriage and family therapist as defined in KRS 335.300(2);

(e) A certified professional counselor as defined in KRS 335.500(2); or

(f) A certified professional art therapist as defined in KRS 309.430(2).]

(9)[(7)] "Specialized children's services clinic" means a clinic enrolled with the Kentucky Medicaid program that provides child ~~[sexual abuse]~~ medical evaluations~~[examinations]~~ and that meets the requirements of Section 3 of this administrative regulation.

[(8)] "Usual and customary charge" means the amount a provider bills to the general public.]

Section 2. Covered Services. (1) A child medical evaluation~~[child sexual abuse medical examination]~~ provided as a clinic service by a specialized children's services clinic shall be covered if medically necessary and provided to a recipient who is under the age of eighteen (18) years.

(2) Consistent with KRS 205.557(1)(c), a child medical evaluation is any combination of one (1) or more of the following services:

(a) A medical history taken from the child and a nonimplicated parent, guardian, or primary caretaker;

(b) A comprehensive physical examination;

(c) Laboratory services;

(d) Photo documentation;

(e) Follow-up evaluation;

(f) A mental health screening to determine the impact of the alleged abuse on the mental health status of the child and the need for mental health services; or

(g) An evidence-based trauma screening approved by the Children's Advocacy Centers of Kentucky, or its successor agency.

(3) A child medical evaluation~~[child sexual abuse medical~~

examination] shall be performed by:

(a) A licensed physician, advance practice registered nurse, physician assistant, or sexual assault nurse examiner who:

1. Completes the medical history and physical examination;
2. Is employed by, under contract with, or has an affiliation agreement with a specialized children's services clinic;
3. Has received specialized training in the medical examination of sexually-abused children; and

4. ~~[Has received specialized training in the use of a colposcope and has access to a colposcope in the specialized children's services clinic; and~~

5.] Shall make reports resulting from child medical evaluations~~[child sexual abuse medical examinations]~~ available for peer review and maintain confidentiality in accordance with Section Z[6] of this administrative regulation; and

(b) ~~As necessary, an approved behavioral health practitioner or an approved behavioral health practitioner under supervision~~[a mental health professional] who:

1. Performs a mental health screening or evidence-based trauma screening to determine the mental health status of the child and the need for further mental health services;

2. Is ~~[directly-]~~supervised by the physician, physician assistant, or advanced practice registered nurse who performs the medical examination and evaluation;

3. Is employed by, under contract with, or has an affiliation agreement with a specialized children's services clinic; and

4. Has received specialized training in the mental health screening or evidence-based trauma screening and assessment of sexually-abused children.

(4) The following mental health treatment services may be offered by a specialized children's services clinic to a person who is involved with or impacted by the subject matter of a child medical evaluation:

(a) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder, a substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder;

3. Establish the need for an in-depth assessment;

4. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:

a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan;

4. Not include a psychological or psychiatric evaluation or assessment; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(c) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for an individual with a behavioral health disorder;

3. Shall be provided:

a. On-site at a specialized children's clinic;

b. As an immediate relief to the presenting problem or threat; and

c. In a one-on-one encounter between the provider and the recipient, which is delivered either in-person or via telehealth if appropriate pursuant to 907 KAR 3:170;

4. May include:

a. Verbal de-escalation, risk assessment, or cognitive therapy;

or

b. Further service planning including:

(i) Lethal means reduction for suicide; or

(ii) Substance use disorder or relapse prevention;

5. Shall be followed by a referral to non-crisis services if applicable; and

6. Shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(d) 1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care for a mental health disorder;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week for adults;

d. Be provided at least six (6) hours per week for adolescents;

e. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan; and

f. Be provided in-person.

2. During psycho-education, the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a specialized services clinic shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(e) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and

b. Restoration of a recipient to the recipient's best possible functional level from a mental health disorder;

2. Consist of:

a. An in-person or via telehealth as appropriate pursuant to

907 KAR 3:170, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functionality;

4. Not exceed three (3) hours per day; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(f)1. Family outpatient therapy shall consist of an in-person, or via telehealth as appropriate pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals, including multiple members from one (1) family, who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Restoration of a recipient to their best possible functional level from a mental health disorder; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(g)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Restoration of a recipient to their best possible functional level from a mental health disorder;

c. Consist of an in-person, or via telehealth as appropriate pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. A family outpatient therapy group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of a group receiving group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(h)1. Collateral outpatient therapy shall:

a. Consist of an in-person or appropriate telehealth, provided pursuant to 907 KAR 3:170, behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's treatment plan; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(i)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder to a recipient by sharing a similar mental health disorder in order to bring about a desired social or personal change;

(ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a mental health disorder to a parent or family member of a child sharing a similar mental health disorder in order to bring about a desired social or personal change; or

(iii) An individual, who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing as a child or youth an emotional, social, or behavioral disorder that is defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care;

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care; and

h. Be provided face-to-face or via telehealth, as established pursuant to 907 KAR 3:170.

2. To provide peer support services, a specialized children's services clinic shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

c. Use an approved behavioral health practitioner to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members;

e. Have the capacity to provide ongoing continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients to provide no more than thirty (30) hours per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting not exceeding eight (8) individuals within any group at a time.

(5) Ongoing mental health treatment services shall be provided by:

- (a) 1. An approved behavioral health practitioner; or
2. An approved behavioral health practitioner under supervision; and
- (b) 1. A provider who is an employee of the specialized children's services clinic; or
2. A provider who has a contractual relationship with the specialized children's services clinic and who does not duplicate the provided behavioral health services to the recipient for another Medicaid provider.

Section 3. Provider Requirements. (1) A provider shall be enrolled with the department as a specialized children's services clinic.

(2) A specialized children's services clinic shall be a children's advocacy center whose providers are employed by, under contract with, or have a signed affiliation agreement with the clinic.

(3) A SANE who is a registered nurse, but not an APRN, shall be under the supervision of a physician, APRN, or physician assistant who is employed or contractually associated with the specialized children's services clinic for billing purposes.

Section 4. Billing for Services. (1) A child medical evaluation~~[child sexual abuse medical examination]~~ shall be billed by a specialized children's services clinic as a comprehensive clinic service which shall include:

(a) The services of the:

1. Physician;
2. Advanced practice registered nurse;
3. Physician assistant; or
4. SANE.

(b) Mental health screening services provided by an approved behavioral health practitioner or an approved behavioral health practitioner under supervision~~[a mental health professional]~~;

(c) Services and supplies furnished as an incidental part of the ~~[physician's]~~professional services performed by a provider listed in paragraph (a) of this subsection in the course of diagnosis and treatment; ~~or~~~~[and]~~

(d) Medical services provided by other clinic employees under the direct supervision of the physician, advanced practice registered nurse, physician assistant, or SANE; or

(e) Follow-up services provided by the physician, advanced practice registered nurse, physician assistant, SANE, approved behavioral health practitioner, or approved behavioral health practitioner under supervision.

(2) Child medical evaluation services provided by a physician, advanced practice registered nurse, physician assistant, SANE, or an approved behavioral health practitioner or an approved behavioral health practitioner under supervision~~[mental health professional]~~ employed by, under contract with, or having a signed affiliation agreement with a specialized children's services clinic shall be billed under the clinic's provider number using a single reimbursement code designated by the department.

(3) Mental health treatment by an approved behavioral health practitioner or approved behavioral health practitioner under supervision shall be billed per encounter by the specialized children's services clinic as consistent with the Outpatient Behavioral Health Fee Schedule, or its successor fee schedule, and Section 2 of this administrative regulation.

(4)(a) A specialized children's services clinic may provide laboratory services directly if:

1. The clinic has the appropriate CLIA certificate to perform laboratory testing pursuant to 907 KAR 1:028; and
2. The services are prescribed by a physician, advanced practice registered nurse, physician assistant, or SANE who has a contractual relationship with the clinic.

(b) If a specialized children's services clinic does not have the appropriate CLIA certificate to perform necessary laboratory testing, it shall establish a contractual relationship with a laboratory or facility with the appropriate CLIA certificate in order to perform any laboratory service required pursuant to this administrative regulation. The contracted laboratory shall not separately bill for

any services provided for a specialized children's services clinic that are also submitted for reimbursement pursuant to this administrative regulation.

(c) Laboratory services may be administered, as appropriate, by:

1. A physician;
2. An APRN;
3. A physician assistant;
4. A SANE;
5. An approved behavioral health practitioner; or
6. An approved behavioral health practitioner under supervision.

Section 5. Reimbursement. (1) The department shall establish a prospective payment~~[a statewide reimbursement]~~ rate or rates for each specialized children's services clinic based on an annual cost report or survey~~[a review of cost data and a consideration of rates paid to providers for similar services]~~.

(a) The prospective payment rate will reflect a true and actual cost for a specialized children's services clinic as established by expenses from the previous year.

(b) The prospective reimbursement rate shall incorporate additional expected expenses for the next year, including expected inflation for the next year.

(2)(a) A managed care organization shall accept the surveys submitted by the department and the department's determination of a prospective reimbursement rate for each and any specialized children's services clinic.

(b) A managed care organization shall not require separate submission of a cost report by a specialized children's services clinic to the managed care organization. [The initial rate of reimbursement for a child sexual abuse medical examination shall be the lesser of:

- (a) An all-inclusive statewide rate of \$538 per examination; or
- (b) The provider's usual and customary charge for the service.

(3) The department shall determine the statewide rate using updated cost data submitted on an annual cost report from the center.]

(3)(a) The department shall utilize the rates established pursuant to subsection (1) of this section to inform the prospective reimbursement rate.

(b) 1. A cost report shall be submitted by each center annually or upon request by the department.

2. A specialized children's clinic may submit a cost report to the department at any time that there is an increase of five (5) percent in cost during the year.

(4)(a) An ongoing mental health treatment service shall be billed consistent with Section 4(3) of this administrative regulation.

(b) The department and each managed care organization shall reimburse at least at the minimum of the rates published on the Outpatient Behavioral Health Fee Schedule, or its successor fee schedule, for services related to ongoing mental health treatment.

Section 6. Reimbursement Prior to Implementation of a Prospective Payment Rate. The department and each managed care organization (MCO) shall reimburse pursuant to this subsection until a prospective payment rate is established pursuant to Section 5. At that time, this section shall become nonoperational.

(1)(a) The department and each managed care organization shall reimburse at least twenty-five (25) percent greater than the Physician's Fee Schedule established pursuant to 907 KAR 3:010 for each service related to a child medical evaluation.

(b) The department may establish and publish a "Specialized Children's Clinic Fee Schedule" for use by specialized children's clinics.

(c) The department shall establish any additional procedure codes needed to perform services pursuant to this administrative regulation.

(2) The department and each managed care organization shall reimburse at least at the minimum of the rate for a specialized children's services clinic established pursuant to subsections (1) or (3) of this section.

(3) In the alternative, a specialized children's services clinic may bill a comprehensive rate for services rendered during the time that this section is operational, not including a follow-up evaluation:

(a) The initial rate shall be no less than \$894, and shall be updated, if necessary, for inflation.

(b) The department may collaborate with designated representatives of the children's advocacy centers to establish a comprehensive rate that is based on any increases in fees or rates established pursuant to subsection (1) of this section.

(c) A separate bill may be submitted by a specialized children's clinic for a follow-up evaluation.

(4)(a) An ongoing mental health treatment service shall be billed consistent with Section 4(3) of this administrative regulation.

(b) The department and each managed care organization shall reimburse at least at the minimum of the rates published on the Outpatient Behavioral Health Fee Schedule, or its successor fee schedule, for services related to ongoing mental health treatment.

Section 7.[Section 6.] Medical Records and Confidentiality. (1) Except to the department, duly authorized representatives of federal or state agencies, multidisciplinary team members acting pursuant to KRS 620.050 or a physician, physician assistant, APRN, SANE, or an approved behavioral health practitioner participating in a peer review of a specific child sexual or physical abuse or neglect case, a specialized children's services clinic shall not disclose any information concerning an eligible recipient without:

(a) Written consent of:

1. The recipient; or

2. If the recipient is a minor, the recipient's parent, legal guardian, or attorney; or

(b) A subpoena from a court of appropriate jurisdiction.

(2) A specialized children's services clinic shall:

(a) Maintain a recipient's medical records in accordance with 907 KAR 1:672;

(b) Maintain up-to-date recipient medical records at the site where the medical services are provided;

(c) Ensure that a recipient's medical record shall be readily retrievable, complete, organized, and legible and shall reflect sound medical recordkeeping practices; and

(d) Safeguard medical records against loss, destruction, and unauthorized use.

Section 8.[Section 7.] Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 9. The department may administer any benefits or services related to a specialized children's services clinic outside of the managed care benefit.

Section 10. Federal Approval and Federal Financial Participation. The cabinet's coverage and reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as relevant.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 26, 2022

FILED WITH LRC: September 30, 2022 at 9:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,

be held on November 28, 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 November 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 November 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 requirements for providers and reimbursement by the Medicaid program for services provided by a specialized children's services clinic.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing reimbursement provisions and requirements regarding services provided by specialized children's services clinics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing reimbursement provisions and requirements regarding services provided by specialized children's services clinics.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation to incorporate changes made by the 2022 Regular Session's SB 8. The changes include defining new terms to modernize behavioral health treatment and behavioral health treatment providers within this administrative regulation. In addition, the previous term of a "child sex abuse medical examination" is being removed in favor of the broader concept of a "child medical evaluation" as found in the 2022 Regular Session's SB 8. The new term will also allow for investigation of physical abuse and neglect by the children's advocacy centers. In addition, new provider types of physician assistants, advanced practice registered nurses, and sexual assault nurse examiners are allowed to provide services within these facilities. This concept of a child medical evaluation is further being expanded to include a Children's Advocacy Centers of Kentucky approved evidence-based trauma screening.

The department is also introducing nine (9) ongoing outpatient behavioral health services and a modernized listing of approved behavioral health practitioners and practitioners under supervision. The new services include screening, assessment, crisis intervention, intensive outpatient program, individual outpatient therapy, group therapy, family therapy, collateral therapy, and peer support services. The services may be provided by any of 13

behavioral health practitioner types or nine behavioral health practitioner types under supervision.

The payment methodology of a child medical evaluation is being expanded to meet SB 8's requirement of paying the "true and actual cost" of the child advocacy centers/specialized children's services clinics. On an initial basis, two reimbursement sections will be included. As the bill is implemented, an enhanced fee schedule will be utilized. In the alternative, and at the option of the child advocacy center, during the implementation phase an updated comprehensive rate could be billed.

As cost surveys are developed and prepared, a prospective payment system rate (PPS) reimbursement will be implemented. The managed care organizations (MCOs) will be required to utilize the cost reports and cost surveys developed and implemented by DMS in consultation with the child advocacy centers. In both reimbursement sections, the new behavioral health services will be conducted outside of the enhanced fee schedule or PPS rate. DMS and the MCOs will be required to reimburse mental health services at least at 100% of the established rates on the Outpatient Behavioral Health Fee Schedule. In addition, additional requirements and standards for laboratory services are being included. The department is also reserving the ability to completely remove this benefit and provider type from managed care in order to lessen administrative burden. Finally, a federal financial participation clause is being included to further modernize the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to expand reimbursement for services provided within children's advocacy centers as required by SB 8. In addition, 3 new providers will be able to provide and participate in a child medical evaluation. In addition, several new behavioral health services will be able to be provided by these facilities.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating changes made by 2022 RS SB 8.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by implementing reimbursement changes made by 2022 RS SB 8.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation affects approximately 15 children's advocacy centers and satellite facilities providing services within each of Kentucky's Area Development 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to follow any new reimbursement provisions and covered service policy requirements established in the administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will receive a "true and actual cost" reimbursement driven by the payment of an enhanced fee schedule and a prospective payment rate. In addition, expanded behavioral health services will be available.

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

(a) Initially: DMS will absorb any costs to implement this administrative regulation on an initial basis consistent with requirements established in the state executive branch budget pursuant to HB 1 of the 2022 Regular Session.

(b) On a continuing basis: DMS will absorb any costs to implement this administrative regulation on a continuing basis consistent with requirements established in the state executive

branch budget pursuant to HB 1 of the 2022 Regular Session.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.557

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

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

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

(c) How much will it cost to administer this program for the first year? DMS will absorb any costs to implement this administrative regulation on an initial basis consistent with requirements established in the state executive branch budget pursuant to HB 1 of the 2022 Regular Session.

(d) How much will it cost to administer this program for subsequent years? DMS will absorb any costs to implement this administrative regulation on an initial basis consistent with requirements established in the state executive branch budget pursuant to HB 1 of the 2022 Regular Session.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

regulation will result in higher reimbursement for regulated entities.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

NOTE: Pursuant to KRS 13A.190, emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. This index reflects the KRS Chapter 13A-established expiration dates. Other statutes or legislation may affect a regulation's actual end date.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Emergency As Amended at ARRS, October 11, 2022)

922 KAR 2:160E. Child Care Assistance Program.

EFFECTIVE: October 11, 2022

Previous version:

Emergency Amendment - 49 Ky.R. 296

RELATES TO: KRS 194A.060, 199.894(1), (5), 199.896, 199.898(1), (2), 199.8982, 199.899, 214.036, 314.011(5), 337.275, 600.020, 605.120(5), 620.020(10), 7 C.F.R. Part 1463, 20 C.F.R. Parts 676-678, 34 C.F.R. Part 361, Part 463, 45 C.F.R. Part 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 7 U.S.C. 2012, 25 U.S.C. 1261, 1401, 5501, 29 U.S.C. 723(a)(5), 34 U.S.C. 20102(c), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141, 1771-1793, 2000d, 3001, 4950-5085, 8621, 9857-9858q, 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 9857-9858q, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner that is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that may affect eligibility or benefit amounts, such as:

(a) Beginning or ending employment;

(b) Change in an employer or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in family members;

(f) Change in self-employment activity;

(g) Change in scheduled hours care is needed;

(h) Beginning or ending an educational activity;

(i) Change in child care provider;

(j) Change in address or residence;

(k) Change in marital status;

(l) Beginning or ending receipt of unearned income; or

(m) Enrollment in a certified trade school or an accredited college or university.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child Care and Development Fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined by 922 KAR 1:330, Section 1(5).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home" is defined by KRS 199.894(5).

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Good academic standing" means a student is meeting the trade school, college, or university's requirements for attendance and satisfactory progress towards the completion of coursework.

(15) "Health professional" means a person actively licensed as a:

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse;

(d) Qualified mental health professional as defined by KRS 600.020(52); or

(e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(16) "Homeless" means an individual or a family lacking a fixed, regular, and adequate nighttime residence, including a child experiencing homelessness as defined by 45 C.F.R. 98.2.

(17) "In loco parentis" means a person acting in place of a parent, including:

(a) A legal guardian;

(b) An individual related by blood, marriage, or adoption to the child; or

(c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(18) "Infant" means a child who is less than one (1) year old.

(19) "Kentucky Transitional Assistance Program" or "KTAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(20) "Parent" is defined by 45 C.F.R. 98.2.

(21) "Part day" means child care that is provided for less than five (5) hours per day.

(22) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(23) "Preventive services" is defined by KRS 620.020(12).

(24) "Provider" means the entity providing child care services, such as:

(a) A member of a limited liability corporation (LLC);

(b) The head of an organization;

(c) An owner of a corporation;

(d) A member of a partnership;

(e) An owner of a business;

(f) An individual provider; or

(g) A stockholder of a stock-holding company.

(25) "Qualified alien" or "qualified immigrant" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(26) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(27) "Related" means having one (1) of the following relationships:

(a) Child;

- (b) Stepchild;
- (c) Grandchild;
- (d) Great-grandchild;
- (e) Niece;
- (f) Nephew;
- (g) Sibling;
- (h) Child in legal custody; or
- (i) Child living in loco parentis.

(28) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

- (a) The natural parent, adoptive parent, or stepparent; or
- (b) The spouse of an individual caring for a child in loco parentis.

(29) "School-age child" means a child who has reached the sixth birthday.

(30) "State median income" or "SMI" means the estimated median income of households in the state.

(31) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

- (a) Defined by 7 U.S.C. 2012; and
- (b) Governed by 921 KAR Chapter 3.

(32) "Teen parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(33) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

- a. A signed DCC-90, Subsidized Child Care Assistance Application Summary; or
- b. Submission in accordance with 921 KAR 2:040, Section 1(6); or

- 2. The agency is contacted, if the person:
 - a. Has a physical or mental disability; and
 - b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:

1. Assisted by another individual of choice in the application process; and

- 2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures established in 920 KAR 1:070, interpreter services shall be provided for persons who are:

- 1. Deaf; or
- 2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, 7, and 8 of this administrative regulation.

(a) An applicant or recipient shall be the primary source of information and shall:

- 1. Furnish verification of:
 - a. Income;
 - b. Technical eligibility; and
 - c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a

failure to present adequate proof of eligibility.

(c) A homeless household shall have a minimum of three (3) months to verify information in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send notice to the applicant in accordance with Section 12(4) of this administrative regulation.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

- (a) Assistance until approval of the application for benefits; or
- (b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

- 1. Resident of Kentucky; and
- 2. U.S. citizen, qualified immigrant, or qualified alien;

(b) Is under age:

- 1. Thirteen (13) at the time of application or recertification; or
- 2. Nineteen (19) at the time of application or recertification

and is:

a. Physically or mentally incapable of caring for themselves, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

- 1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

- a. Licensed child-care center;
- b. Certified child-care home;
- c. Public school;
- d. Head Start; or

e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the KTAP or SNAP case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child-care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child-care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

Section 4. Requirements for Low Income Working Family

Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) A relative or fictive kin caregiver pursuant to 922 KAR 1:565 who meets:

1. All requirements in this section; and

2. Income eligibility standards established in Section 8 of this administrative regulation;

(e) A teen parent attending high school or pursuing a general equivalency degree (GED), including a period of recess or temporary break up to three (3) months; or

(f) An applicant who meets the eligibility requirements specified in Section 7 of this administrative regulation.

(2) A child shall be eligible to receive CCAP for a minimum of three (3) months or in accordance with Section 9 of this administrative regulation if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who is homeless;

(b) An applicant who is engaged in job search;

(c) A recipient after the loss of employment, a reduction in the required number of employment hours, or cessation of attendance at a job training or educational program in accordance with 42 U.S.C. 9858c(c)(2)(N)(iii), to allow for job search or resumption of work or attendance at job training or educational program; or

(d) A recipient on maternity leave or other medical leave from employment as verified by a health professional, unless a temporary disability as verified by a health professional necessitates longer than three (3) months of CCAP eligibility.

(3) Effective October 24, 2022, to the extent funds are available, a household shall have all earned and unearned income excluded from the eligibility determination if an applicant or responsible adult meets the requirements of subsection (1) of this section and has verified employment in a regulated:

(a) Licensed child-care center; or

(b) Certified family child-care home.

(4) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 8(6)(d) of this administrative regulation by an hourly pay rate of no less than minimum wage established in accordance with KRS 337.275.

Section 5. Requirements for Protection and Permanency Eligibility Determination.

(1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 11 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

Section 6. State-Funded Workforce Training Child Care Eligibility Determination. A child shall be eligible for CCAP if the child:

(1) Resides with an applicant who is participating in the:

(a) Kentucky Works Program established in 921 KAR 2:370; or

(b) Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) pursuant to 921 KAR 3:042; and

(2) Meets the requirements listed in Section 3 of this administrative regulation.

Section 7. Education and Job Training Child Care Eligibility Determination. (1) To the extent funds are available, a child shall be eligible for CCAP if the child:

(a) Resides with an applicant who:

1. Is enrolled in:

a.(i) A certified trade school or an accredited college or university; or

(ii) [A full-time program that leads to a general educational development (GED); or

(iii)] A program that leads to a degree or certification; and

b. Accordance with subsection (2) of this section;

2. Is in good academic standing with the trade school, college, or university in which the applicant is enrolled;

3. Provides verification of enrollment and good academic standing from the trade school, college, or university in which the applicant is enrolled;

4. Meets income eligibility criteria of Section 8 of this administrative regulation; and

5. Has not received CCAP for more than sixty (60) months due to enrollment in a certified trade school or an accredited college or university; and

(b) Meets the requirements established in Section 3 of this administrative regulation.

(2) While an applicant is enrolled in a certified trade school or an accredited college or university:

(a) The applicant's coursework shall be completed in-person or online; and

(b) The applicant shall be classified as a full-time student as defined by the trade school, college, or university.

(3) An applicant who does not complete a term at a trade school, college, or university shall be responsible for the cost of child care tuition for the term.

Section 8. Income Eligibility. (1) A child shall be eligible for CCAP if the family's income is less than or equal to eighty-five (85) percent of the SMI as prepared by the U.S. Census Bureau through calendar year 2021 at initial application, recertification, or recalculation.

[(a) 1. Through December 31, 2021, 160 percent of the federal poverty guidelines at initial application; and

2. Effective January 1, 2022, 200 percent of the federal poverty guidelines as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2021 at initial application; or

(b) 1. Through December 31, 2021, 200 percent of the federal poverty guidelines at recertification or recalculation; and

2. Effective January 1, 2022, eighty-five percent (85%) of the SMI as prepared by the U.S. Census Bureau through calendar year 2021 at recertification or recalculation.]

(2) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(3) A child who is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to

the family's income.

- (4) Excluded income shall be:
 - (a) KTAP child only payments, including back payment;
 - (b) A payment received from the kinship care program, pursuant to 922 KAR 1:130, including back payment;
 - (c) Educational grant, loan, scholarship, and work study income;
 - (d) The value of a:
 - 1. Kentucky Works supportive services payment pursuant to 921 KAR 2:017; or
 - 2. SNAP E&T transportation payment pursuant to 921 KAR 3:042;
 - (e) The value of United States Department of Agriculture program benefits including:
 - 1. Donated food;
 - 2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;
 - 3. Special food service program for a child pursuant to 42 U.S.C. 1775;
 - 4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and
 - 5. The monthly allotment under SNAP;
 - (f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;
 - (g) In-kind income;
 - (h) Reimbursement for transportation in performance of an employment duty, if identifiable;
 - (i) Nonemergency medical transportation payment;
 - (j) Highway relocation assistance;
 - (k) Urban renewal assistance;
 - (l) Federal disaster assistance and state disaster grant;
 - (m) Home produce utilized for household consumption;
 - (n) Housing subsidy received from federal, state, or local governments;
 - (o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;
 - (p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;
 - (q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:
 - 1. Senior health aide; or
 - 2. Member of the:
 - a. Service Corps of Retired Executives; or
 - b. Active Corps of Executives;
 - (r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5085 if less than the minimum wage under state or federal law, whichever is greater, including:
 - 1. Volunteers in Service to America (VISTA);
 - 2. Foster Grandparents;
 - 3. Retired and Senior Volunteer Program; or
 - 4. Senior Companion;
 - (s) Payment from the cabinet for:
 - 1. Child foster care; or
 - 2. Adult foster care;
 - (t) Energy assistance payment made under:
 - 1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or
 - 2. Other energy assistance payment made to an energy provider or provided in-kind;
 - (u) The principal of a verified loan;
 - (v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;
 - (w) The advance payment or refund of earned income tax credit;
 - (x) Payment made from the Agent Orange Settlement Fund;
 - (y) Payment made from the Radiation Exposure Compensation Trust Fund;
 - (z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust

or restricted lands;

- (aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;
 - (bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;
 - (cc) A payment received from the National Tobacco Growers Settlement Trust;
 - (dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;
 - (ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 34 U.S.C. 20102(c);
 - (ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;
 - (gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141;
 - (hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);
 - (ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);
 - (jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act pursuant to 20 C.F.R. Parts 676-678 or 34 C.F.R. Part 361 or 463;
 - (kk) Waiver reimbursement in accordance with 907 KAR 1:170, 907 KAR 1:835, or 907 KAR 7:015 to a parent for the care of a child in the home; or
 - (ll) Supplemental Security Income (SSI) for a child.
- (5) Deductions from gross income shall be:
- (a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and
 - (b) Operating costs to determine adjusted gross income from self-employment.
- (6) Best estimate.
- (a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.
 - (b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:
 - 1. Cents shall:
 - a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and
 - b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semi-monthly, monthly, quarterly, or annual earnings;
 - 2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;
 - 3. A monthly amount shall be determined by adding gross income from each pay period, dividing by the total number of pay periods considered, and converting the pay period figure to a monthly figure by multiplying a:
 - a. Weekly amount by four and one-third (4 1/3);
 - b. Biweekly amount by two and one-sixth (2 1/6); or
 - c. Semimonthly amount by two (2); and
 - 4. If income has recently begun and the applicant or recipient has not received a calendar month of earned income, the anticipated monthly income shall be computed by:
 - a. Multiplying the:
 - (i) Hourly rate by the estimated number of hours to be worked in a pay period; or
 - (ii) Daily rate by the estimated number of days to be worked in the pay period;
 - b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph; and
 - c. Rounding to the nearest dollar.
 - (c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:
 - 1. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and
 - 2. Averaging the amount of unstable unearned income

received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing total gross income and total amount of allowable expenses separately by twelve (12) or the appropriate number of months, and rounding the quotients to the nearest dollar; and

d. Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.

(e) If the cabinet or its designee becomes aware of a change in circumstance, the best estimate shall be recalculated.

Section 9. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be recertified at least every twelve (12) months.

(2) Eligibility shall be reviewed at each twelve (12) month recertification for a child who is placed with a relative or fictive kin caregiver. A child who is placed with a relative or fictive kin caregiver shall remain eligible pursuant to Section 5 of this administrative regulation for as long as the cabinet determines that child care is necessary in order to prevent child maltreatment or entry into the foster care system.

(3) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(4) Unless a nonrelative is approved as fictive kin pursuant to 922 KAR 1:140 or 922 KAR 1:565 and Section 5 of this administrative regulation, a nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

(5) In accordance with 42 U.S.C. 9858c(c)(2)(N), if a family's income does not exceed eighty-five (85) percent of Kentucky's SMI, the family shall remain eligible for CCAP until recertification in accordance with this section.

(6)(a)1. Effective March 4, 2022, through August 31, 2022, [to the extent funds are available,] the cabinet shall implement a transitional period in the Child Care Assistance Program. A child enrolled shall continue to receive assistance for three (3) months after becoming ineligible due to exceeding the income limitations established in Section 8 of this administrative regulation.

2. Effective September 1, 2022, to the extent funds are available, the cabinet shall implement a transitional period in the Child Care Assistance Program. A child enrolled shall continue to receive assistance for six (6) months after becoming ineligible due to exceeding the income limitations established in Section 8 of this administrative regulation.

(b) During the transitional period established in paragraph (a) of this subsection, the provider shall continue to receive fifty percent (50%) of the lesser amount of the provider subsidized rate or maximum payment rate established in the DCC-300, rounded up to the nearest whole dollar.

Section 10. Payment Rates and Policy. (1)(a) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rate Chart.

(b) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(c) The maximum payment rates shall include the following categories:

1. Full day;
2. Part day;
3. Licensed Type I;
4. Licensed Type II;
5. Certified;
6. Registered;
7. Infant/Toddler;
8. Preschool child; and
9. School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day through July 31, 2022, and effective August 1, 2022, five (5) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;
2. National Early Childhood Program Accreditation;
3. National Association for Family Child Care;
4. Council on Accreditation; or
5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day through July 31, 2022, and effective August 1, 2022, ten (10) dollars per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or
2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day through July 31, 2022, and effective August 1, 2022, five (5) additional dollars per day beyond the maximum rate for care of a child:

(a) With a special need; or

(b) Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or
2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

(a) Three (3) children receiving CCAP per day; or

(b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and
2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 11. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(3) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

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Family Co-Payment Per Day								
Income Range Monthly		Family Size 2	Family Size 3 Family		Family Size 4 Family		Family Size 5 or More	
		Family Co-Pay With 1 Child	Co-Pay With 1 Child	With 2 or more	Co-Pay With 1 Child	With 2 or more	Family Co-Pay With 1 Child	With 2 or more
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0
900	999	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,000	1,099	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,100	1,199	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,200	1,299	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,300	1,399	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,400	1,499	\$6	\$5	\$6	\$5	\$6	\$4	\$4
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$5	\$5
1,600	1,699	\$8	\$6	\$7	\$6	\$7	\$6	\$6
1,700	1,799	\$9	\$7	\$8	\$7	\$8	\$6	\$7
1,800	1,899	\$10	\$8	\$9	\$7	\$8	\$7	\$8
1,900	1,999	\$10	\$9	\$10	\$8	\$9	\$8	\$9
2,000	2,099	\$11	\$10	\$11	\$8	\$9	\$8	\$9
2,100	2,199.99	\$12	\$10	\$11	\$9	\$10	\$9	\$10
2,200	2,299.99	\$12	\$11	\$12	\$10	\$11	\$9	\$10
2,300	2,399.99	\$12	\$12	\$13	\$11	\$12	\$9	\$10
2,400	2,499.99	\$12	\$12	\$13	\$12	\$13	\$10	\$11
2,500	2,599.99	\$12	\$13	\$14	\$12	\$13	\$10	\$11
2,600	2,699.99	\$12	\$13	\$14	\$13	\$14	\$12	\$13
2,700	2,799.99	\$12	\$13	\$14	\$13	\$14	\$13	\$14
2,800	2,899.99	\$12	\$13	\$14	\$14	\$15	\$14	\$15
2,900	2,999.99	\$12	\$13	\$14	\$14	\$15	\$16	\$17
3,000	3,099.99	\$12	\$13	\$14	\$15	\$16	\$18	\$19
3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$25
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(c) In accordance with 45 C.F.R. 98.21, a copayment for an eligible family shall:

1. Be determined at initial application or recertification; and
2. Not increase during the twelve (12) month eligibility period.

Section 12. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a DCC-94, Child Care Service Agreement and Certificate.

(3) Upon enrollment or reenrollment with a provider, an applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the:

- (a) DCC-94; or
- (b) DCC-90.

(4) Notification of action. (a) A DCC-94C, Provider Notification Letter, shall provide notice to a provider of a child's discontinuation from CCAP or disenrollment with a provider.

(b) A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

1. A change in the certification period of child;
2. Approval of an application; or
3. Continued eligibility.

(c) A DCC-105, Child Care Denial/Discontinuance Notice, shall provide notice of:

1. Denial of an application;
2. Discontinuance of a CCAP benefit;
3. Reason for adverse action;

4. Citation from an applicable state administrative regulation; and

5. Information regarding the opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(d) The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection.

(5) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(6) Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(7) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

(a) Discontinued from CCAP benefits; and

(b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(8) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 14(1)(c) of this administrative regulation.

Section 13. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of

child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

- (a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;
- (b) 922 KAR 2:090, Child-care center licensure;
- (c) 922 KAR 2:100, Certification of family child-care homes;
- (d) 922 KAR 2:120, Child-care center health and safety standards;
- (e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;
- (f) 922 KAR 2:190, Civil penalties;
- (g) 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes; and
- (h) 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals.

(4) The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858(c)(2)(K)(i)(IV) and 922 KAR 2:180.

(5) If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(6) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(7) The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

(8) In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

- (a) Child protective or preventive services authorization;
- (b) A child with a special need;
- (c) A child experiencing homelessness as defined by 45 C.F.R. 98.2;
- (d) A child in the custody of the cabinet;
- (e) KTAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;
- (f) Teen parents attending high school or pursuing a general equivalency degree (GED);
- (g) A KTAP recipient attempting to transition off assistance through employment;
- (h) A parent whose KTAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;
- (i) A low income working parent; or
- (j) A parent in education or training programs leading to self-sufficiency.

Section 14. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

- (a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the provider and prior to receiving payment from the CCAP, the DCC-94;
- (b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;
- (c) 1. Maintain the DCC-94E, Child Care Daily Attendance Record, or a cabinet approved electronic billing system in which the attendance is:
 - a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and
 - b. Signed or electronically recorded legibly with first and last name by the parent or applicant for the child served by CCAP; and
- 2. Submit the DCC-94E or electronic daily attendance record upon request of the cabinet or its designee;
- (d) Comply with the applicable regulatory requirements pursuant to:
 - 1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;
 - 2. 922 KAR 2:090, Child-care center licensure;

3. 922 KAR 2:100, Certification of family child-care homes;

4. 922 KAR 2:120, Child-care center health and safety standards;

5. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

6. 922 KAR 2:190, Civil penalties;

7. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes; and

8. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals;

(e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP; and

(f) Complete, retain on file, and provide to the CCAP billing section a certificate of completion for cabinet approved training on billing once during each year of operation or upon change of the staff member submitting billing information.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

- 1. Each employee of each shift;
- 2. The work hours for each employee of each shift;
- 3. The management for each shift;
- 4. The work hours for each management employee of each shift; and
- 5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

- 1. The operating plan meets all requirements of:
 - a. For a licensed child-care center, 922 KAR 2:090 and 922 KAR 2:120; or
 - b. For a certified family child-care home, 922 KAR 2:100; and
- 2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

(5) A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858(c)(2)(K)(i)(IV) and 922 KAR 2:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

- (a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;
- (b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or
- (c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in the new provider's operations in any capacity.

Section 15. Other Services. To the extent funds are available, a child whose family's income is over the income limits for the CCAP described in Section 8 of this administrative regulation may be eligible for:

- (1) Child care payments;
- (2) Enrollment fees;
- (3) Activity or day trip fees;
- (4) Material fees;
- (5) Transportation fees; or
- (6) Other items relating to child care services with prior approval of the cabinet.

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Section 16. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 2:020.

Section 17. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;
2. An illness of the:
 - a. Child; or
 - b. Applicant; or
3. A disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 11 of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

- a. Entry into the provider's premises during operating hours;

or

- b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

- b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 14(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 14(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 13(8) of this administrative regulation.

Section 18. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 921 KAR 2:055.

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

- (a) 922 KAR 2:260; or
- (b) 922 KAR 2:020.

Section 19. Records. Records of CCAP shall be maintained and disclosed in accordance with:

- (1) KRS 194A.060;
- (2) 45 C.F.R. 98.90(e); and
- (3) 45 C.F.R. 205.50(a)(1)(i).

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Subsidized Child Care Assistance Application Summary", 7/2019;

(b) "DCC-94, Child Care Service Agreement and Certificate", 07/21;

(c) "DCC-94.1, CHILD CARE Approval/Change Notice", 10/17;

(d) "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;

(e) "DCC-94C, Provider Notification Letter", 10/17;

(f) "DCC-94E, Child Care Daily Attendance Record", 07/22[7/13];

(g) "DCC-97, Provider Billing Form", 04/13;

(h) "DCC-105, Child Care Denial/Discontinuance Notice", 10/17; and

(i) "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 10/22[12/21].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbps/Pages/default.aspx>.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION AND LABOR CABINET
Education Professional Standards Board

16 KAR 9:100. Alternative route to Certification Institute.

RELATES TO: KRS 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030,

161.048(1)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(e) ~~requires—directs~~ the Education Professional Standards Board (EPSB) to ~~promulgate~~adopt administrative regulations establishing standards and procedures for the Alternative Route to Certification Institute and the approval criteria for these programs. This administrative regulation establishes the required elements of the alternative route to certification and the application review process.

Section 1. Institute Providers.

(1) A provider~~Providers who are~~ not currently accredited by the EPSB in accordance with 16 KAR 5:010, may~~are recommended to~~ demonstrate a partnership with an institution~~partnerships with institutions~~ of higher education accredited by the EPSB and a school district or cooperative~~school districts or cooperatives~~ recognized by the Kentucky Department of Education.

(2) A provider~~Providers~~ shall submit an application to the EPSB in accordance with the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

Section 2. Application Review.

(1) An application~~Applications~~ to provide an alternative route to certification institute shall be submitted to EPSB staff.

(2) EPSB staff shall complete an initial review to ensure that the application addresses the requirements of KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(a) If EPSB staff determines that the application addresses the requirements of this subsection, the application~~it~~ shall be forwarded to an external review team.

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

(3) An external review team of trained reviewers appointed~~identified~~ by EPSB pursuant to subsection (4) of this section, staff shall review the application in accordance with KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(4) The external review team shall be comprised of:

(a) One (1) representative from an EPSB accredited postsecondary institution;

(b) One (1) representative from a Kentucky education cooperative; and

(c) One (1) representative from a Kentucky public school district.

(5) The external review team shall review the application to provide an alternative route to certification institute and determine the quality of the application based on compliance with subsection (2) of this section. The review team shall recommend acceptance or denial of the application to the EPSB and shall include a supporting rationale for the recommendation.

(6) The EPSB shall review the external review team's recommendation, shall approve or deny each application, and shall transmit the decision and rationale for the decision to the provider.

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

(8) Any approval granted by the EPSB shall specify the period of approval of the institute, which shall not exceed two (2) years for initial approval. A provider~~Providers~~ may apply for an extension of approval as established~~outlined~~ in Section 3 of this administrative regulation.

Section 3. Continuance of Program Approval.

(1) An institute provider may apply for continuance of an approved alternative route to certification institute for an additional period of time not to exceed seven (7) years. The request for continuance shall specify any changes in program components that have occurred since the institute received prior EPSB approval and that are planned for implementation in subsequent training periods.

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

Section 4. Revocation for Cause.

(1) If an area of concern or an allegation of misconduct arises after an institute has been approved, staff shall bring a complaint to the EPSB for initial review.

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

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

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

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

(b) The external review team may conduct on-site evaluations to evaluate the quality of the program~~programs~~.

(c) Upon completion of the review, the external review team shall issue a report recommending to the EPSB continued approval of the institute or revocation of institute approval if the institute no longer meets the standards and requirements for approval established in this administrative regulation.

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

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

(b) The EPSB shall consider the findings and recommendations of the external review team and make a final determination regarding the approval of the institute.

Section 5. Reconsideration~~Appeals Process~~.

(1) If a provider seeks reconsideration~~appeal~~ of an EPSB decision, the provider shall submit a request~~appeal~~ within thirty (30) days of receipt of the EPSB official notification. A provider shall submit the request~~appeal~~ on the grounds that:

(a) A prescribed standard was disregarded;

(b) A procedure was not followed; or

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

(2) A~~An appeals~~ panel of no fewer than three (3) members shall be appointed by the EPSB chair from members of the EPSB who do not have a conflict of interest regarding the provider or

institute. The ad hoc committee shall recommend action on the ~~request/appeal~~ to the full EPSB.

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

Section 6. Data Reports.

(1) The EPSB shall maintain data reports related to ~~the following~~:

- (a) Approval status of all EPSB approved Option 7 programs;
 - (b) Contact information for the person responsible for the institute;
 - (c) Year of last program review;
 - (d) Tables relating the institute total enrollment disaggregated by ethnicity and gender for the last three (3) years;
 - (e) Tables relating the institute faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;
 - (f) Table of the number of program completers for the last three (3) years;
 - (g) Table relating pass rates on the required assessments;
 - (h) Table relating program completer satisfaction with the preparation program; and
 - (i) Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.
- (2) ~~A provider~~**[Providers]** shall report to the EPSB staff at the end of each school year continuous improvement efforts relating to the institute.

Section 7. Temporary Provisional Certificate.

(1) An eligible candidate who meets the requirements of KRS 161.048 (8)(a)1. ~~through~~**[]** 4. and 16 KAR 2:010, Section 3(1), shall be issued a one ~~(1)~~**[]** year provisional teaching certificate.

(2) The candidate shall apply to the EPSB and provide:

- (a) Official transcripts of all college work undertaken by the candidate establishing proof of a bachelor's degree or graduate degree and grade point average;
- (b) Proof of a passing score on the admission assessments as established in 16 KAR 5:020, unless the applicant holds a terminal degree;

(c) Proof of a passing score on the academic content assessment, as established in 16 KAR 6:010, in the area in which certification is being sought;

(d) Verification by the institute provider of completion of half of the requisite institute hours; and

(e) Evidence of employment in a Kentucky school district or nonpublic school in the content area of the certification.

(3) The temporary provisional certificate may be renewed for a maximum of two (2) additional years.

(4) A candidate shall be eligible for first renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and ~~successful completion of the following requirements~~:

(a) Verification of completion of:

- 1. 240 hour institute for elementary or K-12 certification; or
- 2. 180 hour institute for middle or high school certification;

and**[]**

(b) Evidence of employment in a Kentucky school district or nonpublic school in the content area of the certification.

Section 8. Professional Certificate.

(1) Upon completion of all program requirements established in this administrative regulation~~of the alternative route to certification—institute~~, the applicant may apply for the professional certificate.

(2) Prior to issuance of the professional certificate, the candidate shall obtain a passing score on the pedagogy assessment, as established in 16 KAR 6:010, for the certificate being sought.

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

Section 9. Incorporation by Reference.

(1) ~~[The following material is incorporated by reference:]~~**[Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7), 2022, is incorporated by reference.]**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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.

EDUCATION AND LABOR CABINET Education Professional Standards Board (As Amended at ARRS, October 11, 2022)

16 KAR 9:110. Expedited route to certification.

RELATES TO: KRS 161.028, 161.030, 161.048
STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048~~(1)(e)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048~~(1)(e) requires—directs~~ the Education Professional Standards Board (EPSB) to promulgate/adopt administrative regulations establishing standards and procedures for the alternative routes to certification. This administrative regulation establishes the standards and procedures of the Option 9 expedited route to certification.

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

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

(3) ~~A Provider~~**[Providers]** shall submit an application to the EPSB that includes:

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

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

(c) Contact information for the EPP leader and the district or group of districts leader;**[]**

(d) Description of when the expedited route program is offered, the method of delivery, and the certification areas included;**[]**

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

(f) Explanation of how the district or group of districts in cooperation with the EPP shall address the program requirements contained in Sections 2, 3 and 4 of this administrative regulation.

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

(2) ~~A candidate~~**[Candidates]** shall be employed in a classified position with the district while completing coursework from the EPP expedited route program.

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

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

(5) The resident shall adhere to the Professional Code of Ethics

for Kentucky School Certified Personnel established in 16 KAR 1:020.

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

(7) The requirements of this administrative regulation may be fulfilled as part of the resident's classified employment with the district.

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

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

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

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

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

1. Students from a minimum of two (2) different ethnic or cultural groups of which the candidate would not be considered a member;
2. Students from different socioeconomic groups;
3. English language learners;
4. Students with disabilities; and
5. Students from across elementary, middle school, and secondary grade levels;

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

1. Family Resource Centers; or
2. Youth Service Centers;

(c) Student tutoring;

(d) Interaction with families of students;

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

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

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

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

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

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

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

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

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

~~(b) Residents pursuing an elementary certificate shall have their student teaching balanced between a placement in primary~~

~~through grade 3 and a placement in grade 4 or grade 5.~~

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

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

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

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

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

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

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

- (a) Each resident completing the third year;
- (b) The resident's assigned school;
- (c) The cooperating teacher assigned to each resident;
- (d) The cooperating teacher's area of certification; and
- (e) The cooperating teacher's years of experience as a certified or licensed educator.

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

(8)~~(9)~~ The observations may be remote.

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

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

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

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

Section 5. Application Review.

(1) An application~~Applications~~ to provide an expedited route to certification shall be submitted to EPSB staff.

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

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

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

(3) The EPSB shall review the application, shall approve or deny each application based on its compliance with KRS 161.048(10) and this administrative regulation, and shall transmit the decision and rationale for the decision to the provider.

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

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

Section 6. Continuance of Program Approval. (1) An expedited route provider may apply for continuance of an approved expedited route program for an additional period of time not to exceed seven (7) years. The request for continuance shall specify any changes in program components that have occurred since the program received prior EPSB approval and that are planned for implementation in subsequent training periods.

(2) The request for continuance shall provide specific examples of demonstrating program quality as established in this section and the application required by this administrative regulation.

The request for continuance shall ~~include[set forth]~~ statistical information related to teacher retention for all prior candidates who have completed the program. Standards for program approval ~~[and program quality]~~ specified under this administrative regulation shall be maintained under any program extension.

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

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

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

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

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

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

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

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

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

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

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

(a) A prescribed standard was disregarded;

(b) A procedure was not followed; or

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

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

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

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

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

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

(c) Year of last program review;

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

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

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

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

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

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

(2) ~~A provider[Providers]~~ shall report to the EPSB staff at the end of each school year continuous improvement efforts relating to the expedited route program.

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

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

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.

STATE BOARD OF ELECTIONS (As Amended at ARRS, October 11, 2022)

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

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

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

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

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

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

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

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

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 11, 2022)

31 KAR 4:071. Recanvass procedures.

RELATES TO: KRS 117.305, 118.425, 242.110, 242.120

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

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

Section 1.

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

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

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

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

Section 2.

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

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

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

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

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

(2) In a partisan primary, the county board of elections shall only check and tabulate the votes of the candidate requesting a

recanvass and each opposing candidate of the same political party seeking the same office.

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

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

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

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

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

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

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

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

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

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

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

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

(3) This material may also be obtained on the board's Web site at <https://elect.ky.gov>.

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 11, 2022)

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

RELATES TO: KRS 117.085, 117.086, 117A.030, 117A.080, 117A.120, 117A.130, 52 U.S.C. 20302

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. KRS 117.086(1)(b) authorizes the State Board of Elections to promulgate administrative regulations establishing security requirements for the transmission of voted absentee ballots. 52 U.S.C. 20302(e) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request

voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the State Board of Elections to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS 117A.030(5) requires the State Board of Elections to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.030(6) requires the State Board of Elections to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. KRS 117A.130 requires the State Board of Elections, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A. This administrative regulation establishes the procedures for the county clerk to follow when transmitting a military-overseas ballot to a covered voter via facsimile or electronically and for a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporates by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implements the electronic free-access system pursuant to KRS 117A.130.

Section 1. Definitions.

- (1) "Covered voter" is defined by KRS 117A.010(1).
- (2) "Federal postcard application" is defined by KRS 117A.010(3).
- (3) "Instructions to Voter" means the Instructions for Voting to a Covered Voter Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot, SBE 46A.
- (4) "Military-overseas ballot" is defined by KRS 117A.010(5).
- (5) "Transmission sheet" means the Official Election Materials – Electronic Transmission **Cover** Sheet prescribed by the Federal Voting Assistance Program.

Section 2. Delivering a Military-Overseas Ballot to a Covered Voter Via Facsimile or Electronically.

- (1) If the county clerk receives a properly completed federal postcard application from a covered voter who is eligible to vote in the jurisdiction and who requests that balloting materials be transmitted to the covered voter via facsimile or electronically, then for each election in which the covered voter is eligible to vote, the county clerk shall:
 - (a) Prepare a copy of the military-overseas ballot and mark the original, blank military-overseas ballot, "Faxed to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter via facsimile, or "Electronically Transmitted to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter electronically;
 - (b) Complete the county clerk's portion of the Instructions to Voter;
 - (c) If the covered voter has requested that the blank absentee ballot be transmitted through the Federal Voting Assistance Program, complete the Transmission Sheet; and
 - (d) Transmit the copy of the military-overseas ballot, Instructions to Voter, Voter Verification and Declaration, Voter Assistance Form, and Transmission Sheet, if the covered voter has requested that the military-overseas ballot be transmitted through

the Federal Voting Assistance Program, to the covered voter via the method requested by the covered voter.

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

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

Section 3. Ballot Security Requirements for Returning a Military-Overseas Ballot Transmitted to a Covered Voter Via Facsimile or Electronically.

- (1) If the covered voter requires assistance in voting, the covered voter and the person who assists the covered voter shall complete the Voter Assistance Form, except the "Section to be Completed by Precinct Election Officer";
- (2) The covered voter shall mark the military-overseas ballot and seal it in an envelope;
- (3) The covered voter shall complete and sign the Voter Verification and Declaration;
- (4) The covered voter shall place the Voter Verification and Declaration, Voter Assistance Form, if the voter received assistance in voting, and the envelope containing the military-overseas ballot in a separate envelope and seal it;
- (5) The covered voter shall print the covered voter's name, voting address, and precinct number on the back of the outer envelope;
- (6) The covered voter shall sign across the back flap of the outer envelope;
- (7) The covered voter shall print "Absentee Ballot" on the front of the outer envelope, without obstructing the address area; and
- (8) The covered voter shall mail the envelope to the county clerk.

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

Section 5. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Instructions for Voting to a Covered Voter Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot", SBE 46A, **[rev.]** July 2014;
 - (b) "Voter Assistance Form", SBE 31, 04/2022; **[and]**
 - (c) "Voter Verification and Declaration", SBE 46B, **[rev.]** July 2014;
 - (d) **"Transmission Cover Sheet". Federal Voting Assistance Program, 2017; and**
 - (e) **"Federal Postcard Application". Federal Voting Assistance Program, 2021.**
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
 - (3) **This material may also be obtained on:**
 - (a) **The board's Web site at <https://elect.ky.gov>; or**
 - (b) **The Federal Voting Assistance Program Web site at <https://fvap.gov>.**

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 11, 2022)

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 52 U.S.C. 20302(e) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.086(1)(b) authorizes the board to promulgate administrative regulations establishing security requirements for the transmission of voted absentee ballots. This administrative regulation authorizes covered voters to submit federal postcard applications via electronic mail and establishes the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail.

Section 1. Definitions.

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

(2) "Federal postcard application" is:

(a) Defined by KRS 117A.010(3); and

(b) Incorporated by reference in 31 KAR 4:131.

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

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

Section 3. Federal Postcard Applications Submitted Via Electronic Mail.

(1) A covered voter may submit a federal postcard application to the county clerk via electronic mail to register, reregister, and to apply for a military-overseas ballot.

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

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 11, 2022)

31 KAR 4:170. Exceptions to prohibition on electioneering.

RELATES TO: KRS 117.015, 117.235

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.235(3)(d), 117.235(3)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to

promulgate administrative regulations necessary to properly carry out its duties. KRS 117.235(3)(d)(e) authorizes the board to establish exceptions to the prohibition on electioneering through administrative regulations. This administrative regulation establishes these exceptions.

Section 1. Definitions.

(1) "Bumper sticker" means a sticker that measures within fourteen (14) inches by five (5) inches for display on a vehicle bearing a printed message soliciting votes for or against any bona fide candidate or ballot question in a manner which expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question.

(2) "Electioneering" is defined by KRS 117.235(3)(d).

(3) "Polling place" means a voting place established in accordance with the provisions of KRS 117.065.

(4) "Voting room" means a room in which votes are polled as established in ~~accordance with the provisions of~~ KRS 117.235(1).

Section 2. Exceptions to Electioneering. Electioneering shall not include:

(1) A bumper sticker pursuant to KRS 117.235(3)(d) affixed to a person's vehicle while parked within or passing through a distance of 100~~300~~ feet of any polling place on the day of any election for a reasonable amount of time in which to vote; or

(2) A voter's use of a personal telecommunications device, computer, or other information technology system, in the voting room to record or transmit electronically an image of his or her own personal likeness and ballot, if the voter does not use the picture:

(a) To solicit signatures to a petition or solicit votes for or against any bona fide candidate or ballot question in a manner that expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question; and

(b) Within a distance of 100 feet of any entrance to a building in which a voting machine is located if that entrance is:

1. Unlocked; and
2. Used by voters on election day.

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 11, 2022)

31 KAR 4:196. Consolidation of precincts and precinct election officers.

RELATES TO: KRS 117.066, 118.710, 118.720, 118.730

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.066(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.066(3) requires the State Board of Elections to promulgate administrative regulations to provide for a form on which a county board of elections may petition the State Board of Elections to allow for the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote. This administrative regulation establishes that form.

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

writ of election is issued under KRS 118.730. The State Board of Elections ~~may~~**[shall reserve the right to]** request, at any time, from any county, a resubmission of ~~a timely filed~~**[any]** petition to consolidate precincts and precinct election officers ~~if the petition is found to be deficient or incomplete upon review by the State Board of Elections.~~

Section 2. The submission of Form SBE 74 shall be accompanied by no less than one **(1)** map scalable to a sheet of 8.5 x 11 inch paper of the county showing the location of any consolidated precincts comprising a county-wide vote center.

Section 3. Incorporated by Reference.

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

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

(3) This material may also be obtained on the board's Web site at <https://elect.ky.gov>.

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

**STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 11, 2022)**

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

RELATES TO: KRS 120.205, 120.215

STATUTORY AUTHORITY: KRS 117.015(1)(a), **120.205, 120.215**

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

Section 1. ~~If [in the event that]~~ a board is established under KRS 120.205 or KRS 120.215 to try a contested election of a Governor and Lieutenant Governor or a member of the General Assembly, the possession of all components of a voting system, ballots, ballot boxes, precinct rosters, and any other voting records sent for by the board shall not transfer unless **the transfer is:**

(1) Documented in writing on Form SBE 75, ["Election Contest Chain-of-Custody"; and

(2) In compliance with the directions on the form.["]

Section 2. Incorporated by Reference.

(1) "Election Contest Chain-of-Custody," Form SBE 75, **08/2022[04/2022]**, is incorporated by reference.

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

(3) This material is also available on the board's Web site at <https://elect.ky.gov>.

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**STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 11, 2022)**

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

RELATES TO: KRS 117.383

STATUTORY AUTHORITY: KRS 117.015(1)(a), **117.383(8), (9)**

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

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

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

**STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 11, 2022)**

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

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

STATUTORY AUTHORITY: KRS 117.079, **117.086(5), 117A.030(2), 117A.130, 52 U.S.C. 20302(a)(3)**

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

Section 1. Definitions.

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

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

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

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

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

(1) Not open the inner security envelope;

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

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

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

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

Section 4. Receipt of State Ballot Overrides Federal Write-in Absentee Ballot.

(1) The federal write-in absentee ballot shall remain in the locked ballot box pursuant to KRS 117.086(3) and not be opened until after the deadline for receipt of the state absentee ballot.

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

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

CONTACT PERSON: Taylor Brown, General Counsel, 40 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

STATE BOARD OF ELECTIONS
(As Amended at ARRS, October 11, 2022)

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

RELATES TO: KRS 117.001, 117.025, 117.085, 117.086, 117.0861, 117.087, 117.145, 117.225, 117.228, 117.295(1), 117.365

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.085, 117.086, 117.087(3)(d), 117.145, 117.228

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. Several Kentucky Revised Statutes in Chapter 117 require the State Board of Elections to promulgate administrative regulations that provide for measures that establish standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and

secure manner. This administrative regulation provides for those measures.

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

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

Section 3.

(1) Upon the time of certification of each candidate and each question to be voted upon, all pre-printed paper ballots shall be secured by the county clerk of each county, under lock and key, in an area under the direct control of the county clerk and approved by the county board of elections.

(2) The possession of all pre-printed ballots shall be accounted for on SBE Form 76, [""]Ballot Reconciliation Statement. [""]

(3) If [Upon the need for] paper ballots need to be printed at a county clerk's office, an accounting of the printed ballots shall be made on either the SBE Form 76, [""]Ballot Reconciliation Statement, [""] or by the printing equipment.

(4) Upon the transfer of ballots from the area under the direct control of the county clerk to a polling location, the transfer shall be noted on the SBE Form 76, [""]Ballot Reconciliation Statement. [""]

(5) Beginning with the in-person casting of ballots during the period described in KRS 117.076[117.085(2)], each voted in-person ballot shall remain in a locked and sealed receptacle, until the conclusion of the period described in KRS 117.295(1).

(6) At the conclusion of each day of voting, an accounting of the number of all voted, unvoted, and spoiled ballots shall be recorded on the SBE Form 76, [""]Ballot Reconciliation Statement. [""]

(7) All ballots and election materials not secured in an area under the direct control of the county clerk after the close of polls shall be secured at the voting location in a secure manner, based upon the advice and recommendations of the county board of elections and the sheriff from the time described in KRS 117.076[117.085(2)] until the conclusion of voting on the day of an election.

(8) As mail-in absentee ballots are received by county clerks, they shall have their unique barcode or label scanned.

(9) Upon each mail-in absentee ballot being processed, the unique barcode or label shall be scanned again.

(10) If a mail-in absentee ballot is found to be without the need for a signature cure, or a mail-in absentee ballot has been returned along with a completed SBE Form 77, ["Missing-or-"]Discrepant Mail-in Absentee Signature, [""] the ballot shall be recorded into an optical scanner, to be deposited in a locked and sealed receptacle for the period described in KRS 117.295(1).

(11) Any completed SBE Form 76, [""]Ballot Reconciliation Statement [""] shall be turned over to the local Commonwealth's Attorney along with any other materials required under KRS 117.365.

Section 4. A[Any] voter who is disabled may request a mail-in absentee ballot via an online accessible ballot portal, which shall conform to web accessible design standards as established/set forth by the W3C Web Accessibility Initiative at <https://www.w3.org/WAI/>.

Section 5.

(1) Upon receipt of a valid mail-in ballot request, through the online request portal or other valid request method, the request of the voter shall be noted in the Voter Registration System, and reflected in the electronic pollbooks used by precinct election officers.

(2) ~~If [Should]~~ a voter noted to have requested a mail-in absentee ballot ~~appears[appear]~~ at a polling location ~~[in-order-]to~~ vote in-person, the precinct election officer shall communicate with the county clerk, who shall make a determination as to whether the requested mail-in absentee ballot has been completed and returned as a cast ballot by the voter.

(3) If the mail-in absentee ballot is found to have been completed and returned as a cast ballot, the voter shall not be permitted to cast an in-person vote.

(4) If the mail-in absentee ballot is found not to have been completed and returned as a cast ballot and the ballot has been returned to the county clerk no later than seven (7) days prior to the date of the election as required by KRS 117.085(8), the county clerk shall immediately cancel the issued ballot in the Voter Registration System and allow the voter to cast an in-person ballot after the voter completes Form SBE 32, ~~[""]~~Oath of Voter, ~~[""]~~ copies of which shall be forwarded to the Commonwealth's Attorney.

Section 6.

(1) A voter, or an individual identified by KRS 117.0861(1), may deliver a mail-in absentee ballot to the office of the county clerk in the county where the voter is registered, ~~to a secure ballot drop-box in the county where the voter is registered,~~ or to a secure drop-off ~~receptacle[location]~~ if one is maintained by the county clerk in the county where the voter is registered, rather than mailing the ballot via the United States Postal Service.

(2)(a) ~~A[Any]~~ county choosing to use a receptacle for ballot drop-off other than a drop-box provided by the State Board of Elections, ~~shall[must]~~ formally seek the State Board of Elections' approval of the receptacle before any ballot ~~is[shall-be]~~ allowed to be deposited inside.

(b) ~~A[Any]~~ county choosing to utilize a drop-off receptacle, ~~including those provided by the State Board of Elections,~~ shall ~~provide information about the receptacle to[inform]~~ the State Board of Elections ~~as required by KRS 117.086(2)(b)[of the number of receptacles being used, the type of each receptacle being used, and the location of each drop-off location].~~

(3) ~~A drop-box or[Any]~~ receptacle located outside a County Clerk's Office shall be ~~located, secured, and identified as required by KRS 117.086(2)(c)[placed in a well-lit, easily accessible location, be bolted down, and be under video surveillance at all times].~~

(4) ~~A[Any]~~ drop-box ~~or receptacle~~ located inside ~~[""]~~ shall be under direct supervision ~~as required by KRS 117.086(2)(d) and of the staff of the county clerk at all times that it is accessible to the public. All drop-boxes used for the receipt of ballots]~~ shall be clearly marked as for use by voters in the election, so as to differentiate the drop-box ~~or receptacle~~ from any other that may be in use in the area.

(5) Any other non-elections related drop-box in use by a county clerk for any other official business shall clearly indicate that the other drop-box is not for the return of election material.

(6)(a) ~~The[Each]~~ county clerk ~~shall empty the drop box and any[utilizing one or more ballot drop-off]~~ receptacle ~~used[shall empty each receptacle at least once]~~ each business day ~~as required by KRS 117.086(2)(e)[of the county clerk's office,~~ and secure the absentee ballots therein in a manner consistent with KRS 117.086(3) ~~[""]~~; ~~however, county clerks shall empty receptacles more frequently than daily, as needed, so as to reasonably accommodate the volume of voter-delivered absentee ballots].~~

(b) Upon each emptying of a ~~drop-box or~~ receptacle, the individuals collecting absentee ballots pursuant to KRS 117.086(2)(e) shall complete Form SBE 78, ~~[""]~~Daily Absentee Drop-Box Verification Sheet, ~~[""]~~

Section 7.

(1) After the receipt of a mail-in absentee ballot by the county clerk, ~~the signature shall be examined in accordance with KRS 117.087(3)(c)2 and 5[and the examination of the signatures located on the outer envelope and the detachable flap, as well as, the voter's signature of record,]~~

(2) If a signature match cannot be made, ~~notice shall be provided to the voter as required by KRS 117.087(3)(c)5[the county board of elections, central counting board, or the county clerk shall make a reasonable effort to contact the voter],~~ which shall, at minimum, include the mailing of Form SBE 77, ~~[""]~~Discrepant Mail-in Absentee Signature ~~[""]~~, ~~to provide notice to the voter that they may cure their signature before the closing of the polls on the day of the election].~~

(3) Upon the county board of elections, central counting board, or the county clerk determining the need for a signature cure, the ballot shall be noted in the Voter Registration System and the county clerk shall, on that same day, input the voter's address and any other required data into the SBE 77 and mail the form to the voter.

Section 8.

(1) A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.001(15), shall:

(a) Meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, ~~[""]~~Voter Affirmation Form; ~~and[""]~~

(b) ~~Provide alternative proof of identification as required by KRS 117.228(2).~~

(2) A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, ~~[""]~~Election Officer Affirmation Form. ~~[""]~~

(3) Both the SBE 71 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.

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

Section 10. ~~Any] voter[who is qualified to vote on election day in the county of his or her residence]~~ may make application to cast an excused in-person absentee ballot ~~pursuant to KRS 117.076(2)[during normal business hours during the six (6) business days immediately preceding the Thursday of no-excuse in-person absentee voting]~~ by completing SBE Form 44E, ~~[""]~~Excused In-Person Absentee Ballot Application. ~~[""]~~

Section 10.[Section 11.] The status of the tamper-resistant seal and the number on the public counter ~~[to be recorded from all voting equipment to be used,]~~ shall be recorded ~~as required by KRS 117.076(12)~~ before and after each day of in-person absentee voting, on SBE Form 79, ~~[""]~~Daily Voting Machine Verification Sheet, ~~[""]~~ which ~~[""]~~ cumulatively shall be collected by the County Clerk.

Section 11.[Section 12.] Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Oath of Voter ~~[""]~~, ~~[SBE]~~Form ~~SBE~~ 32, 04/2022;

(b) "Ballot Reconciliation Statement ~~[""]~~, Form SBE 76, 04/2022;

(c) "Discrepant Mail-in Absentee Signature ~~[""]~~, Form SBE 77, 08/2022[04/2022];

(d) "Voter Affirmation Form ~~[""]~~, Form SBE 71, 04/2022;

(e) "Election Officer Affirmation Form", Form ~~SBE~~ 72, 04/2022;

(f) "Excused In-Person Absentee Ballot Application", Form ~~SBE~~ 44E, 04/2022;

(g) "Daily Voting Machine Verification Sheet", Form ~~SBE~~ 79, 04/2022; ~~and~~

(h) ~~"Daily Absentee Drop-Box Verification Sheet", Form SBE 78, 04/2022.~~

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

(3) This material may also be obtained on the board's Web site at <https://elect.ky.gov>.

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)**

106 KAR 1:141. Emergency management funding.

RELATES TO: KRS 39A.050(2)(i), (j), (m)-(j), 39C.010, 42 U.S.C. 5170(c), 5172, 5173, 5196, 50 U.S.C. 1521

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39C.100, 42 U.S.C. 5170(c), 5172, 5173, 5196, 50 U.S.C. 1521

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(m) requires the Division of Emergency Management to promulgate administrative regulations to implement KRS Chapter 39A through 39F. KRS 39A.050(2)(i) requires[and (j) require] the division to provide funds to a city, county, or charter county government to support a local emergency management agency and comprehensive emergency management program. This administrative regulation establishes eligibility requirements of a city, county, urban-county, or charter county government for emergency management funding.

Section 1. Definitions.

(1) "Applicant" means a local emergency management agency of a city, county, urban-county, or charter county government established pursuant to KRS 39B.010 and 106 KAR 1:231.

(2) "Emergency management funding" means the funds defined by[in] subsections (3) through, ~~(4), (5), and~~ (6) of this section.

(3) "Chemical Stockpile Emergency Preparedness Program Fund" means the funding established in 50 U.S.C. 1521.

(4) "Federal Disaster and Emergency Assistance Fund" means the funding granted to the division by the Federal Emergency Management Agency, under 42 U.S.C. 5170(c), 5172, and 5173.

(5) "Federal Emergency Management Assistance Fund" means the funding granted to the division by the Federal Emergency Management Agency, under 42 U.S.C. 5196.

(6) "Supplementary State Fund" means the fund established in KRS 39C.010 and 39C.020.

Section 2. Eligibility.

(1) To be eligible for emergency management funding, a city, county, urban-county, or charter-county government shall:

(a) Submit documentation of the establishment of a local emergency management agency pursuant to 106 KAR 1:231;

(b) Submit documentation of the appointment of a local director pursuant to 106 KAR 1:241;

(c) Submit a signed memorandum of agreement issued by the Division of Emergency Management; and

(d) Apply for emergency management funding through a local director who shall:

1. Ensure use of an appropriate application form provided by the Division of Emergency Management;

2. Ensure the official name of a local emergency management agency is used to specify the applicant in an application;

3. Exercise signatory authority established in KRS 39B.030(9) to execute an application and a memorandum of agreement issued by the Division of Emergency Management;

4. Maintain a file of an application and supporting material; and

5. Submit applications, memoranda of agreement, and supporting materials prepared for the city, county, urban-county, or charter-government.

(2) A local director shall submit the materials required in subsection (1) of this section to an area manager, or as directed by the Division of Emergency Management, for transmittal to the

director.

Section 3. Compliance Requirements.

(1) In maintaining eligibility of a city, county, urban-county, or charter-county government for emergency management funding, a local emergency management agency shall comply with 106 KAR 1:171, 201, 211, and 221.

(2) Failure to comply with applicable federal and state requirements may prevent city, county, urban-county, or charter-governments from receiving reimbursement funding for emergency management programs.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)**

106 KAR 1:171. Local emergency management agency program quarterly report.

RELATES TO: KRS 39A.050(2)(j), 39B.020, 39C.050(1), 39C.080(2), 6 U.S.C. 762, 42 U.S.C. 5121 et seq., 5196, 50 U.S.C. 1521

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39C.100, 42 U.S.C. 5196, 50 U.S.C. 1521

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(m) requires the Division of Emergency Management to promulgate administrative regulations to implement KRS Chapter 39A through 39F. KRS 39A.050(2)(j) and 39C.080(2) require local emergency management directors submit work activity progress reports to the Division of Emergency Management quarterly. This administrative regulation establishes the submission process and procedure for local emergency management directors to meet the quarterly reporting requirement.

Section 1. Quarterly Report Documentation Requirements. (1) A local emergency management director[Local directors] shall submit quarterly report documentation to the Division of Emergency Management by January 15, April 15, July 15, and October 15, through the online portal at <http://www.kyemweb.com>[designated by the Division of Emergency Management for this purpose].

(2) Quarterly report documentation shall include minimum required documentation for a scheduled work plan objective as established[specified] in the Emergency Management Assistance (EMA) Annual Program Guidance.

Section 2. Incorporation by Reference. (1) "[The] Emergency Management Assistance (EMA) Annual Program Guidance," 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Emergency Management, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

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DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)

106 KAR 1:181. Emergency management project application.

RELATES TO: KRS 39A.050(2)(j), 39C.060, 39C.070(2), 42 U.S.C. 5196

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39C.100, 42 U.S.C. 5196

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(m) requires the Division of Emergency Management to promulgate administrative regulations to implement KRS Chapter 39A through 39F. KRS 39A.050(2)(j) and 39C.070(2) require[direct] the Division of Emergency Management to require a local emergency management agency to submit a project application, with supporting material, to request financial assistance from the Emergency Management Assistance (EMA) Fund for administrative or operational equipment and for capital and procurement projects. This administrative regulation establishes an application form to request financial assistance from the EMA fund for a project.

Section 1. Definitions.

(1) "Emergency Management Assistance Fund" or "EMA Fund" means the funds defined by[~~in~~] 106 KAR 1:141, Section 1(5) and (6).

(2) "Project" means a purchase or procurement of administrative or operational equipment or capital expenditure, in excess of \$500.

(3) "Project application" means a completed Kentucky[KYEM Form 170, "Division of Emergency Management State Project Application", KYEM Form 170.]"

Section 2. Project Application Requirement. To apply for financial assistance from the Emergency Management Assistance Fund for a project, a local director shall submit a completed project application, as established in KRS 39C.060.

Section 3. Incorporation by Reference.

(1) "Kentucky [KYEM Form 170, "Division of Emergency Management State Project Application", KYEM Form 170. February 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable Copyright law, at Division of Emergency Management, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

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DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)

106 KAR 1:191. Emergency management project application reimbursement.

RELATES TO: KRS 39A.050(2)(j), 39C.070(2), 42 U.S.C. 5196

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39C.100, 42 U.S.C. 5196

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(m) requires the Division of Emergency Management to promulgate administrative regulations to implement KRS Chapter 39A through 39F. KRS 39A.050(2)(j) and 39C.070(2) require[directs] the Division of Emergency Management to require a local emergency management director to submit a reimbursement claim, with supporting documentation, to request financial reimbursement for an approved project

application from the Emergency Management Assistance (EMA) Fund. This administrative regulation establishes the reimbursement procedure required to request reimbursement from the EMA fund for an approved project application as established in 106 KAR 1:181.

Section 1. Definition. "Emergency Management Assistance Fund" or "EMA Fund" means the funds defined by[~~in~~] 106 KAR 1:141, Section 1(5) and (6).

Section 2. Reimbursement Documentation. To apply for reimbursement from the EMA Fund, a local emergency management director shall submit a completed [KYEM Form 160, "Local Emergency Management Assistance Claim Form," KYEM: Form 160, signed by the local emergency management director and the County Treasurer or County Judge/Executive, and vendor invoices or receipts to a Division of Emergency Management area manager and per the process directed by the Division of Emergency Management.

Section 3. Incorporation by Reference.

(1) [KYEM Form 160, "Local Emergency Management Assistance Claim Form," KYEM: Form 160, August 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable Copyright law, at Division of Emergency Management, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

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DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)

106 KAR 1:201. Local emergency management plan.

RELATES TO: KRS 39A.070(5), 39B.020(3)(d), 39B.030(3), 39B.060, 39C.050(3), 39E.010(1), 39E.110(1)(a)(e),(f), 39E.150, 39F.190, 42 U.S.C. 11001-11050

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39E.040(6), 39E.080(4), 42 U.S.C. 1102(c), 1103(c), (d).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(m) requires the Division of Emergency Management to promulgate administrative regulations to implement KRS Chapter 39A through 39F. KRS 39B.030(3) requires local emergency management directors develop a local emergency management plan consistent with 106 KAR Chapter 1[administrative regulations promulgated by the Division of Emergency Management]. This administrative regulation establishes the requirements for processing a local emergency management plan.

Section 1. Definitions. (1) "Federal fiscal year" means a period beginning October 1 of a calendar year and ending September 30 of the following calendar year.

(2) "Local plan" means the written emergency operations plan of a city, county, charter county, or urban-county government pursuant to KRS Chapters 39A through[to] 39F.

Section 2. Local Plan Requirement. (1) A local plan shall:

(a) State[Specify] title headings for a basic plan and annexes corresponding to the Kentucky Emergency Management Operation Plan;

(b) State[Specify] known hazards that might[which may] impact a local jurisdiction and a detailed analysis of each hazard;

(c) Catalogue emergency management and response personnel, equipment, facilities, supplies, materials, and services;

(d) Identify primary and alternate emergency operations center (EOC) locations by facility names, address, and latitude and longitude;

(e) Identify primary and alternate points of distribution (POD) locations by facility names, address, and latitude and longitude;

(f) Identify public, private, and volunteer agencies, entities, and departments comprising the membership of a local emergency management agency and emergency management functions (ESFs);

(g) Describe the duties and responsibilities of each local emergency management agency and emergency management functions (ESFs) assigned with a local plan; and

(h) Incorporate incident command or management system procedures into the direction and control annex.

(2) Local plan format and content shall comply with:

(a) *The Kentucky Division of Emergency Management Standard Operating Guide for the Review, Edit, and Submission of a County Emergency Operations Plan, 2022 Emergency Management Preparedness Grant Cycle*~~planning guidance~~;

(b) ~~[Kentucky Emergency Response Commission planning guidance~~;

(c) ~~Responsibilities of the LEPC, Kentucky Emergency Management, Version 7~~~~local emergency planning committee~~; and

(d) ~~If~~~~Where~~ applicable, planning guidance published jointly by the Federal Emergency Management Agency and the Department of the Army, ~~Planning Guidance for the Chemical Stockpile Emergency Preparedness Program~~.

Section 3. Local Plan Process. (1) Before July 31 of each federal fiscal year, a local director shall ensure completion of the local plan.

(2) To complete and process a local plan, a local director shall:

(a) Review the existing local plan;

(b) Consult the local emergency planning committee, the local search and rescue coordinator, elected officials, department heads, agency chiefs, and public and private officers and leaders or their designees who are members or participants of the emergency management agency and emergency management functions (ESFs);

(c) Prepare and submit a local plan draft to an area manager by May 1 annually;

(d) Submit corrected, amended, revised, or supplemental plan material ~~[specified and]~~ requested by an area manager within thirty (30) calendar days following receipt of a written request;

(e) Upon receipt of written concurrence of the Director of the Division of Emergency Management or designee, submit a local plan draft for official adoption as established~~[specified]~~ in KRS 39B.030(3); and

(f) Distribute an officially adopted local plan to emergency management agency and emergency support functions (ESFs) plan custodians, the chairperson of the local emergency management planning committee, local search and rescue coordinator, area manager, and the Director of the Division of Emergency Management by July 31 annually.

(3) To process a local plan, an emergency management committee, through its chairperson or other authorized representative, shall:

(a) Review the local plan for information reporting consistent with KRS 39E.120, 39E.210, and 39E.220, within thirty (30) calendar days of receipt;

(b) Identify within the local plan's Hazard Analysis section, facilities required to report under EPCRA, SARA Tier III, and input data within the KYEM Tier II reporting software system; and

(c) Reference within the local plan's ESF 10 Annex, the Extremely Hazardous Substances (EHS) Facility Emergency Response Plan~~[Plan(s)]~~ in accordance with 106 KAR 1:081 and the Local Emergency Planning Committee (LEPC) Annual Certification Letter (ACL).

(4) A local search and rescue coordinator shall prepare and submit a local search and rescue plan draft to the local director by July 31 of each federal fiscal year, by:

(a) Reviewing an existing local plan required by KRS 29F.190; and

(b) Preparing and submitting to the local director an updated plan draft or written notice that an existing local plan has been reviewed and is current as of the date of the notice.

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

(a) *Standard Operating Guide for the Review, Edit, and Submission of a County Emergency Operations Plan, 2022 Emergency Management Preparedness Grant Cycle*, 2022;

(b) *Responsibilities of the LEPC, Kentucky Emergency Management, Version 7*, September 2021; and

(c) *Planning Guidance for the Chemical Stockpile Emergency Preparedness Program*, May 1996.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Emergency Management, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

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**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)**

106 KAR 1:211. Local emergency management training.

RELATES TO: KRS 39A.050(2)(l), 39B.020(1), (3)(d), 39C.050(1), (2), **29 C.F.R. 1910.120(q)(6)**

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39C.050(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(l) requires the Division of Emergency Management to institute emergency management training programs. KRS 39C.050(1) and, (2) require local emergency management agency personnel to complete required training. This administrative regulation establishes training requirements for a local director and other local emergency management agency personnel.

Section 1. Definitions.

(1) "Emergency Management Development Program" means the training curriculum established in Section 2(2) and (3) of this administrative regulation.

(2) "Emergency management training" means a seminar, workshop, course, class, or instruction conducted, sponsored, established~~[specified]~~, offered through, or approved by the Division of Emergency Management.

(3) "Federal fiscal year" means a period beginning October 1 of a calendar year and ending September 30 of the following calendar year.

(4) "Local staff member" means a deputy director, paid or volunteer, or a person appointed to a local emergency management agency pursuant to KRS 39B.070(3); and established~~[specified]~~ in KRS 39C.050(2).

(5) "Successfully complete" means to attend or participate in emergency management training and to acquire and submit a copy of instructor-provided training completion certificate or record to the Division of Emergency Management.

Section 2. Local Director Training Requirement.

(1) Within thirty (30) calendar days of appointment pursuant to KRS 39B.020(1), a local director shall successfully complete an orientation conducted by the Division of Emergency Management covering Kentucky's emergency management system and programs administered by local directors in Kentucky.

(2) Within the first full federal fiscal year following appointment pursuant to KRS 39B.020(1), a local director shall successfully complete a course~~[the following]~~:

(a) ~~[A—course]~~ Covering incident command and incident management system basic concepts;

(b) ~~[A—course]~~ Covering mitigation benefits, methods, resources, and planning;

(c) ~~[A—course]~~ Of at least four (4) hours covering emergency operations center basic concepts;

(d) ~~[A—course]~~ Conducted by the Division of Emergency Management covering rapid assessment of disaster scenes and proper damage and reporting procedure; and

(e) ~~[A—course]~~ Of at least eight (8) hours covering hazardous materials and “first responder awareness level” emergency response competencies as established by 29 C.F.R. 1910.120(q)(6)(i)[defined by the U.S. Occupational Safety and Health Administration], to include instruction on employer and community operating procedures.

(3) By the second full federal fiscal year following appointment, a local director shall begin study to successfully complete ~~a~~the following:

(a) ~~[A—]~~ Course conducted or approved by the Division of Emergency Management, in accordance with KRS 39A.070(3) and 39C.050(10), covering principles in the integrated emergency management system, including interagency teams, coordination methods, and emergency or disaster case studies;

(b) ~~[A—]~~ Course conducted by the Division of Emergency Management covering development of a local emergency operation plan consistent with the Kentucky Emergency Operations Plan;

(c) ~~[A—]~~ Course of at least twenty-four (24) hours covering exercise assessment, design, delivery, and evaluation skills, including a practical application component;

(d) ~~[A—]~~ Course of at least two (2) hours covering local emergency management planning committee member duties and Kentucky’s system for implementation of the federal Emergency Planning and the Community Right to Know Act (EPCRA);

(e) ~~[A—]~~ Course of at least twelve (12) hours covering hazardous materials and “first responder operations level” emergency response competencies as established by 29 C.F.R. 1910.120(q)(6)(ii)[defined by the U.S. Occupational Safety and Health Administration], to include instruction on Commonwealth of Kentucky hazardous materials response plan;

(f) ~~[A—]~~ Course of at least eight (8) hours approved as established by 29 C.F.R. 1910.120(q)(6)(ii) or offered by the Division of Emergency Management covering the eight (8) component elements of an incident command system and incident management system, to include practical application;

(g) ~~[A—]~~ Module offered by the Division of Emergency Management covering the incident command system and incident management system competencies for on-the-scene incident commander level as established by 29 C.F.R. 1910.120(q)(6)(v)[defined by the U.S. Occupational Safety and Health Administration] for hazardous materials response; and

(h) ~~[A—]~~ Course of at least four (4) hours covering requirements and procedures for obtaining and implementing state and federal disaster assistance programs.

(4) A local director shall complete:

(a) At least two (2) of the courses established[specified] in subsection (3) of this section in each consecutive federal fiscal year until all courses are completed;

(b) All courses[coursed] of the Emergency Management Development Program within the first five (5) full federal fiscal years following appointment pursuant to KRS 39B.020(1);

(c) Emergency management training conducted annually at the in each federal fiscal year at the Governor’s Emergency Management Workshop; and

(d) At least thirty-two (32) hours of emergency management training in each federal fiscal year following appointment or reappointment pursuant to KRS 39B.020(1) or (3).

(5) In meeting the annual training requirement established in subsection (4)(d) of this section, a local director shall receive credit for:

(a) Emergency management training completed in compliance with subsections (2) and (3) of this section;

(b) No more than four (4) hours per emergency management

training completed on-line or through a correspondence course, not to exceed twelve (12) hours annually;

(c) No more than four (4) hours per Division of Emergency Management sponsored emergency management training completed on-line or through a correspondence course, not to exceed eight (8) hours annually; and

(d) The training required by subsection (4)(c) of this section.

Section 3. Local Staff Member Training Requirement. (1) In each full federal fiscal year following appointment, a deputy director shall successfully complete at least sixteen (16) hours of training selected from:

(a)[(1)] Emergency management training listed in subsection (2) of this section;

(b)[(2)] No more than four (4) hours per emergency management training completed on-line or through a correspondence course, not to exceed a total of eight hours; and

(c)[(3)] No more than four (4) hours per Division of Emergency Management sponsored emergency management training course a deputy director instructs, not to exceed a total of eight (8) hours.

(2) Except as established[provided] in subsection (1)(a) of this section, a local staff member shall successfully complete at least twelve (12) hours of emergency management or administrative training in each full federal fiscal year following appointment.

Section 4. Request for Training Credit.

(1) In meeting the annual emergency management training requirement established[specified] in Section 2(4)(d) or 3 of this administrative regulation, a local director or local staff member may request credit for training not conducted or sponsored by the Division of Emergency Management.

(2) To request credit for training not conducted or sponsored by the Division of Emergency Management, a local director or local staff member shall submit a completed ~~[KYEM Form 300, “Request for Training Credit, KYEM Form 300,”]~~ to an area manager for transmittal to the Director of the Division of Emergency Management for each training course or instructional offering for which credit is requested.

(3) A local director or local staff member may receive credit for emergency management training under this section if:

(a) A completed ~~[KYEM Form 300, “Request for Training Credit, KYEM Form 300,”]~~ is approved in writing by the Director of the Division of Emergency Management; and

(b) The training approved for credit is successfully completed.

Section 5. Training Documentation. A local director or local staff member shall submit documentation of all successfully completed emergency management training to an area manager within thirty (30) calendar days following completion of training.

Section 6. Incorporation by Reference.

(1) ~~[KYEM Form 300, “Request for Training Credit”]~~, KYEM Form 300, September 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Emergency Management, Emergency Operations Center, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

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DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)

106 KAR 1:221. Local emergency management exercise.

RELATES TO: KRS 39A.050(2)(l), 39C.050(4), 39E.010(1), 39E.150, 42 U.S.C. 11001-11050

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39E.040(6), 39E.080(4), 42 U.S.C. 11003(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(m) requires the Division of Emergency Management to promulgate administrative regulations to implement KRS Chapter 39A through 39F. KRS 39A.050(2)(l) requires the Division of Emergency Management to institute exercise programs for local emergency management. This administrative regulation establishes requirements for exercising a local emergency management plan.

Section 1. Definitions.

(1) "Exercise" means a test and evaluation of a local plan.

(2) "Federal fiscal year" means a period beginning October 1 of a calendar year and ending September 30 of the following calendar year.

(3) "Full-scale exercise" means a comprehensive test and evaluation of a local plan utilizing written objectives that emphasize the practice of multiple emergency management functions and require actual deployment of policy, coordination, and operations personnel, equipment, and resources in response to a simulated emergency.

(4) "Functional exercise" means a limited test and evaluation of a local plan utilizing written objectives that emphasize the practice of direction and control procedures and requiring[require] actual and simulated utilization of policy, coordination, and operations personnel, equipment, and resources in response to a simulated emergency.

(5) "Local plan" means the written emergency operations plan of a city, county, charter county, or urban-county government, pursuant to KRS Chapters 39A through[to] 39F.

(6) "Tabletop exercise" means a group discussion led by a facilitator utilizing a written scenario narrative and a set of problem statements, directed messages, or prepared questions designed to test and evaluate a local plan.

Section 2. Tabletop Exercise Requirement. A tabletop exercise shall consist of development and use of:

(1) [Development and use of.] A written scenario based on a hypothetical emergency situation; and

(2) [Development and use of.] At least fifteen (15) written problem statements, directed messages, or prepared discussion questions worded specifically to test or evaluate the provisions of the local plan.

Section 3. Functional Exercise Requirement. A functional exercise shall consist of:

(1) At least twenty-five (25) percent staffing of a primary or alternate local emergency operation center;

(2) An operational test of communications and emergency power equipment in a local emergency operations center;

(3) Use of message forms or status boards in a local emergency operations center;

(4) Development and use of a written scenario based upon one (1) or more hazards established[specified] in the local plan;

(5) Development and use of five (5) or more written exercise objectives;

(6) Testing of seven (7) or more disaster and emergency response functions specified in a local plan;

(7) Development and use of written evaluation criteria;

(8) Designation and use of a lead evaluator; and

(9) Conduct of an exercise critique involving exercise participants.

Section 4. Full-scale Exercise Requirement. A full-scale

exercise shall consist of:

(1) Completion of the requirements of Section 3 of this administrative regulation, except subsections (1), (5), and (6);

(2) At least seventy-five (75) percent staffing of a primary or alternate local emergency management operations center;

(3) Development and use of ten (10) or more written exercise objectives;

(4) Testing of fifteen (15) or more disaster and emergency services response functions established[specified] in a local plan; and

(5) Field deployment of at least five (5) emergency response and support agencies.

Section 5. Local Exercise Requirement.

(1) Except as established[provided] in subsection (2) of this section, a local director shall:

(a) Schedule, design, conduct, and document one (1) tabletop functional, or full-scale exercise by September 30 of each federal fiscal year; and

(b) At least once during each period of four (4) consecutive federal fiscal years, include in an exercise established[specified] in paragraph (a) of this subsection, testing and validation of a local plan established[specified] in KRS 39E.150.

(2) During each period of four (4) consecutive federal fiscal years, a local director shall schedule, design, conduct, and document at least one (1) functional or full-scale exercise in lieu of one (1) tabletop exercise established[specified] in subsection (1)(a) of this section.

(3) Within thirty (30) days prior to conducting a tabletop exercise established[specified] in subsection (1)(a) of this section, a local director shall submit a final draft of the following to the area manager:

(a) A completed [KYEM Form 201, "Exercise [Narrative] Scenario, KyEM Form 201,"] or computer-generated equivalent;

(b) A copy of the written exercise discussion problem statements, directed messages, and prepared questions established pursuant to Section 2(2) of this administrative regulation; and[.]

(c) A completed [KYEM Form 202, "Exercise Objectives, KyEM Form 202,"] or computer-generated equivalent.

(4) Within thirty (30) calendar days following completion of a tabletop exercise, a local director shall submit to an area manager a written exercise report consisting of the following:

(a) A completed [KyEM Form 201, "Exercise [Narrative] Scenario, KyEM Form 201,"] or computer-generated equivalent; [.]

(b) A copy of the written exercise discussion problem statements, directed messages, and prepared questions established pursuant to Section 2(2) of this administrative regulation; [.]

(c) A completed [KyEM Form 205, "Exercise Participant Roster, KyEM Form 205,"] or computer-generated equivalent; and

(d) A completed [KyEM Form 206, "Exercise Critique, KyEM Form 206,"] or computer-generated equivalent.

(5) Within thirty (30) calendar days prior to conducting a scheduled functional or full-scale exercise, a local director shall submit the final draft of the following forms or computer-generated equivalent to the area manager:

(a) A completed [KYEM Form 201, "Exercise [Narrative] Scenario, KyEM Form 201,"] and

(b) A completed [KYEM Form 202, "Exercise Objectives, KyEM Form 202,"]

(6) Within thirty (30) calendar days following completion of a functional or full-scale exercise, a local director shall submit to a county judge/executive, mayor, or area manager a written local exercise report consisting of the following completed forms or their computer-generated equivalent:

(a) [KYEM Form 201, "Exercise [Narrative] Scenario, KyEM Form 201,"]

(b) [KYEM Form 202, "Exercise Objectives, KyEM Form 202,"]

(c) [KYEM Form 203, "Exercise Evaluation Criteria, KyEM

Form 203;[;]

(d) ~~[KYEM Form 204, “]Master Sequence of Events List,~~
KyEM Form 204;[;]

(e) ~~[KYEM Form 205, “]Exercise Participant Roster,~~ **KyEM Form 205;[;]**

(f) ~~[KYEM Form 206, “]Exercise Critique,~~ **KyEM Form 206;[;]**
and

(g) ~~[KYEM Form 207, “]Exercise~~ **After Action[After-Action]**
Report.[;]

Section 6. Exercise Substitution.

(1) In lieu of conducting and documenting a scheduled tabletop, functional, or full-scale exercise in a federal fiscal year, a local director may request to substitute the actual response of a local disaster and emergency services organization to a major emergency situation or disaster occurrence in a local jurisdiction during the federal fiscal year of the actual response.

(2) A local director requesting to substitute an actual response to a major emergency or disaster occurrence, in lieu of conducting and documenting a scheduled tabletop, functional, or full-scale exercise shall, within sixty (60) calendar days following termination of associated emergency response operations, **shall** submit to the area manager[;] for transmittal to the Director of the Division of Emergency Management, an after-action report in memorandum form containing the following information:

(a) A brief description of the type or kind of emergency situation or disaster that occurred in the local jurisdiction;

(b) Date of the emergency situation or disaster occurrence;

(c) The geographic area adversely affected by the emergency situation or disaster;

(d) The estimated population in the adversely affected geographic area;

(e) The major problems experienced and the actions taken by local government to mitigate or respond to the major problems;

(f) Significant assets utilized to mitigate or respond to the emergency situation or disaster; and

(g) Critique comments describing the general effectiveness of the mitigation or response efforts of local government forces, including the adequacy of the local plan and any significant deficiencies noted.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) ~~[KYEM Form 204, “]Exercise~~ **[Narrative–]Scenario[;];**, **KyEM Form 201, June 2022;**

(b) ~~[KYEM Form 202, “]Exercise Objectives[;];~~ **KyEM Form 202, June 2022;**

(c) ~~[KYEM Form 203, “]Exercise Evaluation Criteria[;];~~ **KyEM Form 203, June 2022;**

(d) ~~[KYEM Form 204, “]Master Sequence of Events List[;];~~ **KyEM Form 204, June 2022;**

(e) ~~[KYEM Form 205, “]Exercise Participant Roster[;];~~ **KyEM Form 205, September 2000;**

(f) ~~[KYEM Form 206, “]Exercise Critique[;];~~ **KyEM Form 206, June 2022;** and

(g) ~~[KYEM Form 207, “]Exercise~~ **After Action[After-Action]**
Report[;]; **KyEM Form 207, June 2022.**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Emergency Management, Emergency Operations Center, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)

106 KAR 1:231. Local emergency management agency ordinance requirement.

RELATES TO: KRS 39B.010, **39B.020, 39B.030,** 39B.990
STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 39A.050(2)(m) requires the Division of Emergency Management to promulgate administrative regulations to implement KRS Chapter 39A through 39F.** KRS 39B.010(1) requires each city, county, charter county, or urban-county government create a local emergency management agency. This administrative regulation establishes the requirements to be met by a governing body of a city, county, charter county, or urban-county government to develop and pass a local emergency management agency ordinance.

Section 1. Ordinance Provisions. (1) The governing body of a city, county, charter county, or urban-county Government shall pass a local ordinance pertaining to local emergency management agency creation, as established in KRS 39B.010.

(2) A local ordinance passed pursuant to subsection (1) of this section shall:

(a) Include the term “emergency management” in the title of the local ordinance; and

(b) Include provisions **that state[which specify]:**

1. The official name of a local emergency management agency created in the local ordinance;

2. The functional and operational organization of a local emergency management agency consistent with KRS 39B.010;

3. The establishment and use of a local emergency management agency budget account consistent with KRS 39B.010(3);

4. The powers and responsibilities of a local emergency management agency;

5. The powers, authorities, rights, and duties of a local emergency management agency director appointed pursuant to KRS 39B.020, including all the powers, duties, rights, and authorities established in KRS 39B.030; and

6. Ordinance enforcement, including the establishment of penalties for violation of the local ordinance.

Section 2. Documentation Requirements. A full copy of a local emergency management agency ordinance and any amendments, agreements, compacts, or other documents associated with the joint creation of a local emergency management agency pursuant to KRS 39B.010(2)(b) shall be submitted by a local director to the area manager for transmittal to the Director of the Division of Emergency Management within thirty (30) calendar days following final passage or adoption by a local governing body.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)

106 KAR 1:241. Local emergency management director appointment process.

RELATES TO: KRS **Chapters 39A – 39F[39B.020]**
STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), **39B.020**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39B.020 requires the chief executive officer of a local government entity to

appoint a local emergency management director. This administrative regulation establishes the process to be followed for the chief executive officer of a local government entity to appoint or reappoint a local emergency management director.

Section 1. Definitions.

(1) "Candidate" means the individual proposed to be appointed pursuant to KRS 39B.020.

(2) "Local appointing authority" means a county judge/executive, mayor, or chief executive officer of a local government entity.

Section 2. Appointment Process. (1) To appoint a local emergency management director, a local appointing authority shall submit:

(a) A completed ~~["Commonwealth of Kentucky Application for Employment;"]~~

(b) A completed ~~[KYEM Form 15, "Appointment of Local Emergency Management Director, KyEM Form 15;"]~~ and

(c) Written authorization consistent with KRS 39B.020(3)(d) 1., 2., 3., or 4[(1) or (2) or (3) or (4)].

(2) If a fiscal court, city commission, or other local governing body has adopted administrative procedures that formally establish a personnel merit system, a local appointing authority shall submit a local employment application in lieu of the document ~~established[specified]~~ in subsection ~~(1)(a) [(2)(a)]~~ of this section. A local employment application shall not be submitted for review by the Personnel Cabinet.

(3) A local appointing authority shall submit the documents, ~~established[specified]~~ in subsections (1) and (2) of this section, to the area manager for transmittal through the Division of Kentucky Emergency Management, Emergency Management Performance Grant ~~["JEMPGR"]~~ Section Chief, to the Director of the Division of Emergency Management, within the time ~~established[specified]~~ in KRS 39B.020(1).

Section 3. Approval Process.

(1) Within thirty (30) calendar days of receiving materials ~~established[specified]~~ in Section 2 of this administrative regulation, the Director of the Division of Emergency Management shall:

(a) Request the human resources officer of the Department of Military Affairs evaluate the candidate's qualifications ~~established in KRS 39B.020~~ for the position of local director; and

(b) Determine the jurisdiction's eligibility for supplementary state funds, as established in KRS Chapters 39A through 39F, to support the operations and activities of a local emergency management agency.

(2) Funding shall be suspended ~~if[when]~~ it is determined that a candidate does not meet the qualification required for the position of a local director.

Section 4. Reappointment Process. To reappoint a local director pursuant to KRS 39B.020(3), a local appointing authority shall execute the actions established in Section 2(1)(b) and (c) of this administrative regulation.

Section 5. Incorporation by Reference.

(1) The following materials are incorporated by reference:

(a) "Commonwealth of Kentucky Application for Employment", PC/DHRA, February 7, 2019;"] and

(b) ~~[KYEM Form 15, "Appointment of local Emergency Management Director", KyEM Form 15, 2009;"]~~

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Division of Emergency Management, Emergency Operations Center, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email

corey.a.jackson23.nfg@army.mil.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)

106 KAR 1:251. Local emergency management personnel Workers' Compensation Enrollment Form.

RELATES TO: KRS 39C.110(4), 39F.170(6)

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39C.110(4), 39F.170(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(m) requires the Division of Emergency Management to promulgate administrative regulations to implement KRS Chapter 39A through 39F. KRS 39C.110(4) and 39F.170(6) require workers' compensation insurance coverage for local emergency management personnel. This administrative regulation establishes the procedure to be followed by local emergency management personnel to enroll in workers' compensation insurance coverage paid by the Division of Emergency Management.

Section 1. Definition[Definitions]. "Local personnel" means the personnel specified in KRS 39C.110 and 39F.170.

Section 2. Enrollment Procedure. To enroll in workers' compensation insurance coverage, local personnel shall submit a completed KYEM Form 50 to the area manager who shall maintain a hard copy of KYEM Form 50 in the area office and promptly upload a copy of the KYEM Form 50 into the WebEOC database.

Section 3. Incorporation by Reference.

(1) "KYEM Form 50", September 2020, is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Division of Emergency Management, Emergency Operations Center, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)

106 KAR 1:261. Supplementary state fund emergency management training expense reimbursement eligibility list.

RELATES TO: KRS 39C.010, 39C.020, 39C.050(8), (9)(a), (b)

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39C.050(9)(a) requires the Division of Emergency Management promulgate an administrative regulation to establish[specifying] officials who may be reimbursed for expenses associated with attendance at emergency management training. This administrative regulation establishes the list of officials eligible to receive emergency management training expense reimbursement through the supplementary state fund established in KRS 39C.010 and 39C.020.

Section 1. Definition[Definitions]. "Emergency management training" means a seminar, workshop, course, class, module, or instruction that is conducted, sponsored, ~~established[specified]~~, offered through, or approved by the Division of Emergency Management.

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Section 2. Eligible Officials. In addition to those officials established[specified] in KRS 39C.050(8), the following officials, or their designee, may have the expenses established[specified] in KRS 39C.050(9)(b) reimbursed through the supplementary state fund for attendance at emergency management training subject to the availability of funds. a:

- (1) ~~[A-]~~ Local emergency management agency secretary or administrative support staff;
- (2) ~~[A-]~~ Chief of a local fire department;
- (3) ~~[A-]~~ Chief of a local law enforcement agency;
- (4) ~~[A-]~~ Director of a local ambulance service;
- (5) ~~[A-]~~ Director of a local emergency medical service;
- (6) ~~[A-]~~ Local public works director;
- (7) ~~[A-]~~ Local emergency management agency operations officer;
- (8) ~~[A-]~~ Local emergency management communications officer;
- (9) ~~[A-]~~ Local emergency management agency public information officer;
- (10) ~~[A-]~~ Local emergency management agency hazard mitigation officer;
- (11) ~~[A-]~~ Chief of a local rescue squad;
- (12) ~~[A-]~~ Local search and rescue coordinator;
- (13) ~~[A-]~~ Local twenty-four (24) hour warning point supervisor;
- (14) ~~[A-]~~ Local public safety officer; and
- (15) ~~[A-]~~ Chairperson of a local emergency planning committee.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)**

106 KAR 1:291. Specialized rescue squad alternative affiliation agreement process.

RELATES TO: KRS 39F.030
STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39F.020(5), 39F.030(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.030(1) authorizes a rescue squad ~~[which proposes-]~~ to provide regional or statewide specialized rescue services to apply to the Director of the Division of Emergency Management for an alternative affiliation agreement and alternative vehicle and equipment requirements. This administrative regulation establishes the process for submitting alternative affiliation requests.

Section 1. Definition[Definitions]. "Chief rescue officer" means the chief executive officer of a rescue squad.

Section 2. Alternative Request.

- (1) A chief rescue officer shall submit a written request for alternative affiliation and alternative vehicle and equipment requirements, including all supporting documentation, to a division area manager; and
- (2) A request shall include a geographical service area as either statewide or regional. Regional service areas shall list each county in a region.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)**

106 KAR 1:341. Rescue aid fund allocation.

RELATES TO: KRS 39F.020(5), 39F.100(2), 39F.110
STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), ~~[and]~~ 39F.020(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.020(5) requires the division to administer funds to local rescue squads. This administrative regulation establishes the allocation of rescue aid funds.

Section 1. Definition. "Fund" means the rescue aid fund established in KRS 39F.100(2).

Section 2. Fund Allocation. The fund shall be allocated as established in subsections (1) through (3) of this section.[follows:]

- (1) Fifteen (15) percent of the total fund appropriated in a state fiscal year shall be allocated for administration and training or may be allocated for minimum equipment or optional equipment ~~[at the discretion of the Director, Kentucky Division of Emergency Management]~~.
- (2) Fifty (50) percent of the total fund appropriated in a state fiscal year shall be allocated for minimum equipment established in 106 KAR 1:350. ~~[; and]~~
- (3) Thirty-five (35) percent of the total fund appropriated in a state fiscal year shall be allocated for optional equipment.

Section 3. A rescue squad shall not be allocated funds for more than one (1) rescue aid application in a state fiscal year.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, October 11, 2022)**

106 KAR 1:371. Rescue aid fund expenditure documentation.

RELATES TO: KRS 39F.140(1)
STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39F.020(5), 39 F.140(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(m) requires the Division of Emergency Management to promulgate administrative regulations to implement KRS Chapter 39A through 39F. KRS 39F.140(1) requires a rescue squad to document expenditure of rescue aid funds. This administrative regulation establishes a procedure for documenting expenditures of rescue aid funds by a rescue squad.

Section 1. To document expenditure of rescue aid funds, a rescue squad shall submit the documentation established[specified] in KRS 39F.140(1) to a local director.

Section 2. A local director, within ten (10) working days of receipt of the materials established[specified] in Section 1 of this administrative regulation, shall submit to an area manager:

- (1) A completed ~~[KYEM Form 160, "Local Emergency Assistance Claim Form, KyEM Form 160,"]~~ incorporated by reference in 106 KAR 1:191; ~~and[.]~~
- (2) The documentation received from a rescue squad pursuant to Section 1 of this administrative regulation.

[Section 3. Incorporation by Reference]

- ~~(1) KYEM Form 160 "Local Emergency Management~~

Assistance Claim Form," is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable Copyright law, at Division of Emergency Management, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.]

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

**DEPARTMENT OF MILITARY AFFAIRS
(As Amended at ARRS, October 11, 2022)**

106 KAR 2:021. Military Family Assistance Trust Fund.

RELATES TO: KRS 36.470, 36.474, 36.476

STATUTORY AUTHORITY: KRS 36.474(3), (4), (5)

NECESSITY, FUNCTION AND CONFORMITY: KRS 36.470 establishes the military family assistance trust fund. KRS 36.474(3) through (5) require the board to promulgate an administrative regulation establishing the maximum amount of grant assistance a person may receive in a twelve (12) month period and to establish a need-based application for trust fund grants. This administrative regulation establishes the Military Family Assistance Trust Fund application process and the maximum amount of grant assistance as required by KRS 36.474.

Section 1. Military Family Assistance Trust Fund Board. The board shall receive a report on all funds expended on applications and shall be informed on the reason for any application being disapproved.

Section 2. Application for Trust Funds. Any qualified service member or the service member's Kentucky resident spouse may submit a ["Kentucky Military Family Assistance Trust Fund Application, DMA [Form J43-1"] for application of grant funds for a need-based emergency.

Section 3. Payment of Grants.

(1)(a) Except as established[provided] in subsection (2) of this section, the following limits shall apply. A maximum of twenty-five (25) percent of the annual Kentucky state median income (SMI), as prepared by the U.S. Census Bureau, using the most current Census may be approved:

1. [(a) A maximum of twenty-five (25) percent of the annual Kentucky state median income (SMI) as prepared by the U.S. Census Bureau using the most current Census may be approved] For a single application as identified on DMA Form 43-1; and

2. [(b) A maximum of twenty-five (25) percent of the annual Kentucky state median income (SMI) as prepared by the U.S. Census Bureau using the most current Census may be approved] Per fiscal year per service member.

(b) An award made to the family of a service member shall be included in the amount calculated as awarded to the service member.

(2) Amounts greater than twenty-five (25) percent of the annual Kentucky state median income (SMI) as prepared by the U.S. Census Bureau using the most current Census for a fiscal year maximum cap may be approved by a majority vote of the board members if there is:

(a) A catastrophic event, including a tornado, fire, earthquake, or other disastrous event; or

(b) At least a twenty-five (25) percent loss of annual income by the service member or spouse that is caused by the deployment compared to what the service member's or spouse's annual income was prior to deployment.

(3) The applicant shall submit appropriate documentation to verify:

(a) The applicant's financial need; and

(b) Other assistance that is provided or not provided by other

sources.

Section 4. Incorporation by Reference. (1) "Kentucky Military Family Assistance Trust Fund Application", DMA [Form J43-1"], May 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Administrative Services Division, Office of Management and Administration, Department of Military Affairs, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168, or by calling the Office at phone (502) 607-1738, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

**DEPARTMENT OF MILITARY AFFAIRS
(As Amended at ARRS, October 11, 2022)**

106 KAR 2:031. National Guard Adoption Benefit Program.

RELATES TO: KRS 36.474, 36.477, 199.555(1)

STATUTORY AUTHORITY: KRS 36.477(8)

NECESSITY, FUNCTION AND CONFORMITY: KRS 36.477(8) requires the Department of Military Affairs to promulgate administrative regulations to implement the Kentucky National Guard Adoption Assistance Program. This administrative regulation establishes the requirements for the Kentucky National Guard employee adoption assistance program.

Section 1. Kentucky National Guard Adoption Benefit Program Application Procedures.

(1) An eligible member of the Kentucky National Guard applying for funds under KRS 36.477 shall submit a completed Kentucky National Guard Adoption Benefit Program Application.

(2) The application shall be submitted to the Department of Military Affairs, along with:

(a) The documentary evidence required by KRS 36.477(5);

(b) A copy of the Affidavit of Expenses related to the adoption filed with and approved by the court at the finalization of the adoption; and

(c) The Adoption Reimbursement Request letter.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky National Guard Adoption Benefit Program Application", May 2022;

(b) "Affidavit of Expenses", May 2022; and

(c) "Adoption Reimbursement Request[Letter]", May 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Military Affairs, 100 Minutemen Parkway, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

**BOARDS AND COMMISSIONS
Kentucky Board of Medical Licensure
(As Amended at ARRS, October 11, 2022)**

201 KAR 9:305. Continued licensure of athletic trainers.

RELATES TO: KRS [244.640,—]311.901(1), 311.905(2), 311.909(1)(o)

STATUTORY AUTHORITY: KRS [244.640(1)—]311.901(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.901(1) requires the Kentucky Board of Medical Licensure to

promulgate administrative regulations relating to the licensure and regulation of athletic trainers and ~~[requires] continuing education requirements. **This administrative regulation establishes the continuing education requirements for the continued licensure of athletic trainers**~~ courses on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome. This administrative regulation establishes the criteria for the continued licensure of athletic trainers].

Section 1. Definition. "CEU" means the completion of ten (10) hours of educational courses approved by the:

- (1) Kentucky Board of Medical Licensure; or
- (2) Board of Certification, Inc.

Section 2. ~~[(4)]~~ An athletic trainer licensed to practice in the Commonwealth of Kentucky shall complete six (6) CEUs during each three (3) year renewal cycle beginning with the renewal cycle that ends on June 30, 2015.

~~[(2)(a) Upon initial licensure or within the first three (3) year renewal cycle from initial licensure, each licensee shall complete an educational course approved by the Cabinet for Health and Family Services on the transmission, control, treatment, and prevention of the human immunodeficiency virus HIV/AIDS.~~

~~(b) The hours required by paragraph (a) of this subsection shall be counted as part of the six (6) CEUs required by subsection (1) of this section for the three (3) year renewal cycle during which the HIV/AIDS course was completed.]~~

CONTACT PERSON: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118, email leanne.diakov@ky.gov.

BOARDS AND COMMISSIONS

Board of Cosmetology

(As Amended at ARRS, October 11, 2022)

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

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

STATUTORY AUTHORITY: KRS 317A.060

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

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

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

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

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

~~(1) All personal and facility licenses shall require an application for [the following:] an initial license, license renewal, license restoration, an out-of-state transfer certification, or a [to] request for examination. These applications are found on the board's Web page;~~

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

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

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

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

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

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

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

~~(1) A signed letter of explanation from the applicant;~~

~~(2) A certified copy of the judgment and sentence from the issuing court; and~~

~~(3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.~~

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

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

~~(a) 1,500 hours of curriculum for cosmetology;~~

~~(b) 450 hours of curriculum for nail technology;~~

~~(c) 750 hours of curriculum for esthetics; [or]~~

~~(d) 300 hours of curriculum for shampoo styling; or~~

~~(e) [(d)] 750 hours of curriculum for instructors.~~

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

~~(a) Digital certification showing proof of a passing score on a board-approved nationally recognized theory and practical exam;~~

~~(b) Current digital certification of the out-of-state license from the issuing state board showing a license in active and good standing; and~~

~~[(c) Diploma or certified testing documents proving 12th grade equivalency education;]~~

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

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

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

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

~~(a) Documentation required by Section 3 [subsection (2)] [(1)] [(a)] through [(7)] [(g)] [(f)] of this administrative regulation [section]; and~~

~~(b) Payment of the applicable examination fees established in 201 KAR 12:260.~~

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

~~(a) All documents required by Section 3 [subsection 2(a)] [(2)] [(b)] through [(7)] [(g)] [(f)] of this administrative regulation [section];~~

~~(b) The Military Transfer Application; and~~

~~(c) A document showing proof of service, sponsor's service, or discharge orders listing the applicant or an accompanying family member as a member of the United States Armed Services; [:] and~~

~~(d) Payment of a twenty-five (25) dollar license fee.]~~

~~(5) All requests for certification of hours or a license shall use the Certification Request Form accompanied by a copy of the~~

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applicant's government-issued photo identification and payment of the fee as set forth in 201 KAR 12:260. Certifications shall only be transmitted digitally to the reciprocal state agency.

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

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

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

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

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

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

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

Section 7.[Section 5.] Examination Registration.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 8.[Section 6.] Examination Components.

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

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

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

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

(c) Mannequin hand for the nail technician practical

examination.

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

Section 9.[Section 7.] Grading.

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

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

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

Section 10.[Section 8.] Practice before Examination Prohibited.

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

Section 11.[Section 9.] License Application.

(1) An applicant who passes the examination shall have ninety (90) days following the examination to apply for a license by complying with all requirements in Section 3(1)(a) through (7)(g) of this administrative regulation.~~[submitting the License Application form and the following documentation:~~

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

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

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

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

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

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

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

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

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

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

Section 12.[Section 10.] Retaking Examinations.

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

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

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

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

(3) Any applicant who fails to report for the examination on the date specified by the board shall submit a new examination application and examination fee prior to being rescheduled for examination. The board may waive the examination fee for good cause shown. "Good cause" includes:

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

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

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

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

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

(2) The annual license renewal period is July 1 through July 31. All licenses ~~[and permits]~~ shall be renewed/renew by providing the required items in Section 3(1)(a) through (7)(g) of this administrative regulation.

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

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

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

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

(3) To restore an expired license~~[-or permit]~~, a Restoration Application shall be submitted to the board with payment of the restoration fee as set forth in 201 KAR 12:260 for each year the license has been expired, the total of which shall not exceed \$300 per license restored, and by providing the required items in Section 3(1)(a) through (7)(g) of this administrative regulation.~~[- along with the following:~~

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

~~[(4)(a)]~~~~[(b)]~~ To restore~~[For]~~ an expired salon license or limited facility ~~license~~~~[permit]~~, a new Salon Application or Limited Facility ~~[Permit-]Application~~ shall be submitted to the board with payment of the restoration fee as set forth in 201 KAR 12:260 for each year the license has been expired, the total of which shall not exceed \$300 per license restored, and by providing the required items in Section 3(1) through (7) of this administrative regulation.~~[- or]~~

~~[(5)(b)]~~~~[(e)]~~ To restore~~[For]~~ an expired school license, a new School Application shall be submitted to the board with payment of the restoration fee as set forth in 201 KAR 12:260 for each year the license has been expired, the total of which shall not exceed \$300 per license restored, and by providing the required items in Section 3(1) through (7) of this administrative regulation.

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

(1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or limited facility shall submit the Salon Application or Limited Facility ~~[Permit-]Application~~, provide the required items in Section 3(1)(a) through (6)(f) of this administrative regulation.~~[with required copies of state identification and driver's licenses, pay the applicable fee set forth in 201 KAR 12:260, and request an inspection by the board inspector in writing a minimum of five (5) business days prior to opening for business.]~~

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

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

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

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

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

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

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

(1) The owners, firm, or corporation operating a licensed salon shall submit to the board a new Salon Application, Limited Facility ~~[Permit-]Application~~, or Manager Change Form, provide the required items in Section 3(1)(a) through (6)(f) of this administrative regulation. and provide payment of the license or change fee as set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership.

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

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

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

(1) Each person, firm, or corporation applying for a license to operate a school shall submit a School Application, provide the required items in Section 3(1)(a) through (6)(f) of this administrative regulation. and pay the applicable fee set forth in 201 KAR 12:260.

(2) The School Application shall be accompanied by:

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

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

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

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

(5)

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

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

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

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

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

2. Supportive documentation of the extension request.

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

(7) The school license shall contain:

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(a) The name of the proposed school; and
(b) A statement that the proposed school may operate educational programs beyond secondary education.

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

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

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

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

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

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

(3) A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A and 201 KAR Chapter 12, and obtain approval of the board prior to assuming operation of the school.

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

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

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

Section 18.[Section 16:] Classification as School. Any person, establishment, firm, or corporation that accepts, directly or indirectly, compensation for teaching any subject of cosmetology as defined in KRS 317A.010 shall comply with KRS Chapter 317A and 201 KAR Chapter 12.

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

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

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

Section 21.[Section 20:] Incorporation by Reference.

(1) The following material is incorporated by reference:

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

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

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

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

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

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

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

(h) "Apprentice Instructor License Application", June-2019;

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

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

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

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

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

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

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

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the board's Web site at <http://kbc.ky.gov>.

CONTACT PERSON: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

BOARDS AND COMMISSIONS

Board of Cosmetology

(As Amended at ARRS, October 11, 2022)

201 KAR 12:060. Inspections.

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

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing the operation of any schools, limited facilities, and salons of cosmetology, nail technology, threading, eyelash artistry, makeup artistry, and esthetics, and to protect the health and safety of the public. This administrative regulation establishes inspection and health and safety requirements for all schools and salons of cosmetology, nail technology, threading, eyelash artistry, makeup artistry, and esthetics.

Section 1. Public Display.

(1)

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

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

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

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

(b) The workstation of the employee.

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

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

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

Section 2. Inspections.

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

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

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

(4) A salon, limited facility, or school shall, within thirty (30)

days, schedule an inspection of the salon, limited facility, or school after an inspector twice attempts, but is unable, to inspect the salon or school.

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

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

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

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

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

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

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

(a) Refusing to allow entry to perform an ~~Permit~~ inspection of the licensed premises; ~~or~~

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

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

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

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

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

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

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

CONTACT PERSON: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S. Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

BOARDS AND COMMISSIONS

Board of Cosmetology

(As Amended at ARRS, October 11, 2022)

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

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

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

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

cosmetology, esthetic practices, and nail technology. This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required for students and faculty for schools of cosmetology, esthetic practices, and nail technology.

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

(1) Basics:

(a) History and Career Opportunities;

(b) Life Skills;

(c) Professional Image; and

(d) Communications.

(2) General Sciences:

(a) Infection Control: Principles and Practices;

(b) General Anatomy and Physiology;

(c) Skin Structure, Growth, and Nutrition;

(d) Skin Disorders and Diseases;

(e) Properties of the Hair and Scalp;

(f) Basic Chemistry; and

(g) Basics of Electricity.

(3) Hair Care:

(a) Principles of Hair Design;

(b) Scalp Care, Shampooing, and Conditioning;

(c) Hair Cutting;

(d) Hair Styling;

(e) Braiding and Braid Extensions;

(f) Wig and Hair Additions;

(g) Chemical Texture Services; and

(h) Hair Coloring.

(4) Skin Care:

(a) Hair Removal;

(b) Facials;

(c) Facial Makeup; and

(d) Application of Artificial Eyelashes.

(5) Nails:

(a) Manicuring;

(b) Pedicuring;

(c) Nail Tips and Wraps;

(d) Monomer Liquid and Polymer Powder Nail Enhancements;

and

(e) Light Cured Gels;

(f) Nail Structure and Growth; and

(g) Nail Diseases and Disorders.

(6) Business Skills:

(a) Preparation for Licensure and Employment;

(b) On the Job Professionalism; and

(c) Salon Businesses.

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

Section 3. Instructional Hours.

(1) A cosmetology student shall receive not less than 1,500 hours in clinical class work and scientific lectures with a minimum of:

(a) 375 lecture hours for science and theory;

(b) 1,085 clinic and practice hours; and

(c) Forty (40) hours on the subject of applicable Kentucky statutes and administrative regulations.

(2) A cosmetology student shall not perform chemical services on the public until the student has completed a minimum of 250 hours of instruction.

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

(1) A training period for a student shall be no more than eight (8) hours per day, forty (40) hours per week.

(2) A student shall be allowed thirty (30) minutes per eight (8)

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hour day or longer for meals or a rest break. This thirty (30) minute period shall not be credited toward a student's instructional hours requirement.

Section 5. Laws and Regulations.

(1) At least one (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A and 201 KAR Chapter 12.

(2) Schools or programs of instruction of any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall provide a copy of KRS Chapter 317A and 201 KAR Chapter 12 to each student upon enrollment.

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

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

Section 7. Nail Technology Hours Required.

(1) A nail technician student shall receive no less than 450 hours in clinical and theory class work with a minimum of:

- (a) 150 lecture hours for science and theory;
 - (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) 275 clinic and practice hours.
- (2) A nail technician student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

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

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

- (14) Teacher assistant; and
- (15) Pupil teaching (practice teaching).

Section 9. Supervision.

(1) An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor while providing any instruction for students.~~[during the school day.]~~ "Immediate supervision" requires that in this instance means a licensed instructor is physically present in the same room and overseeing the activities of the apprentice instructor at all times.

(2) An apprentice instructor shall not assume the duties and responsibilities of a licensed supervising instructor.

(3) An apprentice instructor shall not teach any practices defined in KRS Chapter 317A or 201 KAR Chapter 12 outside of the board licensed school in which the individual is enrolled.

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

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

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

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

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

Section 14. Esthetician Hours Required.

(1) An esthetician student shall receive no less than 750 hours in clinical and theory class work with a minimum of:

- (a) 250 lecture hours for science and theory;
- (b) Thirty-five (35) hours on the subject of applicable Kentucky statutes and administrative regulations; and
- (c) 465 clinic and practice hours.

(2) An esthetician student shall have completed 115 hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first 115 hours.

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

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

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

- (1) A shampoo styling~~[blow-drying]~~ services license student shall receive no less than 300~~[400]~~ hours in clinical and theory class work with a minimum of:
 - (a) 100~~[150]~~ lecture hours for science and theory;
 - (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) 175~~[275]~~ clinic and practice hours.
- (2) A shampoo styling~~[blow-drying]~~ services license student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

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

Section 18. Student Records. Each school shall:

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

Section 19. Certification of Hours.

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

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

Section 21. Instructor Licensing and Responsibilities.

- (1) A person employed by a school or program for the purpose of teaching or instruction shall be licensed by the board as an instructor and shall post his or her license as required by 201 KAR 12:060.
- (2) A licensed instructor or apprentice instructor shall supervise all students during a class or practical student work.
- (3) An instructor or apprentice instructor shall render services only incidental to and for the purpose of instruction.
- (4) Licensed schools shall not permit an instructor or apprentice instructor to perform services in the school for compensation~~[during school hours]~~.
- (5) An instructor shall not permit students to instruct or teach other students in the instructor's absence.
- (6) Except as provided in subsection (7) of this section, schools may not permit a demonstrator to teach in a licensed school.
- (7) A properly qualified, licensed individual may demonstrate a new process, preparation, or appliance in a licensed school if a licensed instructor is present.
- (8) Licensed schools or programs of instruction in any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall, at all times, maintain a minimum faculty to student ratio of one (1) instructor for every twenty (20) students enrolled and supervised.
- (9) Licensed schools or programs of instruction in any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall, at all times, maintain a minimum ratio of one (1) instructor for every two (2) apprentice instructors enrolled and supervised.
- (10) Within ten (10) business days of the termination, employment, and other change in school faculty personnel, a licensed school shall notify the board of the change.
- (11) All instructors on staff within a licensed school shall be designated as full-time, part-time, or substitute instructors to the board when reporting employment.

Section 22. School Patrons.

- (1) All services rendered in a licensed school to the public shall be performed by students. Instructors may teach and aid the students in performing the various services.
- (2) A licensed school shall not guarantee a student's work.
- (3) A licensed school shall display in the reception room, clinic room, or any other area in which the public receives services a sign to read: "Work Done by Students Only." The letters shall be a minimum of one (1) inch in height.

Section 23. Enrollment.

- (1) Any person enrolling in a school or program for instruction in any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall furnish proof that the applicant has:
 - (a) A high school diploma~~;~~;
 - (b) A General Educational Development (GED) diploma; or
 - (c) Results from the Test for Adult Basic Education indicating a score equivalent to the successful completion of grade 12~~[the~~

~~twelfth grade of high school~~.

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

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

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

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

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

Section 24. Certificate of Enrollment.

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

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

Section 25. Student Compensation.

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

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

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

(4) An apprentice instructor may receive compensation as a teaching assistant.

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

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

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

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

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

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

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

- (1) In writing from the individual/student to the school; and
- (2) Clearly denote the beginning and end dates for the leave of

absence.

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

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

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

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

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

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

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

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

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

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

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

(1) Full auditable attendance records shall be kept showing actual contact time spent by a student in the instruction module.

(2) Milady or Pivot Point supported digital curriculum platforms or recorded video conference participation shall be used.

(3) Schools shall submit an outline to the board within ten (10) days prior to the occurrence of the alternative education defining the content scope to be taught or completed, and a plan for a transition into a digital training environment. Plans may be submitted for approval by the board to be kept for future use if emergency alternative education is allowable.

(4) Completion certificates showing final scoring on digital modules shall be maintained in student records.

(5) Schools and students shall comply with Section 4 of this administrative regulation on accessible hours.

(6) No student shall accrue more than the total required theory instruction hours outlined in the instructional sections in emergency alternative education time as established in Sections 3(1)(a), 7(1)(a), 14(1)(a), and 16(1)(a) of this administrative regulation.

(7) The board may determine eligibility for accruals based on duration of the crisis and applicable time limits for alternative emergency education availability.

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

(1)

(a) "Certification of Student Extracurricular Event Hours", July 2022~~[October 2018]~~;

(b) "Enrollment Correction Application", July 2022~~[October 2018]~~; and

(c) "Program Hour Transfer Request Form", July 2022~~[April 2020]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 1049 US Hwy 127 S. Annex #2~~[111 St. James Court, Suite A,]~~ Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at kbc.ky.gov.

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BOARDS AND COMMISSIONS

Board of Cosmetology

(As Amended at ARRS, October 11, 2022)

201 KAR 12:190. Complaint and disciplinary process.

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

STATUTORY AUTHORITY: KRS 317A.060, 317.070, 317A.145

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.145 authorizes the board to investigate complaints and, where appropriate, take disciplinary action for violations of KRS Chapter 317A and the administrative regulations promulgated by the board. KRS 317A.070 requires the board to hold hearings to review the board's decision upon the request of any licensee or applicant affected by the board's decision to refuse to issue or renew a license or permit, or to take disciplinary action against a license or permit. This administrative regulation establishes the board's complaint and disciplinary process.

Section 1. Definitions.

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

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

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

Section 3. Complaint Procedures.

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

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

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

(a) Dismiss the complaint;

(b) Order further investigation;

(c) Issue a written admonishment for a minor violation; or
(d) Issue a notice of disciplinary action informing the respondent of [the following]:

1. The statute(s) or administrative regulation(s) violated;

2. The factual basis for the disciplinary action;

3. The penalty to be imposed; and

4. The licensee's or permittee's right to request a hearing.

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

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

(a) Issue to the person or entity a written request to voluntarily cease the unlicensed activity; or

(b) Seek injunctive relief in a court of competent jurisdiction pursuant to KRS 317A.020(7).

(6) Any board member who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint, which could influence an impartial decision, shall disqualify himself or herself from participating in the adjudication of the complaint.

Section 4. Settlement by Informal Proceedings.

(1) The board, through its complaints committee or counsel, may, at any time during this process, resolve the matter through informal means, including an agreed order of settlement or mediation.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the respondent and board chair, or the chair's designee.

Section 5. Hearings.

(1) A written request made by the respondent for a hearing shall be filed with the board within thirty (30) days of the date of the board's notice that it intends to refuse to issue or renew a license or permit, to deny, suspend, probate, or revoke a license or permit, or to impose discipline~~[a fine]~~ on a licensee or permittee.

(2) If no request for a hearing is filed, the board's refusal to issue or renew a license or permit, or the board's notice of disciplinary action, shall become effective upon the expiration of the time to request a hearing.

Section 6. Incorporation by Reference.

(1) "Complaint Form", July 2022~~[April 2018]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Cosmetology, 1049 US Hwy 127 S. Annex #2~~[111 St. James Court, Suite A,]~~ Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the board's Web site at <http://kbc.ky.gov>.

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BOARDS AND COMMISSIONS

Board of Cosmetology

(As Amended at ARRS, October 11, 2022)

201 KAR 12:260. Fees.

RELATES TO: KRS 317A.050, 317A.062

STATUTORY AUTHORITY: KRS 317A.062

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.062 requires the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations and the issuance, renewal, and restoration of licenses and permits. This administrative regulation establishes a fee

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schedule for applications, permits, and licenses issued by the board.

Section 1. The initial license fees shall be as follows:

- (1) Cosmetologist - fifty (50) dollars;
- (2) Nail technician - fifty (50) dollars;
- (3) Esthetician - fifty (50) dollars;
- (4) Shampoo Styling~~[Blow-drying]~~ services - fifty (50) dollars;
- (5) Cosmetology instructor - fifty (50) dollars;
- (6) Esthetic instructor - fifty (50) dollars;
- (7) Nail Technology instructor - fifty (50) dollars;
- (8) Beauty salon - \$100;
- (9) Nail salon - \$100;
- (10) Esthetic salon - \$100;
- (11) School - \$1,500;
- (12) School transfer of ownership - \$1,500;
- (13) Salon transfer of ownership - \$100;
- (14) Limited facility license for a limited beauty salon, threading facility, eyelash artistry facility, and makeup facility - \$100;
- (15) Threading permit - fifty (50) dollars;
- (16) Eyelash Artistry Permit - fifty (50) dollars; ~~and~~
- (17) Makeup Artistry Permit - fifty (50) dollars; ~~and~~
- (18) Event Services Permit - \$100; and
- (19) Homebound Care Permit - \$100.

Section 2. The renewal license fees shall be as follows:

- (1) Cosmetologist - fifty (50) dollars;
- (2) Nail technician - fifty (50) dollars;
- (3) Esthetician - fifty (50) dollars;
- (4) Shampoo Styling~~[Blow-drying]~~ services - fifty (50) dollars;
- (5) Cosmetology instructor - fifty (50) dollars;
- (6) Esthetic instructor - fifty (50) dollars;
- (7) Nail Technology instructor - fifty (50) dollars;
- (8) Beauty salon - \$100;
- (9) Nail salon - \$100;
- (10) Esthetic salon - \$100;
- (11) School - \$250;
- (12) Limited facility license for a limited beauty salon, threading facility, eyelash artistry facility, and makeup facility - \$100;
- (13) Threading permit - fifty (50) dollars;
- (14) Eyelash Artistry Permit - fifty (50) dollars; ~~and~~
- (15) Makeup Artistry Permit - fifty (50) dollars; ~~and~~
- (16) Event Services Permit - \$100; and
- (17) Homebound Care Permit - \$100.

Section 3. Applications for examination including retake applications shall be accompanied by a fee as follows:

- (1) Cosmetologist - eighty-five (85)~~[seventy-five (75)]~~ dollars;
- (2) Nail technician - eighty-five (85)~~[seventy-five (75)]~~ dollars;
- (3) Esthetician - eighty-five (85)~~[seventy-five (75)]~~ dollars;
- (4) Shampoo Styling~~[Blow-drying]~~ services - eighty-five (85)~~[seventy-five (75)]~~ dollars; and
- (5) Instructor - eighty-five (85)~~[seventy-five (75)]~~ dollars.

Section 4. Miscellaneous fees shall be as follows:

- (1) Demonstration permit - fifty (50) dollars;
- (2) Certification for an out-of-state license or school hours transfer - twenty-five (25) dollars;
- (3) Duplicate license - twenty-five (25) dollars;
- (4) Salon manager change - fifty (50) dollars;
- (5) School manager change - fifty (50) dollars;
- (6) Enrollment correction fee, as established in 201 KAR 12:082, Section 24(2) - fifteen (15) dollars;
- (7) Out-of-state endorsement application fee - \$100;
- (8) Apprentice instructor enrollment - twenty-five (25)~~[fifty (50)]~~ dollars;
- (9) Student enrollment~~[permit]~~ - twenty-five (25) dollars;
- (10) Individual license restoration fee - fifty (50) dollars;
- (11) Salon license restoration fee, or limited facility permit~~[license]~~ restoration fee for a limited beauty salon, threading facility, eyelash artistry facility, and makeup facility - \$100;
- (12) School license restoration fee - \$500; and
- (13) School or Salon location change - \$100.

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BOARDS AND COMMISSIONS
Board of Cosmetology
(As Amended at ARRS, October 11, 2022)

201 KAR 12:290. Permits.

RELATES TO: KRS 317A.020, 317A.050, 317A.060
STATUTORY AUTHORITY: KRS 317A.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing permits in threading, makeup artistry, eyelash artistry, homebound care, and event services. This administrative regulation establishes procedures for permits.

Section 1. Fees. Permit fees are set forth in 201 KAR 12:260.

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

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

Section 3. Prior Felony Convictions. For any permit issued or conducted by the board, an applicant ~~[for any permit issued or conducted by the board]~~ convicted of a prior felony shall include with his or her application:

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

Section 4. All incorporated forms may be replicated in a digital format for online completion.

Section 5. Threading and Makeup Artistry Permits. (1) Any person who engages in the practice of threading or makeup artistry shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.

- (2) The applicant shall include with the Permit Application:
 - (a) A copy of the applicant's government-issued photo identification;
 - (b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months; and
 - (c) Proof of completion of a board approved sanitation course within the six (6) month period preceding the application.

Section 6. Eyelash Artistry Permits. (1) Any person who engages in the practice of eyelash artistry shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.

- (2) The applicant shall include with the Permit Application:
 - (a) A copy of the applicant's government-issued photo identification;
 - (b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;
 - (c) Proof of completion of a board approved sanitation course within the past six (6) month period preceding the application; and
 - (d) Proof of completion of a board approved eyelash certificate training program taught by a licensed instructor within the preceding six (6) months.

Section 7. Homebound Care Permit. (1) Any person engaging in the cosmetic care of a homebound or medically infirm individual shall first obtain a permit from the board by submitting a completed application and paying the fee established in 201 KAR 12:260.

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

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

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

(c) Proof of ownership, employment, or booth rental agreement with a Kentucky board licensed salon;

(d) Medical release document for the homebound or infirm individual from a physician, licensed by the Kentucky Board of Medical Licensure, defining which services can or cannot be safely provided; ~~and~~;

(e) The address of the location where services will be provided.

Section 8. Event Services Permit. (1) Any person engaged in providing on-site services outside of a board licensed facility for events shall first obtain a permit from the board by submitting a completed application and paying the fee established in 201 KAR 12:260.

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

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

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

(c) Proof of ownership, employment, or booth rental agreement with a Kentucky board licensed salon; ~~and~~

(d) The address of the location where services will be provided shall be provided to the board two (2) weeks in advance of each event along with the time frame services will be provided.

Section 9. Practice before Permit Issuance Prohibited. Any individual found engaging in the practice of threading, makeup artistry, eyelash artistry, or providing homebound care or event services prior to the permit issuance shall be ineligible to receive a permit from the board for a period of one (1) year from the date of the unauthorized practice and be responsible for the payment of any fines ordered by the board.

Section 10. Duplicate Permit, Renewal, and Restoration.

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

(2) The annual license renewal period is July 1 through July 31. All permits shall:

(a) Be renewed using the board's online portal;

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

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

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

(e) Disclose to the board the current name and license number of the facility where the permit holder is working; and

(f) Include/Upload a current passport style headshot photo.

(3) To restore an expired permit, a Restoration Application shall be digitally submitted to the board with payment of the restoration fee as set forth in 201 KAR 12:260 for each year the permit has been expired, the total of which shall not exceed \$300 per permit restored, along with a copy of a government-issued photo identification.

Section 11. Eyelash Artistry Training Programs. (1) An eyelash training program may be approved by the board upon submission of: ~~;~~

(a) A written request for consideration;

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

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

(d) A copy of the Kentucky cosmetology or esthetics instructor license verifying the credentials to teach the course; ~~and~~

(e) A completed training manual with detailed instructions on safety, infection control, eye diseases, contraindications, application and removal procedures, and product knowledge. The manual shall also contain current Kentucky Statutes and Regulations on scope of practices, requirements for facility and personal licensure, and infection control standards; ~~and~~;

(f) A copy of a training contract that outlines the responsibility of the training company, cost for classes, and completion requirements.

(2) Failure to seek approval as required by subsection (1) of this section shall invalidate all certifications issued to trainees and submitted by permit applicant.

(3) An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor while providing any instruction for students. "Immediate supervision" requires that [in this instance means] a licensed instructor is physically present in the same room and overseeing the activities of the apprentice instructor at all times.

(4) A licensed cosmetology or esthetics school may seek course approval by submitting a curriculum packet for review and providing proof that the instructor has appropriate credentials to train in eyelash artistry.

Section 12. Eyelash Training Course Administration. (1) Upon board approval ~~offas~~ an eyelash artistry training program the instructor or program director shall, ten (10) business days prior to the start of the program, submit to the board:

(a) ~~[Submit to the board]~~ The date and time of the training course;

(b) ~~[Submit]~~ A class roster of anticipated attendees; ~~and~~

(c) ~~[Provide]~~ A copy of the completed contract for each attendee; ~~and~~

(2) [(d)] Upon completion of the reported course, the instructor or program director shall submit to the board a signed and dated roster of attendees ~~[shall be submitted]~~.

(3) [(2)] Any student not listed with a signature on the class roster may be considered absent and may not be considered for a permit to practice from the board.

Section 13. Demonstration Permits. Professional services performed outside a licensed facility, including charity events and hair shows, require [may have] approval of the board and shall display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Permit Application", July 2022; and

(b) "Demonstration Permit Application", July 2022

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the board's Web site at <http://kbc.ky.gov>.

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BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, October 11, 2022)

201 KAR 20:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.

RELATES TO: KRS 314.041(1), 314.111(1), ~~314.111(5)~~, 314.131

STATUTORY AUTHORITY: KRS 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(1) and 314.131(2) require the board to approve schools of nursing and courses preparing persons for licensure and to monitor standards for nurse competency under KRS Chapter 314. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement KRS Chapter 314. This administrative regulation establishes the organization and administration standards for prelicensure registered nurse or practical nurse programs.

Section 1. Definitions.

(1) "Campus" means a division of a college or university that has its own grounds, buildings, and students, but is administratively joined to the rest of the college or university.

(2) "Clerical assistance" means the provision of administrative, secretarial, or clerical help by qualified individuals that assists the program of nursing.

(3) "Clinical instructor" means a nurse who is employed by a program of nursing solely to provide students with traditional clinical or simulated experiences.

(4) "Nurse faculty" means a nurse who is employed by a program of nursing, either full-time, part-time, or adjunct, to provide didactic instruction, and may also provide clinical instruction or simulated experiences.

(5) **"Nursing track" means a path within a program of nursing that leads to licensure as a nurse.**

(6) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a student.

~~(7) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse.~~

~~(7) "Nursing track" means a path within a program of nursing that leads to licensure as a nurse.~~

Section 2. Organization or Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligible for approval by the board, a program shall have:

(1) A governing institution.

(a) The governing institution that establishes and conducts the program of nursing shall hold accreditation as a postsecondary institution, college, or university by an accrediting body recognized by the U.S. Department of Education.

(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing. The program of nursing shall have comparable status with the other programs in the governing institution and the relationship shall be clearly delineated.

(c) The governing institution shall:

1. Designate a program administrator for the prelicensure program of nursing who is qualified pursuant to 201 KAR 20:310 and is responsible for fulfilling the duties specified in subsection (3) of this section on a twelve (12) month basis;

2. Assure that at least fifty (50) percent of the program administrator's time shall be dedicated to complete the duties specified in this administrative regulation at each program of nursing. A governing institution that is unable to comply with this standard may request an exemption from the board in writing.

a. The request shall state the reasons for noncompliance and the efforts the institution has taken and will take to comply with the standard.

b. If the exemption is granted, it shall be for twelve (12) months from the date of board approval. During this time, the governing institution shall not open a new program of nursing ~~and shall not increase enrollment at an existing program of nursing~~;

3. Provide evidence that the fiscal, human, physical, clinical, and technical learning resources shall be adequate to support program mission, processes, security, and outcomes;

4. Provide student support programs, services, and activities consistent with the mission of the governing institution that promote student learning and enhance the development of the student;

5. Make financial resources available to the program of nursing consistent with equivalent programs at the governing institution;

6. Employ nurse faculty pursuant to 201 KAR 20:310 in sufficient number and expertise to accomplish program outcomes and quality improvement;

7. Provide written policies for faculty related to qualifications for the position, rights and responsibilities of the position, criteria for evaluation of performance, workload, and retention;

8. Involve the nurse faculty in determining academic policies and practices for the program of nursing; and

9. Provide for the security, confidentiality, and integrity of faculty employment and student records.

(d) The governing institution shall provide an organizational chart that describes the organization of the program of nursing and its relationship to the governing institution;

(2) Administrative policies.

(a) There shall be written administrative policies for the program of nursing that shall be:

1. In accord with those of the governing institution; and

2. Available to the board for review.

(b) The board shall be notified in writing of a change, vacancy, or pending vacancy, in the position of the program administrator within thirty (30) days of the program of nursing's awareness of the change, vacancy, or pending vacancy.

1. The head of the governing institution shall submit to the board in writing the name of the registered nurse who has been designated to assume the administrative duties for the program, the date the person will assume the duties of program administrator, and a copy of his or her curriculum vitae.

2.a. If there is to be a lapse between the date of the change or vacancy and the date the newly-appointed program administrator assumes duties, the head of the governing institution shall submit a plan of transition to ensure the continuity of the program.

b. Progress reports shall be submitted if requested by the board.

3.a. The length of the appointment of an interim program administrator shall not exceed six (6) months.

b. Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position.

(c) A written plan for the orientation of the nurse faculty to the governing institution and to the program shall be implemented.

(d) There shall be a written contract between the governing institution and each agency or institution that provides a learning experience for a student. A contract shall not be required for an observational experience.

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the nurse faculty control of the student learning experiences subject to policies of the contractual parties.

4. The contract shall be current and may include an annual automatic renewal clause.

5. The contract shall contain a termination clause by either party;

(3) A program or an interim program administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships with the administration of the institution, other divisions or departments within the institution, related facilities, and the community;

(b) Participation in the preparation and management of the program of nursing budget;

(c) Screening and recommendation of candidates for nurse faculty appointment, retention, and promotion;

(d) Submission of the qualifications of all nurse faculty and clinical instructors as set forth in 201 KAR 20:310, Section 4;

(e) To provide leadership within the nurse faculty for the development, implementation, and evaluation of the program of nursing and program outcomes;

(f) To facilitate the implementation of written program policies for the following:

1. Student admission;

2. Student readmission and advance standing;

3. Student progression, which shall include:

a. The level of achievement a student shall maintain in order to remain in the program or to progress from one (1) level to another; and

b. Requirements for satisfactory completion of each course in the nursing curriculum.

4. Requirements for completion of the program;

5. Delineation of responsibility for student safety in health related incidents both on campus and at any clinical activity required by the program of nursing;

6. Availability of student guidance and counseling services;

7. The process for the filing of grievances and appeals by students;

8. Periodic evaluation by the nurse faculty of each nursing student's progress in each course and in the program;

9. Student conduct that incorporates the standards of safe nursing care; and

10. Publication and access to current academic calendars and class schedules;

(g) To facilitate the continuing academic and professional development for the nurse faculty;

(h) 1. To initiate and coordinate the development of contracts with clinical facilities, the number and variety of which shall be adequate to meet curricular outcomes;

2. To develop written criteria for the selection and evaluation of clinical facilities and ensure that the criteria shall be utilized by the program of nursing; and

3. To assure that clinical facilities show evidence of approval by the appropriate accreditation, evaluation, or licensure bodies, if applicable;

(i) The establishment of student-nurse faculty ratio in the clinical practice experience.

1. The maximum ratio of nurse faculty to students in the clinical area of patients-clients shall be defensible in light of safety, learning objectives, student level, and patient acuity.

2. The student-nurse faculty ratio shall not exceed ten (10) to one (1) in the clinical practice experience, including observational or other supervised learning experiences.

3. This ratio shall not apply to on campus skill lab experiences;

(j) The submission of the Certified List of Kentucky Program of Nursing Graduates, as incorporated by reference in 201 KAR 20:070, upon student completion of all requirements for a degree, diploma, or certificate, regardless of the state in which the graduate intends to seek licensure;

(k) The development and maintenance of an environment conducive to the teaching and learning process;

(l) To facilitate the development of long-range goals and objectives for the nursing program;

(m) To ensure that equipment, furnishings, and supplies be current and replaced in a timely manner;

(n) To ensure that the nurse faculty has sufficient time to accomplish those activities related to the teaching-learning process and program outcomes;

(o) To coordinate an orientation to the roles and responsibilities of full-time, part-time, adjunct nurse faculty, and clinical instructors to the program of nursing and, as appropriate, to clinical facilities so that the mission, goals, and expected outcomes of the program shall be achieved;

(p) To facilitate regular communication with the full and part time nurse faculty and clinical instructors in the planning,

implementation, and evaluation of the program of nursing;

(q) To ensure that recruitment materials provide accurate and complete information to prospective students about the program including the:

1. Admission criteria;

2. Program description, including course sequence, prerequisites, and corequisites;

3. Length of the program;

4. Current cost of the program, including tuition and all associated fees and expenses; and

5. Transferability of credits to other public and private institutions in Kentucky;

(r) To conduct or participate in the written evaluation of each nurse faculty member, clinical instructor, and program of nursing support staff according to published criteria, regardless of contractual or tenured status;

(s) To ensure the adherence to the written criteria for the selection and evaluation of clinical facilities utilized by the program of nursing;

(t) To maintain current knowledge of requirements pertaining to the program of nursing and licensure as established in 201 KAR Chapter 20;

(u) To attend the next available board orientation for program administrators but not later than within six (6) months of appointment;

(v) To develop a structure to allow nurse faculty to assist in the governance of the program;

(w) To ensure that the curriculum is developed and implemented pursuant to 201 KAR 20:320; and

(x) To ensure that the program of nursing posts a link provided by the board to the information published by the board pursuant to 201 KAR 20:360, Section 5(4) on its Web site and refers all individuals seeking information about the program to this link.

(4) A system of official records and reports essential to the operation of the program of nursing maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system shall include records of:

(a) Currently enrolled students to include admission materials, courses taken, grades received, scores for standardized tests, and clinical performance records;

(b) Minutes of faculty and committee meetings, which shall be maintained a minimum of five (5) years, irrespective of institutional policy;

(c) Faculty records including:

1. Validation of current licensure or privilege to practice as a Registered Nurse in Kentucky;

2. Evidence of fulfilling the faculty orientation requirements established in 201 KAR 20:310, Section 3(5); and

3. Performance evaluation for faculty employed more than one (1) year;

(d) Systematic plan of evaluation;

(e) Graduates of the program of nursing; and

(f) Administrative records and reports from accrediting agencies; and

(5) Official publications of the governing institution including:

(a) A description of the governing institution and program of nursing;

(b) Policies on admission, progression, dismissal, graduation, and student grievance procedures; and

(c) A description of student services;

(6) Clerical assistance and support staff.

(a) There shall be clerical assistance and support staff sufficient to meet the needs of the nursing program for the administrator, faculty, and students.

(b) Each campus shall have at least one (1) dedicated clerical staff.

(c) If the program of nursing does not have at least one (1) dedicated clerical staff, the program administrator shall provide written justification to the board. The board shall evaluate the justification to determine whether the program may operate effectively without dedicated staff sufficient to meet the needs of the nursing program. If the board rejects the justification, the

program of nursing shall comply with the board's determination on clerical staffing.

(7) Nurse faculty, full-time, and part-time, with the authority and responsibility to:

(a) Plan, implement, evaluate, and update the program;
(b) Assist in the design, implementation, evaluation, and updating of the curriculum using a written plan;

(c) Participate in the development, implementation, evaluation, and updating of policies for student admission, progression, and graduation in keeping with the policies of the governing institution;

(d) Participate in academic advisement and guidance of students;

(e) Provide theoretical instruction and clinical learning experiences;

(f) Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;

(g) Develop and implement student evaluation methods and tools for each course that measure the progression of the student's cognitive, affective, and psychomotor achievement of course and clinical outcomes based on published rubrics and sound rationale;

(h) Participate in academic and professional level activities that maintain the faculty member's competency and professional expertise in the area of teaching responsibility;

(i) Communicate clinical outcomes to the student, clinical instructor, preceptor, and staff at the clinical site;

(j) Assume responsibility for utilizing the criteria in the selection of clinical sites and in the evaluation of clinical experiences on a regular basis;

(k) Evaluate the student's experience, achievement, and progress in relation to course and clinical outcomes, with input from the clinical instructor and preceptor, if applicable; and

(l) Delegate to a nurse employed by a clinical agency the supervision of a student performing a procedure; and

(8) Clinical instructors with the authority and responsibility to:

(a) Design, at the direction of the nurse faculty member, the student's clinical experience to achieve the stated outcomes of the nursing course in which the student is enrolled;

(b) Clarify with the nurse faculty member:

1. The role of the preceptor, if applicable;
2. The course responsibilities;
3. The course or clinical outcomes;
4. A course evaluation tool; and
5. Situations in which collaboration and consultation shall be needed;

(c) Participate in the evaluation of the student's performance by providing information to the nurse faculty member and the student regarding the student's achievement of established outcomes; and

(d) Delegate to a nurse employed by a clinical agency the supervision of a student performing a procedure.

Section 3. Number of Students Enrolled[Notification of Change in Enrollment].

(1) All programs of nursing shall have on record with the board the [maximum] number of new students that the program is able to enroll in one (1) academic year. [This number shall be referred to as the program's enrollment baseline.]

(2) There shall be no limit on the number of students who may attend a program of nursing if the program of nursing meets:

(a) The requirements of KRS 314.111(5); and

(b) The benchmarks set out in 201 KAR 20:360, Section 5(2)(f).

[~~(a) A program of nursing that desires to increase its enrollment beyond its enrollment baseline shall submit a request to the board. The request shall be sent in writing at least two (2) months prior to the date for which the requested increase is being sought. Exceptions to this time frame shall only be made for exigent circumstances. The request is only necessary if the increase is greater than the following:~~

- ~~1. If the enrollment baseline is fifty (50) or less, an increase of ten (10) students;~~
- ~~2. If the enrollment baseline is fifty-one (51)-100, an increase of twenty (20) students; or~~
- ~~3. If the enrollment baseline is greater than 100, an increase of~~

~~twenty-five (25) students.~~

~~(b) The request shall demonstrate that the program has sufficient resources to fulfill the standards established by this administrative regulation for the anticipated increase in enrollment. These sufficient resources shall include adequate:~~

- ~~1. Number of qualified faculty;~~
- ~~2. Classroom space;~~
- ~~3. Clinical sites;~~
- ~~4. Clerical support; and~~
- ~~5. Financial support.~~

~~(c) The program shall investigate the projected impact of the increase on the operation of programs of nursing within a fifty (50) mile radius and shall submit a report to the board.~~

~~(d) The program of nursing shall submit evidence that it has met the benchmarks set out in 201 KAR 20:360, Section 5(2)(f).]~~

(3)(a) A program of nursing that meets the requirements set out in subsection (2) of this section may increase its enrollment without limitation.

(b) A program of nursing shall report any increase in enrollment to the board.

[(a) The request shall be reviewed by board staff. Board staff may approve the request if it is determined that the criteria listed in subsection (2) of this section have been met.

(b) If board staff determines that the criteria listed in subsection (2) of this section have not been met, the request shall be referred to the board for further consideration and a decision.]

(4)(a) The board may impose a limit on the number of students attending a program of nursing that does not meet the requirements of subsection (2) of this section.

(b) The board may deny an increase in enrollment for a program of nursing that does not meet the requirements of subsection (2) of this section.

Section 4. Multiple Campuses. (1)(a) A governing institution may have programs of nursing located on different campuses.

(b) Each campus shall be considered a separate program of nursing.

(2)(a) The governing institution shall designate a main campus headed by a program administrator.

(b) The program administrator shall have final responsibility and authority for the non-main campuses, but shall designate an assistant program administrator to assist in the governance of each non-main location. The assistant program administrator shall meet the qualification for a nurse faculty as set out in 201 KAR 20:310. The program administrator may designate the amount of release time for the assistant program administrator for administrative duties, but it shall not be less than twenty-five (25) percent.

(3) For purposes of calculating benchmarks set out in 201 KAR 20:360, Section 5(2)(f), each campus shall individually report its data annually to the board. The board shall evaluate the benchmarks for each campus individually.

(4) A governing institution that has extended its main campus to a new campus during the period 201 KAR 20:260E was in effect, from January 11, 2022 to October 8, 2022, shall take the necessary steps to comply with 201 KAR 20:280. The process shall begin within thirty (30) days of the effective date of this administrative regulation.

Section 5. Suspension of Enrollment. (1) A governing institution that decides to suspend enrollment in the program of nursing shall notify the board in writing within thirty (30) days following the decision. No longer enrolling in one (1) of several nursing tracks within a program of nursing shall not constitute suspension of enrollment for purposes of this administrative regulation.

(2) The notification shall identify the reasons leading to the decision and how long it is anticipated that the suspension will be in effect.

(3) The governing institution shall report to the board annually on the status of the suspension.

(4)(a) If the decision to reinstate enrollment is made within three (3) years of the decision to suspend enrollment, the governing institution shall notify the board in writing of the decision

within thirty (30) days.

(b) The notification shall state the date classes will begin. It shall also list the faculty and clinical sites that will be utilized.

(5) If the decision to reinstate enrollment is made three (3) years or more from the decision to suspend enrollment, the governing institution shall comply with the procedures outlined in 201 KAR 20:280.

Section 6. Change in Accreditation.

(1) A governing institution that seeks to change the U.S. Department of Education recognized accrediting body from which it receives accreditation shall notify the board when it has filed an application for accreditation.

(2) A governing institution with an application in process before the accrediting body shall be considered in compliance with Section 2(1)(a) of this administrative regulation.

(3)(a) A governing institution whose application has been denied by its accrediting body shall not be considered to be in compliance with Section 2(1)(a) of this administrative regulation.

(b) The board shall begin the process established in 201 KAR 20:360, Section 7 for withdrawal of approval.

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BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, October 11, 2022)

201 KAR 20:490. Licensed practical nurse infusion therapy scope of practice.

RELATES TO: KRS 314.011(10)(a), (c)

STATUTORY AUTHORITY: KRS 314.011(10)(c), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.011(10)(c) authorizes the board to promulgate an administrative regulation to establish the scope of practice for administering medicine or treatment by a licensed practical nurse. KRS 314.011(10)(a) requires that licensed practical nurses practice under the direction of a registered nurse, advanced practice registered nurse, physician assistant, licensed physician, or dentist. This administrative regulation establishes the scope of that practice as it relates to infusion therapy.

Section 1. Definitions. (1) "Administration" means to initiate and maintain infusion therapy.

(2) "Antineoplastic agent" means a medication that prevents the development, growth, or proliferation of malignant cells.

(3) "Central venous access device" means a catheter inserted into a peripheral or centrally located vein with the tip residing in the superior or inferior vena cava. This includes peripherally inserted central catheters.

(4) "Direction" means a communication of a plan of care that is based upon assessment of a patient by an advanced practice registered nurse, a registered nurse, physician assistant, licensed physician, or dentist that establishes the parameters for the provision of care or for the performance of a procedure.

(5) "Peripheral venous access device" means a peripherally-inserted intravenous catheter or needle that is less than or equal to three (3) inches in length.

(6) "Pharmacology" means information on the classification of intravenous drugs, indications for use, pharmacological properties, monitoring parameters, contraindications, dosing, clinical mathematics, anticipated side effects, potential complications, antidotal therapy, compatibilities, stabilities, specific considerations for select intravenous drugs, and administration of intravenous medications to pediatric, adult, and geriatric populations.

(7) "Procedural sedation" means the administration of intravenous medications to produce a decreased level of consciousness.

(8) "Supervision" means the provision of guidance by a registered nurse, advanced practice registered nurse, physician assistant, licensed physician, or dentist for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed in a safe manner.

(9) "Supervisor" means the registered nurse, advanced practice registered nurse, physician assistant, licensed physician, or dentist who provides supervision of the licensed practical nurse's practice as defined in this section.

(10) "Therapeutic phlebotomy" means removal of a specific volume of blood from a patient as ordered for the treatment of a specific condition or disease.

(11) "Unstable" means inconsistent, unpredictable, or consistently fluctuating.

Section 2. Education and Training Standards.

(1) Prior to performing infusion therapy, the licensed practical nurse (LPN) shall have completed education and training related to the scope of infusion therapy for an LPN. This education and training shall be obtained through:

(a) A precicensure program of nursing for individuals admitted to the program after September 15, 2019; or

(b) An institution, practice setting, or continuing education provider that has in place a written instructional program and a competency validation mechanism that includes a process for evaluation and documentation of an LPN's demonstration of the knowledge, skills, and abilities related to the safe administration of infusion therapy. The LPN shall receive and maintain written documentation of completion of the instructional program and competency validation.

(2) The education and training programs recognized in subsection (1) of this section shall be based on the Policies and Procedures for Infusion Therapy; **Home Infusion** and the Infusion Therapy: Standards of Practice and shall include the following components:

(a) Legal considerations and risk management issues;

(b) Related anatomy and physiology including fluid and electrolyte balance;

(c) Principles of pharmacology as related to infusion therapy;

(d) Infusion equipment and preparation;

(e) Principles and procedures for administration of solutions and medications via intravenous route including transfusion therapy and parenteral nutrition;

(f) Principles and procedures for site maintenance for a peripheral venous access device and a central venous access device;

(g) Assessment of and appropriate interventions for complications related to infusion therapy; and

(h) Demonstration and validation of competency for infusion therapy procedures.

Section 3. Supervision Requirements.

(1) An LPN performing infusion therapy procedures shall be under the direction and supervision of a registered nurse (RN), advanced practice registered nurse (APRN), physician assistant, licensed physician, or dentist.

(2) For a patient whose condition is determined by the LPN's supervisor to be stable and predictable, and rapid change is not anticipated, the supervisor may provide supervision of the LPN's provision of infusion therapy without being physically present in the immediate vicinity of the LPN, but shall be readily available.

(3) In the following cases, for the LPN to provide infusion therapy, the LPN's supervisor shall be physically present in the immediate vicinity of the LPN and immediately available to intervene in the care of the patient:

(a) If a patient's condition is or becomes unstable;

(b) If a patient is receiving blood, blood components, or plasma volume expanders; or

(c) If a patient is receiving peritoneal dialysis or hemodialysis.

BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, October 11, 2022)

Section 4. Standards of Practice.

(1) An LPN shall perform only those infusion therapy acts for which the LPN possesses the knowledge, skill, and ability to perform in a safe manner, except as limited by Section 5 of this administrative regulation and under supervision as required by Section 3 of this administrative regulation.

(2) An LPN shall consult with an RN or physician, physician assistant, dentist, or advanced practice registered nurse and seek guidance as needed if:

(a) The patient's care needs exceed the licensed practical nursing scope of practice;

(b) The patient's care needs surpass the LPN's knowledge, skill, or ability; or

(c) The patient's condition becomes unstable.

(3) An LPN shall obtain instruction and supervision as necessary if implementing new or unfamiliar nursing practices or procedures.

(4) An LPN shall follow the written, established policies and procedures of the facility that are consistent with KRS Chapter 314.

Section 5. Functions That Shall Not Be Performed. An LPN shall not perform the following infusion therapy functions:

(1) Administration of tissue plasminogen activators, except when used to declot any central venous access device;

(2) Accessing of a central venous access device used for hemodynamic monitoring;

(3) Administration of medications or fluids via arterial lines or implanted arterial ports;

(4) Accessing or programming an implanted infusion pump;

(5) Administration of infusion therapy medications for the purpose of procedural sedation or anesthesia;

(6) Administration of fluids or medications via an epidural, intrathecal, intraosseous, or umbilical route, or via a ventricular reservoir;

(7) Administration of medications or fluids via an arteriovenous fistula or graft, except for dialysis;

(8) Repair of a central venous access device;

(9) Performance of therapeutic phlebotomy;

(10) Aspiration of an arterial line;

(11) Initiation and removal of a peripherally inserted central, midclavicular, or midline catheter; or

(12) Administration of immunoglobulins, antineoplastic agents, or investigational drugs.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Policies and Procedures for Infusion Therapy: Home Infusion", Infusion Nurses Society, [Fifth]Second Edition, [2016]2021; and

(b) "Infusion Therapy: Standards of Practice", Infusion Nurses Society, Eighth Edition, 2021.[2016]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. Links to this material is also available on the board's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx>.

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201 KAR 20:620. Licensing requirements for licensed certified professional midwives.

RELATES TO: KRS 194.540, 314.400 – 314.414, 620.020

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(2) requires the board to promulgate an administrative regulation to establish licensing requirements for licensed certified professional midwives. KRS 314.404(5) requires the board to promulgate an administrative regulation to establish fees. This administrative regulation establishes the fees and requirements for initial licensure, renewal, and reinstatement for licensed certified professional midwives.

Section 1. Fees.

(1) The fee for initial licensure shall be \$1,000.

(2) The fee for licensure renewal shall be \$1,000.

(3) The fee for licensure reinstatement shall be \$1,000.

(4) Unless otherwise specified in this section, fees enumerated in 201 KAR 20:240 shall apply.

Section 2. Initial Licensure. An applicant for initial licensure as a licensed certified professional midwife (LCPM) shall complete the Certified Professional Midwife Application for Licensure and pay the fee for initial licensure as established in Section 1 of this administrative regulation.

Section 3. Educational Requirements.

(1) An applicant for initial licensure as an LCPM shall provide evidence that the program from which they graduated is accredited by the Midwifery Education Accreditation Council (MEAC).

(2) An applicant shall also provide a copy of his or her official transcript.

(3)(a) If the applicant was certified by the North American Registry of Midwives (NARM) before January 1, 2020 through an educational pathway not accredited by MEAC, the applicant shall provide evidence of having earned the Midwifery Bridge Certificate issued by NARM. This shall be in lieu of an official transcript.

(b) If the applicant is licensed in another state that does not require an accredited education, the applicant shall provide evidence of having earned the Midwifery Bridge Certificate issued by NARM and proof of licensure in the other state.

(4) An applicant shall provide evidence of current American Heart Association Basic Life Support (BLS) for health care providers and Neonatal Resuscitation Program (NRP) certifications.

(5) An applicant shall complete a pediatric abusive head trauma course described in KRS 620.020(8) and a domestic violence course described in KRS 194A.540 and provide evidence to the board at the time of application.

Section 4. Competency Validation. An applicant shall provide evidence of having passed the North American Registry of Midwives (NARM) Examination and been granted certification by NARM.

Section 5. Criminal Record Check.

(1) Within six (6) months of the date of the application, an applicant shall request a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card and including any required fee to the KSP and the FBI.

(2) An applicant shall provide a certified or attested copy of the court record of any misdemeanor or felony conviction and a letter of explanation that addresses each conviction at the time of application.

Section 6. Action in Another Jurisdiction. An applicant shall provide a certified copy of any disciplinary action taken on any professional or business license in another jurisdiction and a letter of explanation at the time of application.

Section 7. License.

(1) An applicant who meets the requirements of KRS 314.404 and Sections 1 through 6 of this administrative regulation shall be issued a license to practice as an LCPM.

(2) The license shall be issued for one (1) year from the date of initial licensure and may be renewed pursuant to Section 8 of this administrative regulation.

Section 8. Renewal.

(1) A license to practice as an LCPM may be renewed by completing the Certified Professional Midwife Licensure Renewal Application and paying the fee established in Section 1 of this administrative regulation.

(2) The LCPM shall provide evidence of current certification with NARM at the time of renewal.

(3) The LCPM shall provide evidence of current BLS and NRP certifications at the time of renewal.

(4) Upon approval of the Certified Professional Midwife Renewal Application, the license shall be renewed for one (1) year.

Section 9. Reinstatement.

(1) If the LCPM license has lapsed, an applicant may file the Certified Professional Midwife Application for Licensure to request reinstatement and pay the fee established in Section 1 of this administrative regulation.

(2) The LCPM shall provide evidence of current certification with NARM at the time of application for reinstatement.

(3) The LCPM shall provide evidence of current BLS and NRP certifications at the time of application for reinstatement.

(4) An applicant for reinstatement shall also meet the requirements of Sections 5 and 6 of this administrative regulation.

Section 10. For the purposes of the practice as an LCPM, an LCPM shall use the name under which he or she is licensed with the board of nursing.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Certified Professional Midwife Application for Licensure", 1/2020; and

(b) "Certified Professional Midwife Licensure Renewal Application", 1/2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material is also available on the agency's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx>.

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BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, October 11, 2022)

201 KAR 20:650. Licensed certified professional midwives permitted medical tests and formulary.

RELATES TO: KRS 314.400[314.404] – 314.416[314.414]

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate

administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(7) ~~requires~~authorizes~~requires~~ the board to promulgate an administrative regulation to establish a list of medical tests that a licensed certified professional midwife may order when providing certified professional midwifery services that is limited to only those tests that are indicated and approved for the safe conduct of pregnancy, labor or birth, and care of a client and not intended for the diagnosis or management of any acute condition unrelated to pregnancy. This administrative regulation establishes the medical tests and formulary for licensed certified professional midwives.~~[This administrative regulation establishes the medical tests and formulary for licensed certified professional midwives.]~~

Section 1. An LCPM may independently order the following medical tests:

- (1) Complete blood count (CBC);
- (2) Blood type, Rh, and antibody screen;
- (3) Screening for gestational diabetes;
- (4) Hepatitis B and C panels for immunity or infection;
- (5) HIV test;
- (6) HPV test;
- (7) Pap smear;
- (8) Screen tests for syphilis, chlamydia, gonorrhea, and herpes;
- (9) Rubella titers;
- (10) Urine or serum HCG;
- (11) Urinalysis;
- (12) Urine culture including Group B strep;
- (13) Vaginal culture for Group B strep;
- (14) Varicella titers;
- (15) Ultrasound for fetal viability, confirmation of singleton intrauterine pregnancy, gestational age, fetal position, placental localization, anatomy scan, amniotic fluid index, or nuchal translucency;
- (16) Standard state newborn screening for metabolic disorders;
- (17) Newborn hearing screening;
- (18) Critical congenital heart disease screening (pulse oximetry);
- (19) Maternal prenatal genetic screening for errors of metabolism;
- (20) Hemoglobin A1C;
- (21) Standard screening tests for fetal genetic abnormalities including Quad Screen and cell-free DNA testing;
- (22) TSH screening;~~and~~
- (23) Non-stress tests;
- (24) Neo-Bilirubin or Total-Bilirubin;
- (25) Coombs and blood type test of the newborn; and
- (26) The fetal screen and Rhogam tests of the client.

Section 2. An LCPM may order any other test which is ~~determined as deemed~~determined—as necessary after consultation with a physician or other appropriate licensed healthcare provider.

Section 3.

(1) An LCPM may obtain, transport, and administer the following legend medications:

- (a) Vitamin K;
- (b) Rho D immune globulin;
- (c) Erythromycin ophthalmic ointment USP, five-tenths (0.5) percent;
- (d) Oxygen;
- (e) Hepatitis B vaccine;
- (f) Antibiotics which shall be administered pursuant to United States Centers for Disease Control (CDC) Guidelines for Prophylaxis:
 1. Penicillin;
 2. Ampicillin;
 3. Cefazolin;
 4. Clindamycin; and
 5. Vancomycin;

- (g) Topical anesthetics:
 1. Procaine HCl;
 2. Novacaine;
 3. Benzocaine;
 4. Cetacaine; and
 5. Generic equivalents;
 - (h) Lidocaine, one (1) percent ~~one (1) percent~~ up to twenty (20) milliliters per patient;
 - (i) Epinephrine;
 - (j) Glucose gel to be administered orally for neonatal hypoglycemia;
 - (k) Tranexamic acid;
 - (l) Oxytocin;
 - (m) Lactated Ringer's;
 - (n) Normal saline; and
 - (o) ~~(f)~~ Medical supplies needed to administer the medications listed in this administrative regulation.
- (2)
- (a) An LCPM shall obtain and transport for emergencies Oxytocin ~~[(Pitocin)]~~ for prevention of postpartum hemorrhage and Lactated Ringer's or Normal Saline for intravenous infusion.
 - (b) The LCPM shall obtain and transport at least one (1) of the following to be used in the event of postpartum hemorrhage and if Oxytocin is not successful:
 1. Methylergonovine (Methergine);
 2. Hemabate; or
 3. Misoprostal (Cytotec).

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KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Board of Emergency Medical Services (As Amended at ARRS, October 11, 2022)

202 KAR 7:701. Scope of practice matters.

RELATES TO: KRS 39A.050, 311A.135, 311A.140, 311A.160, 311A.165, 311A.170, 311A.175

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, 311A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This administrative regulation establishes the scope of practice.

Section 1. Emergency Medical Responder. (1) In addition to the skills and procedures established in the current National Highway Traffic Safety Administration National EMS Scope of Practice Model, emergency medical responders certified by the board shall be eligible to perform the supplemental procedures:

- (a) Cervical spine and spinal immobilization; and
- (b) Administration of Naloxone via Nasal Atomization Devices.

(2) To be eligible to perform a supplemental procedure established in subsection (1) of this section, an emergency medical responder shall have been trained and educated utilizing:

- (a) Kentucky Required Mandatory Supplemental Curriculum: EMR Spinal Immobilization (KBEMS-E-34); and
- (b) Kentucky Required Mandatory Supplemental Curriculum for the EMR in the Administration of Naloxone using a Nasal Atomization Device (KBEMS-E-33).

(3) An out-of-state emergency medical responder may perform any skill or procedure that the emergency medical responder may use in the state in which the emergency medical responder is certified subject to the emergency medical responder being called upon to assist in providing medical and related care during a

disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

(4)(a) An emergency medical responder shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

1. The emergency medical responder's medical director or designated on-line medical direction orders otherwise;
 2. Compliance with approved protocols is not in the patient's medical best interest; or
 3. The emergency medical responder does not have the equipment or medication to adhere to the protocol.
- (b) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

Section 2. Emergency Medical Technician (EMT). (1) In addition to the skills and procedures established in the current National Highway Traffic Safety Administration National EMS Scope of Practice Model, an EMT certified by the board shall be eligible to perform the supplemental procedures:

- (a) Identification of correct placement of an endotracheal tube (ETT) placed by a licensed paramedic ~~including the use of end tidal CO₂ monitoring (EtCO₂)~~;
- (b) Securing of an endotracheal tube that has been inserted by appropriately licensed personnel;
- (c) The use of Blind Insertion Airway Devices (BIADs);
- (d) Utilizing a cardiac monitor and troubleshooting potential problems;
- (e) Selecting and applying cardiac electrodes;
- (f) Non-interpretive acquisition and transmission of a 12-Lead Electrocardiogram (ECG);
- (g) Appropriate utilization of equipment and sampling of blood glucose using a glucometer;
- (h) Care for a saline lock site where a catheter has been dislodged;
- (i) Administration of Epinephrine for anaphylaxis;
- (j) Administration of Naloxone using a Nasal Atomization Device; ~~and~~
- (k) Administration of Albuterol using a Nebulizer; and
- (l) Quantitative and qualitative capnography and capnometry.

(2) To be eligible to perform each of the supplemental procedures, an EMT shall have been trained and educated utilizing:

- (a) Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Monitoring & Securing an ETT (KBEMS-E-38);
- (b) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of Electrocardiogram Electrodes, Use of a Cardiac Monitor, and Acquisition and Transmission of a 12-Lead ECG (KBEMS-E-35);
- (c) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT): Training in the Monitoring, Maintaining, and Discontinuing of Pre-established Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-Home Encounters (KBEMS-E-40);
- (d) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of End-tidal Carbon Dioxide Monitoring (KBEMS-E-39);
- (e) Kentucky Required Mandatory Supplemental Curriculum for the EMT in the Administration of Naloxone Using a Nasal Atomization Device (KBEMS-E-36);
- (f) Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Blindly Inserted Airway Devices (BIADs) (KBEMS-E-37);
- (g) Kentucky Required Mandatory Supplemental Curriculum for the EMT: Sampling of Blood Glucose Using a Glucometer (KBEMS-E-41);
- (h) Kentucky Required Mandatory Supplemental Curriculum: Administration of Epinephrine (KBEMS-E-42); and

(i) Kentucky Required Mandatory Supplemental Curriculum: Administration of Albuterol using a Nebulizer (KBEMS-E-43).

(3) An EMT shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

(a) The medical director or designated on-line medical direction orders otherwise;

(b) Compliance is not in the medical best interest of the patient; or

(c) The EMT does not have the equipment or medication to adhere to the protocol.

(4) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

(5) An out-of-state EMT may perform any skill or procedure that the EMT may use in the state in which the EMT is certified subject to the EMT being called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

Section 3. EMT Students. (1) During the didactic, laboratory, and clinical portions of an EMT course, an EMT student may perform any skill or procedure, or administer any medication within the scope of practice for an EMT as established by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure, or to administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the EMT course.

(2) During a field internship, an EMT student may perform any skill or procedure, or administer any medication within the scope of practice for an EMT as established by this administrative regulation, if:

(a) The student has written authorization by the medical director of the EMT course to perform the skill or procedure;

(b) Authorization to perform the skill or procedure is filed with the coordinator of the EMT course; and

(c) The medical director of the EMT course and the director of the agency for whom the skill or procedure is performed each give written permission to the EMT student to participate in a field internship with the agency.

(3) This administrative regulation shall not be construed to allow an emergency medical responder student or EMT student, ~~AEMT student, or paramedic student~~ to perform any skill or procedure without direct supervision by a physician, registered nurse, ~~or paramedic~~, AEMT, or EMT, any of whom shall be licensed or certified in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 4. Advanced Emergency Medical Technician (AEMT).

(1) An AEMT shall provide emergency medical services consistent with the current National Highway Traffic Safety Administration National EMS Scope of Practice Model.

(2) In addition to the skills and procedures in the National EMS Scope of Practice Model, the scope of practice of a Kentucky AEMT shall include the supplemental procedures:

(a) Quantitative and qualitative capnography and capnometry;

(b) Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure (BiPAP/CPAP) devices; and

(c) Establishing and maintaining an adult intraosseous infusion.

(3) To be eligible to perform each of the supplemental procedures, an AEMT shall have been trained and educated utilizing:

(a) Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using a Noninvasive Monitoring Device - Application and Interpretation of Quantitative Capnography and End Tidal Carbon Dioxide Monitoring (KBEMS-E30);

(b) Kentucky Required Mandatory Supplemental Curriculum for the AEMT - Intraosseous Infusion in the Adult (KBEMS-E-31); and

(c) Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using Bi-level Positive Airway Pressure and Continuous

Positive Airway Pressure Devices (KBEMS-E-32).

(4)(a) An AEMT shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

1. The AEMT's medical director or designated on-line medical direction orders otherwise;

2. Compliance with approved protocols is not in the patient's medical best interest; or

3. The AEMT does not have the equipment or medication to adhere to the protocol.

(b) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

(5) If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact pursuant to KRS 39A.050, or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an AEMT certified in another state may perform the skills and procedures approved by the certifying state.

Section 5. AEMT Students. (1) During the didactic, laboratory, and clinical portions of an AEMT course, an AEMT student may perform any skill or procedure, or administer any medication within the scope of practice for an AEMT, as defined by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure, or to administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the AEMT course.

(2) During a field internship, an AEMT student may perform any skill or procedure, or administer any medication within the scope of practice for an AEMT, as established by this administrative regulation, if:

(a) The student has written authorization by the medical director of the AEMT course to perform the skill or procedure;

(b) Authorization to perform the skill or procedure is filed with the coordinator of the AEMT course; and

(c) The medical director of the AEMT course and the director of the agency for whom the skill or procedure is performed each give written permission to the AEMT student to participate in a field internship with the agency.

(3) This administrative regulation shall not be construed to allow an ~~emergency medical responder student, EMT student, AEMT student, or paramedic student~~ to perform any skill or procedure without direct supervision by a physician, registered nurse, ~~or paramedic~~, or AEMT, any of whom shall be licensed or certified in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 6. Paramedic. (1) A paramedic may perform any of the skills and procedures consistent with the current National Highway Traffic Safety Administration National EMS Scope of Practice Model.

(2) A paramedic shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

(a) The medical director or designated on-line medical direction orders otherwise;

(b) Compliance is not in the medical best interest of the patient; or

(c) The paramedic does not have the equipment or medication to adhere to the protocol.

(3) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

(4)(a) A paramedic functioning in a position of employment may perform any procedure or administer medications authorized by KRS 311A.170 or this administrative regulation, at any location within the Commonwealth subject to the written approval of, and limitations established by the paramedic's medical director and the paramedic's employer.

(b) A paramedic performing skills or procedures outside of the normal response area for the paramedic shall accompany and

assist with or continue treatment for the patient until the patient is accepted by a receiving hospital, an ALS ground or licensed ALS air ambulance provider, or care is transferred to another licensed paramedic, receiving facility RN, advanced practice registered nurse (APRN), licensed physician's assistant, or physician.

(5)(a)1. An off-duty paramedic may perform any procedure or administer medications authorized by KRS 311A.170 or this administrative regulation, at any location within the Commonwealth subject to the written approval of, and limitations established by the paramedic's medical director and, if appropriate, the paramedic's employer; or

2. The paramedic may render care subject to the limitations of the paramedic's scope of practice at any location, if ordered to do so by a duly licensed physician.

(b) A paramedic performing skills or procedures outside of the normal response area for the paramedic shall accompany and assist with or continue treatment for the patient until the patient is accepted by a receiving hospital, an ALS ground or licensed ALS air ambulance provider, or care is transferred to another licensed paramedic, hospital emergency department, RN, advanced practice registered nurse (APRN), licensed physician's assistant, or physician.

(6) An out-of-state paramedic may perform any skill, procedure, or administer any medications that the paramedic may use in the state in which the paramedic is certified or licensed, subject to the control of the out-of-state paramedic's medical director or protocols and only in the following circumstances:

(a) An out-of-state paramedic is transporting a patient from out-of-state to a Kentucky medical facility or other location in Kentucky;

(b) An out-of-state paramedic is transporting a patient from out of state through Kentucky to another location out of state; or

(c) An out-of-state paramedic is called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

(7) A paramedic with a critical care endorsement shall be authorized to perform the skills and procedures included in the paramedic's education and training subject to authorization by the medical director through established protocols in accordance with KRS Chapter 311A and 202 KAR Chapter 7.

Section 7. Paramedic Hospital Scope of Practice. (1) Paramedics functioning in the hospital environment shall perform within the scope of practice, as established in this administrative regulation.

(2) Employment of paramedics in hospital emergency department settings, exclusive of employment by air or ground transport components, or both, owned or operated by the hospital, shall be subject to demonstrating knowledge based and clinical competencies at a level satisfactory to the employing hospital and subject to KRS Chapter 311A and 202 KAR Chapter 7.

(3) An employer shall not require practice for a paramedic that exceeds the defined scope of practice established by KRS Chapter 311A and 202 KAR Chapter 7. The paramedic shall inform the employing institution or supervising staff of any inability or limitation to perform an ordered skill or procedure based upon:

(a) A lack of knowledge of or training or education in the procedure or skill; or

(b) The order or directive exceeding the paramedic's scope of practice.

(4) An employer may provide education or educational opportunities to expand the documented clinical practice of the paramedic but shall not do so with the intent of requiring the paramedic to perform skills or procedures exceeding the scope of practice established by KRS Chapter 311A and 202 KAR Chapter 7 while in the hospital's employ.

(5) A paramedic shall:

(a) Maintain strict patient confidentiality;

(b) Provide and assure continuity of care to patients;

(c) Be a patient advocate;

(d) Follow the hospital's chain of command;

(e) Be knowledgeable and function within the scope of practice

of a paramedic;

(f) Be clearly identified as a licensed paramedic while functioning in the hospital's employ;

(g) Document on patient care records all interventions, treatments, and assessments performed by the paramedic;

(h) Perform patient assessment, which may include triage; and

(i) Institute appropriate therapy in the care of patients subject to the limitation of existing protocols.

Section 8. Paramedic Students. (1) During the didactic, laboratory, and clinical portions of a paramedic course, a paramedic student may perform any skill or procedure, or administer any medication within the scope of practice for a paramedic as established by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure or administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the paramedic course.

(2) During the field internship, a paramedic student may perform any skill or procedure, or administer any medication within the scope of practice for a paramedic as established by this administrative regulation, if:

(a) The student has written authorization by the medical director of the paramedic course to perform the skill or procedure;

(b) The permission is filed with the paramedic course coordinator of the paramedic course; and

(c) The medical director and director of the ambulance service each give written permission to the paramedic student to participate in a field internship with the ambulance service.

(3) This administrative regulation shall not be construed to allow ~~a[n emergency medical responder student, EMT student, AEMT student, or]~~ paramedic student to perform any skill or procedure without direct supervision by a physician, registered nurse, or paramedic, any of whom shall be licensed or certified in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 9. Restriction of Practice. This administrative regulation shall not prohibit a medical director from restricting the scope of practice of any emergency medical responder, EMT, AEMT, or paramedic under the medical director's authority through established protocols.

Section 10. Exemptions. This administrative regulation shall not prohibit an emergency medical responder, emergency medical technician, advanced emergency medical technician, or paramedic certified or licensed in another state or registered with the NREMT from functioning in accordance with the scope of practice established in KRS Chapter 311A and 202 KAR Chapter 7 while assisting with mass casualties, weapons of mass destruction, or disaster incidents.

Section 11. Incorporation by Reference. (1) The following ~~material is~~~~[documents are]~~ incorporated by reference:~~;~~~~]~~

(a) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using a Noninvasive Monitoring Device - Application and Interpretation of Quantitative Capnography and End Tidal Carbon Dioxide Monitoring", KBEMS-E-30, February 2007;

(b) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT Intraosseous Infusion in the Adult", KBEMS-E-31, February 2007;

(c) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT using Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure Devices", KBEMS-E-32, February 2007;

(d) "Kentucky Required Mandatory Supplemental Curriculum for the EMR in the Administration of Naloxone Using a Nasal Atomization Device" KBEMS-E-33, February 2007;

(e) "Kentucky Required Mandatory Supplemental Curriculum: EMR Spinal Immobilization", KBEMS-E-34, February 2007;

(f) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive

Monitoring Device - Application of Electrocardiogram Electrodes, Use of a Cardiac Monitor, and Acquisition and Transmission of a 12-Lead ECG", KBEMS-E-35, February 2007;

(g) "Kentucky Required Mandatory Supplemental Curriculum for the EMT in the Administration of Naloxone Using a Nasal Atomization Device", KBEMS-E-36, February 2007;

(h) "Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Blindly Inserted Airway Devices (BIADs)", KBEMS-E-37, February 2007;

(i) "Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Monitoring & Securing an ETT", KBEMS-E-38, February 2007;

(j) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of End-Tidal Carbon Dioxide Monitoring", KBEMS-E-39, February 2007;

(k) "Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT): Training in the Monitoring, Maintaining, and Discontinuing of Pre-established Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-Home Encounters", KBEMS-E-40, February 2007;

(l) "Kentucky Required Mandatory Supplemental Curriculum for the EMT: Sampling of Blood Glucose Using a Glucometer", KBEMS-E-41, February 2007;

(m) "Kentucky Required Mandatory Supplemental Curriculum: Administration of Epinephrine", KBEMS-E-42, February 2007;

(n) "Kentucky Required Mandatory Supplemental Curriculum: Administration of Albuterol Using a Nebulizer", KBEMS-E-43, February 2007; and

(o) "National Highway Traffic Safety Administration National EMS Scope of Practice Model", February 2007.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509 [148 James Court, Suite 50, Lexington, Kentucky 40565], Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the agency's Web site at <https://kbems.kctcs.edu/about/forms.aspx>.**

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TOURISM, ARTS AND HERITAGE CABINET
Heritage Council
(As Amended at ARRS, October 11, 2022)

300 KAR 6:011. Historic rehabilitation tax credit certifications.

RELATES TO: KRS 171.396, 171.3961, 171.3963, 171.397, **42 U.S.C. 12101**, 54 U.S.C. 300101, **36 C.F.R. 67**, 36 C.F.R. 800, [**42 U.S.C. 12401**]

STATUTORY AUTHORITY: KRS 171.397(12), (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.397(12) and (14) **authorize[authorizes]** the Kentucky Heritage Council to promulgate administrative regulations to implement the certified historic structures rehabilitation tax credit and to impose fees for tax credit applications. This administrative regulation establishes the application process to determine a taxpayer's eligibility to claim a certified historic structure rehabilitation tax credit.

Section 1. Definitions. (1) "Act" means the enabling legislation for the historic rehabilitation tax credit, KRS 171.396 **through[te]** 171.397.

(2) "Adjusted basis of the structure" means the purchase price of the property, minus the cost of land, plus improvements already made, minus allowable depreciation.

(3) "Certified historic structure" is defined by KRS 171.396(1).

(4) "Certified rehabilitation" is defined by KRS 171.396(2).

(5) "Certified rehabilitation credit cap" is defined by KRS 171.396(3).

(6) "Complete and adequately documented" means the applicant has provided all elements **established[outlined]** in the Part 1, 2, 3 or **KHC Form TC-4[application]**, fee payment, adequate photo documentation **prior to rehabilitation[at the time of purchase]** and **documentation of[documenting]** any subsequent changes by current owner, photo key, maps, and related architectural renderings or construction documents.

(7) "Completed rehabilitation project" means any certified historic structure **that[which]** has been substantially rehabilitated and, after the completion date, has been submitted by the applicant to the council for final certification of rehabilitation under the Act.

(8) "Completion date" means:

(a) For owner-occupied residential property, the month, date, and year in which the last eligible rehabilitation expense is incurred; or

(b) For all other property, the month, date, and year **in which[when]** the rehabilitation project is completed to allow occupancy of the entire building or some identifiable portion of the building and, if applicable, a certificate of occupancy has been issued.

(9) "Department" means the Kentucky Department of Revenue.

(10) "Director" means the executive director of the Kentucky Heritage Council.

(11) "Disqualifying work" is defined by KRS 171.396(5).

(12) "Exempt entity" is defined by KRS 171.396(6).

(13) "File" or "filed" means physical receipt by the council of an application for certification along with the tender of the appropriate review fee.

(14) "Final amount of credit approved" means the individual credit awarded for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.3961 or KRS 171.397, whichever is applicable, **upon filing of[when]** the Certificate of Rehabilitation-Part 3 **[is filed]** and **upon approval[approved]** by the council.

(15) "Inspection" means a visit by the director or an authorized representative of the council to a property for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

(16) "Meaningful consultation" **means[is]** the opportunity to consult with a historic building owner prior to the removal of historic fabric or work that does not meet the Secretary of the Interior's Standards for Rehabilitation **as established in Section 4(2) of this administrative regulation**.

(17) "National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the U. S. Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, 54 U.S.C. 300101, and implemented through 36 C.F.R. Part 800.

(18) "Owner" means:

(a) The person, partnership, corporation, public agency, or other entity holding a fee simple interest in a property, or any other person or entity recognized by the department for purposes of the applicable tax benefit under KRS 171.397 or KRS 171.3961, whichever is applicable; or

(b) A lessee, if the remaining term of the lease is not less than twenty-seven and one-half (27 1/2) years for residential property or thirty-nine (39) years for all other property.

(19) "Owner-occupied residential property" is defined by KRS 171.396(8).

(20) "Preliminary tax credit allocation" means the maximum individual credit available for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.397, on April 29 of the year in which the Certificate of Rehabilitation-Parts 1 and 2 are filed and approved by the council.

(21) "Property" means a building and its site and landscape features.

(22) "Qualified rehabilitation expense" is defined by KRS 171.396(9).

(23) "Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment ~~that[which]~~ are significant to its historic, architectural, ~~or[and]~~ cultural values ~~[as determined by the director]~~.

(24) "Rehabilitation plan" means a plan pursuant to which a certified historic structure will be substantially rehabilitated.

(25) "Rehabilitation project" means any certified historic structure, submitted by the applicant to the council, for certifications of rehabilitation under the Act.

(26) "Standards for rehabilitation" mean the Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. 67.7, as established by the U. S. Department of Interior and restated in Section 4(2) of this administrative regulation.

(27) "Starting date" means the date upon which the applicant applies for the building permit for work proposed by the rehabilitation plan or the date upon which actual physical work contemplated by the plan of rehabilitation begins.

(28) "Substantial rehabilitation" is defined by KRS 171.396(10).

(29) "Taxpayer" is defined by KRS 171.396(11).

Section 2. Certifications of Rehabilitation. (1) For tax credits under KRS 171.3961, a request for certification of historic significance and of rehabilitation under the Act shall be a five (5) stage process that requires the filing of the ~~[following forms]~~:

(a) Certification Application-Intent to Apply for Major Certified Rehabilitation[Expanded Credit];

(b) Certification Application Part 1-Evaluation of National Register Status;

(c) Certification Application Part 2-Description of Rehabilitation;

(d) Certification Application Part 3-Request for Certification of Completed Work; and

(e) ~~[Certification Application-]~~Summary of Investment and Election of Credit.

(2) For tax credits under KRS 171.397, a request for certification of historic significance and of rehabilitation under the Act shall be a four (4) stage process that requires the filing of the ~~[following forms]~~:

(a) Certification Application Part 1-Evaluation of National Register Status;

(b) Certification Application Part 2-Description of Rehabilitation;

(c) Certification Application Part 3-Request for Certification of Completed Work; and

(d) Certification Application-Summary of Investment and Election of Credit.

(3) Intent to Apply for Expanded Credit shall be a request for certification of an applicant's intent to claim a tax credit established by KRS 171.3961 for a proposed rehabilitation project.

(4) Part 1 shall be a request for certification of historic significance.

(5) Part 2 shall be a request for certification of a proposed rehabilitation project.

(6) Part 3 shall be a request for certification of a completed rehabilitation project.

(7) Summary of Investment and Election of Credit shall be actual cost, square footage, and use attributed to the rehabilitation work and an irrevocable election by the taxpayer to receive a refundable credit or transfer the credit.

(8) Certification of applications shall be filed with the council as established in paragraphs (a) through (c) of this subsection.[follows:]

(a) 1. Part 1 and Part 2 shall be filed with the council on or before April 29 for a preliminary determination of maximum credit eligibility for a credit under KRS 171.397.

2. Part 1, Part 2, and Intent to Apply for Expanded Credit shall be filed with the council on or before June 30, 2015, for a credit under KRS 171.3961.

(b) 1. Part 1 and Part 2 may be filed after rehabilitation has commenced, but an applicant who begins rehabilitation prior to receiving Part 2 certification shall assume[assumes] the risk that certification may be denied.

2. If rehabilitation has commenced prior to receiving Part 2

certification, the applicant ~~shall[is required to]~~ check a corresponding box on the Part 2 form that may prompt an inspection by council staff to determine level of completeness.

3. If it is determined that demolition ~~or[and/or]~~ rehabilitation has progressed beyond the point ~~at which[where]~~ "meaningful consultation" can be carried out, the council shall notify the applicant within thirty (30) days of inspection that a foreclosure on the agency's opportunity to comment on the rehabilitation plan has occurred and the application is closed.

4. Application[Any application] or review fees that have been paid ~~shall[may]~~ be refunded.

5. A taxpayer may appeal a determination of foreclosure.

a. An appeal shall be submitted by filing an appeal in writing within thirty (30) days of notification to the council board.

b. The council board shall either confirm the determination or reverse the determination based on compliance with this administrative regulation, with instructions to return the application to council staff for standard processing and review.

c. The council shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is considered at the regularly scheduled council meeting ~~if[where]~~ a quorum is present.

(c) Part 3 and Summary of Investment and Election of Credit shall be filed with the council after the completion date of a completed rehabilitation project for a final determination of credit.

(9) If at any stage an application is not approved by the council, the rehabilitation project shall not qualify as a certified rehabilitation for purposes of the Act.

Section 3. Certifications of Historic Significance-Part 1. (1) Application. The Certification Application Part 1-Evaluation of National Register Status form shall be ~~[timely]~~ filed with the council for certification of historic significance.

(a) Property individually listed in the National Register of Historic Places. Individually listed property shall be considered a certified historic structure for purposes of the Act subject to confirmation by the council based on compliance with the requirements established in this administrative regulation. The following information shall be provided by the applicant:

1. Names and mailing addresses of owners;

2. Name and address of property;

3. Photographic documentation of the building and property prior to and after alteration, showing exterior and interior features and spaces to ensure that the listed property has not lost the characteristics ~~that[which]~~ caused it to be listed on the National Register of Historic Places;

4. Descriptions of all the buildings within the listing if the property contains more than one (1) building for the purpose of determining which of the buildings are of historic significance to the property;

5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;

6. Brief statement of significance summarizing how the property reflects the values that give its distinctive historical and visual character, and explaining any significance attached to the property itself;

7. A copy of a map indicating where the subject property is located. If an individually-listed property is also located in a historic district listed in the National Register of Historic Places, a copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district shall also be included; and

8. Signatures of owners requesting confirmation of listing in the National Register of Historic Places or concurring in the request if the owners are not the applicants.

(b) Property located in a historic district listed in the National Register of Historic Places. If the property is located in historic district listed in the National Register of Historic Places, an applicant shall request that the property be certified by the council as a historic structure contributing to the significance of a historic district and provide the[The following information shall be provided]:

1. Names and mailing addresses of owners;

2. Name and address of property;
3. Name of historic district;
4. Photographic documentation of the building and property prior to and after alteration, showing exterior and interior features and spaces, and photographic documentation of adjacent properties and structures on the street showing significance to the historic district;
5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;
6. Brief statement of significance summarizing how the property reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself;
7. A copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district; and
8. Signatures of owners requesting certification or concurring in the request if the owners are not the applicants.

(2) Multiple structures. A property containing more than one (1) building shall be treated as a single certified historic structure if the council determines that the buildings have been functionally related~~[functionally-related]~~ historically to serve an overall purpose, whether the property is individually listed in the National Register or is located within a registered historic district. Buildings that are functionally related historically shall be those that[which] have functioned together to serve an overall purpose during the property's period of significance.

(3) Standards for evaluating significance.

(a) In addition to the existing National Register documentation, an application for certification of historic significance shall contain documentation with information about the significance of the specific buildings and structures.

(b) A property located within a historic district listed in the National Register of Historic Places shall be evaluated for contribution to the historic significance of the district by applying the [following—]standards established in subparagraphs 1. through 3. of this paragraph.[:]

1. A property contributing to the historic significance of a district shall be a property that[which] by location, design, setting, materials, workmanship, concept[feeling], and association adds to the district's sense of time and place and historical development.[:]

2. A property not contributing to the historic significance of a district shall be a property that[which] does not add to the district's sense of time and place and historical development; or a property in which[where] the location design, setting, materials, workmanship, concept[feeling] and association have been so altered or have so deteriorated that the overall integrity of the property has been irretrievably lost.[: and]

3. If the building was built within the past fifty (50) years, it shall not be considered to contribute to the significance of a district, unless a strong justification concerning its historical or architectural merit is given or the historical attributes of the district are considered to be less than fifty (50) years old.

(c) An evaluation of historic significance shall be made based upon the appearance and condition of the property before rehabilitation was begun.

(d) The qualities of a property and its environment that[which] qualify it as a certified historic structure shall be determined taking into account all available information, including information derived from the physical and architectural attributes of the building, and shall not be limited to information contained in the National Register nomination reports.

(e) If a nonhistoric surface material obscures a façade, it may be necessary to remove the surface materials prior to requesting certification so that a determination of significance can be made. After the material has been removed, if the obscured façade has retained substantial historic integrity and the property otherwise contributes to the historic district, it shall be determined to be a certified historic structure.

(4) Review of Part 1 Applications.

(a) A complete and adequately-documented Certification Application Part 1-Evaluation of National Register Status form shall

be reviewed by the council to determine if the property contributes to the historic significance of the district by applying the standards established in subsection (3) of this section.

(b) After consideration of the information contained in the application and other available information, the council shall approve the application if:

1. The property meets the standards for evaluating for significance established in subsection (3) of this section; or

2. The director confirms that the property is individually listed in the National Register of Historic Places.

(5)(a) If the application is not adequate to complete the review, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application.

(b) The applicant's failure to respond shall[may] result in [denial-of-]the application being closed.

(c) The council's notification or failure to notify shall not constitute a waiver of a deficiency or an alteration of a time limitation established under the Act.

(6) An applicant shall notify the council of any substantial damage, alteration, or changes to a property that occurs after issuance of a Certification of Part 1-Evaluation of National Register Status. The council may, upon thirty (30) days written notice to the applicant, withdraw a certification of historic significance and may seek to have the property removed from the National Register under 36 C.F.R. 800.

Section 4. Certifications of Rehabilitation-Part 2. (1) Applications.

(a) A Certificate of Application Part 2-Description of Rehabilitation form shall be [timely—]filed with the council for certification that a rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(b) A rehabilitation project shall be done according to a rehabilitation plan.

(c) The burden shall be upon the applicant to supply sufficient information to the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(d) An application shall include the [following information]:

1. Names and mailing addresses of owners;
2. Name and address of property;
3. Designation of whether the application is for owner-occupied residential property or other property;
4. Information sufficient to establish the proposed use of the structure;

5. Adjusted[The adjusted] basis for the property if other than owner-occupied residential or owned by an exempt entity;

6. Proposed starting date and completion date;

7. Projected qualified rehabilitation expenses;

8. Numbered photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment before rehabilitation that correspond to numbered positions on existing plans;

9. Taxpayer[The taxpayer] identification number or Social Security number;

10. Written detailed description of existing features and their conditions, and a written description of proposed rehabilitation work and the impact on existing features;

11. Plans for any attached, adjacent, or related new construction, if applicable; and

12. Signatures of owners requesting certification or concurring in the request if the owners are not the applicant.

(2) Standards for rehabilitation.

(a) The standards for rehabilitation shall be the criteria used to determine if the rehabilitation qualifies as a certified historic rehabilitation. Rehabilitation shall be consistent with the historic character of the structure or structures and, if applicable, the district in which it is located.

(b) A rehabilitation project shall meet all of the standards for rehabilitation established in this paragraph.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining

characteristics of the building and its site and environment.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. A change that creates a false impression[sense] of historical development, such as adding a conjectural feature or architectural element from another building, shall not be undertaken.

4. Changes to the property that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

6. Deteriorated architectural features shall be repaired rather than replaced. If the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, if possible, materials. Replacement of missing architectural features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If these resources shall be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in [such—]a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(c) 1. The quality of materials, craftsmanship, and related new construction in rehabilitation shall match the quality of materials, craftsmanship, and design of the historic structure [in question].

2. Certain treatments, if improperly applied, or certain materials by their physical properties, can[may] cause or accelerate physical deterioration of historic buildings, and use of these treatments or materials shall result in denial of certification.

3. The burden shall be upon the applicant to consult with the council for a determination as to what rehabilitation measures are appropriate for the structure.

4. Inappropriate rehabilitation measures on historic properties shall include:

a.[1.] Improper masonry repointing materials and techniques;

b.[2.] Improper exterior masonry cleaning methods;

c.[3.] Improper introduction of insulation if damage to historic fabric would result; and

d.[4.] Incompatible additions and new construction.

(d) The council may consider the dismantling and rebuilding of a portion of a certified historic structure to stabilize and repair weakened structural members and systems as a certified historic rehabilitation if:

1. The necessity for dismantling is justified in supporting documentation;

2. Significant architectural features and overall design are retained; and

3. Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

(3) Substantial rehabilitation. A rehabilitation project shall be a substantial rehabilitation only if the requirements of KRS 171.396(9) and (10) are met. To determine if[whether] a rehabilitation project is a substantial rehabilitation, the conditions established in this subsection shall apply.

(a) Increases to the adjusted basis of the structure shall include capital improvements to the structure, legal fees incurred for perfecting title, and zoning costs. Any depreciation previously claimed for the structure shall be subtracted from this figure.

(b) If a cost only partially qualifies as an eligible rehabilitation expense because some of the cost is attributable to the enlargement of the building, the expenditures shall be apportioned proportionately between the original portion of the building and the enlargement.

(c) In addition to the expenses listed in KRS 171.396(9), qualified rehabilitation expenses shall include:

1. The cost of work done to structural components of the building within the footprint of the historic structure if the components[they] are permanent;

2. Costs related to new heating, plumbing, and electrical systems, as well as expenses related to updating kitchens and bathrooms, compliance with the Americans with Disabilities Act of 1990, [42 U.S.C. 12101], and fire suppression systems and fire escapes; and

3. The cost of architectural and engineering fees, site survey fees, legal expenses, development fees, and other construction-related costs, if those costs are added to the basis of the property.

(d) In addition to the exclusions listed in KRS 171.396(9), qualified rehabilitation expenses shall not include the construction costs for a new building, parking lot, or sidewalk.

(4) Review of Part 2 Applications.

(a) A complete and adequately documented Certification Application Part 2- Description of Rehabilitation shall be reviewed by the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section. Applicants that do not meet this standard shall[will] be notified via email and given ten (10)[40] days to submit missing elements; otherwise, the project shall[will] be placed on hold and removed from the allocation pool until KHC certifies that the Part 2 constitutes a complete and adequately documented application.

(b) After consideration of the information contained in the application and other available information, the council shall issue a preliminary certification of rehabilitation if the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(5)(a) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established in subsection (2) of this section, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application.

(b) An applicant's failure to respond shall[may] result in denial of the application.

(c) The council's notification or failure to notify shall not constitute a waiver of a deficiency or an alteration of a time limitation established under the Act.

(6) Changes to rehabilitation plans. Once a rehabilitation plan has been approved by the council, an applicant may only make substantive changes in the work stated[described] in the application by:

(a) Filing a Certification Application-Continuation/Amendment form with the council; and

(b) Receiving notification from the council that the revised plan continues to meet the standards of rehabilitation established in subsection (2) of this section and is a substantial rehabilitation.

Section 5. Certifications of Rehabilitation-Part 3 Completed Work. (1) Application. Upon completion of a rehabilitation project, an applicant shall file a Certification Application Part 3-Request for Certification of Completed Work form with the council for final certification of rehabilitation. An application shall include the following information:

(a) Names and mailing addresses of owners;

(b) Name and address of property;

(c) Designation of whether the application is for owner-occupied residential property or other property;

(d) Actual starting date and completion date;

(e) Actual qualified rehabilitation expenses;

(f) Photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment during and after rehabilitation;

(g) ~~Taxpayer~~~~[The taxpayer]~~ identification number or Social Security number; and

(h) Signatures of owners or a representative authorized to sign on behalf of the owner requesting certification.

(2) Summary of Investment and Election of Credit. In addition to filing a Certification Application Part 3-Request for Certification of Completed Work form, the applicant shall file a Summary of Investment and Election of Credit form with the council. The Summary of Investment and Election of Credit shall include the following:

(a) Names and mailing addresses of the owners;

(b) Name and address of the property;

(c) Actual costs attributed to the rehabilitation work;

(d) Signatures of the owners or a representative authorized to sign on behalf of the owner;

(e) Notarization of the signatures if the property is an owner-occupied residence or, for all other property, compilation by a certified public accountant or equivalent of the actual costs attributed to the rehabilitation of the historic structure; and

(f) An irrevocable election by the taxpayer to:

1. Use the credit, in which case, the credit shall be refundable;

or

2. Transfer the credit, pursuant to KRS 171.397(8).

(3) Scope of review.

(a)1. Rehabilitation shall encompass all work on the interior and exterior of the certified historic structure or structures and the site and environment, ~~[as determined by the council,]~~ as well as related demolition, new construction, or rehabilitation work ~~that could[which may]~~ affect the historic qualities, integrity or site, landscape features, and environment of the certified historic structure.

2. Conformance to the standards of rehabilitation established in Section 4(2) of this administrative regulation shall be determined on the basis of application documentation and other available information by evaluating the property as it existed prior to the commencement of rehabilitation.

(b) A phased rehabilitation project shall not be ~~authorized[permitted]~~. Starting April 30, 2022, a Part 2 application ~~shall[may]~~ not be submitted if a building has already received a Part 2 allocation from a previous year that has not yet been certified or if the owner has not relinquished that allocation in writing.

(c) Portions of a completed rehabilitation project that are not in conformance with the standards for rehabilitation shall not be exempted and ~~shall[may]~~ result in denial of the Certification Application Part 3-Request for Certification of Completed Work.

(4) Review of Part 3 Applications. A complete and adequately documented Certification Application Part 3 - Request for Certification of Completed Work shall be reviewed by the council for a determination that the completed rehabilitation project is a certified rehabilitation and a determination of the final amount of credit approved. The council shall issue a final certification of rehabilitation if ~~[all the following requirements have been met]:~~

(a) All elements of the completed rehabilitation project meet the standards for rehabilitation as established in Section 4(2) of this administrative regulation;

(b) The completed rehabilitation project was a substantial rehabilitation; and

(c) Part 3 was filed with the council after the completion date.

(5) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established in Section 4(2) of this administrative regulation, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application. Applicant's failure to respond ~~shall[may]~~ result in denial of the application. The council's notification or failure to notify shall not constitute a waiver or alteration of time limitations established under the Act.

Section 6. Recapture of Preliminary Tax Credit Allocation For Credits Under KRS 171.397. (1) Notice of Recapture. For tax credits under KRS 171.397, if an owner fails to obtain a Certification of Completed Work within thirty-six (36) months from

the date of the taxpayer's preliminary allocation of tax credit, the director shall mail to the owner written notice of recapture of the preliminary tax credit allocation.

(2) Objection.

(a) If the owner objects to the recapture of the preliminary allocation of tax credit, the owner shall file written notice of objection accompanied by a supporting statement ~~establishing[setting forth]~~ grounds for objection within forty-five (45) days of the date of the notice of recapture.

(b) If the owner does not timely object, the preliminary tax credit allocation shall be recaptured by the council and added to the certification rehabilitation credit cap for the next calendar year, pursuant to KRS 171.397(2)(c).

(3) Reinstatement. Within thirty (30) days of receipt of the owner's notice of objection, the council shall review the objection and determine if the owner has provided reasonable grounds as established in subsection (5) of this section to reinstate the preliminary allocation.

(a) If the council determines that the preliminary tax credit allocation shall be reinstated, the:

1. Council shall give the owner written notice that the preliminary tax credit allocation has been reinstated for an additional twenty-four (24) months;

2. Owner shall pay a review fee for a Part 2 application in the amount established in Section 10(2) of this administrative regulation, whichever is applicable; and

3. Owner shall obtain a signed Part 3-Request for Certification of Completed Work (TC-3 form) on or before the expiration of twenty-four (24) months. If the owner fails to obtain a Certification of Completed Work or fails to request an extension under subsection (4) of this section, the council shall initiate recapture of the preliminary tax credit allocation under the procedures established in this section.

(b) If the council determines that the preliminary tax credit allocation shall not be reinstated:

1. The council shall give the owner written notice that the preliminary tax credit allocation has not been reinstated;

2. The owner shall be given thirty (30) days from the date of the notice that the preliminary tax credit allocation has not been reinstated to file an appeal, pursuant to Section 8 of this administrative regulation; and

3. If the owner fails to file a timely appeal, pursuant to Section 8 of this administrative regulation:

a. The preliminary allocation shall not be reinstated;

b. The preliminary tax credit allocation shall be recaptured by the council; and

c. The preliminary tax credit allocation shall be added to the certification rehabilitation credit cap for the next calendar year, pursuant to KRS 171.397(2)(c).

(4) Extension of Preliminary Tax Credit Allocation. (a) At any time prior to expiration of thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax, an owner may request in writing that the preliminary tax credit allocation be extended for a period of twenty-four (24) months if the owner:

1. ~~Provides[Owner Provides]~~ written documentation of reasonable grounds established in subsection (5) of this section for an extension; and

2. ~~Pays[Owner Pays]~~ a review fee for a Part 2 application in the amount established in Section 10(2) of this administrative regulation, whichever is applicable.

(b) Prior to the expiration of the twenty-four (24) month extension, the owner may request another extension under the procedures established in this subsection. There shall not be a limit on the number of extensions that an owner may request.

(5) Grounds for Reinstatement or Extension.

(a) Reasonable grounds shall be documentation of on-going efforts to obtain financial, legal, material, or physical resources necessary to complete the rehabilitation project or documentation that the delay in completion of the rehabilitation project is necessary and unavoidable.

(b) Reasonable grounds shall not include casualty loss or demolition to the extent that the structure no longer qualifies as a certified historic structure, inability to qualify as a substantial

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rehabilitation, or inability or unwillingness to perform work conditioned by the council and necessary to qualify the project as a certified rehabilitation.

(c) The number of prior reinstatements or extensions shall not be a factor in determining if a reinstatement or extension shall be granted.

Section 7. Inspection. The director or an authorized representative of the council shall be ~~authorized~~**[permitted]** to conduct an inspection of the property at any time up to three (3) years after the council has issued a Certification of Completed Work to determine if the work meets the standards for rehabilitation established in Section 4(2) of this administrative regulation.

Section 8. Appeal. A taxpayer may appeal a determination that the rehabilitation project does not qualify as a certified rehabilitation for purposes of the Act. ~~An appeal shall be filed~~**[by filing an appeal]** in writing, in care of the council, to the director or a reviewing officer designated by the director to hear an appeal. (1) An appeal shall be made within thirty (30) days of the date of receipt of the determination being appealed.

(2) The director or the reviewing officer shall decide, based solely upon the record developed by the council, if the council:

- (a) Reached incorrect conclusions of law;
- (b) Made clearly erroneous factual findings;
- (c) Did not consider relevant facts; or
- (d) Abused the discretion available to that person.

(3) The director's or reviewing officer's decision shall:

- (a) Confirm the determination;
- (b) Reverse the determination ~~due to~~**[on account of]** incorrect conclusions of law; or
- (c) Remand the matter to the council for further proceedings.

(4) The director or reviewing officer shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

(5) If the appeal is decided by a reviewing officer and the reviewing officer affirms the determination, the taxpayer may appeal the reviewing officer's determination in writing to the director. ~~An appeal shall be~~**[.]** pursuant to this subsection.

(a) An appeal to the director shall be filed within the time period established in subsection (1) of this section.

(b) The director shall use the same standards of review established in subsection (2) of this section.

(c) The director shall:

1. Confirm the decision of the reviewing officer;
2. Reverse the determination ~~due to~~**[on account of]** incorrect conclusions of law; or
3. Remand the matter to the council for further proceedings.

(d) The director shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

Section 9. Revocation of Owners' Certifications. (1) If, after obtaining final certification of rehabilitation, the council determines that the rehabilitation was not undertaken as represented by the owner in the applications, amendments, or supporting documentation, or the owner upon obtaining final certification undertook disqualifying work, the council may revoke a certification by giving written notice to the owner.

(2) The owner may file an appeal, pursuant to Section 8 of this administrative regulation.

(3) If the owner fails to file a timely appeal, the final certification of rehabilitation shall be revoked.

Section 10. Fees for Processing Rehabilitation Certification Requests.

(1)~~(a)~~ Payment of fees for review of Parts 2 and 3 shall be filed with the council ~~with~~**[when]** applications~~—are filed~~ and ~~shall be~~**[are]** nonrefundable.

~~(b)~~ Certification shall not be issued until the appropriate remittance is received.

~~(c)~~ Payment shall be made by check or money order payable to the Kentucky State Treasurer.

(2) For tax credits under KRS 171.397, fees for reviewing rehabilitation certification requests of owner-occupied residential property, commercial, and other buildings shall be charged in accordance with the ~~table established in this subsection~~**[following schedule]**. If a Part 2 application is denied, there shall not be a charge for a Part 3 review.

Rehabilitation Costs for Owner-Occupied Residences, Commercial and Other Buildings	Part 2 Review Fee	Part 3 Review Fee
\$20,000 - \$50,000	\$150.00	\$150.00
\$50,001 - 100,000	\$250.00	\$250.00
\$100,001 - \$250,000	\$375.00	\$375.00
250,001 - \$500,000	\$500.00	\$500.00
\$500,001 - \$6,000,000	.15% of estimate eligible costs and expenses	.15% of estimate eligible costs and expenses
Over \$6,000,000	\$9,000.00	\$9,000.00

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

(a) "Certification Application Part 1-Evaluation of National Register Status", KHC Form TC-1, Rev. 2022;

(b) "Certification Application Part 2-Description of Rehabilitation", KHC Form TC-2, Rev. 2022;

(c) "Certification Application Part 3-Request for Certification of Completed Work", KHC Form TC-3, Rev. 2022;

(d) "Certification Application-Continuation/Amendment", KHC Form TC-2a, Rev. 2022;~~and~~

(e) "Summary of Investment and Election of Credit", KHC Form TC-4, Rev. 2022;~~and~~

~~(f) Intent to Apply for Major Rehabilitation, KHC Form TC-00, Rev. 2022;~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Heritage Council, 410 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material is also available on the Council's Web site at <https://heritage.ky.gov/historic-buildings/rehab-tax-credits/Pages/guides.aspx>.

CONTACT PERSON: Craig Potts, Executive Director, 410 High Street, Frankfort, Kentucky 40601, phone (502) 564-7005, fax (502) 564-5820, email craig.potts@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, October 11, 2022)

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

Section 1. Definitions.

(1) "Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are fishing license exempt as established in KRS 150.170.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(4) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.

(5) "Catfish" means a blue catfish, channel catfish, or flathead catfish.

(6) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.

(7) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(8) "Pneumatic arrow launching device" means a device designed to fire an arrow through the use of a compressed air cartridge.

(9) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(10) "Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(11) "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

(12) "Trophy catfish" means a:

(a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or

(b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

Section 2. General Provisions.

(1) A person using nontraditional fishing methods shall observe the daily creel limits and size limits established in paragraphs (a) through (d) of this subsection:

(a) The daily creel limit for catfish using any non-traditional fishing method shall not include more than one (1) trophy catfish of each species, except as established in Section 7(3) of this administrative regulation.;

(b) The paddlefish daily creel limit shall be two (2) with no size limit.;

(c) The shovelnose sturgeon daily creel limit shall be two (2) with no size limit; and

(d) The asian carp daily creel limit shall be unlimited with no size limit.

(2) The possession limit for paddlefish and trophy catfish shall be two (2) times the daily creel limit for each species.

(3) Shovelnose sturgeon shall may not be harvested from the Mississippi River and shall must be immediately released.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Pallid sturgeon; or

(c) Alligator gar.

Section 3. Skin Diving, Scuba Diving, and Underwater Spear Fishing.

(1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department's Division of Law Enforcement; or

(b) The local conservation officer who is assigned to the particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the

possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated cove as established in subsection (4) of this section shall display an international diving flag as established in 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand-held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 surface acres in size or larger, as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.

(a) An angler who is spearing fish shall:

1. Be completely submerged in the water where spearing takes place; and

2. Only spear rough fish.

(b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 4. Sport Fishing Trotlines, Jugging, and Setlines.

(1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the customer identification number found on the current sport fishing license of the person using it.

(2) Each trotline, jug line, or setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if it is not:

(a) Properly labeled or tagged; or

(b) Checked or baited at least once every twenty-four (24) hours.

(4) An angler shall not use more than:

(a) Two (2) sport fishing trotlines;

(b) Twenty-five (25) setlines; or

(c) Fifty (50) jug lines.

(5) Multiple anglers in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) An angler using a sport fishing trotline shall:

(a) Set the trotline at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) A sport fishing trotline, jug line, or setline shall not be used in the waters established in paragraphs (a) through (d) of this subsection:

(a) In the Tennessee River within 700 yards of Kentucky Lake Dam;

(b) In the Cumberland River below Lake Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area lakes, Ballard County;

2. Peal Wildlife Management Area lakes, Ballard County; and

3. Swan Lake Wildlife Management Area lakes, Ballard County; or

(d) In the areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K & I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9) An angler using a trotline, jug line, or setline shall follow all sport fish daily creel limits and size limits as established in 301 KAR 1:201.

Section 5. Temporary Aquatic Areas and Temporary Pools.

(1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where anglers may take rough fish by any method except:

- (a) Poison;
- (b) Electrical devices;
- (c) Firearms; or
- (d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person with a valid commercial fishing license may use nets and seines if the nets and seines are appropriately tagged, as established in 301 KAR 1:146.

(4) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 6. Gigging and Snagging.

(1) Gigging and snagging season shall be February 1 through May 10, except as established in subsections (7) and (9) of this section.

(2) A person shall not:

(a) Gig or snag a sport fish, as established in 301 KAR 1:060, except as established in subsections (7) and (9) of this section;

(b) Gig or snag from a platform;

(c) Gig from a boat in any lake less than 500 surface acres;

(d) Gig at night from a boat; or

(e) Snag from a boat.

(3) A snagging rod shall be equipped with:

- (a) Line;
- (b) Guides;
- (c) A reel; and

(d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used while snagging in:

- 1. The Green River and its tributaries; or
- 2. The Rolling Fork River and its tributaries.

(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established in subsections (7) and (9) of this section.

(5) A person shall not gig or snag in the areas or bodies of water established in paragraphs (a) through (g) of this subsection:

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) The Cumberland River below the Lake Barkley Dam to the U.S. 62 bridge;

(d) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

~~(e)~~ The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;

~~(f)~~ Cave Run Lake; or

~~(g)~~ Within 200 yards of any dam on a river or stream, except as established in subsection (7) of this section.

(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:

(a) For twenty-four (24) hours a day from January 1 through May 31; and

(b) From sunset to sunrise from June 1 through December 31.

(8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.

(9) A person may snag sport fish or rough fish year-round in the section of the Tennessee River from the Interstate 24 bridge to the Ohio River.

(10) A person shall not snag on the Tennessee River:

(a) Under the U.S. 62 bridge;

(b) Under the P & L Railroad bridge; or

(c) From any fishing pier or jetty ~~the fishing piers located below the U.S. 62 bridge~~.

(11) There shall not be a daily creel limit for rough fish except[.];

~~[(a)] [The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam] shall be eight (8), except there shall not be a creel limit on Asian Carp;~~

~~[(b)] the daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp; and]~~

~~[(c)]~~

~~[1.] [The statewide daily creel limit for snagging paddlefish shall be two (2), in all areas] [outside those established in paragraphs (a) and (b) of this subsection; and]~~

~~[2.] [In an area established in paragraph (a) or (b) of this subsection, up to eight (8)] [paddlefish may be taken.]~~

~~(12) There shall not be a size limit for sport fish snagged in the Tennessee River below Kentucky Lake Dam.~~

(13) A person shall immediately retain, and not release or cull, any gigged or snagged paddlefish.

~~(14)~~ All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

~~(15)~~ All gigged or snagged rough fish in the Cumberland River below Lake Barkley ~~[Lake—]~~ Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

~~(16)~~ A person shall immediately cease snagging if:

(a) A daily creel limit of paddlefish is reached;

(b) A daily creel limit of shovelnose sturgeon is reached;

(c) A daily creel limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8); or

~~(d)~~ A trophy catfish is snagged.

Section 7. Grabbing.

(1) The grabbing season for rough fish shall be June 1 to August 31 during daylight hours.

(2) Grabbing shall be permitted in all waters.

(3) The daily creel limit for grabbing shall be fifteen (15) fish, no more than five (5) of which may be catfish, except anglers grabbing at Barren River Lake, Carr Creek Lake, Dewey Lake, Fishtrap Lake, or Taylorsville Lake, may only harvest one (1) blue or channel catfish over twenty-five (25) inches.

Section 8. Bow Fishing.

(1) An angler using archery equipment, a crossbow, or a pneumatic arrow launching device shall not take:

- (a) Sport fish;
- (b) Alligator gar;
- (c) More than five (5) catfish daily; or

- (d) ~~More than two (2) paddlefish daily; or~~
- ~~[(e)] Lake sturgeon.~~
- (2) Any paddlefish, shovelnose sturgeon, or catfish shot with archery equipment, a crossbow, or a pneumatic arrow launching device shall:
 - (a) Be immediately retained, and not released or culled; and
 - (b) Count toward a person's daily limit.
- (3) Bow fishing shall be open statewide, except:
 - (a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;
 - (b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;
 - (c) ~~In the following lakes:~~
 - 1. Carpenter Lake (Davies County);
 - 2. Clear Creek Lake (Bath County);
 - 3. Greenbo Lake (Greenup County);
 - 4. Lake Carnico (Nicholas County); and
 - 5. Lake Reba (Madison County); or
 - (d) From a boat in restricted areas below navigation, power generating, or flood control dams.

CONTACT PERSON: Jenny Gilbert, Legislative Affairs, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, October 11, 2022)

502 KAR 13:010. 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.

RELATES TO: KRS 15.383, 61.365, 186.412, 237.138-237.142, 446.010(31)(29), 18 U.S.C. 926C[- Pub.L. 108-277]

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 237.138 to 237.142 establish/establishes provisions for certification to carry a concealed deadly weapon for any elected or appointed peace officer who is honorably retired and who meets the provisions of these statutes and the Law Enforcement Officers Safety Act, 18 U.S.C. 926C. KRS 237.140 requires the Kentucky State Police to promulgate administrative regulations to implement the provisions of KRS 237.138 to 237.142 for the certification of retired peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. [provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and authorizes] [requires] [the department] [Kentucky State Police] to promulgate administrative regulations to implement the certification provisions.** This administrative regulation establishes the requirements and procedures for certification.

Section 1. Definitions.

- (1) "Applicant" means an honorably retired peace officer who has applied to the Kentucky State Police to be certified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C.
- (2) "Application form" means the ["Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License."]
- (3) "Honorably retired" means an elected or appointed peace officer who **meets the requirements to be a qualified retired law enforcement officer as defined by 18 U.S.C. 926C(c)[:-]**
- ~~[(a)] [Separated in good standing from service with a public agency as a law enforcement officer;]~~
- ~~[(b)] [Before separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or~~

~~prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;]~~

- ~~[(e)]~~
- ~~[1.] [Before separation, served as a law enforcement officer for an aggregate of ten (10) years or more; or]~~
- ~~[2.] [Separated from service with an agency, after completing any applicable probationary period of service, due to a service-connected disability, as determined by the agency;]~~
- ~~[(d)]~~
- ~~[1.] [Has not been officially found by a qualified medical professional employed by the agency from which the applicant separated from service to be unqualified for reasons relating to mental health; or]~~
- ~~[2.] [Has not entered into an agreement with the agency from which the applicant separated from service in which the applicant acknowledged that he or she is not qualified under 18 U.S.C. 926C for reasons relating to mental health;]~~
- ~~[(e)] [During the most recent twelve (12) month period, has met, at the expense of the retired peace officer, Kentucky's standards for training and qualifications for active law enforcement officers to carry firearms, as set out in KRS 15.383;]~~
- ~~[(f)] [Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and]~~
- ~~[(g)] [Is not prohibited by Federal law from receiving a firearm].~~
- (4) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, as codified in 18 U.S.C. 926C.
- (5)(4) "Peace officer" is defined by KRS 446.010(31)(29) and 61.365.

Section 2. An application form shall be identified by a unique number that shall be:

- (1) Expressed on the application form as a bar code that contains the application number;
- (2) Used as the identifying number for the applicant; and
- (3) Machine and human readable.

Section 3. Application forms shall:

- (1) Not be stored in an area accessible to the public; and
- (2) Not be removed from the office of the sheriff except as permitted by Section 7(6)(4) of this administrative regulation.

Section 4. **An applicant[Applicants] shall submit an application form and documents required by KRS 237.138 to 237.142 to the department[by]:**

- (1) Electronically, via the **portal on the department Web site and according to the procedures as described by the department**; or
- (2) By the procedures ~~[set forth]~~ in Section 5 through[-] Section 7 of this administrative regulation.

Section 5. A sheriff shall issue an application form to an applicant if:

- (1) An applicant meets the requirements established by KRS 237.138 to 237.142;
- (2) The sheriff has verified that an applicant is qualified for certification pursuant to KRS 237.138 to 237.142 and this administrative regulation;
- (3) An applicant has submitted the material required by KRS 237.138 to 237.142 and this administrative regulation;
- (4) Verification that an applicant is a Kentucky resident is made by:
 - (a) Submission of a valid Kentucky operator's license or personal identification card issued by the Transportation Cabinet [a circuit court clerk] pursuant to KRS 186.412;
 - (b) Personal knowledge of the sheriff; or
 - (c) Confirmation by another governmental agency; and
 - (5) Verification of an applicant's Social Security number is made by submission of:
 - (a) The applicant's Social Security card; or

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(b) A governmental agency document that contains the applicant's name and Social Security number.

Section 6.~~[Section 5.]~~ Completion of Paper Application Form through Sheriff. An applicant shall:

- (1) Complete an application form;
- (2) Sign the application in the applicant signature block of the application form in ink;
- (3) Provide the information required by KRS 237.110(7)(a) through (e) on the application form;
- (4) Not fold or tear the form;
- (5) Use a black ink pen to complete the form;
- (6) Not mark or otherwise make an entry in the "For Sheriff's Dept. Use Only" portion;
- (7) Fill each bubble completely;
- (8) Fill in or enter information, as appropriate, within a column block or bubble;
- (9) Write within the constrained areas;
- (10) Use upper case (capital) letters;
- (11) Provide a photograph of the applicant complying with the provisions of 502 KAR 13:070;
- (12) Submit the following completed forms to the sheriff to be attached to the application form:
 - (a) A KSP ~~[Form 123, LEOSA/Law Enforcement Officers Safety Act Licensee Peace Officer]~~ Range Qualification Certification~~[-LEOSA (KSP 123)]~~;
 - (b) A KSP ~~[Form 124A, LEOSA Applicant Certification [(KSP 124A)]~~; and
 - (c) A KSP ~~[Form 124B, LEOSA Law Enforcement Retirement Certification[(KSP 124B)]~~; and
- (13) Not be required to pay an application fee.

Section 7.~~[Section 6.]~~ Sheriff's Duties.

- (1) If an applicant fails to follow the instructions for completion of an application, the sheriff shall:
 - (a) Destroy the improperly completed application; and
 - (b) Require the applicant to complete a new application form.
- (2) The sheriff shall complete in black ink the lower right hand portion of the application form titled "For Sheriff's Dept. Use Only" by:
 - (a) Completing the ORI Number;
 - (b) Filling in the date of application;
 - (c) Indicating the applicant is a retired peace officer;
 - (d) Indicating the applicant is seeking LEOSA certification; and
 - (e) Signing in the portion labeled "Authorizing Official Signature."
- (3) The sheriff shall place the following material in a single applicant packet:
 - (a) The applicant's completed application form;
 - (b) A photograph of the applicant complying with the provisions of 502 KAR 13:070; and
 - (c) ~~[A]~~Completed KSP forms 123, 124A, and 124B.
- (4) The sheriff shall mail single applicant packets~~[-]~~
 - ~~[(a)]~~ in a bulk mailer to Kentucky State Police, LEOSA, 1266 Louisville Road, Frankfort, Kentucky 40601.~~[-]~~ and
 - ~~[(b)]~~ ~~[On dates established by the "CCDW-LEOSA Application Mailing Schedule For Sheriffs."]~~

Section 8.~~[Section 7.]~~ Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Carry Concealed Deadly Weapons/LEOSA: Application for License", September 2022/2019 edition;
 - ~~[(b)]~~ ~~["Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License", October 2009;]~~
 - ~~[(b)]~~ ~~["CCDW-LEOSA Application Mailing Schedule For Sheriffs", July 2006;]~~
 - ~~[(e)]~~ ~~[KSP Form 123, "LEOSA/Law Enforcement Officers Safety Act Licensee Peace Officer" Range Qualification Certification", ""]~~ KSP 123, 2022/2014 edition~~[-LEOSA", KSP 123, 07/05;]~~
 - ~~[(c)]~~~~[(b)]~~~~[(d)]~~~~[KSP Form 124A, "LEOSA Applicant Certification", KSP 124A[KSP 124A], [December]2022/2010 edition]~~; and

~~[(d)]~~~~[(e)]~~~~[(e)]~~~~[KSP Form 124B, "LEOSA Law Enforcement Retirement Certification", KSP 124B, 2014/ edition]~~~~[KSP 124B, December 2010.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1266 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. This material is also available on the department Web site at kentuckystatepolice.org.~~[-]~~ phone, (502) 227-8700.

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email brenn.combs@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, October 11, 2022)

502 KAR 13:030. 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.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140
NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.138 to 237.142 establish provisions for certification to carry a concealed deadly weapon for any elected or appointed peace officer who is honorably retired and who meets the provisions of these statutes and the Law Enforcement Officers Safety Act, 18 U.S.C. 926C. KRS 237.140 requires the Kentucky State Police to promulgate administrative regulations to implement the provisions of KRS 237.138 to 237.142~~[provides]~~ for the certification of ~~[honorably retired]~~ ~~[elected or appointed]~~ peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C~~[- and requires the department]~~~~[Kentucky State Police]~~~~[- to promulgate administrative regulations to implement the certification provisions]~~. This administrative regulation establishes the requirements and procedures for range qualification for certification.

Section 1. Perform Live-firing Exercises. An applicant shall annually qualify for certification by performing a live-firing exercise in which the applicant is required to:

- (1) Fire from a safe position;
- (2) Perform without receiving any assistance in holding, aiming, or firing from the instructor or any other person; and
- (3) Meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140(4)(a).

Section 2. Supervision of Live-firing Exercise. The live-firing exercise shall be supervised as required by KRS 237.140(4)(b).

Section 3. Live-Firing Exercise Procedures and Grading.

(1) If the live-firing exercise is conducted at a facility or range that requires a training instructor or range officer to clear or directly supervise and assist in the clearing of all firearm jams or malfunctions, the clearing of a firearm jam or malfunction by a certified firearms instructor or facility range officer in accordance with that policy shall not constitute prohibited assistance to an applicant for the purposes of Section 1(2) of this administrative regulation.

(2) An applicant shall provide a safe, functional handgun and factory-loaded ammunition.

(3) Prior to conducting range firing, the firearms instructor shall:

- (a) Inspect each applicant's firearm; and
- (b) Not allow the firing of a handgun that the instructor has reason to believe is not in sound mechanical condition or otherwise may pose a safety hazard.

(4) A passing grade shall not be given on range work to an applicant who:

- (a) Does not follow the orders of the firearms instructor;
- (b) In the judgment of the firearms instructor, handles a firearm in a manner that poses a danger to the applicant or to others; or
- (c) Fails to meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140(4)(a).
- (5) If the applicant successfully completes the live-firing exercise, the firearms instructor shall mail or hand deliver the completed KSP [Form] 123, LEOSA["Law Enforcement Officer Safety Act - Peace Officer"] Range Qualification Certification["LEOSA," KSP Form Number 123], showing the applicant's successful completion of the live-firing exercise to the applicant within five (5) business days.

Section 4. Incorporation by Reference.

(1) [KSP Form 123, "LEOSA/Law Enforcement Officer Safety Act - Peace Officer"] Range Qualification Certification, KSP 123["LEOSA," KSP 123], 2022/2014 edition["07/05;"] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1266/1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. This material is also available on the department Web site at kentuckystatepolice.org["The phone number for the Criminal Identification and Records Branch is (502) 227-8700;"]

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email brenn.combs@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, October 11, 2022)

502 KAR 13:040. 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.

RELATES TO: KRS 186.412, 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.138 to 237.142 establish provisions for certification to carry a concealed deadly weapon for any elected or appointed peace officer who is honorably retired and who meets the provisions of these statutes and the Law Enforcement Officers Safety Act, 18 U.S.C. 926C. KRS 237.140 requires the Kentucky State Police to promulgate administrative regulations to implement the provisions of KRS 237.138 to 237.142["provides"] for the certification of [honorably] retired [elected or appointed] peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C["and requires the department"]["Kentucky State Police"]to promulgate administrative regulations to implement the certification provisions["]. This administrative regulation establishes the requirements and procedures for the issuance, expiration, and renewal of a LEOSA license.

Section 1. [Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

Section 2. Issuance of License.

(1) The department shall issue a LEOSA license if it confirms that the applicant is qualified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C after the department has received the documentation required by 502 KAR 13:010.

(2) If the department issues a LEOSA license, it shall:

- (a) Transmit the license to the sheriff; and
- (b) Send a["an issuance"] notice to the applicant;[";"]

1. Informing him or her that the license is being conveyed to the sheriff of the county where the applicant resides and what date the license will be available from the sheriff; and

2. Including a section that the applicant may sign in the presence of the sheriff or the sheriff's designee.

(3) The sheriff shall issue the license to the applicant upon:

- (a) Verification of the identity of the applicant by:
 - 1. Submission of a valid Kentucky operator's license or personal identification card issued by the Transportation Cabinet [a circuit court clerk] pursuant to KRS 186.412; or
 - 2. Personal knowledge of the sheriff; and
- (b) Signature on["of"] the notice of issuance [notice] by the applicant in the presence of the sheriff or the sheriff's designee.

Section 2. [Section 3.] Expiration. A LEOSA license shall expire one (1) year from the date of the range qualification listed on the KSP [Form] 123, LEOSA["Law Enforcement Safety Act Licensee - Peace Officer"] Range Qualification Certification["LEOSA," KSP 123], submitted with the application.

Section 3. [Section 4.] Extension/Renewal["].

(1) Not less than ninety (90)["one hundred twenty (120)"] days prior to the expiration date of the license, the department shall notify["mail to"] each licensee a notice["of the expiration by mail"]["Notice of Expiration - LEOSA."]

(2) Any licensee wishing to extend["renew"] the license shall qualify with a certified range instructor in compliance with KRS 237.140 and have the required material submitted to the Department of Kentucky State Police by the range instructor. The extension shall be for up to one (1) year and may be repeated not more than four (4) times.

(3) Any licensee wishing to obtain a new license shall apply and be approved in the manner described in 502 KAR 13:010 and this administrative regulation for first time applicants except that a licensee shall not have to submit a copy of the ["LEOSA Law Enforcement Retirement Certification"], KSP 124B, if the licensee previously submitted a retirement certification that was accepted by the department.

Section 4. [Section 5.] Identification. A LEOSA license issued by the department to a successful applicant shall consist of a photographic identification card containing the following:

(1) The front of the photographic identification card shall include the following information for the certified retired peace officer:

- (a) Name;
- (b) Address;
- (c) Date of birth;
- (d) Law enforcement agency retired from;
- (e) Expiration date of certification;
- (f) LEOSA license number; and
- (g) Photograph.

(2) The back of the photographic identification card shall state the following: [be substantially in the following form:] The Commonwealth of Kentucky hereby certifies that the licensee identified on the front of this card is a qualified retired law enforcement officer as defined in the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C, and has, within one (1) year prior to the expiration date shown on the front of this card, been tested or otherwise found by the Commonwealth of Kentucky to meet the marksmanship qualification requirement established by the Commonwealth for peace officers.

Section 5. [Section 6.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "LEOSA/KSP Form 123, Law Enforcement Officer Safety Act Licensee - Peace Officer"] Range Qualification Certification["LEOSA," KSP 123], KSP 123, 2022/2014 edition["07/05;"]

["(b)"] ["Notice of Issuance", 1/9/07;]

["(c)"] ["Notice of Expiration - LEOSA", 6/21/07;] and

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~~(b)(d)] [KSP Form 124B,] LEOSA Law Enforcement Retirement Certification", KSP 124B, [KSP 124B,] 2014 [edition] (December 2010).~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1266 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700. This material is also available on the department's Web site at kentuckystatepolice.org.

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email brenn.combs@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, October 11, 2022)

502 KAR 13:050. 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.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.138 to 237.142 establish provisions for certification to carry a concealed deadly weapon for any elected or appointed peace officer who is honorably retired and who meets the provisions of these statutes and the Law Enforcement Officers Safety Act, 18 U.S.C. 926C. KRS 237.140 requires the Kentucky State Police to promulgate administrative regulations to implement the provisions of KRS 237.138 to 237.142 [provides] for the certification of [honorably] retired [elected or appointed] peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C [and requires the department] [Kentucky State Police] [to promulgate administrative regulations to implement the certification provisions]. This administrative regulation establishes the requirements and procedures for the replacement of LEOSA licenses that have been lost, destroyed, or stolen.

Section 1. [Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

Section 2.] Lost, Destroyed, or Stolen LEOSA License.

(1) If a LEOSA license is lost, destroyed, or stolen, a licensee shall notify the department on a [Request For Duplicate LEOSA License,] KSP 127.

(2) A licensee shall complete the [Request For Duplicate LEOSA License,] KSP 127, in the presence of the sheriff.

(3) The completed [Request For Duplicate LEOSA License,] KSP 127, shall be:

(a) Signed by the licensee in the presence of the sheriff; [and]

(b) Notarized; [and]

(c) Signed by the sheriff; and

(d) Transmitted by the sheriff to the department as established in the manner set forth in 502 KAR 13:010, Section 7(4) [11:010(10)].

[(4)] [The completed "Request For Duplicate LEOSA License," KSP 127 shall be:]

[(a)] [Signed by the sheriff; and]

[(b)] [Transmitted by the sheriff to the department in the manner set forth in 502 KAR 11:010, Section 10.]

(4) The department shall issue a duplicate license if it confirms that the requirements of 502 KAR 13:040 have been met.

(5) [(5)] If the department approves the request for a duplicate license, the department shall:

(a) Issue a duplicate license that contains a license number that differs from the license number on the lost, destroyed, or stolen license;

(b) Send the duplicate license to the sheriff; and

(c) Notify the licensee in writing that the duplicate license may be obtained by the licensee:

1. At the office of the sheriff; and

2. After verification of identity of the licensee as provided by 502 KAR 13:010, Section 5[4].

~~[(5)] [(6)] [If the department denies the request for a duplicate license, it shall notify the licensee in writing.]~~

Section 2.] [Section 3.] Incorporation by Reference.

(1) [KSP Form 127,] Request For Duplicate LEOSA License," KSP 127, 2014 [KSP 127,] [2006 edition]. [06/12/06.] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1266[1250] Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700. This material is also available on the department's Web site at kentuckystatepolice.org.

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email brenn.combs@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, October 11, 2022)

502 KAR 13:060. 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.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.138 to 237.142 establish provisions for certification to carry a concealed deadly weapon for any elected or appointed peace officer who is honorably retired and who meets the provisions of these statutes and the Law Enforcement Officers Safety Act, 18 U.S.C. 926C. KRS 237.140 requires the Kentucky State Police to promulgate administrative regulations to implement the provisions of KRS 237.138 to 237.142 [provides] for the certification of [honorably] retired [elected or appointed] peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C [and requires the department] [Kentucky State Police] [to promulgate administrative regulations to implement the certification provisions]. This administrative regulation establishes the requirements and procedures for the change of personal information regarding LEOSA licensees.

Section 1. [Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.]

[Section 2.] Change of Personal Information.

(1) If the address or personal information of a licensee has changed, the licensee shall notify the department within thirty (30) days of the change of personal information on the [Law Enforcement Officers Safety Act Licensee Request for Change of Personal Information,] KSP 120.

(2) The [Law Enforcement Officers Safety Act Licensee Request for Change of Personal Information,] KSP 120, shall be:

(a) Completed and signed by the licensee in the presence of the sheriff; and

(b) Executed under oath.

(3) The sheriff shall verify the change of personal information as provided by 502 KAR 13:010, Section ~~5~~**[4]**.

(4) The completed ~~[""]~~Law Enforcement Officers Safety Act Licensee Request for Change of Personal Information,~~[""]~~ KSP 120, shall be:

- (a) Signed by the sheriff; and
- (b) Transmitted by the sheriff to the department pursuant to 502 KAR ~~13:010~~**[11:010]**, Section ~~7~~**[4]**~~[10]~~.

~~Section 2.~~**[Section 3.]** Incorporation by Reference.

(1) ~~["KSP Form 120,"]~~Law Enforcement Officers Safety Act Licensee Request for Change of Personal Information", ~~KSP 120, 2022~~**[,"KSP 120, 2006 edition"]**~~[08/06]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, ~~1266~~**[1250]** Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700. This material is also available on the department's Web site at kentuckystateppolice.org.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, October 11, 2022)

502 KAR 13:080. 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.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 237.138 to 237.142 establish provisions for certification to carry a concealed deadly weapon for any elected or appointed peace officer who is honorably retired and who meets the provisions of these statutes and the Law Enforcement Officers Safety Act, 18 U.S.C. 926C. KRS 237.140 requires the Kentucky State Police to promulgate administrative regulations to implement the provisions of KRS 237.138 to 237.142**~~[provides]~~ for the certification of ~~[honorably]-retired~~ ~~[elected or appointed]~~ peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C~~[and requires the department]~~~~[Kentucky State Police]~~~~[to promulgate administrative regulations to implement the certification—provisions]~~. This administrative regulation establishes the reasons an application form shall be deemed incomplete and the required procedures for the department.

Section 1. ~~[Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.]~~

~~[Section 2.]~~ An application form shall not be considered complete if:

- (1) It does not meet the requirements of 502 KAR 13:010;
- (2) It contains erroneous information; or
- (3) An item of the application form is illegible or incomprehensible.

~~Section 2.~~**[Section 3.]** If the department determines that an application form is incomplete pursuant to the Section 1 of this administrative regulation, the department shall notify the applicant ~~[on a "Missing Information/Document"]~~ of the:

- (1) Reason the application form has been determined to be incomplete; and

- (2) The action required to complete the application form.

~~[Section 4.]~~ ~~[Incorporation by Reference.]~~

~~[(1)]~~ ~~["Missing Information/Document", 01/09/07, is incorporated by reference.]~~

~~[(2)]~~ ~~[This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.]~~

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JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, October 11, 2022)

503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards.

RELATES TO: KRS Chapter 13B, 15.330(1)(f), 15.330(1)(h), 15.380, 15.382, 15.384(1), 15.392, 15.394(1), 15.396(1), 15.3971, 15.400(1), 15.440, 15.540, 15.565, 15.580

STATUTORY AUTHORITY: KRS 15.330(1)(f), 15.330(1)(h), 15.382, 15.440, 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and other persons having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.592. KRS 15.440 authorizes the council to promulgate administrative regulations for approval of basic training credit for out-of-state basic training and work experience. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification.

Section 1. Approval of Agency's Validated Job Task Analysis and Associated Agency Testing.

(1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to the KLEC office completed KLEC Forms J and Q along with a copy of the proposed job task analysis. The agency shall supply:

- (a) The name of the entity that completed the analysis;
- (b) The date on which the analysis was completed;
- (c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and
- (d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.

(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

- (a) Credentials and history of the entity conducting the analysis.

- 1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.

- 2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.

- 3. Number and quality of job task analyses completed.

- (b) Methodological approach.

- 1. Reasonable, standardized format of the study and the report.

- 2. Relative reliability and validity of the study's sampling techniques and practice.

- 3. Other considerations that reflect sound practice of the scientific method.

4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.

(3) Initial review.

(a) Within five (5) business days of receipt of the application, the KLEC office shall notify the agency that:

1. The application has been received and is complete; or

2. The application is incomplete. The notice that an application is incomplete shall identify the specific information to be supplemented to process the application. The agency shall submit the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for consideration of its job task analysis and associated agency testing.

(b) The KLEC office recommendation. Within thirty (30) days of receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests and the specific reasons supporting a recommendation to reject.

(c) KLEC review. The KLEC Professional Standards Committee shall review the application and recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.

(d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:

1. The reasons for the finding; and

2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

Section 2. Agency Testing Procedures.

(1) Each agency participating in certification shall submit a completed KLEC Form Q or KLEC Form tele-Q to the KLEC office prior to any applicant testing. The KLEC office shall be notified of any changes in the Form Q or KLEC Form tele-Q within ten (10) days.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC Form Q, the KLEC office shall notify the agency that the form:

(a) Has been received and is complete; or

(b) Is incomplete. The notice that an application is incomplete shall identify the specific information to be supplemented to process the form. The agency shall submit the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. Applicants shall not be tested or certified by KLEC until the form is complete.

(3) The KLEC office review of requests for agency testing. Within thirty (30) days of receipt of the completed form, the KLEC office shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. The KLEC office shall notify the agency if the proposed testing is acceptable. If the KLEC office determines that the minimum standards are not met, it shall forward the form to KLEC along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC Professional Standards Committee shall review the form and the recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of receipt of the form, KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected and the specific reasons supporting the rejection.

(5)

(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:

1. With the Secretary of the Justice and Public Safety Cabinet; and

2. Within thirty (30) days of receipt of the notice of rejection.

(b) The notice of appeal shall be submitted:

1. In writing; and

2. With a copy of the notice of rejection of agency testing attached.

(c) A copy of the notice of appeal shall also be mailed to the KLEC office by certified mail.

(d) The Secretary of the Justice and Public Safety Cabinet shall schedule a hearing within thirty (30) days of receipt of the notice of appeal.

(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 3. Certification of peace officers, telecommunications, and court security officers.

(1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC Form E to the KLEC office.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC Form E to the KLEC office.

(3) An agency may request that peace officers identified in KRS 15.380(4), who have completed law enforcement basic training, and part-time telecommunications, who have completed the Telecommunications Academy, participate in certification by submitting KLEC Form E to the KLEC office.

(4) Peace officers, telecommunications, and court security officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1), 15.3971, 15.560, or 15.565 shall submit KLEC Form C.

Section 4. Suitability Minimum Requirements: The minimum requirements and procedures established for KLEC testing by this section shall be followed.

(1) The background investigation as specified in KRS 15.382(12) and 15.3971(1)(k) shall consist of the following minimum requirements, using the KLEC Form H-1 Background Investigation and personal history questionnaire.

(a) Biographical history;

(b) Family history;

(c) Education;

(d) Employment history;

(e) Interview with the applicant's references;

(f) Criminal history including domestic violence protective orders; and

(g) Credit history.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5), 15.3971(1)(e), and 15.540(1)(c) through the procedure established by this subsection.

(a) The applicant shall be fingerprinted by the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent to the FBI for a records check.

(b) The KSP shall forward the results of state and FBI records check to the employing agency.

(c) Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI.

(d) The agency may employ the peace officer, telecommunicator, or court security officer contingent upon the pending FBI results.

(3) Psychological screening, as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d), shall consist of the minimum requirements established by this subsection.

(a) Screening shall measure a broad spectrum of abilities which are relevant to job related duties, including:

1. Cognitive abilities;

2. Personality characteristics; and

3. Related constructs, including:

a. Integrity; and

b. Conscientiousness.

(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.

(c)

1. Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's overall suitability for employment as a peace officer, telecommunicator, or court security officer;

2. The summary statement shall classify applicants as:

- a. Essentially suitable;
- b. May be unsuitable; or
- c. Borderline suitability; and

3. If an applicant is classified as borderline suitability or may be unsuitable, the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency.

(d) Screening shall be administered in accordance with the Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.

(4) Physical ability testing as specified in KRS 15.382(16) shall consist of the minimum requirements established by this subsection.

(a) Precertification status.

1. To obtain precertification status under KRS 15.386(1), the applicant shall successfully complete each of the events in the following order as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the KLEC Physical Fitness Testing Protocols:

- a. Bench press;
- b. Sit-ups;
- c. 300 meter run;
- d. Push-ups; and
- e. One and five-tenths (1.5) mile run.

2. An applicant shall pass the physical ability test for precertification status if he or she achieves a cumulative score of fifty (50) points or more, based upon the following scoring of the physical training events listed in subparagraph 1 of this paragraph:

a. Bench press, based upon a percentage of the recruit's body weight:

- (i) 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;
- (ii) 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;
- (iii) 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;
- (iv) 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and
- (v) 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;

b. Sit-ups:

- (i) 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;
- (ii) 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;
- (iii) 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and
- (iv) 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

c. 300 meter run:

- (i) 9 points - Recruit shall complete in sixty-eight (68) seconds or less;
- (ii) 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;
- (iii) 10 points - Recruit shall complete in sixty-five (65) seconds; and

(iv) 11 points - Recruit shall complete in less than sixty-five (65) seconds;

d. Push-ups:

- (i) 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;
- (ii) 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;
- (iii) 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;
- (iv) 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and
- (v) 11 points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and

e. One and five-tenths (1.5) mile run:

- (i) 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;
- (ii) 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;
- (iii) 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;
- (iv) 10.5 points - Recruit shall complete in at least 1,004 seconds (16:44) or less; and
- (v) 11 points - Recruit shall complete in 975 seconds (16:15) or less.

3. An applicant shall not be awarded more than eleven (11) points in any one (1) of the five (5) physical ability events.

4. An applicant shall fail the physical ability test for precertification status if he or she does not achieve:

- a. A cumulative score of at least fifty (50) points for all five (5) events; and
- b. At least nine (9) points on each physical training event.

5. At the sole discretion of the hiring agency, an applicant who fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, subject to the conditions established by this subparagraph.

a. A retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required cumulative fifty (50) point minimum.

b. A retest shall not occur any sooner than forty-eight (48) hours or any later than sixty (60) days from the date of the initial test attempt.

6. If an applicant obtains a point value for each event, but does not obtain a cumulative score of at least fifty (50) points, the applicant may attempt the test battery again, in its entirety. This shall be considered a second test administration and not a retest.

7. An applicant may participate in the physical ability test for precertification status in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

8. An applicant may participate in one (1) physical ability retest for each physical ability test taken for precertification status.

(b) Certification status.

1. To obtain certification status under KRS 15.386(2), the applicant shall successfully complete each of the following physical ability requirements within ten (10) days of graduation from law enforcement basic training, which shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols:

- a. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the applicant's body weight;
- b. Sit-ups. Nineteen (19) sit-ups in one (1) minute;
- c. 300 meter run in less than sixty-five (65) seconds;
- d. Push-ups. Twenty-five (25) push-ups; and
- e. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

2. If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements for certification status.

3. Retest. If an applicant fails to pass all events when participating in the physical ability test for certification status during the training graduation test:

a. The applicant shall not retest in the failed events earlier than forty-eight (48) hours after the date the test is originally administered;

b. All failed events shall be retested on the same date; and

c. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability test requirements for certification status.

(5) Medical screening as specified in KRS 15.382(10) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall complete KLEC Form G-2, Medical History Statement, which, along with KLEC Form G-3, Medical Screening Guidelines Implementation Manual, shall be provided to the physician, nurse practitioner, or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.

(b) The agency shall provide the examining physician, nurse practitioner, or physician's assistant with a copy of the KLEC Form T-1a, Physician's Medical Release Form.

(c) The physician, nurse practitioner, or physician's assistant shall complete KLEC Form G-1, Medical Examination Report, and forward it to the employing agency.

(6) Drug screening as specified in KRS 15.382(11), 15.3971(1)(j), and 15.540(1)(f) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall execute KLEC Form K-1 and submit a urine sample that shall be screened and if necessary confirmed using the guidelines as outlined in the Mandatory Guidelines for Federal Workplace Drug Testing Programs, 82 Fed. Reg. 7920-1 (Jan. 23, 2017). The screening and confirmatory cutoff concentrations are as follows:

SCREENING	
Marijuana metabolites	50 ng/mL
Cocaine metabolite (Benzoyllecgonine)	150 ng/mL
Codeine / Morphine	2,000 ng/mL
Hydrocodone / Hydromorphone	300 ng/mL
Oxycodone / Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine / Methamphetamine	500 ng/mL
MDMA / MDA	500 ng/mL
CONFIRMATION	
THC/THCA	15 ng/mL
Benzoyllecgonine	100 ng/mL
Codeine	2,000 ng/mL
Morphine	2,000 ng/mL
Hydrocodone	100 ng/mL
Hydromorphone	100 ng/mL
Oxycodone	100 ng/mL
Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine	250 ng/mL
Methamphetamine	250 ng/mL
MDMA	250 ng/mL
MDA	250 ng/mL

(b) The integrity of the urine sample shall be documented on KLEC Form K-2, Drug Screening through Urinalysis Chain of Custody.

(7) For the polygraph examination as specified in KRS 15.382(17), 15.3971(1)(n), and 15.540(1)(e), the applicant shall complete KLEC Form I-1, Consent for Pre-employment Polygraph Examination, and KLEC Form I-2, Pre-employment Polygraph Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant.

(8) The agency shall ensure that the applicant receives and has read KLEC Form L-1, Code of Ethics and KLEC Form L-2, Canon of Ethics.

(9) High school diploma.

(a) The high school graduate requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b) shall be met by:

1. Submission of a copy of a diploma or transcript from a public high school; or

2. Submission of a diploma or transcript from a private high school that:

a. Is certified by or recognized by the Kentucky Department of Education; or

b. Has complied with all provisions of Kentucky law relating to private or other non-public secondary schools as applicable, including days and hours of attendance and course curriculum. The applicant shall also submit a completed Applicant Education Verification form.

(b) A document purporting to be a high school or college diploma and obtained through the internet or by mail order shall not satisfy the requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b).

Section 5. KLEC Administered Testing Procedures.

(1) An applicant shall execute all releases required for KLEC testing, including:

(a) KLEC Form I-1 - Consent for Pre-employment Polygraph Examination;

(b) KLEC Form K-1 - Drug Screening through Urinalysis Applicant Consent Form;

(c) KLEC Form T-1 - Medical Release - Phase I Testing; and

(d) KLEC Form T-2 - Liability Waiver - Phase I Testing.

(2) Testing schedule.

(a) The KLEC office shall publish online or otherwise make available to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered testing.

(b) Testing sites shall be statewide and accommodations shall be made where reasonable to ensure testing sites are accessible based upon need.

(c) Advance notice of the schedule shall be made public prior to the testing.

(d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training as needed.

(3) Registration for KLEC administered testing. The KLEC office shall receive KLEC Form A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification when the testing is administered.

(b) The KLEC office shall receive the completed polygraph questionnaire KLEC Form I-2 when the testing is administered.

Section 6. Test Reporting by KLEC.

(1) Results of tests provided by or through the KLEC office shall be forwarded to the employing agency head.

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC Form D. The information from the completed form shall be provided to DOCJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(3) Length of test result validity.

(a) Physical ability for precertification status results shall be considered current and valid one (1) year from the passing date of the test.

(b) Suitability screening results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new suitability screening for the applicant.

(c) Polygraph examination results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant who leaves and reenters the testing process for preselection screening shall submit to another drug screening.

(4) Updating test results. The employing agency shall update test results if necessary by submitting KLEC Form D to the KLEC office.

(5) Agency access to prior test results.

(a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing, which is still current and valid.

(b) If agencies enter into an agreement with the written permission of the applicant, the new employing agency shall receive the medical, suitability, and polygraph results directly from the agency that initially requested testing of the applicant.

(c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

Section 7. Test Reporting by Agency.

(1) An agency that performs physical ability testing based upon the requirements in Section 4 of this administrative regulation shall report all test results by submitting a POPS Form PT-1, Physical Agility Test Session Report, to the KLEC within ten (10) days of administering the test.

(2) An agency that performs physical ability testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.

(3) Physical ability test results shall be reported to the KLEC office regardless of whether the applicant:

(a) Passes or fails the test; or

(b) Performs or completes every component of the physical ability test.

Section 8. KLEC Administered Testing Costs.

(1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

(a) Sixty-five (65) dollars for each psychological screening;

(b) \$100 for each polygraph examination; and

(c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:

1. The actual approved budget of the governmental unit for the current and the preceding year;

2. The number of certification applicants for the current and preceding year;

3. The actual revenue receipts of the governmental unit for the current and the preceding year; and

4. A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that adequate funding was not budgeted to cover the cost of testing.

(b) Initial review. Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that:

1. The application has been received and is complete; or

2. The application is incomplete and shall identify the specific information to be supplemented to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

(c) Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the application for financial hardship and the specific reasons supporting a recommendation to reject.

(d) KLEC review.

1. The KLEC Committee on Professional Standards shall review the application and the recommendation of the KLEC office and forward their recommendation to KLEC for final review.

2. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected and shall provide the specific reasons supporting the rejection.

(e) Appeal.

1. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.

2. The notice shall be filed within thirty (30) days of receipt of the notice of rejection.

3. The notice of appeal shall be submitted ***in writing[on KLEC POPS Form-S]*** with a copy of the notice of rejection of financial hardship attached.

4. A copy of the notice of appeal shall be delivered to the KLEC office by certified mail.

5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office shall immediately notify DOCJT.

Section 9. Employment Changes.

(1) Pursuant to KRS 15.392 and 15.580 if a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC Form F.

(2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency the employing agency shall submit KLEC Form F within five (5) business days of the employment or appointment. Additionally, the agency shall submit KLEC Form D-1 for returning peace officers or court security officers.

(3) Information from completed KLEC Forms F shall be provided to DOCJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

Section 10. Out-of-state, Military, and Federal Law Enforcement and Telecommunications Basic Training.

(1) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was equal to or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers when the course was completed by the applicant, as determined by the executive director of the Office of Kentucky Law Enforcement Support;

(b) The basic training course or academy is a single, stand-alone course;

(c) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency; and

(d) The peace officer completes the following courses presented by the Department of Criminal Justice Training within one (1) year of his or her hiring by the Kentucky law enforcement agency. For purposes of meeting the hourly requirement in paragraph (a) of this subsection, the number of hours of these courses shall be added to the number of hours taken in the out-of-state basic training course:

1. The twenty-four (24) hour legal update Penal Code course;

2. The sixteen (16) hour legal update constitutional procedure course;

3. On-line Federal Emergency Management Agency ICS 100, ICS 200, and IS 700 courses (or current equivalent). A Certificate of Completion or official transcript shall satisfy this requirement; and

4. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:

- a. Basic officer skills;
- b. Orientation for new police chiefs; or
- c. Mandatory duties of the sheriff.

(2) An applicant to a Kentucky law enforcement agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was at least 300 hours, but less than the number of hours required for Kentucky peace officers;

(b) The peace officer has been employed in a full-time capacity as a peace officer for three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy;

(c) The basic training course or academy is a single, stand-alone course; and

(d) The peace officer completes the courses as required in subsection (1)(d) of this section with the number of hours of these courses added to the number of hours taken in the out-of-state basic training course in subsection (2)(a) of this section.

(3) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a law enforcement or telecommunications basic training course or academy while serving in the United States military may be certified by the KLEC if:

(a)

1. The basic training course or academy corresponded with or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, as determined by the Executive Director of the Office of Kentucky Law Enforcement Support; or

2. The basic training course or academy did not correspond with or exceed the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, a basic training credit of fifty (50) hours for each year of his or her full-time peace officer service together with the basic training course hours shall be granted to allow compliance with the total hours required by KRS 15.440, 503 KAR 1:110, or another administrative regulation modifying the hours; and

(b) The basic training course or academy was a single, stand-alone course.

(4) An applicant to a Kentucky law enforcement agency who has graduated from one (1) of the following Federal law enforcement basic training courses may be certified by the KLEC:

- (a) Federal Bureau of Investigation;
- (b) Bureau of Alcohol, Tobacco, and Firearms;
- (c) Drug Enforcement Administration; or
- (d) United States Secret Service.

(5) The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.

(6) An agency may request certification for a peace officer who has completed an out-of-state law enforcement basic training by submitting for the applicant:

(a) A certificate of completion or other official documentation showing completion of basic training;

(b) A transcript of classes for basic training with individual class hours specified; and

(c) A letter from an employing agency signed by the chief or a direct supervisor of the applicant certifying, or other official documentation showing, that the applicant was employed in a full-time capacity as a peace officer for:

1. At least one (1) year; or

2. Three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy.

(7) An applicant to a Kentucky law enforcement or telecommunications agency seeking certification under this section shall not be certified unless he or she has worked in a full-time capacity as a peace officer within five (5) years of applying for certification in Kentucky.

Section 11. Records.

(1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the records retention schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030.

(2) Security. The KLEC office and employing agencies shall maintain records in a manner to ensure their security. To properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2), a law enforcement or telecommunications agency shall keep all records relating to certification in a file separate from any personnel file maintained by the hiring authority.

(3) For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in the agency file a KLEC FORM POPS P, Certification of Peace Officer Professional Standards Testing Procedures, KLEC Form Q-3 – Drug Screening Approval, KLEC Form Q-4 – Polygraph Approval, and KLEC Form Q-5 – Suitability Screener Approval, indicating that the following testing procedures have been completed:

- (a) Polygraph;
- (b) Suitability screening;
- (c) Drug screen; and
- (d) Medical examination or history statement.

(4) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer regardless of where the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(5) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

Section 12. Applicant Conduct and Behavior.

(1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with KRS Chapter 13B, may be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume, or be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) An applicant shall advise the KLEC test administrator in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician.

(c) An applicant shall not participate in physical ability testing if:

1. The applicant has taken:

- a. A controlled substance as prescribed by a physician; or
- b. Any other medication, whether prescribed or not; and

2. The applicant is under the influence of the controlled substance or medication to the extent that the applicant may be impaired or is a danger to self or others.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of testing, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

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(4) The KLEC shall notify the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing. The notice shall state the supporting reasons and circumstances of the removal and whether the agency may reschedule testing.

Section 13. Compliance.

(1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, to audit specific applicants and agencies to ensure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of participation in Kentucky Law Enforcement Foundation Program Fund (KLEFPF). If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14. Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office upon loss of certification.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014;

(b) "KLEC Form A - Testing Registration - Attesting to Minimum Standards", 2021;

(c) "KLEC Form C - Grandfather Information", 2021;

(d) "KLEC Form D - All Standards Met", 2022[2024];

(e) "KLEC Form D-1 - All Standards Met - Inactive to Active Status", **October 2022[2024]**;

(f) "KLEC Form E - Request for Certification for Exempt Officers", March 1, 1999;

(g) "KLEC Form F - Status Update", 2021;

(h) "KLEC Form G-1 - Medical Examination Report", 2021;

(i) "KLEC Form G-2 - Medical History Statement", 2021;

(j) "KLEC Form G-3 - Medical Screening Guidelines Implementation Manual", 2021;

(k) "KLEC Form H-1 - Background Investigation", 2021;

(l) "KLEC Form I-1 - Consent for Pre-employment Polygraph Examination", 2021;

(m) "KLEC Form I-2 - Pre-employment Polygraph Questionnaire", 2021;

(n) "KLEC Form J - JTA Submission", January 19, 1999;

(o) "KLEC Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form", 2021;

(p) "KLEC Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form", 2021;

(q) "KLEC Form L-1 - Code of Ethics", 2021;

(r) "KLEC Form L-2 - Canon of Ethics", 2021;

(s) "KLEC Form Q - Agency Submission Form", 2021;

(t) "KLEC Form Q-3 - Drug Screening Approval", 2021;

(u) "KLEC Form Q-4 - Polygraph Approval", 2021;

(v) "KLEC Form Q-5 - Suitability Screener Approval", 2021;

(w) "KLEC Form tele-Q - Agency Submission Form", 2021;

(x) "KLEC Form T-1 - Medical Release - Phase I Testing", 2021;

(y) "KLEC Form T-1a - Physician's Medical Release Form", 2021;

(z) "KLEC Form T-2 - Liability Waiver - Phase I Testing", 2021;

(aa) "POPS Form PT-1 - Physical Agility Test Session Report", 2021;

(bb) "POPS Form P - Certification of Peace Officer Professional Standards Testing Procedures", July 2004;

(cc) "KLEC Physical Fitness Testing Protocols", 2021; and

(dd) "KLEC Education Form - Applicant Education Verification", 2021.

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**PUBLIC PROTECTION CABINET
Department of Insurance
Financial Standards and Examinations Division
(As Amended at ARRS, October 11, 2022)**

806 KAR 37:010. Insurance holding company systems and other insurer filing.

RELATES TO: KRS 304.1-050, 304.6, 304.24-390, 304.24-400, 304.24-415, 304.33, 304.37-010, 304.37-020, 304.37-030, 304.37-110, 304.37-120, 304.37-130

STATUTORY AUTHORITY: KRS 304.2-110, 304.37-060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 ~~authorizes[provides—that]~~ the Commissioner of the Department of Insurance to promulgate[may] make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. KRS 304.37-060 authorizes the commissioner to promulgate administrative regulations as may be necessary to carry out KRS Chapter 304 Subtitle 37[:37]. This administrative regulation establishes procedural requirements necessary to carry out the provisions of KRS Chapter 304 Subtitle 37[:37], insurance holding company systems, and statutes relating to the merger and acquisition of domestic insurers.

Section 1. Definitions.

(1) "Commissioner" is defined by KRS 304.37-010(2)[304.1-050(1)].

(2) "Department" is defined by KRS 304.1-050(2).

(3) "Ultimate controlling person" means that person which is not controlled by any other person.

Section 2. Forms - General Requirements. (1)(a) Forms A, B, C, D, E, and F shall specify the information required to be provided in the preparation of the statements required by KRS 304.37-120, 304.37-020(1) to (14) and 304.37-030. In addition, Form A shall be used ~~for[as-to]~~ mergers and acquisitions of domestic insurers referred to in KRS 304.24-390. ~~They are not intended to be blank forms which are to be filled in.]~~

(b) Filed statements shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers are prepared in a manner ~~that[as-to]~~ clearly indicates[indicate clearly] the scope and coverage of the items.

(c) All instructions, whether appearing under the items of the form or elsewhere, shall be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer is in the negative, a statement to that effect shall be made.

(2)(a) Duplicate originals of each statement, including exhibits and all other papers and documents filed as a part of the statement, shall be filed with the commissioner by personal delivery or mail addressed to: Financial Standards and

Examination Division, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

(b) A copy of Form C shall be filed in each state in which an insurer may do business, if the insurance regulatory official of that state has notified the insurer of its request in writing, in which case the insurer has fifteen (15) days from receipt of the notice to file the form.

(c) The duplicate original shall be ~~[manually]~~signed in the manner prescribed on the form.

(d) ~~[Unsigned copies shall be conformed.~~

~~(e)~~ If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall ~~[also]~~ be filed with the statement.

(3) If an applicant requests a hearing under KRS 304.37-120(4)(b), in addition to filing the Form A with the commissioner, the applicant shall file a copy of the Form A with the National Association of Insurance Commissioners in electronic form.

(4) Statements shall be prepared electronically. All copies of any statements, financial statements, or exhibits shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable on photocopies. Statements shall be in the English language, and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language, and any monetary value shown in a foreign currency ~~[normally]~~ shall be converted into United States currency.

Section 3. Forms - Incorporation by Reference, Summaries, and Omissions. (1)(a) Information required by any item on Forms A, B, D, E, or F may be incorporated by reference in answer or partial answer to any other item.

(b) Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item on Forms A, B, D, E, or F if the document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive.

(c) Documents currently on file with the commissioner which were filed within three (3) years of the current filing shall not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that the material is to be incorporated by reference in an answer to the applicable item.

(d) Material shall not be incorporated by reference if the incorporation may render the statement incomplete, unclear, or confusing.

(2)(a) If an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document.

(b) In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which was filed within three (3) years of the current filing and may be qualified in its entirety by the reference.

(c) If two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties, the dates of execution, or other details, a copy of only one (1) of the documents shall be filed, with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the filed documents.

Section 4. Forms - Information Unknown or Unavailable and Extension of Time to Furnish.

(1) If it is impractical to furnish any required information, document, or report when it is required to be filed, there shall be filed with the commissioner a separate document that:

(a) Identifies the information, document, or report in question;

(b) States why its filing ~~[when required]~~ is impractical; and

(c) Requests an extension of time for filing the information, document, or report to a specified date.

(2) The request for extension shall be granted unless the commissioner, within sixty (60) days after receipt of the request, enters an order denying the request.

Section 5. Forms - Additional Information and Exhibits. (1) In addition to the information expressly required to be included in Forms A, B, C, D, E, and F, the commissioner may request further material information as may be necessary to make the information contained in the filing not misleading. The material information requested, and which may include supplemental financial information, supporting contracts and agreements, and filings with other regulatory bodies.

(2) The person filing may also file exhibits in addition to those expressly required by the statement. These exhibits shall clearly indicate the subject matters to which they refer.

(3) Changes to Forms A, B, C, D, E, or F shall include, on the top of the cover page, the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

Section 6. Subsidiaries of Domestic Insurers. The authority to invest in subsidiaries under KRS 304.37-110 shall be in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code, KRS Chapter 304, and KAR Title 806[corresponding administrative regulations].

Section 7. Acquisition of Control - Statement Filing. A person required to file a statement pursuant to KRS 304.24-390[,] or 304.37-120 shall furnish the required information on Form A, and on Form E, in accordance with Section 10 of this administrative regulation.

Section 8. Amendments to Form A. The applicant shall promptly advise the commissioner of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished, but prior to the commissioner's disposition of the application.

Section 9. Acquisition of Certain Insurers. (1) If the person being acquired is a "domestic insurer" solely because of the provisions of KRS 304.37-120(1)(a), the name of the domestic insurer on the cover page shall be indicated, in the following format[as follows:] "ABC Insurance Company, a subsidiary of XYZ Holding Company".

(2) If an insurer referred to in subsection (1) of this section is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

Section 10. Pre-Acquisition Notification. (1) If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to KRS 304.37-120, that person shall file a pre-acquisition notification form, Form E.

(2) If a non-domiciliary insurer licensed to do business in the Commonwealth is proposing a merger or acquisition pursuant to KRS 304.37-130, that insurer shall file a pre-acquisition notification form, Form E. A pre-acquisition notification form shall not be filed if the acquisition meets the requirements of KRS 304.37-130(2)(b).

(3) In addition to the information required by Form E, the commissioner may require an expert opinion as to the competitive impact of the proposed acquisition.

Section 11. Annual Registration of Insurers - Statement Filing. (1) An insurer required to file an annual registration statement pursuant to KRS 304.37-020 shall furnish the required information on Form B.

(2)(a) An amendment to Form B shall be filed in accordance with KRS 304.37-020(5)[within fifteen (15) days after the end of any month in which] there is a material change to the information provided in the annual registration statement.

(b) Only those items reported as amendments shall be filed in the Form B format[Amendments shall be filed in the Form B format with only those items which are being

~~amended reported. Each amendment shall include at the top of the cover page "Amendment No. (insert number) to Form B for (insert year)" and shall indicate the date of the change and not the date of the original filings.~~

Section 12. Summary of Registration - Statement Filing. An insurer required to file an annual registration statement pursuant to KRS 304.37-020 shall also furnish information required on Form C. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the insurance regulatory official of that state.

Section 13. Alternative and Consolidated Registrations. (1) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers ~~that[which]~~ are required to register under KRS 304.37-020. A registration statement may include information not required by KRS Chapter 304 Subtitle 37[-37] regarding any insurer in the insurance holding company system, even if the insurer is not authorized to do business in Kentucky. ~~Instead[In lieu]~~ of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report ~~that[which]~~ it is required to file in its state of domicile if:

(a) The statement or report contains substantially similar information required to be furnished on Form B; and

(b) The filing insurer is the principal insurance company in the insurance holding company system.

(2) ~~[The question of whether the filing insurer shall be the principal insurance company in the insurance holding company system shall be a question of fact.]~~ An insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer shall set forth a brief statement of facts which substantiates the filing insurer's claim that it is the principal insurer in the insurance holding company system.

(3) With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures ~~that[which]~~ may be done by an authorized insurer under subsection (1) of this section.

(4) Any insurer may take advantage of the provisions of KRS 304.37-020(9) or (10) without obtaining the prior approval of the commissioner. However, the commissioner may require individual filings if consolidation renders the material incomplete, unclear, or confusing.

Section 14. Disclaimers and Termination of Registration. (1) A disclaimer of affiliation or a request for termination of registration claiming that a person shall not, or will not, upon the taking of some proposed action, control another person, referred to as the subject, shall contain the following information:

(a) The number of authorized, issued, and outstanding voting securities of the subject;

(b) With respect to the person whose control is denied and all affiliates of this person, the number and percentage of shares of the subject's voting securities which are held of record or known to be owned beneficially, and the number of these shares ~~[concerning]in~~ ~~that[which]~~ there is a right to acquire, directly or indirectly;

(c) All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of this person; and

(d) A statement explaining why the person shall not be considered to control the subject.

(2) A request for termination of registration shall be granted unless the commissioner, within thirty (30) days after he or she receives the request, notifies the registrant otherwise.

Section 15. Transactions Subject to Prior Notice - Notice Filing. (1) An insurer required to give notice of a proposed transaction pursuant to KRS 304.37-030 shall furnish the required information on Form D.

(2) Agreements for cost sharing services and management services shall, at a minimum and as applicable:

(a) Identify the person providing services and the nature of the

services;

(b) Set forth the methods to allocate costs;

(c) Require timely settlement at least on a quarterly basis and in compliance with KRS Chapter 304 Subtitle 6[-6];

(d) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(e) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(f) Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(g) Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(h) State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer, and are subject to the control of the insurer;

(i) Include standards for termination of the agreement with and without cause;

(j) Include provisions for indemnification of the insurer ~~if there is[In the event of]~~ gross negligence or willful misconduct on the part of the affiliate providing the services;

(k) Specify that, if the insurer is placed in receivership or seized by the commissioner under KRS Chapter 304 Subtitle 33[-33]:

1. All of the rights of the insurer under the agreement extend to the receiver or commissioner; and

2. All books and records ~~shall:[will]~~

~~a.~~ Immediately be made available to the receiver or the commissioner;~~is]~~ and ~~shall]~~

~~b.~~ Be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(l) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to KRS Chapter 304 Subtitle 33[-33]; and

(m) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under KRS Chapter 304 Subtitle 33[-33], and will make these available to the receiver for as long as the affiliate continues to receive timely payment for services rendered.

Section 16. Enterprise Risk Report. The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to KRS 304.37-020 ~~(14)[(13)]~~ shall furnish the required information on Form F.

Section 17. Extraordinary Dividends and Other Distributions.

(1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(a) The amount of the proposed dividend;

(b) The date established for payment of the dividend;

(c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description of the property, its cost, and its fair market value together with an explanation of the basis for valuation;

(d) A copy of the calculations determining that the proposed dividend is extraordinary, ~~which[-The work paper]~~ shall include the following information:

1. The amounts, dates, and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the ~~insurer's[insurers]~~ own securities, paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought, and commencing on the day after the same day of the same month in the last preceding year;~~is]~~

2. Surplus as regards to policyholders, total capital and surplus, as of the 31st day of December next preceding;

3. If the insurer is a life insurer, the net gain from operations for the twelve (12) month period ending the 31st day of December next preceding;

4. If the insurer is not a life insurer, the net income less realized capital gains for the twelve (12) month period ending the 31st day of December next preceding and the two (2) preceding twelve (12) month periods; and

5. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years;~~;~~^f

(e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

(2) Subject to KRS 304.37-030(2), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration, including the same information required by subsection (1)(d) of this section.

Section 18. Adequacy of Surplus. (1) In determining the adequacy and reasonableness of an insurer's surplus pursuant to KRS 304.37-030(4), no single factor shall be controlling. The commissioner shall consider the net effect of all of these factors, plus other factors bearing on the financial condition of the insurer.

(2) In comparing the surplus maintained by other insurers, the commissioner shall consider the extent to which each of these factors varies from insurer to insurer, and in determining the quality and liquidity of investments in subsidiaries, the commissioner shall consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

Section 19. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Form A Statement Regarding the Acquisition of Control of or Merger With a Domestic Insurer," September 2022~~[October 2014]~~;

(b) "Form B Insurance Holding Company System Annual Registration Statement," September 2022~~[August 2014]~~;

(c) "Form C Summary of Changes to Registration Statement," August 2014;

(d) "Form D Prior Notice of a Transaction," September 2022~~[August 2014]~~;

(e) "Form E Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this State or by a Domestic Insurer," September 2022~~[August 2014]~~; and

(f) "Form F Enterprise Risk Report," September 2022~~[August 2014]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, 245 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Department of Insurance Internet Web site, <https://insurance.ky.gov/ppc/CHAPTER.aspx>~~[http://insurance.ky.gov]~~.

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PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(As Amended at ARRS, October 11, 2022)

820 KAR 1:001. Definitions.

RELATES TO: KRS 238.500, et. seq.~~[238.505, 238.510, 238.515, 238.520, 238.522, 238.525, 238.530, 238.535, 238.536, 238.540, 238.545, 238.547, 238.550, 238.555, 238.560, 238.565,~~

~~238.567, 238.570, 238.995]~~

STATUTORY AUTHORITY: KRS 238.515(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 authorizes the Department of Charitable Gaming to promulgate administrative regulations to carry out the purposes and intent of the chapter. This administrative regulation establishes definitions of terms used throughout 820 KAR Chapter 1.

Section 1. Definitions.

(1) "Account number" means the unique identification number, if any, assigned by a card-minding device system or electronic pulltab system to a customer that uses a card-minding device to play bingo or an electronic pulltab device to purchase and play a pulltab.

(2) "Bet block" means an area that indicates the dollar amount of the wager.

(3) "Cash over" means the total amount of money actually received from the sale of gaming supplies at a charitable gaming session is more than the amount of money due from the sale of that quantity of gaming supplies.

(4) "Cash short" means the total amount of money actually received from the sale of gaming supplies at a charitable gaming session is less than the amount of money due from the sale of that quantity of gaming supplies.

(5) "Charitable gaming session" means a single gathering, event, or occurrence, at a specific location, during a specific time period, at which games of chance as defined by KRS Chapter 238 are conducted by a charitable organization.

(6) "Charitable gaming session program" means a written list of all games to be played and prize amounts to be paid for each game during a charitable gaming session, including, if the prizes are based on attendance, the amount of the prize and the attendance required.

(7) "Chief executive officer" means the director of the organization or the person who has legal authority to direct the management of the organization, distributor, manufacturer, or charitable gaming facility with respect to the conduct of charitable gaming.

(8) "Chief financial officer" means the person who is:

(a) Responsible for overseeing the financial activities of the organization, distributor, manufacturer, or charitable gaming facility;

(b) The custodian of the charitable gaming session records; and

(c) Responsible for ensuring that all records are accurate, complete, and maintained;

(9) "Digital signature" means a method by which data, as in a software application, is expressed in a calculated number that is used to verify the accuracy of the data or a copy of the data.

(10) "Draw ticket" means a blank ticket upon which the numbers are marked as they are randomly selected.

(11) "EPROM" means Erasable Programmable read-only memory.

(12) "Gambling" is defined by KRS 528.010(4).

(13) "Merchandise prize" means a noncash prize given away at a charitable gaming session either as a game prize or a door prize.

(14) "Player tracking software" means computer software installed on a card-minding device system, electronic pulltab system, or other point of sale system that is used to identify or track certain characteristics of bingo or pulltab players, including personal data and purchasing habits.

(15) "Primary office location" means:

(a) The land and building in and upon which a charitable organization conducts the majority of its charitable business; and

(b) Does[. An organization's primary office location shall] not include any physical space a charitable organization shares/shared] with a bar, restaurant, convenience store, or other commercial retail business.

(16) "PROM" means programmable read-only memory.

~~(17) [(46)]~~ "Promotional" means any item available at no charge to all participants at a[an] charitable gaming session.

~~(18) [(47)]~~ "Proprietary software" means custom computer software developed by the manufacturer that is a primary

component of a card-minding device system or electronic pulltab system and is required for a card-minding device to be used in a game of bingo or for an electronic pulltab device to be used to play an electronic pulltab.

(19){(48)} "Purchased prize" means any merchandise prize that was purchased and not donated.

(20){(49)} "RAM" or "random access memory" means the electronic memory that a computer uses to store information.

(21){(20)} "Random number generator" means a device:

(a) For generating number values that exhibit characteristics of randomness; and

(b) Composed of:

1. Computer hardware;

2. Computer software; or

3. A combination of computer hardware and software.

(22){(24)} "Secondary component" means an additional software or hardware component that:

(a) Is part of or is connected to a card-minding device system or electronic pulltab system;

(b) Does not affect the conduct of the game of bingo or an electronic pulltab;

(c) Is provided by the manufacturer; and

(d) May include computer screen backgrounds, battery charge-up software routines, monitors, keyboards, pointer devices, mice, printers, printer software drivers, or charging racks.

(23){(22)} "Serial number" means a number assigned by the manufacturer to track the individual product.

(24){(23)} "Site system" means computer hardware, software, and peripheral equipment leased or purchased from a licensed distributor and used by a licensed organization to conduct, manage, and record bingo games played on card-minding devices and electronic pulltab games played on electronic pulltab devices.

(25){(24)} "Terminal number" means the unique identification number, if any, assigned by a manufacturer to a specific standard card-minding device or a specific electronic pulltab device.

(26){(25)} "Transaction log" means a record of the same information printed on each outside ticket that is:

(a) Retained in the computer's memory; or

(b) Printed out by the computer.

(27){(26)} "Version number" means a unique number designated by the manufacturer to identify a specific version of software used on or by the card-minding device system or the electronic pulltab system.

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**PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(As Amended at ARRS, October 11, 2022)**

820 KAR 1:032. Pulltabs.

RELATES TO: KRS 238.505, 238.545

STATUTORY AUTHORITY: KRS 238.515, 238.545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming. KRS 238.545 requires the department to establish standards for pulltab construction, distribution, electronic pulltabs, and rules of play. This administrative regulation establishes those standards.

Section 1. Definitions. These definitions shall apply to all administrative regulations relating to pulltabs or electronic pulltabs.

(1) "Bonus round" means a single, new screen, apart from ordinary gameplay, that incrementally reveals the results of a single electronic pulltab ticket either by simulating the opening of additional tickets or simulating a prize board from which a player may pick symbols or icons.

(2) "Cumulative pulltab game" means a pulltab game

consisting of multiple pulltab deals or game sets that is designed by the manufacturer so that a portion of each deal's predetermined payout is designated to a prize pool board.

(3) "Deal" means each separate game or series of pulltabs that have the same serial number and that may be composed of multiple packages.

(4) "Electronic pulltab system" means:

(a) A central computer system, which may be an optional site system;

(b) Electronic pulltab devices;

(c) Point of sale stations;

(d) Secondary components; and

(e) Proprietary software that contains reporting and control functions whereby the central computer system communicates with the electronic pulltab devices for the purpose of distributing a finite number of electronic pulltabs, a certain number of which, if randomly selected, entitle a player to prize awards at various levels.

(5) "Event game" means a type of pulltab game, with or without a seal card, that is designed by the manufacturer so that certain prizes are determined by:

(a) The draw of a bingo ball; or

(b) A method of randomly selecting numbers or symbols that correspond to the numbers or symbols printed on a paper or electronic pulltab.

(6) "Fixed[-]base electronic pulltab device" means a single personal computing device that has been loaded with proprietary software by a licensed manufacturer to enable it to function as an electronic pulltab device.

(7) "Flare" means the paper included with a deal of paper pulltabs, or the electronic representation of a paper flare included with a game set of electronic pulltabs, that identifies the game, the rules of the game, the payout structure, and other information required by this administrative regulation[these regulations].

(8) "Form number" means a manufacturer's alphanumeric number that identifies a pulltab payout structure.

(9) "Game set" means the entire deal of finite electronic pulltabs that contains predefined and randomized game results assigned under a unique serial number.

(10) "Game subset" means a division of a game set into equal sizes following randomization, with each game subset also identified by a unique serial number.

(11) "Hand-held electronic pulltab device" means a single tablet or hand-held computer, other than a mobile phone or similar hand-held device that is either manufactured or customized by the manufacturer to operate as an electronic pulltab device.

(12) "Jackpot prize in a progressive pulltab game" or "progressive jackpot prize" means a prize in addition to the instant or seal card prizes that is carried over from deal to deal, or game set to game set, until it is won.

(13) "Jar ticket" means a type of pulltab game ticket that is folded, glued, or stapled.

(14) "Last sale" means a pulltab game designed by the manufacturer in which a prize is awarded to the person who bought the last pulltab or electronic pulltab in a deal or game set.

(15) "Multipackaged pulltab deal" means a pulltab game consisting of a single deal or game set of not more than 25,000 tickets that is packed or electronically grouped in subsets and in which each subset contributes to a prize pool with or without a prize board.

(16) "Progressive pulltab game" or "carryover pulltab game" means a pulltab game consisting of one (1) or more deals or game sets designed by the manufacturer so that a portion of the deal's predetermined prize payout is designated to a progressive jackpot and the jackpot value may accumulate from one (1) deal to the next deal until won.

(17) "Pulltab" means a charity game ticket as defined by KRS 238.505(5).

Section 2. Conformity of Paper Pulltabs. (1) A licensed distributor of charitable gaming supplies and equipment shall distribute in Kentucky only those paper pulltabs conforming to the requirements of this administrative regulation.

(2) A licensed charitable organization shall sell to the public only those paper pulltabs conforming to the requirements of this administrative regulation.

Section 3. Paper Pulltab Construction Standards. (1) Pulltabs shall be constructed so that the concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the pulltab using a high intensity lamp of up to and including 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, printed, glued, cut, and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each pulltab in a deal shall bear the same serial number. If a seal card is used with a pulltab deal, the seal card shall bear the same serial number as each pulltab. Only one (1) serial number shall be used in a deal. A serial number used in a deal of pulltabs shall not be repeated by the same manufacturer on that same manufacturer's form number within a three (3) year period.

(4) If the pulltab utilizes a window, the numbers or symbols on the pulltab shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) It shall not be possible to distinguish winning pulltabs from losing pulltabs through variations in printing graphics or colors, including those involving different printing plates.

(6) All winning pulltabs shall have at least one (1) winner protection feature. In addition, all winning pulltabs that entitle a player to an instant prize of greater than twenty (20) dollars shall include an additional form of winner protection. Numeral jar tickets with colored winning numerals shall not be required to have secondary winner protection.

(7) All pulltabs shall be glued on the window edges and between each window. The glue shall be of sufficient strength and type to prevent the separation or delamination of the pulltab. For banded tickets, the glue shall be of sufficient strength and quality to prevent the separation of the band from the ticket.

(8) The window slits on each break-open ticket shall be perforated on at least three cut sides. The ties shall be of a sufficient thickness or strength to prevent unauthorized peering under the windows and so that unauthorized peering under the windows can be detected. It shall not be possible to isolate winning or potential winning tickets from variations to the size or the appearance of a cut edge of the pulltab comprising a particular game.

(9) Except as provided in subsections (10) and (11) of this section, the minimum information that shall be printed on an unopened pulltab with an overall area of two and five-tenths (2.5) square inches or more shall be:

- (a) The name of the manufacturer, or its distinctive logo;
- (b) The name of the game;
- (c) The manufacturer's form number;
- (d) The price per individual pulltab;
- (e) The unique minimum five (5) digit game serial number, printed on the game information side of the pulltab; and
- (f) The number of winners and respective winning numbers or symbols, and specific prize amounts.

(10) A pulltab with an overall area of at least one and six tenths (1.6) square inches unopened but less than two and five tenths (2.5) square inches unopened shall:

- (a) Have printed on it, at a minimum, the information listed in subsection (9)(a), (b), (c), (d), and (e) of this section; and
- (b) Not be required to have the information listed in subsection (9)(f) of this section.

(11) A pulltab with an overall area of less than one and six-tenths (1.6) square inches unopened shall:

- (a) Have printed on it, at a minimum, the information listed in subsection (9)(a) and (e) of this section; and
- (b) Not be required to have the information listed in subsection (9)(b), (c), (d), or (f) of this section.

Section 4. Randomization of Paper Pulltabs. Winning paper pulltabs shall be distributed and mixed among all other pulltabs in a deal to eliminate any pattern between deals, or portions of deals. The pulltab deal shall be assembled so that the winning pulltabs cannot be distinguished. Winning tickets shall be randomly distributed throughout the deal. Banded tickets packaged in bags, rather than boxes, shall be subject to these requirements.

Section 5. Packaging and Distribution of Paper Pulltabs. (1)(a) Each paper pulltab deal's package, box, or other container shall be sealed or taped at every entry point at the manufacturer's factory with a tamper resistant seal or tape.

(b) The seal or tape shall be visible under the shrink-wrap or from outside the container and shall be constructed to guarantee that, if the container is opened or otherwise tampered with, evidence of the opening or tampering will be easily detected.

(c) The seal or tape shall include a warning to the purchaser that the deal may have been tampered with if the package, box, or other container is received by the purchaser with the seal or tape broken.

(d) If the deal is packaged in a plastic bag, the entry point shall be completely sealed by the application of heat or adhesive. The warning may be imprinted in the plastic.

(2) A deal's serial number shall be clearly and legibly placed on:

- (a) The outside of the deal's package, box, or other container; or
- (b) The inside of the deal's package, box, or other container if it is clearly visible from the outside of the package, box, or other container.

(3) Manufacturers shall print on or affix to the outside of the package or container of pulltabs or include inside the package or container, in bold print of sufficient size to be easily read, a message that states substantially the following: "tickets ***shall/must*** be removed from this packaging container and thoroughly mixed prior to sale to the public."

(4) Manufacturers shall include with every deal of pulltabs a bar code label that contains at a minimum the name of the manufacturer or its distinctive logo, the game form number, and the game serial number. The bar code label shall be visible from the outside of the package, box, or other container.

Section 6. Flares and Seal Cards for Paper Pulltabs. (1) Every deal of pulltabs shall contain a flare or a seal card. The manufacturer shall print directly on the paper flare or seal card the following information:

- (a) The name of the game;
- (b) The manufacturer's name or logo;
- (c) The manufacturer's form number;
- (d) The game serial number;
- (e) The ticket count;
- (f) The prize structure, including a description of the number of winning pulltabs by denomination, with their respective winning symbols or number combinations, and amounts dedicated to the prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize; and
- (g) The cost per play.

(2) Every deal of pulltabs shall contain instructions on how to play the game.

Section 7. Cumulative Games and Carryover or Progressive Games. (1) The rules for cumulative games, carryover, or progressive games shall apply to both paper and electronic pulltabs.

(2) The amount dedicated to a cumulative prize pool or a carryover or progressive jackpot shall be predetermined by the manufacturer and built into the payout structure for the game.

(a) For paper pulltabs, the dedicated amount shall be printed by the manufacturer on either the flare or seal card for each game or on each ticket in each game.

(b) For electronic pulltab games, the dedicated amount shall be included by the manufacturer on the flare or seal card for each

game.

(3) All games contributing to the cumulative prize pool or the carryover or progressive jackpot shall be of the same form number.

(4) The paper or electronic flare or seal card for the carryover or progressive jackpot shall contain an area in which the current amount of the carryover or progressive jackpot can be posted.

(5) If a carryover or progressive pulltab game uses a progressive jackpot prize card that is separate from the jackpot seal, the jackpot card shall contain prize space for the organization to record the serial numbers of all games contributing to the jackpot prize.

(6) If a carryover or progressive pulltab game uses a jackpot prize card that is separate from the jackpot seal card, each deal of the game shall possess both a seal card and a jackpot prize card that has the serial number of the deal affixed to it by the manufacturer.

(7) In a carryover or progressive pulltab game, the organization shall either start a new jackpot card with each deal or use the original jackpot card until won. The organization shall maintain each jackpot card used.

(8) A progressive pulltab game shall not be designed by the manufacturer to give any player initial odds greater than a fifty (50) percent chance to win the progressive jackpot.

(9) If a paper pulltab game contributes to a progressive raffle jackpot, a licensed charitable organization shall not sell a similar version of that paper pulltab game unless it also contributes to a progressive raffle jackpot. All paper pulltab game tickets that contribute to a progressive raffle jackpot shall be sold for cash and shall not be used as a merchandise prize for any bingo, pulltab, or door prizes.

Section 8. Event Games. (1) The rules for event games shall apply to both paper and electronic pulltabs.

(2) An event game shall not contain a "last sale" feature.

(3) The number of winners and the prize amounts shall be built into the payout structure for the game by the manufacturer.

(4) An event ticket prize shall not exceed the individual ticket prize limit for a pulltab game.

(5) The prize for an event pulltab game shall not be considered a bingo prize.

Section 9. Multipackaged Pulltab Deals. (1) The rules for multipackaged pulltab deals shall apply to both paper and electronic pulltabs. Every package shall be played for the deal to show the stated profit.

(2) Each package may contain individual winners if desired. If each package contains a winner, the game shall contain a method of verifying from which package the winner was sold.

Section 10. Tracking by Manufacturer. Every manufacturer of paper pulltabs shall maintain records sufficient to track each deal of paper pulltabs, by serial number and form number, from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

Section 11. Tracking by Distributor. (1) Every distributor of paper and electronic pulltabs shall maintain records sufficient to track each deal of paper and electronic pulltabs, by serial number and form number, from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

(2) For sales in the Commonwealth of Kentucky or to residents of Kentucky, the records required under this section shall be sufficient if the distributor records the name of the purchaser and makes and retains a copy of the Kentucky charitable gaming license or exemption number of the purchaser at the next point of sale.

Section 12. Requirements of Distributor Invoice. (1) Distributors selling paper pulltabs to charitable organizations or other distributors shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:

- (a) The purchaser's name, address, and license number;
- (b) The address to which the shipment was delivered;
- (c) The date of sale or credit;
- (d) The conditions of the sale or credit;
- (e) The quantity of pulltabs sold including the number of deals, the name of each deal, the tickets per deal, and the serial number and form number of the deal;
- (f) The total invoice amount;
- (g) The name of the person who ordered the supplies;
- (h) The name of the person making the delivery;
- (i) The date of delivery or date the item was picked up for sale or credit;
- (j) The place or manner of delivery; and
- (k) The name and signature of the person taking delivery, if any.

(2) A distributor may deliver paper pulltabs to an agreed secure location or to an identified person. An invoice not challenged within seven (7) days of delivery shall be determined as~~deemed~~ accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the department.

Section 13. Defects. (1) If a defect in packaging or construction of a paper pulltab is discovered by an organization, the defect shall be reported to the distributor within fifteen (15) days. The distributor shall correct the defect or replace the defective items within a reasonable time, or, if the product cannot be replaced or the defect corrected, the distributor shall provide a refund to the organization.

(2) If the department, in consultation with the manufacturer, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall, with respect to paper pulltabs for use in Kentucky, require the manufacturer to:

(a) Recall the affected pulltabs that have not been sold at retail to licensed organizations; or

(b) Issue a total recall of all affected deals.

(3) In choosing and directing a particular recall in accordance with subsection (2) of this section, the department shall be guided in each circumstance by any combination of the following factors:

(a) The nature of the defect;

(b) Whether the defect affected game security;

(c) Whether the defect affected game playability;

(d) Whether the defect was limited to a specific number of deals of a particular form number;

(e) Whether the defect was easily detectable by a charitable organization;

(f) Whether the defect was easily detectable by members of the general public;

(g) Whether the defect threatens public confidence in the game; or

(h) Whether the defect is capable of being used to adversely affect the fair play of the game.

(4) In consultation with the manufacturer, the department shall determine a specific date for the recall to be completed and whether the manufacturer is required to reimburse the organization or distributor.

Section 14. Pulltab Dispenser Construction and Use. (1) A pulltab dispenser shall not be sold, leased, or otherwise furnished to any person in the state unless it has been approved by the department.

(2) Before approval by the department, a dispenser that is identical to the dispenser intended to be sold, leased, or otherwise furnished shall be certified by an independent testing laboratory that the dispenser satisfies the manufacturing requirements established in Section 15 of this administrative regulation.

(3) If granted, approval shall extend only to the specific dispenser model approved, and any modification shall first be approved by the department.

Section 15. Requirements of Pulltab Dispensers. Each pulltab dispenser shall meet the following requirements:

- (1) Contain a three (3) prong ground and surge protector, and

shall be capable of withstanding static electricity;

(2) Accommodate pulltabs of different sizes;

(3) Be constructed so that customers can see how many pulltabs remain within the dispenser, or have resettable counters visible to the customer indicating the number of pulltabs left in each column of the dispenser;

(4) Have an outlet or tray to catch dispensed pulltabs;

(5) Accurately dispense the correct number of pulltabs;

(6) Contain one (1) or more player buttons on the front of the dispenser to dispense pulltabs if pressed;

(7) Contain an illuminated electronic display to display the value of money deposited;

(8) Be capable, if a malfunction occurs or the electrical power is interrupted after the money has been validated, of accurately redisplaying the value of the money after the malfunction or power is restored;

(9) Not dispense any credits, or validate, read, or redeem a winning pulltab;

(10) If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;

(11) Not have a video screen or produce audio sounds except for security alarms;

(12) Not resemble a slot machine or other gambling device;

(13) Contain the manufacturer's name, dispenser's serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;

(14) Have an on/off switch in an inconspicuous location on the exterior of the dispenser;

(15) Not record test sales of pulltabs or money acceptances on the dispenser's accounting meters;

(16) Contain a nonresettable accounting meter for total money validated and for the total of pulltabs dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;

(17) Contain an EPROM microchip, microprocessor, or other verifiable electronic program storage media which holds the dispenser's programming code and which is identical in all respects to the manufacturer's programming code approved by the department;

(18) Contain a RAM or an EPROM microchip equipped with a RAM microchip, which shall be installed with a tamper-proof seal inside the dispenser, or a microprocessor or flash memory microchip, or other verifiable electronic program storage media, which shall maintain the same information as required in subsection (17) of this section for six (6) months after power has been disconnected;

(19) Automatically discontinue operation if any nonresettable accounting meter, RAM microchip, EPROM microchip, microprocessor, or other verifiable electronic program storage media is disconnected; and

(20) Contain at least one (1) electronic money validator that shall:

(a) Only validate United States money;

(b) Not validate money in denominations in excess of twenty (20) dollars;

(c) Transmit the value of validated money to the pulltab dispenser;

(d) Be equipped with mechanisms to ensure that pulltabs will not be dispensed unless the money is validated and retained;

(e) Be capable of preventing acceptance of known counterfeit money;

(f) Return any invalid money to the player;

(g) Have at least one (1) removable stacker box capable of stacking bills or a removable drop box contained in a separate locked compartment; and

(h) Automatically discontinue accepting or validating money if a malfunction occurs or if electrical power to the dispenser or currency validator is interrupted.

Section 16. Pulltab Dispensing Limitations. (1) A charitable organization shall not use a dispenser until the charitable organization that previously used the dispenser has removed its pulltabs and money from the dispenser.

(2) Each charitable organization operating the dispenser shall place upon the dispenser an identification label that displays the organization's name and license number.

(3) The keys to open the locked doors to the dispenser's ticket dispensing area and cash box shall be solely in the possession and control of the designated chairperson of the charitable organization conducting the charitable gaming session.

(4) The entire deal of pulltabs shall be sold from the dispenser and shall not be sold on the floor.

(5) All pulltabs in any one (1) column shall have the same serial number.

(6) A licensee shall not display, use, or otherwise furnish a dispenser that has in any manner been tampered with or that otherwise may deceive the public or affect a person's chances of winning.

(7) A pulltab deal shall not be placed in the dispenser until the entire deal of pulltabs previously in the dispenser has been played out or permanently removed.

(8) After placement in the dispenser, a pulltab shall not be removed from the dispenser, except for those pulltabs:

(a) Actually played by consumers;

(b) Removed by department representatives or law enforcement agencies;

(c) Temporarily removed during necessary repair, and maintenance; or

(d) Removed at the end of the charitable gaming session.

(9) At least one (1) chairperson who is listed on the application for licensure shall be present at all times a pulltab dispenser is in use and shall be responsible for the administration and conduct of the pulltab dispenser.

(10) An organization utilizing a pulltab dispenser at its office location or owned premises shall only utilize the dispenser during business hours.

Section 17. Pulltab Dispenser Inspection. The department or its authorized representatives may examine and inspect any automated pulltab dispenser. The examination and inspection shall include immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

Section 18. Pulltab Dispenser Recordkeeping. (1) Each licensed charitable organization shall maintain the following information in connection with its use of an automated pulltab dispenser:

(a) Date of purchase or lease of each dispenser;

(b) Model and serial number of each dispenser;

(c) Purchase or lease price of each dispenser;

(d) Name, address, and license number of the distributor from whom the dispenser was purchased, leased or otherwise furnished; and

(e) A record of all maintenance and repairs relating to the dispenser.

(2) Manufacturers and distributors shall maintain the following information in connection with each sale or lease of a dispenser:

(a) Date of sale or lease;

(b) Quantity sold or leased;

(c) Cost per dispenser;

(d) Model and serial number of each dispenser; and

(e) Name, address, and license number of the purchaser or lessee.

(3) All records, reports, and receipts relating to dispenser sales, maintenance and repairs required to be maintained shall be retained for a period of three (3) years for examination by the department.

Section 19. Pulltab Dispenser Defects. (1) If the department detects or discovers any defect or malfunction with the dispenser that is not temporary in nature or affects the integrity or security of the pulltab game, the department shall direct the manufacturer, distributor, or organization to cease the sale, lease, or use of the dispenser, as applicable, and shall require the manufacturer to correct the defect, malfunction, or problem or recall the dispenser

immediately upon notification by the department to the manufacturer.

(2) If the manufacturer, distributor, or organization detects or discovers any defect or malfunction with the dispenser that is not temporary in nature, the entity shall immediately remove the dispenser from use and notify the department of that action.

Section 20. Pulltab Rules of Play. (1) All individuals involved in the sale of pulltabs shall be trained in the proper conduct of the game and control of funds.

(2) The chairperson shall be in full charge of the charitable gaming session, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) More than one (1) charitable organization shall not conduct gaming at the same time and location as another charitable organization, except for raffles and licensed charity fundraising events.

(4) Each organization's gaming supplies shall be maintained in a location separate from another organization's gaming supplies. This location shall also be locked and access shall be controlled.

(5) Except for a charity fundraising event, a volunteer at any other charitable gaming session at which pulltabs are sold shall not purchase or play pulltabs at that charitable gaming session. At a charity fundraising event, a volunteer may purchase or play pulltabs on a day the volunteer does not work, and from a deal the volunteer does not sell.

(6) If the charitable organization has house rules concerning its charitable gaming session, the house rules shall:

(a) Be posted in at least two (2) conspicuous locations at the charitable gaming session and announced prior to the commencement of the charitable gaming session or be listed on the program;

(b) Not conflict with KRS Chapter 238 or 820 KAR Chapter 1;

(c) Be followed; and

(d) Include the organization's name and license number.

Section 21. Playing. (1) The flare or seal card for paper pulltabs, including a progressive jackpot card relating to a carryover or progressive prize, or a prize board relating to a game with a cumulative prize, shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play, including the time after all tickets have been sold until all prizes have been claimed, or the time to claim prizes has expired. Electronic pulltab games shall include an electronic flare or seal card, including a progressive jackpot card relating to carryover or progressive prizes, that is available for view on the electronic pulltab device by players at all times while the game set is in play.

(2) Paper pulltabs shall not be sold to the public from the original packing box or container. Paper pulltabs shall be removed from the original box or container and mixed by shuffling together prior to sale.

(3) If a deal of paper pulltabs is packed in more than one (1) box or container, an individual container shall not designate a winner or contain a disproportionate number of winning or losing tickets. Each package, box, or container shall be placed out for play at the same time unless the deal is designed by the manufacturer to be played in subsets. Those subsets may be placed out for play in succession.

(4) Paper pulltabs that have been marked, defaced, altered, tampered with, received in packaging that is not tamper-resistant, or otherwise constructed in a manner that tends to deceive the public or affect the chances of winning or losing, shall not be placed into play. The organization shall notify the Department of Charitable Gaming of the existence of these tickets in writing within fifteen (15) days.

(5) Before placing a deal into play, the charitable organization shall verify that the serial number on the paper pulltabs within each deal matches the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. If the charitable organization determines that serial numbers on tickets within a deal or game set do not

match the serial number on the flare or seal card accompanying the deal or game set, the organization shall not place the deal or game set into play and shall notify that distributor. If the distributor does not correct the problem within thirty (30) days, the organization shall notify the department in writing.

(6) Any licensed charitable organization that sells pulltabs from its office location or from a pulltab dispenser shall comply with 820 KAR Chapter 1 regarding the play, proper recordkeeping, and reporting of those sales. The sales shall be reported on the financial report.

(7)(a) If a deal or game set is not played to completion and there remain unsold winning pulltabs, the licensed charitable organization conducting the gaming shall sell the remaining pulltabs on the next appointed date for charitable gaming activities.

(b) If no future date is anticipated, the licensed charitable organization shall consider the deal or game set closed or completed, declare the winners, and post winning numbers for fifteen (15) days with information directing the method of claiming a prize at its office location. All unsold pulltabs shall be retained pursuant to subsection (15) of this section.

(c) If no winning pulltabs remain in the paper deal, the licensed charitable organization may consider the deal closed or completed, declare the winners, and shall retain unsold pulltabs pursuant to subsection (15) of this section.

(d) A licensed charitable organization shall not complete play of a deal, game set, or a seal card it did not initiate.

(8) A pulltab shall not be sold to the public at a price different than that generated by the manufacturer of the pulltab upon the flare or seal card that accompanies the deal or game set.

(9) Only authorized representatives of the charitable organization conducting the event at which pulltabs are sold shall verify the serial numbers and winner protections for all winning pulltabs redeemed.

(10) In playing paper pulltabs that utilize a seal card, a charitable organization shall not award a prize to the holder of a winning pulltab unless the serial number on the ticket presented for redemption matches the serial number on the seal card. In a progressive pulltab game, the serial number on the tickets shall be checked in accordance with Section 6 of this administrative regulation.

(11) A charitable organization shall award prizes to winners of pulltabs only in accordance with the prize structure indicated on the flare or seal card accompanying the deal or game set of tickets as designed by the manufacturer. If multiple prize structures are indicated on the flare or seal card, the charitable organization shall announce to the patrons and circle on the paper flare or seal card the prize structure to be awarded before placing the deal or game set into play.

(12) A holder of a winning pulltab shall have fifteen (15) days to redeem the winning ticket. If the prize is not claimed within fifteen (15) days, the prize shall be considered unclaimed and be retained as property of the organization.

(13) Once redeemed, the holder of a winning pulltab shall be paid in full no later than five (5) days from the date of redemption.

(14) All winning paper pulltabs shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(15)(a) The charitable organization shall retain, in paper or electronic form, for a period of twelve (12) months, to allow auditing by the staff of the department:

1. All winning pulltabs with a prize value of fifty (50) dollars and above;

2. The flare from all winning pulltabs with a prize value of fifty (50) dollars and above;

3. All seal cards with a prize value of fifty (50) dollars and above;

4. All prize boards in cumulative games with a prize value of fifty (50) dollars and above; and

5. All unsold pulltabs.

(b) These records may be maintained at the gaming location.

(16) The fair market value of bingo paper, a card-minding device, pulltab, or electronic pulltab device given away as a merchandise prize shall be the price that a patron would have paid

for the same bingo paper, card-minding device, pulltab, or electronic pulltab device at that charitable gaming session.

(17)(a) If bingo paper is awarded as a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;
2. The date on which it was awarded;
3. The date on which it was redeemed;
4. The amount of bingo paper given in exchange for the voucher; and
5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The organization shall retain the voucher with its charitable gaming session records.

(18)(a) If a card-minding device or electronic pulltab device is awarded as a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;
2. The date on which it was awarded;
3. The date on which it was redeemed; and
4. The number of card-minding devices and the number of faces loaded on each device, or the number of electronic pulltab devices and credits loaded on each device, if any, given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device or electronic pulltab device. No more than one (1) card-minding device or one (1) electronic pulltab device may be redeemed per player per charitable gaming session.

(d) The organization shall retain the voucher with its charitable gaming session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher involving a card-minding device and electronic pulltab device.

(19) If a paper pulltab or electronic pulltab device is awarded as a promotional item or a door prize, the amount and description of the pulltab or electronic pulltab device and credits loaded on each device, if any, shall be listed on the charitable gaming session program with "free" or "promotional" listed as the price. The point of sale shall have a specifically described discount button for this promotion.

(20) If a paper pulltab or electronic pulltab device is awarded as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs or electronic pulltab device and any credits loaded to the device from the pulltab manager by transfer of cash from bingo payout to pulltab sales, and it shall be recorded as a sale on the charitable gaming session records.

(21) Vouchers shall be redeemed on the same day as awarded.

(22) Jar tickets shall be played and prizes awarded as stated on the flare received with each deal.

(23) "Last Sale" pulltabs shall only be sold by an organization at its office location and not during a bingo session.

Section 22. Seal Card Games. (1) The organization shall post the paper seal card for the deal in play at the location of the seal game while the deal is in play. An electronic seal for an electronic game set shall be viewable, upon player request, on the video screen of the electronic pulltab device while the game set is in play.

(2) If a deal or game set with a seal card is not completed during a charitable gaming session, the organization shall require the patrons with holders to sign or enter their name electronically on the seal card and provide a means of contacting them when the winner is declared.

(3)(a) The seal for the deal or game set shall be broken, torn open, or otherwise revealed in plain view of all persons present when:

1. All tickets from a deal or game set have been sold;

2. All the winning tickets from a deal or game set have been sold;

3. All the lines on the sign-up card have been filled;

4. The deal or game set has been closed because no future date is anticipated; or

5. Instructed to by the game as designed by the manufacturer.

(b) Each winning combination, the name of the game, and the serial number of the deal or game set shall be announced and posted at the location of the game.

(c) The date the seal tab was opened shall be recorded on the seal card.

Section 23. Seal Card Games with Carry Over or Progressive Prizes. (1) The prize pool for a progressive pulltab game shall be established only through the play of deals or game sets of the same game that bear a manufacturer's form number identical to the form number of any previously-played deals or game sets contributing to the prize pool.

(2) Before placing a paper deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. The serial number on the tickets shall not be required to match the serial number on the progressive pulltab jackpot card if the deal is the second or subsequent deal played in the progressive game and one (1) progressive jackpot card is used for more than one (1) deal.

(3) After a progressive pulltab game has been started, it shall remain in play continuously until the progressive jackpot prize is awarded. If the game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day its office is open. If an organization stops conducting charitable gaming or wishes to stop playing a progressive pulltab game, the organization shall, with prior approval from the department, transfer the current jackpot to another progressive game or determine a method to award the progressive jackpot to the players. With prior approval from the department, an organization may alter the suggested rules of the manufacturer to determine a winner.

(4) The seal card for each deal or game set in a progressive game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the progressive jackpot prize pool.

(5) Every seal card for each deal or game set that has been played or is being played in the course of a progressive pulltab game, together with any progressive jackpot card, shall be displayed at all times while the game is in play, until the progressive jackpot prize is won.

(6) The serial numbers for each deal or game set contributing to a carryover or progressive jackpot prize shall be recorded in the charitable gaming session records.

(7) A progressive or carryover pulltab game shall be played in accord with the manufacturer's specifications for the determination of a winner, unless the department permits otherwise pursuant to subsection (3) of this section.

(8) If a progressive or carryover pulltab game bearing the same manufacturer's form number is no longer available, the organization shall contact the department for instructions on how to proceed.

(9)(a) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times either:

1. The jackpot card being played and each seal card contributing to the jackpot prize pool; or

2. A legible poster identifying by name, serial number, and form number each deal or game set of pulltabs contributing an amount to the jackpot prize pool.

(b) The poster or seal cards shall remain displayed during bingo sessions or other charitable gaming activities conducted by the organization until the expiration of fifteen (15) calendar days after the organization awards the prize. For progressive pulltab games played on an electronic pulltab device, a poster shall be

displayed to fulfill this requirement.

(c) If a progressive jackpot prize is not awarded, the organization shall continue to display the poster or seal cards during bingo sessions or other charitable gaming activities it conducts for at least fifteen (15) calendar days after the date the organization considers the game closed and retains the prize as its property.

(d) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times, the current value of the jackpot.

(10) An organization shall not award the jackpot prize in a progressive pulltab game unless the serial number and form number on the winning ticket match the serial number and form number on a seal card from a deal or game set of tickets that contributed to the jackpot prize.

(11) For jackpot prizes of \$250 or over, the organization shall attach a copy of the valid state identification card that contains the name, address, date of birth, and state identification number of the winner to the jackpot prize card.

(12) The jackpot prize in a progressive game may accrue in excess of \$2,400. An individual jackpot prize shall not be paid in excess of \$2,400. The amount of the current jackpot, the amount contributed, the payouts made, and the jackpot carried forward to the next charitable gaming session at each charitable gaming session shall be recorded in the charitable gaming session record.

(13) Any advertisement regarding the progressive jackpot may state the total amount in the jackpot prize pool if it also includes the statement that the individual payout shall not exceed \$2,400.

(14) A licensed charitable organization shall report to the department concerning its play of seal card games with a progressive prize on the financial report.

(15) The jackpot prize pool in a progressive game shall be considered an adjusted gross receipt that shall be deposited within two (2) business days of the charitable gaming session.

Section 24. Seal Card Games with Cumulative Prizes. (1) The prize pool for a cumulative pulltab game shall be established only through the play of deals or game sets of the same game that bear a manufacturer's form number identical to the form number of any previously played deals or game sets contributing to the prize pool, unless the department permits otherwise pursuant to subsection (3) of this section.

(2) Before placing a paper deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal matches the serial number on the flare, prize board, or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal.

(3) After a cumulative pulltab game has been started, it shall remain in play continuously until the cumulative prize pool has been awarded. If that game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day their office is open. If an organization stops conducting charitable gaming or wishes to stop playing a cumulative pulltab game, the organization shall, with prior approval from the department, transfer the current jackpot to another cumulative game or determine a method to award the cumulative jackpot to the players. With prior approval from the department, an organization may alter the suggested rules of the manufacturer to determine a winner.

(4) Prizes shall be offered and awarded only in accord with the manufacturer's predesignated prize structure for the game, unless the department permits otherwise pursuant to subsection (3) if this section.

(5) The seal card for each deal or game set in a cumulative pulltab game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the cumulative prize pool.

(6) Every seal card for each deal or game set that has been played or is being played in the course of a cumulative pulltab game, together with any prize board, shall be displayed at all times while the game is in play, until the cumulative prize pool is awarded.

(7) The serial numbers for each deal or game set contributing to a cumulative prize pool shall be recorded in the charitable gaming session records.

(8) An organization shall not award the cumulative prize pool unless the serial number and form number on the winning ticket matches the serial number and form number on a seal card from a deal or game set of tickets that contributed to the cumulative prize board.

(9) A cumulative prize board shall not contain prizes totaling in excess of \$2,400.

(10) A licensed charitable organization shall report to the department concerning its play of seal card games of cumulative games on the financial report.

Section 25. Electronic Pulltab System Construction Standards.

(1) An electronic pulltab system's central computer system shall be dedicated to electronic accounting, reporting, presentation, randomization, and transmission of electronic pulltabs to electronic pulltab devices. It shall also be capable of generating the data necessary to provide reports required by administrative regulation or otherwise specified by the department.

(2) A player shall purchase or otherwise obtain access to an electronic pulltab device[,] and load money to a player account for purchase of electronic pulltabs during the current charitable gaming session[,] only from a point of sale station or by inserting currency into the gaming device. The point of sale station may be stationary, mobile, or self-service.

(3) All equipment used to facilitate the distribution, play, or redemption of electronic pulltabs shall be physically located within the boundaries of the Commonwealth of Kentucky. Electronic pulltab devices, site system if used, point of sale stations, and all secondary components shall be located on the premises where the charitable gaming session is being held.

(4) A manufacturer, distributor, or charitable organization shall not add to an electronic pulltab system any software or program unless the software or program has been certified by an independent testing facility. If the department detects or discovers an electronic pulltab system at a playing location that is using a program or software that has not been certified by an independent testing facility, the electronic pulltab system shall be determined to have an unauthorized modification and use of the system shall cease immediately.

(5) Any element of the central computer system that holds or maintains game data, other than an electronic pulltab device or point of sale station, shall be kept in a locked and secure enclosure with limited access to designated personnel. The system shall provide a secure physical and electronic means for securing the games and game data against alteration, tampering, or unauthorized access.

(6) The central computer system shall include a central server located in the Commonwealth of Kentucky that is accessible to the department so the department has the ability to remotely verify the operation, compliance, and internal accounting systems of the electronic pulltab system at any time. The department shall have real time and complete read-only access to all data for all systems and devices.

(a) The manufacturer shall provide to the department all current protocols, passwords, and any other required information needed to access the electronic pulltab system prior to the operation of the system within Kentucky, and at all times while the system remains operational within Kentucky.

(b) The department shall be notified of any changes in the protocols, passwords, and any other required information needed to access the system at least three (3) days prior to the change.

(c) Any reports maintained or generated by the electronic pulltab system shall be capable of being downloaded or otherwise accessed via the internet by the department.

(7) A site system, if used, shall:

(a) Be located at the gaming premises;

(b) Be operated by the charitable organization;

(c) Interface with, connect with, control, or define the operational parameters of the electronic pulltab devices;

(d) Report and transmit the game results as prescribed by the

department;

(e) Provide security and access levels sufficient so that the internal control objectives are met as prescribed by the department; and

(f) Contain a point of sale station.

(8) The site system, if used, may include the following components:

(a) Required printers;

(b) Proprietary executable software;

(c) Report generation software; and

(d) An accounting system or database.

(9) The electronic pulltab system shall provide password protection for each organization.

(10) An electronic pulltab system shall provide a means for terminating a game set if information about electronic pulltabs in an open game set has been accessed, or if the department determines there has been a breach of game security. Traceability of unauthorized access including time and date, users involved, and any other relevant information shall be available.

(11) An electronic pulltab system shall not permit the alteration of any accounting or significant event information. Significant events shall include power resets or failures, communication loss between an electronic pulltab device and the electronic pulltab system, any award in excess of the single-win limit for an electronic pulltab, or corruption of the electronic pulltab system memory or storage. If financial data is changed, an automated audit log shall be capable of being produced to document the following:

(a) Data element altered;

(b) Data element value prior to alteration;

(c) Data element value after alteration; and

(d) Time and date of alteration.

(12) An electronic pulltab system shall provide password security or other secure means of ensuring data integrity and enforcing user permissions for all system components, including the following:

(a) All programs and data files shall only be accessible via the entry of a password that shall be known only to authorized personnel;

(b) The electronic pulltab system shall have multiple security access levels to control and restrict different privilege levels;

(c) The electronic pulltab system access accounts shall be unique when assigned to the authorized personnel;

(d) The storage of passwords and PINs shall be in an encrypted, nonreversible form; and

(e) A program or report shall be available that lists all authorized users on the electronic pulltab system including their privilege level.

(13) All components of an electronic pulltab system that allow access to users, other than end-users for game play, shall have a password sign-on comprised of:

(a) A personal identification number; or

(b) a personal identification code and a personal password.

(14) Electronic pulltab system software components shall be verifiable by a secure means at the system level. An electronic pulltab system shall have the ability to allow for an independent integrity check of the components from an outside source and is required for all control programs that may affect the integrity of the electronic pulltab system. This shall be accomplished by being authenticated by a third-party device, which may be embedded within the electronic pulltab system software or having an interface or procedure for a third-party application to authenticate the component. This integrity check shall provide a means for field verification of the electronic pulltab system components.

(15) The electronic pulltab system shall have a medium for securely storing electronic pulltab game sets that shall be mirrored in real time by a backup medium. The electronic pulltab system shall also provide a means for storing duplicates of the game sets already transmitted to the electronic pulltab devices so as to reflect, on an ongoing basis, changes in the transmitted game sets as they occur.

(a) All storage shall be through an error checking, nonvolatile physical medium, or an equivalent architectural implementation, so that if the primary storage medium fails, the functions of the

electronic pulltab system and the process of auditing those functions shall continue with no critical data loss.

(b) The database shall be stored on redundant media so that a single failure of any portion of the system shall not result in the loss or corruption of data.

(c) If there is a catastrophic failure when the electronic pulltab system cannot be restarted in any other way, it shall be possible to reload the electronic pulltab system from the last viable backup point and fully recover the contents of that backup, to consist of at least the following information:

1. All significant events;

2. All accounting information; and

3. Auditing information, including all open game sets and the summary of completed game sets.

(16) Connections between all components of the electronic pulltab system shall only be through use of secure communication protocols that are designed to prevent unauthorized access or tampering, employing Data Encryption Standards (DES) or equivalent encryption with changeable seeds or algorithms.

(17) An electronic pulltab system's central computer system may be used to record the data used to verify game play and to configure and perform security checks on electronic pulltab devices, if the functions do not affect the security, integrity, or outcome of any game and meet the requirements established in this administrative regulation regarding program storage devices.

(18) An electronic pulltab system shall not display to the player, the licensed charitable organization, or the licensed distributor the number of electronic pulltabs that remain in a game set, or the number of winners or losers that have been drawn or still remain in the game set while the game set is still open for play. Once a game set has been closed, it shall not be able to be opened for play.

(19) The electronic pulltab system shall render unplayable the electronic pulltabs of a charitable organization once the organization logs out of the system at the end of the organization's charitable gaming session and until the organization logs back onto the system at the start of the organization's next scheduled charitable gaming session. If multiple organizations use the same electronic pulltab devices and electronic pulltab system, one (1) organization's electronic pulltab games and data shall not be accessible or played by another organization.

(20) An electronic pulltab system may include player tracking software. Player tracking records shall at all times be the property of the charitable organization and neither the manufacturer nor the distributor shall utilize or make available to any person, other than the department or as otherwise authorized by law, the information contained within the player tracking software without the express permission of the charitable organization.

(21) One (1) or more electronic internal accounting systems shall be required to perform recordkeeping, reporting, and other functions in support of an electronic pulltab system. The electronic internal accounting system shall not interfere with the outcome of any gaming function.

(22) The electronic internal accounting system shall be capable of recording and retaining for a period of not less than three (3) years the following information:

(a) The name and license number of the organization utilizing an electronic pulltab system; and

(b) For each charitable gaming session:

1. The date and time of each log-on and log-off of an organization;

2. The total amount of all monetary transactions regarding electronic pulltabs and electronic pulltab devices at each charitable gaming session;

3. The total number of electronic pulltab devices sold or provided at each charitable gaming session;

4. The serial number of each hand-held electronic pulltab device sold or provided;

5. The terminal number for each fixed base electronic pulltab device sold or provided;

6. The name, serial number, price, and predetermined finite number of tickets within each game set available for play at each charitable gaming session;

7. The total number of electronic pulltabs played from each

game set at each charitable gaming session;

8. All prize payouts for each game set per charitable gaming session; and

9. All wagers and other information necessary to fully reconstruct a game outcome.

(23) The information required pursuant to subsection (22) of this section shall be secure and shall not be accessible for alteration. Information pertaining to the number of electronic pulltabs that remain in an open game set, or the number of winners or losers that have been drawn or still remain in an open game set shall not be accessible to the licensed organization or the licensed distributor.

(24) The electronic pulltab system's central computer system shall maintain a printable, permanent record of all transactions involving each device and each closed electronic pulltab game played on each device.

(25) An electronic pulltab system shall have report generation software with the capability to print all information required to be maintained on the system's active or archived databases, and pursuant to the restrictions related to information available on open game sets.

(26) All data required to be available or reported by this administrative regulation shall be retained for a period of not less than three (3) years.

(27) An electronic pulltab system shall utilize randomizing procedures in the creation of game sets for electronic pulltabs or utilize externally generated randomized game sets. After randomization, game sets may be broken into game subsets of equal size that shall be assigned a unique serial number.

(28) Winning electronic pulltabs shall be distributed randomly among all other pulltabs in a game set to eliminate any pattern between game sets, or portions of game sets.

(29) Any random number generation, shuffling, or randomization of outcomes used in connection with an electronic pulltab system shall be by use of a random number generation application that has successfully passed standard tests for randomness and unpredictability.

Section 26. Electronic Pulltab Point of Sale Requirements. (1)

An electronic pulltab system shall include a point of sale station that is used to facilitate the sale of an electronic pulltab device, to load money to a player account for purchase of electronic pulltabs during the current charitable gaming session, and to cash-out or redeem credits from the play of electronic pulltabs.

(a) The point of sale station may be stationary, mobile, or self-service.

(b) The point of sale station shall not be designed or manufactured to resemble an electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(c) The point of sale station shall not have vertical or horizontal spinning reels, a pull handle, sounds or music, flashing lights, tower light, top box, enhanced animation, artwork, or any other attribute or representation that mimics a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(d) The point of sale station shall not function simultaneously as an electronic pulltab device.

(2) The point of sale station shall be capable of printing a receipt, which the organization shall provide to the player, that details each transaction. The receipt shall contain, at a minimum, the following information:

(a) The date and time of the transaction;

(b) A unique non-resettable transaction number that is printed in continuous, consecutive order;

(c) The dollar amount of the transaction, including the cost, if any, of the electronic pulltab device and the amount of money loaded to a player account that will be available for the purchase of electronic pulltabs during that charitable gaming session;

(d) A unique entry code or account number that will be used to activate an electronic pulltab device and make available to the player the money loaded to the player account at the point of sale for the purchase of electronic pulltabs during that charitable

gaming session;

(e) The name of the charitable organization and license number; and

(f) The point of sale identification number or name.

(3) If the receipt printer malfunctions or printed receipts are not legible, manual receipts shall be issued that contain the same information required pursuant to subsection (2) of this section.

(4) The point of sale station shall be capable of displaying, at minimum, the following for each charitable gaming session:

(a) The sales transaction history, including:

1. The organization name and license number;

2. Date and time of each transaction;

3. Dollar value of each transaction;

4. Quantity of electronic pulltab devices sold;

5. All transaction numbers; and

6. The point of sale identification number or name; and

(b) A pay-out history detailing all pay-outs, including:

1. The organization name and license number;

2. Date and time of each pay-out;

3. Dollar value of each pay-out; and

4. Point of sale identification number or name.

(5) A point of sale station shall not display information relating to prizes already paid out in a particular game set, the number of electronic pulltabs that remain in a game set, or the number of winners or losers that have been drawn or still remain in the game set while the game set is still open for play.

(6) A player shall only cash-out or redeem credits from a point of sale station.

(7) A point of sale station shall not be capable of accepting payment from a credit card or debit card.

Section 27. Electronic Pulltab Device Construction Standards.

(1) An electronic pulltab device shall not be capable of being used for the purpose of engaging in any game prohibited by the department.

(2) An electronic pulltab device shall be designed as a handheld or fixed base personal computing device that:

(a) Is used to play one (1) or more electronic pulltab games;

(b) Requires coded entry or insertion of currency or a credit ticket to activate a device for a player to purchase and play electronic pulltabs~~[-but does not allow the use of coin, currency, or tokens to be inserted to purchase and play electronic pulltabs];~~

(c) Maintains and displays information pertaining to accumulation of credits that may be applied to games in play or redeemed upon termination of play;

(d) Has no vertical or horizontal spinning reels, pull handle,~~[sounds or music other than those allowed by Section 28(5)(b) of this administrative regulation,]~~ flashing lights, tower light, top box, coin tray, ~~[ticket acceptor,]~~ hopper, coin acceptor, ~~[cabinet, artwork,]~~ the ability to dispense coins, cash, tokens, or anything of value other than a credit ticket, or any other attribute or representation that mimics a video slot machine;

(e) Shall not be capable of displaying any animation while in an idle state. An electronic pulltab device may use simple display elements or screen savers to prevent monitor damage;

(f) Has no additional function as a gambling device other than as an electronic pulltab device or as an approved card-minding device;

(g) Is not a pulltab dispenser as established in this administrative regulation; and

(h) The device shall have adjustable volume accessible to the player or the charitable organization.

(3) An electronic pulltab device shall not have hardware or software that determines the outcome of any electronic pulltab, produces its own outcome, or affects the order of electronic pulltabs as dispensed from the electronic pulltab system's central computer system. The game outcome shall be determined by the electronic pulltab system's central computer system.

(4) An electronic pulltab device may utilize a touch screen. The touch screen shall meet the following requirements:

(a) It shall be accurate once calibrated;

(b) It shall be able to be recalibrated; and

(c) It shall have no hidden or undocumented buttons or

touchpoints anywhere on the touch screen.

(5) A fixed based electronic pulltab device may incorporate an attached bill validator, which shall be constructed to ensure proper handling of inputs that protect against vandalism, abuse, or fraudulent activity. A bill validator shall only accept United States/State paper currency or a valid credit ticket to initiate play. Bill validators shall be tested to comply with accepted industry standards.[A fixed base electronic pulltab device shall not be built into a cabinet or in any way be designed or manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.]

(6) A fixed/Anj based electronic pulltab device shall not be capable of accepting payment by credit card or debit card.

Section 28. Electronic Pulltab Software Construction Standards. (1) Any game available for play in the Commonwealth of Kentucky shall be installed on the demonstration terminals at the Department of Charitable Gaming's office in Frankfort, Kentucky.

(2) An electronic pulltab system shall dispense, upon player request and payment of consideration, an electronic pulltab. A player shall win if the player's electronic pulltab reveals whether and how much money a player has won, or if the electronic pulltab contains a combination of symbols or numbers that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game. All games shall be played without replacement.

(3) An electronic pulltab game or game set shall:

(a) Be a version of a paper pulltab game, with a prize structure and gameplay rules substantially similar to a paper pulltab game, that is played on an electronic pulltab device;

(b) Have a predetermined, finite number of winning and losing tickets, not to exceed 25,000 tickets per game set;

(c) Charge the same price for each ticket in a game set;

(d) Comply with KRS Chapter 238, and 820 KAR Chapter 1;

(e) Comply with prize limits established in KRS Chapter 238;

(f) Have a unique serial number for each game set that shall not be regenerated. Each pulltab in a game set shall bear the same serial number and only one (1) serial number shall be used in a game set. After randomization, game sets may be broken into subsets of equal size. If game subsets are used, they shall each be assigned a unique serial number and be traceable to a parent game set. If a seal card is used with a pulltab game set, the seal card shall bear the same serial number as each pulltab;

(g) Have an electronic flare or seal card, viewable upon player request, that displays the name of the game, manufacturer's name or logo, manufacturer's form number, the game serial number, the predetermined finite number of tickets in the game set, and the prize structure, including a description of the number of winning pulltabs by denomination, and amounts, if any, dedicated to the prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize, and the cost per play of an electronic pulltab within the game set; and

(h) Every game set of electronic pulltabs shall contain electronic rules of play.

(4) An electronic pulltab game shall not contain vertical or horizontal spinning reels, a pull handle, or other representations that mimic a video slot machine, including representations of coins falling into a coin tray or hopper.

(5) Games shall not contain obscene or offensive graphics, sounds, or references.

[(a) Game animation shall be limited to:

1. Animated characters related to the theme of the game;

2. An animation, not to exceed five (5) seconds in duration, to simulate the opening of the ticket, a window on the ticket, or a window in a player-pick bonus round that simulates a prize board; and

3. An animated graphic, not to exceed five (5) seconds in duration, indicating whether and how much money the player's ticket or a simulated free ticket in a bonus round has won or lost.

(b) Game sounds shall have a duration of no longer than five (5) seconds and shall be limited to:

1. Indicating that the player's ticket has won;

2. Indicating that the player's ticket has lost;

3. Indicating that the player has pressed a button; and

4. Simulating the opening of a paper pulltab ticket.

(c) Any electronic pulltab game approved by the department prior to October 1, 2018, may remain available for play.]

(6) The result of an electronic pulltab ticket shall be clearly shown on the video display. If the game uses symbols or combinations of symbols to reveal whether the player's ticket has won, winning tickets shall indicate to the player the symbols or combination of symbols that resulted in a winning ticket. Prizes shall be added as a credit to the player's account.

(7) The available games, flare, and rules of play shall be displayed on the electronic pulltab device's video screen upon player request.

(8) Any number of games may be selectable for play on any given electronic pulltab device. Only one (1) of the games shall be playable at a time.

(9) An electronic pulltab device shall have one (1) or more buttons, or an electromechanical or touch screen to facilitate the following functions:

(a) Viewing of the game "help" screens;

(b) Viewing of the game rules including the flare or seal card;

(c) Initiating game play;

(d) Cash-out or logout; and

(e) Purchasing or revealing the pulltab.

(10) Each electronic pulltab shall be initially displayed so that the numbers, letters, or symbols on the pulltab are concealed. Each electronic pulltab game shall require the player to press a "purchase" or equivalent button to initiate the purchase of an electronic pulltab. The game shall then require the player to press a subsequent button or buttons to reveal the numbers, letters, or symbols on the pulltab. A player shall have the option of opening each individual line, row, or column of each electronic pulltab or choosing to "open all".

(11) If an electronic pulltab game contains~~[If the player's winning ticket leads to]~~ a bonus round that simulates the opening of additional tickets, then the following disclaimer shall be displayed in a conspicuous manner in the player interface of the electronic pulltab device every time the player wins a supplemental tab or~~[and]~~ on the [HELP]flare or help screen: "Tabs that appear in (name of the bonus round) do not represent equal or separate chances to win. The supplemental tabs are utilized to reveal the value of the initial, winning pulltab ticket incrementally. These supplemental tabs appear for entertainment value only."

(12) An available player account balance shall be collected by the player by pressing the "cash-out" button or "logout" button on the electronic pulltab device and taking the device, the receipt, or, if allowed, a player account card to the point of sale station.

(13) The cost of any individual electronic pulltab ticket shall not exceed five (5) dollars.

Section 29. Independent Testing Facility Certification for Electronic Pulltabs. (1) An electronic pulltab system shall not be sold, leased, or otherwise furnished to any person for use in the conduct of charitable gaming until an identical system containing identical software has been tested and certified by an independent testing facility.

(2) The cost of testing and certification shall be the responsibility of the manufacturer.

(3) The independent testing facility shall certify in writing that the electronic pulltab system and associated hardware and software conform, at a minimum, to the requirements and restrictions established in KRS Chapter 238 and these administrative regulations.

(4)(a) The department, in consultation with the independent testing facility, shall determine if the electronic pulltab system and associated hardware and software conform to the requirements and restrictions established in KRS Chapter 238 and these administrative regulations, and shall notify the manufacturer of its decision in writing.

(b) Once the department has received the test results from the independent testing facility, the department may request a demonstration of the product within thirty (30) days.

(5) Any modifications to an electronic pulltab system or its software, except as provided in Section 31(7) of this administrative regulation, shall be tested and certified by an independent testing facility, demonstrated to the department by the manufacturer upon request, in the same manner as a new system or new software. Testing and certification shall be at the manufacturer's expense.

Section 30. Electronic Pulltab Defect and Recall. (1) If a manufacturer, distributor, or charitable organization detects or discovers any defect, malfunction, or problem with an electronic pulltab system, electronic pulltab device, or electronic pulltab game that affects the security or the integrity of the electronic pulltab system, electronic pulltab device, or electronic pulltab game, the manufacturer, distributor, or charitable organization shall immediately notify the department. The charitable organization shall also immediately notify the distributor of the defect, malfunction, or problem. The distributor shall immediately notify the manufacturer of the defect, malfunction, or problem.

(2) If the department detects, discovers, or is notified of any problem with an electronic pulltab system, electronic pulltab device, or electronic pulltab game that affects the security or the integrity of the electronic pulltab system, electronic pulltab device, or electronic pulltab game, the department shall direct the manufacturer, distributor, and charitable organization to immediately cease the sale, lease, or use of the affected electronic pulltab system, electronic pulltab device, or electronic pulltab game until the problem can be assessed by the department in consultation with the manufacturer or distributor.

(3) If the department, in consultation with the manufacturer or distributor, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall require the manufacturer to issue a total recall of all affected electronic pulltab systems, electronic pulltab devices, or electronic pulltab games or affected game sets or subsets, if necessary.

(4) In choosing and directing a particular recall pursuant to subsection (3)[paragraph (c)] of this section[subsection], the department shall be guided in each circumstance by any combination of the following factors:

- (a) The nature of the defect;
- (b) Whether the defect affected game security;
- (c) Whether the defect affected game playability;
- (d) Whether the defect was limited to a specific number of deals of a particular form number;
- (e) Whether the defect was easily detectable by a charitable organization;
- (f) Whether the defect was easily detectable by members of the general public;
- (g) Whether the defect threatens public confidence in the game; or
- (h) Whether the defect is capable of being used to adversely affect the fair play of the game.

(5) The manufacturer or distributor may correct the defect, if possible, without issuing a total recall if the affected electronic pulltab devices and electronic pulltabs are not offered for sale, lease, or use until the department allows. The manufacturer or distributor shall make all corrections within a reasonable time, not to exceed thirty (30) days, and the manufacturer or distributor shall demonstrate the correction to the department. If the department believes the defect has been corrected and that the defect no longer affects game security or otherwise threatens public confidence in the game, the department may issue written notification that the affected electronic pulltab system, devices, or pulltab game may be reoffered for sale, lease, or use.

(6) If a recall of an electronic pulltab system or electronic pulltab device is necessary, the department, in consultation with the manufacturer, shall determine a specific date for the recall of any affected electronic pulltab system or electronic pulltab device to be completed and whether the manufacturer is required to reimburse the organization or distributor. The recall of any electronic pulltab game shall occur no later than twenty-four (24) hours after the manufacturer is notified of the defect.

Section 31. Electronic Pulltab Manufacturer Requirements. (1) A manufacturer shall affix to each electronic pulltab device an identification badge that shall include the following information:

- (a) Manufacturer name;
 - (b) A unique serial number;
 - (c) The electronic pulltab device model number, if applicable;
- and
- (d) The date of manufacture, if applicable.

(2) Each manufacturer selling, leasing, or otherwise furnishing electronic pulltab devices, site systems, point of sale stations, secondary components, and electronic pulltabs shall maintain a log or other record showing the following:

- (a) The name, address, and license number of the distributor to whom the electronic pulltab devices, site systems, point of sale stations, secondary components, or electronic pulltabs were sold, leased, or otherwise furnished;
- (b) The date of the transaction with the distributor;
- (c) The model, version, and serial number of each hand-held electronic pulltab device, if applicable;
- (d) The account number or terminal number of each fixed base electronic pulltab device, if applicable;
- (e) The quantity of each type of electronic pulltab device;
- (f) The model and version number of the system software;
- (g) The name, form number, and serial number of each game set of electronic pulltabs; and
- (h) The quantity of game sets sold, the cost per game set, the selling price per ticket, the cash take-in per game set, and the cash payout per game set.

(3) A manufacturer selling, leasing, or otherwise providing electronic pulltab devices, site systems, point of sale stations, or secondary components to a distributor shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

- (a) The manufacturer name, address, and license number;
- (b) The distributor name, address, and license number;
- (c) The address to which the shipment was delivered;
- (d) The date of sale or credit and the time period covered by the invoice;
- (e) The conditions of the sale or credit;
- (f) A description of the type and the quantity of electronic pulltab devices, site systems, point of sale stations, and secondary components provided;
- (g) The total invoice amount;
- (h) The name of the person who ordered the supplies;
- (i) The name of the person making the delivery;
- (j) The date of delivery or date the item was picked up for sale or credit;
- (k) The place or manner of delivery; and
- (l) The name and signature of the person taking delivery, if any.

(4) A manufacturer providing electronic pulltabs to a distributor for distribution to a licensed charitable organization shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

- (a) The manufacturer name, address, and license number;
- (b) The distributor name, address, and license number;
- (c) The organization name, address, and license number;
- (d) The date of sale or credit and the time period covered by the invoice;
- (e) The conditions of the sale or credit;
- (f) The quantity of electronic pulltabs sold including the number of game sets, the name of each game set, the number of tickets per game set, and the serial number and form number of the game set; and
- (g) The total invoice amount.

(5) The manufacturer shall maintain physical or electronic copies of the documentation required by this section for a period of not less than three (3) years.

(6) A manufacturer shall supply any available financial reports to distributors and organizations, upon request, that provide detailed pulltab sales activity for the requesting distributor or organization for a selected date range.

(7) A manufacturer may conduct routine maintenance activities

and replace secondary components of an electronic pulltab system without additional testing and certification if this activity does not affect the operation of any proprietary software, the manner in which an electronic pulltab game is played, the integrity of any critical or controlled software, or the outcome of an electronic pulltab game. A record of all activities shall be maintained and provided to the department within ten (10) days of the maintenance or replacement.

(8) A licensed manufacturer of charitable gaming supplies and equipment shall sell, lease, distribute, or otherwise provide in the Kentucky market only those electronic pulltab systems and electronic pulltabs that conform to the requirements of these administrative regulations. A licensed charitable organization shall provide to the public only those electronic pulltab systems and electronic pulltabs that conform to the requirements of this administrative regulation.

Section 32. Electronic Pulltab Distributor Requirements. (1) Before initial use by a charitable organization, the distributor shall ascertain that the particular electronic pulltab system, electronic pulltab device, and associated software version are approved by the department for use in Kentucky.

(2) A distributor shall not display, use, or otherwise furnish an electronic pulltab device, site system, or secondary component that has in any manner been marked, defaced, or tampered with, or that is otherwise intended to deceive the public or affect a person's chances of winning.

(3) Before the complete removal of any electronic pulltab system, the distributor shall supply a copy of the data files to each charitable organization that used the electronic pulltab system and to the department.

(4) Each distributor selling, leasing, or otherwise furnishing electronic pulltab devices, site systems, point of sale stations, secondary components, or electronic pulltabs shall maintain a log or other record showing the following information, if applicable:

(a) The name of the location, physical address, telephone number, and facility license number, if applicable, where the electronic pulltab devices, site systems, point of sale stations, and secondary components are located for play;

(b) A description, including the quantity, of all electronic pulltab devices, site systems, point of sale stations, and secondary components at each playing location;

(c) The date any electronic pulltab device, site system, point of sale station, or secondary component was installed in or removed from a playing location;

(d) The model, version, and serial numbers or terminal numbers of the electronic pulltab devices, site systems, point of sale stations, and secondary components, if applicable;

(e) The name and license number of the charitable organization or distributor to whom the electronic pulltab devices, site systems, point of sale stations, or secondary components were sold, leased, or otherwise furnished;

(f) The name and license number of the manufacturer or distributor from whom the electronic pulltab devices, site systems, point of sale stations, and secondary components were purchased, leased, or otherwise obtained;

(g) Each contract, lease, or purchase agreement between a distributor and the charitable organization or other distributor to which the electronic pulltab devices, site systems, point of sale stations, or secondary components are furnished; and

(h) The total dollar amount of electronic pulltab device, site system, point of sale station, and secondary component sales or lease transactions regarding each charitable organization to which the equipment was furnished during each calendar quarter.

(5) A distributor selling, leasing, or otherwise providing electronic pulltab devices, site systems, point of sale stations, or secondary components to a licensed charitable organization shall provide the organization with an invoice or other documentation that contains, at a minimum, the following information:

- (a) The manufacturer name, address, and license number;
- (b) The distributor name, address, and license number;
- (c) The organization name, address, and license number;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) A description of the type and the quantity of electronic pulltab devices, site systems, point of sale stations, and secondary components provided;

(g) The total invoice amount;

(h) The name of the person who ordered the supplies;

(i) The name of the person making the delivery;

(j) The date of delivery or date the item was picked up for sale or credit;

(k) The place or manner of delivery; and

(l) The name and signature of the person taking delivery, if any.

(6) A distributor providing electronic pulltabs to a licensed charitable organization shall provide the organization with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The organization name, address, and license number;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) The quantity of electronic pulltabs sold including the number of game sets, the name of each game set, the number of tickets per game set, and the serial number and form number of the game set; and

(g) The total invoice amount.

(7) An invoice not challenged within seven (7) days of delivery shall be determined as[deemed] accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the department.

(8) The distributor shall maintain physical or electronic copies of the documentation required by this section for a period of not less than three (3) years.

(9) A distributor shall deliver electronic pulltab devices, site systems, point of sale stations, and secondary components to an agreed secure location or to an identified person.

(10) A licensed distributor of charitable gaming supplies and equipment shall sell, lease, distribute, or otherwise provide in the Kentucky market only those electronic pulltab systems and electronic pulltabs that conform to the requirements of these administrative regulations. A licensed charitable organization shall provide to the public only those electronic pulltab systems and electronic pulltabs that conform to the requirements of this administrative regulation.

Section 33. Charitable Organization Requirements. (1) Before initial use, the organization shall ascertain that the particular electronic pulltab system, electronic pulltab device, and associated software version are approved by the department for use in Kentucky.

(2) An organization shall not display, use, or otherwise furnish an electronic pulltab device, site system, or secondary component that has in any manner been marked, defaced, or tampered with, or that is otherwise intended to deceive the public or affect a person's chances of winning.

(3) The number[use] of electronic pulltab devices shall be limited to the following:

(a) A maximum of thirty-five (35) electronic pulltab devices on or in the primary office location of a licensed charitable organization;

(b) A maximum of fifty (50) electronic pulltab devices during the bingo session of a licensed charitable organization;

(c) A maximum of fifty (50) electronic pulltab devices in a licensed charitable gaming facility; or

(d) With prior approval of the department, at any authorized charity fundraising event conducted by a licensed charitable organization at an off-site location.

(4) All electronic pulltab games shall be sold and played at the authorized locations, which shall be stated on the organization's charitable gaming license, and shall not be linked to other

authorized locations. A distributor may install electronic pulltab systems or devices in unlicensed locations, for demonstration purposes only, if the system and devices do not accept payments or pay out prizes, and the time period of the demonstration does not exceed seventy-two (72) hours. The electronic pulltab system and devices shall not be operated unless a representative of the licensed manufacturer or distributor conducting the demonstration is present.

(5) Electronic pulltab games shall not be transferred electronically or otherwise to any other location by the licensed organization.

(6) An organization may remove from play a device that a player has not maintained in an activated mode for a specified period of time determined by the organization. The organization shall provide the notice in its house rules and shall allow the player to cash-out.

(7) Before purchasing or being provided with an electronic pulltab device, a player shall present proof that the player is at least eighteen (18) years of age. Proof shall be in the form of a picture identification card that includes the player's date of birth. If an organization uses a self-service point of sale kiosk, identification shall be presented and verified at the door.

(8) Each player shall be limited to the use of one (1) electronic pulltab device at a time.

(9) If a player's electronic pulltab device malfunctions during a game, it shall be repaired or the credits shall be transferred to another electronic pulltab device.

(10) The department shall be allowed access to examine and inspect any part of an electronic pulltab system. The department shall be granted access to all electronic pulltab devices in use by a charitable organization.

(11) The organization shall reasonably ensure that the connection to the electronic pulltab system's central computer system is operational at all times.

(12) If the organization sells electronic pulltab devices for a discounted price or gives them away as a promotion, the site system shall be programmed to account for the discounted item and priced separately from those sold at the regular price. A generic discount key shall not be allowed.

(13) The organization shall generate an Electronic Pulltab Receipts and Payouts report at the end of each charitable gaming session and maintain it with the charitable gaming session records. The Electronic Pulltab Receipts and Payouts worksheet shall be completed in the format of Form CG-EPRP.

(14) A manufacturer's representative or distributor's representative may be present during a charitable gaming session only to consult, demonstrate, provide technical support, or train the organization on the operation of the electronic pulltab system.

(15) A licensed charitable organization shall ensure that an authorized chairperson is present on the premises at all times that electronic pulltab devices are made available to the public.

Section 34. Incorporation by Reference. (1) Form CG-EPRP, "Electronic Pulltab Receipts and Payouts", (2018) [7], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 500 Mero Street[–2NW24], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the department's Web site at dcg.ky.gov.**

CONTACT PERSON: Doug Hardin, Staff Attorney, Department of Charitable, 500 Mero Street 2NW24, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Prevention and Quality Improvement
(As Amended at ARRS, October 11, 2022)

902 KAR 21:040. Community health worker certification.

RELATES TO: KRS13B.080-160, 211.090, 211.180

STATUTORY AUTHORITY: KRS 194A.050, 2022 Ky Acts ch. 86

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. Ky Acts ch. 86 authorizes the Department for Public Health to promulgate administrative regulations for the certification of community health workers. This administrative regulation establishes the certification requirements for a community health worker.

Section 1. Definitions. (1) "Applicant" means an individual applying to be certified or recertified as a community health worker [7].

(2) "Certification" means the voluntary process by which the department grants recognition and use of a credential to individuals who are eligible to practice as certified community health workers [7].

(3) "Certified community health worker" or "CCHW" is defined by Ky Acts ch. 86.

(4) "Code of ethics" means the commonly understood principles and practices that all health and social service professionals are subject to. The Community Health Worker (CHW) code of ethics is maintained by the Kentucky Office of Community Health Workers and is available at <https://chfs.ky.gov/agencies/dph/dpqi/cdpb/Pages/chwp.aspx>.

(5) "Core competencies" means the knowledge and skills gained through education and experience, and includes:

- (a) Communication;
 - (b) Use of public health concepts and approaches;
 - (c) Organizational and community outreach;
 - (d) Advocacy and community capacity building;
 - (e) Care coordination and system navigation;
 - (f) Health coaching;
 - (g) Documentation, reporting, and outcome management; and
 - (h) Legal, ethical, and professional conduct.
- (6) "Department" means the Kentucky Department for Public Health.

(7) "Program" means the Kentucky Office of Community Health Workers (KOCHW) in the Department for Public Health.

(8) "Verifiable employment" means employment that can be confirmed by the department and that demonstrates achievement of a minimum standard of proficiency in the core competencies.

Section 2. Application for Initial Certification. (1) An applicant for initial certification as a certified community health worker shall meet the qualifications listed in Ky Acts ch. 86.

(2) Applications shall be submitted to the program for review and approval.

(3) All applications shall include a color photograph of the applicant.

(4) A nonrefundable application fee of fifty (50) dollars by check or money order made payable to the Kentucky State Treasurer shall be submitted to the program.

(5) The application shall not be considered complete and shall not be processed until all information and any subsequent documentation requested by the program is provided.

(6) If an application is denied, the applicant shall be notified in writing of the decision and given the opportunity to reapply or appeal the denial decision.

(7) Once an application is approved, a certificate with a certificate number shall be issued.

Section 3. Certified Community Health Worker Eligibility. (1) An applicant for certification as a community health worker may be eligible based on training or verifiable employment.

(2) To be eligible based on training, the applicant shall submit:

(a) Documentation of successful completion of a competency-based training program by a KOCHW approved organization. Training ***shall[must]*** be completed within three (3) years prior to application; and

(b) Documentation of successful completion of a minimum of forty (40) hours of verifiable mentorship completed within three (3) years prior to application.

(3) To be eligible based on experience the applicant shall have a minimum of 2,500 hours of verifiable employment as a community health worker within three (3) years prior to application.

Section 4. Renewal of a Current Certificate. (1) All certificates for CCHWs shall be renewed annually by October 31.

(2) A CCHW who holds a current certificate and has completed the continuing education requirements for renewal in Section 6 of this administrative regulation may apply to renew their certificate by:

(a) Submitting a complete application; and

(b) Payment of the twenty-five (25) dollar renewal application fee by check or money order made payable to the Kentucky State Treasurer.

Section 5. Extension for Renewal. (1) A CCHW may submit a written request for an extension to submit the renewal paperwork. This written request shall:

(a) Be received by the program on or before October 31; and

(b) Provide justification for the request.

(2) The program may grant an extension beyond the October 31 deadline based on extenuating circumstances beyond the control of the CCHW.

(3) The CCHW shall be notified in writing of the program's decision to grant or deny the extension.

(4) Failure to submit the renewal or request an extension by the October 31 deadline shall result in expiration of the certificate.

Section 6. Continuing Education Requirements. (1) Continuing education requirements for renewal shall be fulfilled during each annual renewal period.

(2) A CCHW shall complete a minimum of ten (10) contact hours of continuing education related to the core competencies each annual renewal period.

(3) Credit for semester hours taken at a college or university shall be:

(a) Consistent with the community health worker core competencies; and

(b) Approved at three (3) credits for each semester hour.

(4) Continuing education courses may be:

(a) Completed in person before a live presenter;

(b) Through home or self-study; or

(c) Delivered through electronic media or technology including distance learning, online, or teleconference.

(5) Effective October 31, 2023, all CCHWs ***shall[must]*** complete a KOCHW approved training in oral healthcare, infant and maternal healthcare, and geriatric healthcare.

(a) CHWs who hold a current certification ***shall[must]*** complete the training by October 2023 for renewal.

(b) CHWs who become newly certified ***shall[must]*** complete the training within ***twelve (12)*** months of certification.

(c) These are one-time requirements and ***shall[will]*** not need to be repeated.

(6) The program shall maintain a record of all approved community health worker training providers on the program's website.

(7) Providers of approved curricula shall notify the program within twenty (20) business days of a trainee's successful completion of a community health worker training.

Section 7. Certified Community Health Worker Scope of

Practice. A certified community health worker may:

(1) Provide cultural mediation among individuals, communities, and health and social service systems;

(2) Provide culturally appropriate health education and information;

(3) Provide care coordination, case management, and system navigation services;

(4) Provide coaching and social support;

(5) Advocate for individuals and communities;

(6) Build individual and community capacity;

(7) Provide direct services;

(8) Implement individual and community assessments;

(9) Conduct outreach; or

(10) Participate in evaluation and research.

Section 8. Complaint Procedures. (1) Any organization or individual may file a signed written complaint.

(2) The complaint shall be sent to the Kentucky Office of Community Health Workers, 275 East Main Street, HS2W-E, Frankfort, Kentucky 40621 or by email at chw.certification@ky.gov, subject line "Community Health Worker Complaint".

(3) The complaint shall include:

(a) A statement that the CCHW has violated the requirements of this administrative regulation or the CHW code of ethics;

(b) The facts on which the complaint is based; and

(c) The signature and contact information for the complainant.

(4) The program shall provide notice to the CCHW named in the complaint that a complaint has been filed and provide the CCHW an opportunity to respond to the complaint, including a proposal to resolve the complaint.

(5) The alleged violation shall have occurred not more than one (1) year before the date that the complaint is received by the program.

(6) Within sixty (60) calendar days after a complaint is filed, the program shall:

(a) Carry out an independent investigation, if the program determines that an investigation is necessary;

(b) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) Review all relevant information and make a determination as to whether the CCHW has violated the requirements of this administrative regulation or the code of ethics; and

(d) Issue a written decision to the complainant that addresses each allegation in the complaint and contains the reasons for the program's final decision.

Section 9. Denial, Suspension, and Revocation of a Certificate.

(1) The program reserves the right to:

(a) Deny an application for certification or renewal; and

(b) Conduct an audit of a CCHW.

(2) Written notice of the denial of an application for certification or renewal shall be provided to the applicant and include:

(a) The applicant's opportunity to reapply; or

(b) Right to appeal.

(3) A request to appeal the denial of a certificate shall be submitted to the department within ten (10) days from the date listed on the written notice issued pursuant to subsection (2) of this section and provide evidence that the denial was in error.

(4) The department shall re-evaluate the evidence and issue a final notice to the applicant within ten (10) days.

(5) An applicant whose application is denied following the appeal shall be ineligible to apply for a period of one (1) year following the final notice of denial.

(6) A certificate may be suspended if:

(a) Audit findings show the CCHW has violated the requirements of the program; or

(b) The CCHW is found in violation of the CHW code of ethics.

(7) Written notice of the suspension shall be provided to the CCHW and include the right to appeal.

(8) A request to appeal the suspension shall be submitted to the program within ten (10) days of the notice and include evidence that the suspension is in error or the reason for the suspension has

been corrected.

(9) Failure to submit a request to appeal the suspension within ten (10) days shall result in permanent suspension of the certificate.

(10) A certificate that has been suspended for one (1) year shall be considered revoked.

(11) During the period of suspension, the CCHW shall return the certification and identification card to the program and shall not engage in the practice of community health work until the suspension is lifted or further disciplinary action is taken.

(12) A certificate shall be revoked for repeated violations of the requirements of this administrative regulation or the CHW code of ethics.

(13) Written notice of the revocation shall be provided to the CCHW and include the right to request a hearing in accordance with KRS Chapter 13B.

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 Child Care
(As Amended at ARRS, October 11, 2022)

922 KAR 2:160. Child Care Assistance Program.

RELATES TO: KRS 194A.060, 199.894(1), (5), 199.896, 199.898(1), (2), 199.8982, 199.899, 214.036, 314.011(5), 337.275, 600.020, 605.120(5), 620.020(10), 7 C.F.R. Part 1463, 20 C.F.R. Parts 676-678, 34 C.F.R. Part 361, Part 463, 45 C.F.R. Part 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 7 U.S.C. 2012, 25 U.S.C. 1261, 1401, 5501, 29 U.S.C. 723(a)(5), 34 U.S.C. 20102(c), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141, 1771-1793, 2000d, 3001, 4950-5085, 8621, 9857-9858q, 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 9857-9858q, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner that is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that may affect eligibility or benefit amounts, such as:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;

(h) Beginning or ending an educational activity;

(i) Change in child care provider;

(j) Change in address or residence;

(k) Change in marital status;

(l) Beginning or ending receipt of unearned income; or

(m) Enrollment in a certified trade school or an accredited college or university.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent or guardian's[parent's] responsibility for the child's protection, development, and supervision.

(5) "Child Care and Development Fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined by 922 KAR 1:330, Section 1(5).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home" is defined by KRS 199.894(5).

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Good academic standing" means a student is meeting the trade school, college, or university's requirements for attendance and satisfactory progress towards the completion of coursework.

(15) "Health professional" means a person actively licensed as a:

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse;

(d) Qualified mental health professional as defined by KRS 600.020(52); or

(e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(16) "Homeless" means an individual or a family lacking a fixed, regular, and adequate nighttime residence, including a child experiencing homelessness as defined by 45 C.F.R. 98.2.

(17) "In loco parentis" means a person acting in place of a parent, including:

(a) A legal guardian;

(b) An individual related by blood, marriage, or adoption to the child; or

(c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(18) "Infant" means a child who is less than one (1) year old.

(19) "Kentucky Transitional Assistance Program" or "KTAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(20) "Parent" is defined by 45 C.F.R. 98.2.

(21) "Part day" means child care that is provided for less than five (5) hours per day.

(22) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(23) "Preventive services" is defined by KRS 620.020(12).

(24) "Provider" means the entity providing child care services, such as:

(a) A member of a limited liability corporation (LLC);

(b) The head of an organization;

(c) An owner of a corporation;

(d) A member of a partnership;

(e) An owner of a business;

(f) An individual provider; or

(g) A stockholder of a stock-holding company.

(25) "Qualified ~~alien~~ or ~~qualified~~ immigrant" means a child who meets the requirements of 921 KAR 2:006, Section 1(12) or 5(2)[1(14)].

(26) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(27) "Related" means having one (1) of the following relationships:

- (a) Child;
- (b) Stepchild;
- (c) Grandchild;
- (d) Great-grandchild;
- (e) Niece;
- (f) Nephew;
- (g) Sibling;
- (h) Child in legal custody; or
- (i) Child living in loco parentis.

(28) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

- (a) The natural parent, adoptive parent, or stepparent; or
- (b) The spouse of an individual caring for a child in loco parentis.

(29) "School-age child" means a child who has reached the sixth birthday.

(30) "State median income" or "SMI" means the estimated median income of households in the state.

(31) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

- (a) Defined by 7 U.S.C. 2012; and
- (b) Governed by 921 KAR Chapter 3.

(32) "Teen parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(33) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

- a. A signed DCC-90, Subsidized Child Care Assistance Application Summary; or
- b. Submission in accordance with 921 KAR 2:040, Section 1(6); or

- 2. The agency is contacted, if the person:
 - a. Has a physical or mental disability; and
 - b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures established in 920 KAR 1:070, interpreter services shall be provided for persons who are:

- 1. Deaf; or
- 2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, 7, and 8 of this administrative regulation.

(a) An applicant or recipient shall be the primary source of information and shall:

- 1. Furnish verification of:

- a. Income;
- b. Technical eligibility; and
- c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(c) A homeless household shall have a minimum of three (3) months to verify information in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send notice to the applicant in accordance with Section 12(4) of this administrative regulation.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

- (a) Assistance until approval of the application for benefits; or
- (b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

- 1. Resident of Kentucky; and
- 2. U.S. citizen ~~or~~ qualified immigrant ~~or qualified alien~~;

(b) Is under age:

- 1. Thirteen (13) at the time of application or recertification; or
- 2. Nineteen (19) at the time of application or recertification and

is:

a. Physically or mentally incapable of caring for themselves, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

- a. Licensed child-care center;
- b. Certified child-care home;
- c. Public school;
- d. Head Start; or

e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the KTAP or SNAP case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child-care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child-care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating

hours as wrap-around child care; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) A relative or fictive kin caregiver pursuant to 922 KAR 1:565 who meets:

1. All requirements in this section; and

2. Income eligibility standards established in Section 8 of this administrative regulation;

(e) A teen parent attending high school or pursuing a general equivalency degree (GED), including a period of recess or temporary break up to three (3) months; or

(f) An applicant who meets the eligibility requirements specified in Section 7 of this administrative regulation.

(2) A child shall be eligible to receive CCAP for a minimum of three (3) months or in accordance with Section 9 of this administrative regulation if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who is homeless;

(b) An applicant who is engaged in job search;

(c) A recipient after the loss of employment, a reduction in the required number of employment hours, or cessation of attendance at a job training or educational program in accordance with 42 U.S.C. 9858c(c)(2)(N)(iii), to allow for job search or resumption of work or attendance at job training or educational program; or

(d) A recipient on maternity leave or other medical leave from employment as verified by a health professional, unless a temporary disability as verified by a health professional necessitates longer than three (3) months of CCAP eligibility.

(3) Effective October 24, 2022, to the extent funds are available, a household shall have all earned and unearned income excluded from the eligibility determination if an applicant or responsible adult meets the requirements of subsection (1) of this section and has verified employment in a regulated:

(a) Licensed child-care center; or

(b) Certified family child-care home.

(4) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 8(6)(d) of this administrative regulation by an hourly pay rate of no less than minimum wage established in accordance with KRS 337.275.

Section 5. Requirements for Protection and Permanency Eligibility Determination.

(1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 11 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

Section 6. State-Funded Workforce Training Child Care Eligibility Determination. A child shall be eligible for CCAP if the child:

(1) Resides with an applicant who is participating in the:

(a) Kentucky Works Program established in 921 KAR 2:370; or

(b) Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) pursuant to 921 KAR 3:042; and

(2) Meets the requirements listed in Section 3 of this administrative regulation.

Section 7. Education and Job Training Child Care Eligibility Determination. (1) To the extent funds are available, a child shall be eligible for CCAP if the child:

(a) Resides with an applicant who:

1. Is enrolled in:

a.(i) A certified trade school or an accredited college or university; or

~~(ii) [A full-time program that leads to a general educational development (GED); or~~

~~[(iii)] A program that leads to a degree or certification; and~~

b. Accordance with subsection (2) of this section;

2. Is in good academic standing with the trade school, college, or university in which the applicant is enrolled;

3. Provides verification of enrollment and good academic standing from the trade school, college, or university in which the applicant is enrolled;

4. Meets income eligibility criteria of Section 8 of this administrative regulation; and

5. Has not received CCAP for more than sixty (60) months due to enrollment in a certified trade school or an accredited college or university; and

(b) Meets the requirements established in Section 3 of this administrative regulation.

(2) While an applicant is enrolled in a certified trade school or an accredited college or university:

(a) The applicant's coursework shall be completed in-person or online; and

(b) The applicant shall be classified as a full-time student as defined by the trade school, college, or university.

(3) An applicant who does not complete a term at a trade school, college, or university shall be responsible for the cost of child care tuition for the term.

Section 8. Income Eligibility. (1) A child shall be eligible for CCAP if the family's income is less than or equal to eighty-five (85) percent of the SMI as prepared by the U.S. Census Bureau through calendar year 2021 at initial application, recertification, or recalculation.

~~[(a)1. Through December 31, 2021, 160 percent of the federal poverty guidelines at initial application; and~~

~~2. Effective January 1, 2022, 200 percent of the federal poverty guidelines as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2021 at initial application; or~~

~~(b)1. Through December 31, 2021, 200 percent of the federal poverty guidelines at recertification or recalculation; and~~

~~2. Effective January 1, 2022, eighty-five percent (85%) of the SMI as prepared by the U.S. Census Bureau through calendar~~

year 2021 at recertification or recalculation.]

(2) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(3) A child who is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(4) Excluded income shall be:

- (a) KTAP child only payments, including back payment;
- (b) A payment received from the kinship care program, pursuant to 922 KAR 1:130, including back payment;
- (c) Educational grant, loan, scholarship, and work study income;

(d) The value of a:

- 1. Kentucky Works Program supportive services payment pursuant to 921 KAR 2:017; or
- 2. SNAP E&T transportation payment pursuant to 921 KAR 3:042;

(e) The value of United States Department of Agriculture program benefits including:

- 1. Donated food;
- 2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;
- 3. Special food service program for a child pursuant to 42 U.S.C. 1775;
- 4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under SNAP;

(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Native American[Indian] tribes by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;

(p) Funds distributed per capita to or held in trust for a member of a Native American[an Indian] tribe by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5085 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program (LIHEAP) pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u) The principal of a verified loan;

(v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during

World War II;

(w) The advance payment or refund of earned income tax credit;

(x) Payment made from the Agent Orange Settlement Fund;

(y) Payment made from the Radiation Exposure Compensation Trust Fund;

(z) Up to \$2,000 per year of income received by individual Native Americans[Indians] denied from a lease or other use of individually-owned trust or restricted lands;

(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc) A payment received from the National Tobacco Growers Settlement Trust;

(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 34 U.S.C. 20102(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);

(jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act pursuant to 20 C.F.R. Parts 676-678 or 34 C.F.R. Part 361 or 463;

(kk) Waiver reimbursement in accordance with 907 KAR 1:170, 907 KAR 1:835, or 907 KAR 7:015 to a parent for the care of a child in the home; or

(ll) Supplemental Security Income (SSI) for a child.

(5) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self-employment.

(6) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall:

a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and

b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semi-monthly, monthly, quarterly, or annual earnings;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by adding gross income from each pay period, dividing by the total number of pay periods considered, and converting the pay period figure to a monthly figure by multiplying a:

a. Weekly amount by four and one-third (4 1/3);

b. Biweekly amount by two and one-sixth (2 1/6); or

c. Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received a calendar month of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period;

b. Converting the resulting pay period figure to a monthly

amount pursuant to subparagraph 3.c. of this paragraph; and

c. Rounding to the nearest dollar.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

2. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing total gross income and total amount of allowable expenses separately by twelve (12) or the appropriate number of months, and rounding the quotients to the nearest dollar; and

d. Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.

(e) If the cabinet or its designee becomes aware of a change in circumstance, the best estimate shall be recalculated.

Section 9. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be recertified at least every twelve (12) months.

(2) Eligibility shall be reviewed at each twelve (12) month recertification for a child who is placed with a relative or fictive kin caregiver. A child who is placed with a relative or fictive kin caregiver shall remain eligible pursuant to Section 5 of this administrative regulation for as long as the cabinet determines that child care is necessary in order to prevent child maltreatment or entry into the foster care system.

(3) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(4) Unless a nonrelative is approved as fictive kin pursuant to 922 KAR 1:140 or 922 KAR 1:565 and Section 5 of this administrative regulation, a nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

(5) In accordance with 42 U.S.C. 9858(c)(2)(N), if a family's income does not exceed eighty-five (85) percent of Kentucky's SMI, the family shall remain eligible for CCAP until recertification in accordance with this section.

(6)(a)1. Effective March 4, 2022, through August 31, 2022, [to the extent funds are available,] the cabinet shall implement a transitional period in the Child Care Assistance Program. A child enrolled shall continue to receive assistance for three (3) months after becoming ineligible due to exceeding the income limitations established in Section 8 of this administrative regulation.

2. Effective September 1, 2022, to the extent funds are available, the cabinet shall implement a transitional period in the Child Care Assistance Program. A child enrolled shall continue to receive assistance for six (6) months after becoming ineligible due to exceeding the income limitations established in Section 8 of this administrative regulation.

(b) During the transitional period established in paragraph (a) of this subsection, the provider shall continue to receive fifty percent (50%) of the lesser amount of the provider subsidized rate or maximum payment rate established in the DCC-300, rounded up to the nearest whole dollar.

Section 10. Payment Rates and Policy. (1)(a) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rate Chart.

(b) The rates in the DCC-300 shall represent the maximum

payment rates on a per day, per child, per child care provider basis.

(c) The maximum payment rates shall include the following categories:

1. Full day;
2. Part day;
3. Licensed Type I;
4. Licensed Type II;
5. Certified;
6. Registered;
7. Infant/Toddler;
8. Preschool child; and
9. School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) ~~Two (2) dollars per day through July 31, 2022, and effective August 1, 2022,~~ Five (5) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;
2. National Early Childhood Program Accreditation;
3. National Association for Family Child Care;
4. Council on Accreditation; or
5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) ~~One (1) dollar per day through July 31, 2022, and effective August 1, 2022,~~ Ten (10) dollars per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or
2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of ~~one (1) additional dollar per day through July 31, 2022, and effective August 1, 2022,~~ five (5) additional dollars per day beyond the maximum rate for care of a child:

- (a) With a special need; or
- (b) Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or

2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

- (a) Three (3) children receiving CCAP per day; or
- (b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and
2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 11. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(3) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

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Family Co-Payment Per Day								
Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0
900	999	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,000	1,099	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,100	1,199	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,200	1,299	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,300	1,399	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,400	1,499	\$6	\$5	\$6	\$5	\$6	\$4	\$4
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$5	\$5
1,600	1,699	\$8	\$6	\$7	\$6	\$7	\$6	\$6
1,700	1,799	\$9	\$7	\$8	\$7	\$8	\$6	\$7
1,800	1,899	\$10	\$8	\$9	\$7	\$8	\$7	\$8
1,900	1,999	\$10	\$9	\$10	\$8	\$9	\$8	\$9
2,000	2,099	\$11	\$10	\$11	\$8	\$9	\$8	\$9
2,100	2,199.99	\$12	\$10	\$11	\$9	\$10	\$9	\$10
2,200	2,299.99	\$12	\$11	\$12	\$10	\$11	\$9	\$10
2,300	2,399.99	\$12	\$12	\$13	\$11	\$12	\$9	\$10
2,400	2,499.99	\$12	\$12	\$13	\$12	\$13	\$10	\$11
2,500	2,599.99	\$12	\$13	\$14	\$12	\$13	\$10	\$11
2,600	2,699.99	\$12	\$13	\$14	\$13	\$14	\$12	\$13
2,700	2,799.99	\$12	\$13	\$14	\$13	\$14	\$13	\$14
2,800	2,899.99	\$12	\$13	\$14	\$14	\$15	\$14	\$15
2,900	2,999.99	\$12	\$13	\$14	\$14	\$15	\$16	\$17
3,000	3,099.99	\$12	\$13	\$14	\$15	\$16	\$18	\$19
3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$25
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(c) In accordance with 45 C.F.R. 98.21, a copayment for an eligible family shall:

1. Be determined at initial application or recertification; and
2. Not increase during the twelve (12) month eligibility period.

Section 12. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a DCC-94, Child Care Service Agreement and Certificate.

(3) Upon enrollment or reenrollment with a provider, an applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the:

- (a) DCC-94; or
 - (b) DCC-90.
- (4) Notification of action.

(a) A DCC-94C, Provider Notification Letter, shall provide notice to a provider of a child's discontinuation from CCAP or disenrollment with a provider.

(b) A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

1. A change in the certification period of child;
2. Approval of an application; or
3. Continued eligibility.

(c) A DCC-105, Child Care Denial/Discontinuance Notice, shall provide notice of:

1. Denial of an application;

2. Discontinuance of a CCAP benefit;

3. Reason for adverse action;

4. Citation from an applicable state administrative regulation; and

5. Information regarding the opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(d) The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection.

(5) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(6) Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(7) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

(a) Discontinued from CCAP benefits; and

(b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(8) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 14(1)(c) of this administrative regulation.

Section 13. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer

information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

- (a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;
- (b) 922 KAR 2:090, Child-care center licensure;
- (c) 922 KAR 2:100, Certification of family child-care homes;
- (d) 922 KAR 2:120, Child-care center health and safety standards;
- (e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;
- (f) 922 KAR 2:190, Civil penalties;
- (g) 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes; and
- (h) 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals.

(4) The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180.

(5) If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(6) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(7) The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

(8) In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

- (a) Child protective or preventive services authorization;
- (b) A child with a special need;
- (c) A child experiencing homelessness as defined by 45 C.F.R. 98.2;
- (d) A child in the custody of the cabinet;
- (e) KTAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;
- (f) Teen parents attending high school or pursuing a general equivalency degree (GED);
- (g) A KTAP recipient attempting to transition off assistance through employment;
- (h) A parent whose KTAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;
- (i) A low income working parent; or
- (j) A parent in education or training programs leading to self-sufficiency.

Section 14. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the provider and prior to receiving payment from the CCAP, the DCC-94;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c) 1. Maintain the DCC-94E, Child Care Daily Attendance Record, or a cabinet approved electronic billing system in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed or electronically recorded legibly with first and last name by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E or electronic daily attendance record upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

- 1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;
- 2. 922 KAR 2:090, Child-care center licensure;
- 3. 922 KAR 2:100, Certification of family child-care homes;
- 4. 922 KAR 2:120, Child-care center health and safety standards;
- 5. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;
- 6. 922 KAR 2:190, Civil penalties;
- 7. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes; and
- 8. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals;
- (e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP; and
- (f) Complete, retain on file, and provide to the CCAP billing section a certificate of completion for cabinet approved training on billing once during each year of operation or upon change of the staff member submitting billing information.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

- 1. Each employee of each shift;
- 2. The work hours for each employee of each shift;
- 3. The management for each shift;
- 4. The work hours for each management employee of each shift; and
- 5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

- 1. The operating plan meets all requirements of:
 - a. For a licensed child-care center, 922 KAR 2:090 and 922 KAR 2:120; or
 - b. For a certified family child-care home, 922 KAR 2:100; and
- 2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

(5) A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

(a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;

(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or

(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in the new provider's operations in any capacity.

Section 15. Other Services. To the extent funds are available, a child whose family's income is over the income limits for the CCAP described in Section 8 of this administrative regulation may be eligible for:

- (1) Child care payments;
- (2) Enrollment fees;
- (3) Activity or day trip fees;
- (4) Material fees;

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- (5) Transportation fees; or
- (6) Other items relating to child care services with prior approval of the cabinet.

Section 16. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 2:020.

Section 17. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

- 1. A death in the family;
- 2. An illness of the:

- a. Child; or
- b. Applicant; or

3. A disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 11 of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

- a. Entry into the provider's premises during operating hours; or
- b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 14(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 14(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 13(8) of this administrative regulation.

Section 18. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 921 KAR 2:055.

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

- (a) 922 KAR 2:260; or
- (b) 922 KAR 2:020.

Section 19. Records. Records of CCAP shall be maintained and disclosed in accordance with:

- (1) KRS 194A.060;
- (2) 45 C.F.R. 98.90(e); and

(3) 45 C.F.R. 205.50(a)(1)(i).

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Subsidized Child Care Assistance Application Summary", 7/2019;

(b) "DCC-94, Child Care Service Agreement and Certificate", 07/21;

(c) "DCC-94.1, CHILD CARE Approval/Change Notice", 10/17;

(d) "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;

(e) "DCC-94C, Provider Notification Letter", 10/17;

(f) "DCC-94E, Child Care Daily Attendance Record", 07/22[7/13];

(g) "DCC-97, Provider Billing Form", 04/13;

(h) "DCC-105, Child Care Denial/Discontinuance Notice", 10/17; and

(i) "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 10/22[12/21].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amended After Comments)

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

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

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer group hospital and medical insurance coverage to retired members and some spouses and dependents. This administrative regulation establishes eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a ~~[regular full-time]~~ position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from January 1, 2009~~[March 1, 2017]~~ through September 30, 2022.

Section 1. Definitions.

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

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

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

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

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

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

(7) "MEM" means:

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

(b) A Medicare eligible member who is retired and whose spouse meets the following criteria:

1. The spouse is also a retired member,

2. The spouse is reemployed with a participating employer which offers the spouse a hospital and medical insurance benefit, or by a participating employer which is prevented from offering a hospital and medical benefit to the spouse as a condition of reemployment under KRS 70.293, 95.022, or 164.952.

3. The premium required to provide the spouse with hospital and medical insurance plan coverage is fully or partially paid based on the Medicare eligible retired member's benefits as provided in KRS 61.702(4) and 78.5536(4).

(8) "Monthly contribution rate" means:

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

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

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

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

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

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

Section 3. Eligibility for Reimbursement.

(1) A MEM who was informed by the agency that he or she was not eligible for group hospital and medical insurance plan coverage through the systems, and who paid premiums for a group hospital and medical insurance plan for himself or herself as well as his or her eligible spouse and dependent(s) may request reimbursement for those premiums paid during the time period from January 1, 2009~~[March 1, 2017]~~ to September 30, 2022 as described in Section 4.

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

(b) For calendar year 2022 only, MEMs and eligible spouses and dependents of MEMs already enrolled in a hospital and medical insurance plan other than a KEHP group hospital and medical insurance plan may choose to remain on that plan through December 31, 2022 and have his or her reimbursement eligibility period extended to December 31, 2022.

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

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

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

coverage through the agency, and

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

Section 4. Request for Reimbursement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6)(a) If a MEM is deceased, the executor, administrator, or other representative of the MEM's estate may request

reimbursement for the MEM, and any eligible spouse or dependents, by filing a Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, and all other required documentation at the retirement office in compliance with this Section.

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

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

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

Section 6. Authorized Payments.

(1) The agency shall reimburse premiums paid by a MEM or the spouse of a MEM for a MEM who meets the eligibility requirements of Section 3 of this administrative regulation and the MEM's eligible spouse and dependents for each month between January 1, 2009~~[March 1, 2017]~~ and September 30, 2022, except as provided in subsection (2) of this Section:

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

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

(2) In the case of MEMs who choose to remain on their current hospital and medical insurance plan through December 31, 2022 in accordance with paragraph (1)(b) of Section 3 of this administrative regulation, the agency shall reimburse premiums paid by a MEM or the spouse of a MEM for a MEM who meets the eligibility requirements of Section 3 of this administrative regulation and the MEM's eligible spouse and dependents for each month between January 1, 2009~~[March 1, 2017]~~ and December 31, 2022:

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

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

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

(a) The monthly contribution rate in effect during the calendar year in which the premiums authorized for reimbursement were paid by the MEM or the spouse of the MEM had the MEM been eligible to enroll in the non-Medicare eligible group hospital and medical insurance plan established in accordance with KRS 61.702 and 78.5536, or

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

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

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

insurance plan.

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

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

Section 7. Incorporated by Reference. (1) Form 6260, "Medicare Secondary Payer Application for Medical Insurance Reimbursement", **September 2022[May 2022]**, is incorporated by reference.

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

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: October 12, 2022

FILED WITH LRC: October 13, 2022 at 8:15 a.m.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.NonAdvocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien, Policy Specialist

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a full-time position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from January 1, 2009 through September 30, 2022.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a full-time position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from January 1, 2009 through September 30, 2022.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer group hospital and medical insurance coverage to retired members and some spouses and dependents. This administrative regulation establishes eligibility requirements and procedures for reimbursements of premiums paid by Medicare eligible retired members who are or were reemployed in a regular full-time position with a participating employer during the period of January 1, 2009 through September 30, 2022, when a group hospital and medical insurance plan was not available for these retired members or their eligible spouses and dependents.

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

administrative regulation will assist in the effective administration of the statutes by establishing eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a regular full-time position with a participating employer and were previously informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from January 1, 2009 through September 30, 2022.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1100 individuals who are retired members of the systems operated by the Kentucky Public Pensions Authority. An unknown number of spouses and dependents of retired members of the systems operated by the Kentucky Public Pensions Authority. One (1) entity that provides day-to-day operations for the three (3) public retirement systems: the Kentucky Public Pensions Authority. Three (3) public retirement systems: the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance for the Kentucky Public Pensions Authority consists solely of the costs associated with implementation of this administrative regulation, which should be minimal. The cost of compliance for the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System is unknown because the cost will be dependent on several factors that are unknown at the time of filing of this administrative regulation: (i) the number of eligible retired members who timely request reimbursement in accordance with this administrative regulation, (ii) the periods during which the affected retired members paid for premiums, and (iii) whether the affected retired members may have had their premiums partially or entirely paid for by an employer.

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

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

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

(b) On a continuing basis: The continuing costs associated with

the implementation of this administrative regulation should be minimal, particularly after the window for requesting reimbursement closes on June 30, 2023.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All affected public retirement systems are treated in the same manner by this administrative regulation.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Public Pensions Authority and the three (3) public retirement systems for which it provides day-to-day operations: the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System.

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

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

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

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

(c) How much will it cost to administer this program for the first year? Unknown.

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

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

Revenues (+/-): None.

Expenditures (+/-): Unknown.

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

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

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

(c) How much will it cost the regulated entities for the first year? Unknown.

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

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

Cost Savings (+/-): None.

Expenditures (+/-): Unknown.

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

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a "major economic impact" because it will not have a negative or adverse economic impact on the Kentucky Public Pensions Authority or the three (3) public retirement systems for which it provides day-to-day operations (the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System).

EDUCATION AND LABOR CABINET Kentucky Board of Education Department of Education (Amended After Comments)

704 KAR 3:305. Minimum requirements for high school graduation.

RELATES TO: KRS 156.160(1)(a), (d), 158.140(6), 158.142, 158.645, 158.6451

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (d), 158.140(6), 158.142

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3)(b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky academic standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

Section 1. Definitions.

(1) **"Graduate early" means a student is awarded a diploma from the district, in under four (4) academic years from the start of grade 9, based upon meeting the minimum credit requirements of this administrative regulation and additional requirements as may be imposed by a local board of education.**

(2) **"Early Graduation Program" or "EGP" means an optional, criteria-based program in which a student may receive a diploma from the school district, an Early Graduation Certificate, and a**

~~scholarship award upon proper notification of intent to participate and the successful completion of all program requirements in three (3) academic years or less.~~ "Early graduation" means meeting the competency-based criteria established in this administrative regulation in three academic years or less.]

(3)(2)] "Early Graduation Certificate" means a certificate, awarded by the district and signed by the principal and superintendent, that shall qualify[make] the recipient to be awarded a high school diploma and[eligible for] a scholarship award equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level, to be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and Schools.

(4) "Continuity of services plan" means a plan that outlines the ways in which a student will receive access to essential services that will end should the student graduate early.

(5)(3)] "Individual Learning Plan" or "ILP" is defined in 704 KAR 19:002.

Section 2. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address the content as provided in the Kentucky academic standards for career studies established in 704 KAR Chapter 8. The individual learning plan shall not be a substitute for the statement of transition service needs for students with disabilities as provided in 707 KAR 1:320.

(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent receives information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6) The development of the individual learning plan for each student shall be established **within the first ninety (90) days[at]** ~~[begin by]~~ ~~[the beginning]~~ ~~[end]~~ of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.

Section 3. (1) For students entering grade 9 on or before the first day of the 2018-2019 academic year, each student in a public school shall have a total of at least twenty-two (22) credits for high school graduation.

(2) Those credits shall include the content standards as provided in the Kentucky academic standards, established in 704 KAR 3:303 and KAR Chapter 8.

(3) Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

(4) The required credits and demonstrated competencies shall include the following minimum requirements:

(a) Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky academic standards for this content area and comply with the following:

1. Language arts shall be taken each year of high school; and
2. If a student does not meet the college readiness benchmarks for English and language arts as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take an English and language arts transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(b) Social studies - three (3) credits to include the content contained in the Kentucky academic standards for this content area;

(c) Mathematics - three (3) credits to include the content contained in the Kentucky academic standards for this content area and include the following minimum requirements:

1. Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky academic standards, established in 704 KAR 3:303 and 704 Chapter 8;

2. A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce;

3. Any mathematics course other than Algebra I, Geometry, or Algebra II shall be counted as an elective; and

4. If a student does not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(d) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area;

(e) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(f) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(g) Visual and performing arts - one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan;

(h) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and

(i) Demonstrated performance-based competency in technology.

Section 4. (1) Beginning with students who enter grade 9 on or after the first day of the 2019-2020 academic year, in order to receive a high school diploma, each student in a public school shall earn a total of at least twenty-two (22) credits for high school graduation.

(2) The required credits shall include the content standards as provided in the Kentucky academic standards, established in 704 KAR 3:303 and 704 KAR Chapter 8.

(3) Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

(4) Each student shall be required to complete the following foundational credits and demonstrated competencies, consisting of ten (10) credits:

(a) English/language arts - two (2) credits (English I and II) to include the content contained in the Kentucky academic standards for this content area;

(b) Social studies - two (2) credits to include the content contained in the Kentucky academic standards for this content

area;

(c) Mathematics - two (2) credits (Algebra I and Geometry) to include the content contained in the Kentucky academic standards for this content area;

(d) Science - two (2) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area;

(e) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(f) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area; and

(g) Visual and performing arts - one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan.

(5) In addition to the foundational requirements established in subsection (4) of this Section, every student shall earn a minimum of twelve (12) personalized credits in order to receive a high school diploma. These twelve (12) personalized credits shall include:

(a) Two (2) additional English/Language Arts credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;

(b) Two (2) additional mathematics credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;

(c) One (1) additional science credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan;

(d) One (1) additional social studies credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan;

(e) Academic and career interest standards-based learning experiences - six (6) credits including four (4) standards-based learning experiences based on the student's individual learning plan;

(f) Demonstrate performance-based competency in technology as approved by the Kentucky Department of Education;

(g) Pass a civics test as required by KRS 158.141; and

(h) Beginning with students entering grade 9 on or after the first day of the 2020-2021 academic year, successfully complete one (1) or more courses or programs that meet the financial literacy requirements pursuant to KRS 158.1411 and standards as established in 704 KAR Chapter 8.

Section 5. (1) Only students who meet the criteria established in this section shall be eligible for the Early Graduation Program.

(a) Students wishing to participate in the EGP shall indicate that intent to the school principal in writing at the beginning of grade 9 or as soon as the intent is known to the student, but no later than the first thirty (30) school days of the academic year in which the student intends to graduate. Those students who meet the criteria and requirements of the EGP shall receive from the school district a diploma and an Early Graduation Certificate.

(b) Schools and districts shall not prohibit a student from completing the EGP in the event the student meets all EGP requirements.

(c) Those students who enroll in the EGP and meet the criteria provided in this section shall receive from the school district a diploma and an early graduation certificate. Students wishing to participate in the EGP shall indicate that intent to the school principal at the beginning of grade 9 or as soon as the intent is known, but within the first thirty (30) school days of the academic year in which they wish to graduate.

(d) The school or district shall enter the enrolled EGP

student. A student's intent to participate in the EGP shall be entered into the student information system by the school district by October 15 of the year in which the student intends to graduate. Students working toward early graduation and receipt of a corresponding Early Graduation Certificate shall be supported by development and monitoring of an individual learning plan to support their efforts.

(d) Students working toward early graduation and receipt of a corresponding Early Graduation Certificate shall be supported by development and monitoring of an individual learning plan to support their efforts.

(e) Students participating in the EGP shall complete all requirements set forth in this section applicable to the academic year in which the student intends to graduate; and

(f) A student who has indicated an intent to complete the EGP may participate in the state administration of the college entrance exam prior to the junior year, if needed.

(2) To participate in the EGP and graduate during the 2022-2023 school year, a student shall:

(a) Meet the requirements of subsection 1 of this section;

(b) Meet the college readiness exam benchmarks established by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for remediation; and

(c) Complete one (1) or more courses or programs that meet the financial literacy requirements pursuant to KRS 158.1411.

(2) To graduate early and earn an Early Graduation Certificate, a student shall:

(a) Score proficient or higher on the state-required assessments required by the Kentucky Board of Education in 703 KAR 5:200; and

(b) Meet the college readiness exam benchmarks established by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for remediation.

(3) A student who has indicated an intent to graduate early may participate in the student's state administration of the college readiness exam prior to the junior year, if needed.

(3) By July 1, 2023, each school district shall provide each school within the district with the policy established by the local board of education for students wishing to participate in the EGP and earn an Early Graduation Certificate and scholarship. The district policy shall provide for support in the development and monitoring of an individual learning plan that shall include:

(a) Criteria for supporting the development and monitoring of the student individual learning plan, as provided in Section 2;

(b) Goal planning related to the attainment of established district essential workplace ethics programs as provided in KRS 158.1413;

(c) Completion of a professional resume; and

(d) Completion of one postsecondary admissions application that may be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and Schools in which the student is interested in applying.

(4) Beginning with the 2023-2024 academic year, each EGP participant, with the support of the comprehensive school counselor, or designee, shall:

(a) Identify all EGP requirements and develop a strategy within the individual learning plan for meeting those requirements, including the district's established workplace ethics program provided in KRS 158.1413; and

(b) Complete an entrance interview with the principal, or designee, to discuss postsecondary goals and career aspirations.

(5) Beginning with the 2023-2024 academic year, to successfully complete the EGP and earn an Early Graduation Certificate and scholarship, the student shall:

(a) Communicate intent to the principal as required in subsection (1) of this section;

(b) Meet the college entrance exam benchmarks established by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for

remediation:

(c) Earn ten (10) foundational credits that shall include the content standards as provided in the Kentucky academic standards, established in 704 KAR 3:303 and 704 KAR Chapter 8;

(d) Complete the essential workplace ethics program requirements established by the school district pursuant to KRS 158.1413; and

(e) Complete one (1) or more courses or programs that meet the financial literacy requirements pursuant to KRS 158.1411.

~~(6)(5)~~ By July 1, 2024, each local board of education shall establish a policy requiring high schools to determine performance descriptors and evaluation procedures for an EGP performance-based project, portfolio or capstone required for those students who intend to complete the EGP beginning with the 2024-2025 academic year. Performance descriptors and evaluation procedures shall provide an opportunity for the student to demonstrate attainment of the following critical skills required for postsecondary and career success:

(a) Attainment of essential workplace ethics program components as established by the board of education pursuant to KRS 158.1413;

(b) Demonstration of an ability to apply the Kentucky academic standards, established in 704 KAR 3:303 and KAR Chapter 8, as a life-long learner and contributing member of society;

(c) Demonstration of written and verbal communication skills needed for postsecondary success; and

(d) Demonstration of an ability to think critically, synthesize information and draw conclusions.

~~(7)(6)~~ Beginning July 1, 2024, the performance-based project, portfolio or capstone shall be required for completion of the EGP.

~~(8)(7)~~ A school shall maintain and make readily available to the Kentucky Department of Education the EGP participant's performance-based project, portfolio or capstone for a minimum of five years.

Section 6. (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content.

(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.

Section 7. (1) A local board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky academic standards, established in 704 KAR 3:303 and 704 KAR Chapter 8, and a rigorous performance standards policy established by the local board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

(2) A local board of education shall award credit toward high school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one (1) subject; or

(b) A performance-based credit based on standards, regardless of the number of instructional hours in one (1) subject.

(3) A local board of education which has chosen to award performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7, or 8 if:

(a) The content of the course is the same as that described in the Kentucky academic standards, established in 704 KAR 3:303 and 704 KAR Chapter 8; and

(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.

(4) A local board of education which has chosen to award performance-based credit shall establish a policy for a performance-based credit system that includes:

(a) The procedures for developing performance-based credit systems and for amending the system;

(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards established in 704 KAR 3:303 and 704 KAR Chapter 8;

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:

1. Designed to further student progress towards the individual learning plan;

2. Supervised by qualified instructors; and

3. Aligned with state and local content and performance standards.

(5) A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Sections 3 and 4 of this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;

(c) Standards-based portfolios, senior year, or capstone projects;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; or

(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school or the community.

(6) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b) [and 703 KAR 4:060].

Section 8. (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education or meets the requirements for the Early Graduation Program established in Section 5 of this administrative regulation shall be awarded a graduation diploma.

(2) A local board shall not adopt any high school graduation requirements that include achieving a minimum score on a statewide assessment as established in KRS 158.140.

(3) The local board of education shall award the diploma.

Section 9. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal, or teacher from awarding special recognition to a student.

Section 10. (1) If the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Sections 3 and 4 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered.

(2) This course of study shall be based upon student needs and the provisions established in 704 KAR 3:303 and 704 KAR Chapter 8, and shall be reviewed at least annually.

(3) A student who completes this course of study shall receive an alternative high school diploma to be awarded by the local board of education consistent with the graduation practices for all students.

(4) A local board of education may establish policies to award an alternative high school diploma to a former student who has received a certificate or certificate of attainment.

Section 11. (1) Any student seeking to graduate early who receives services deemed essential by the local school district shall engage in meaningful consultation with a school-based mental health services provider, as defined by KRS 158.4416, on the creation of a continuity of services plan prior to graduation.

(2) School districts shall ensure the creation of a continuity of services plan for all students identified as a homeless child pursuant to 42 U.S.C. 11434, a migratory child pursuant to 20 U.S.C. 6399, or youth engaged in foster care pursuant to KRS 620.020(5).

(3) The completion of a transition plan for children aging out of foster care, as described by 42 U.S.C. 675(5)(H), shall meet the requirements outlined in this section.

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., Board Chairperson

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:42 p.m.

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: 704 KAR 3:305 establishes the minimum requirements for entitlement to a high school diploma in Kentucky, including those who are eligible to participate in the Early Graduation Program provided in KRS 158.142.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142 requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky Academic Standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(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 relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142 requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky academic standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation outlines the minimum requirements for high school graduation for all Kentucky students.

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

(a) How the amendment will change this existing administrative regulation: The amendments to 704 KAR 3:305

serve two purposes. First, to provide clean-up language needed throughout the regulation. Second, the amendments are needed to ensure alignment to the statute while also providing greater clarification for schools and districts as they implement the requirements for the Early Graduation Program resulting in an Early Graduation Certificate and scholarship to be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and Schools.

(b) The necessity of the amendment to this administrative regulation: Given changes to the authorizing statute during the 2022 legislative session, these amendments are needed to ensure alignment to the statute while also providing greater clarification for schools and districts as they implement the requirements for the Early Graduation Program.

(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 relating to the courses of study for the different grades, the minimum requirements for high school graduation and the requirements for the Early Graduation Program.

(d) How the amendment will assist in the effective administration of the statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The amendment to this administrative regulation establishes greater clarity on the expectations and competencies needed of students in order to qualify for, and successfully complete, the Early Graduation Program.

(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: all public schools, school districts, and the Kentucky Department of Education as it is tasked with providing guidance, support, and technical assistance, and monitoring of the implementation of new minimum high school graduation requirements.

(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: Specifically, the entities identified above will need to take the following actions to comply with the amendments proposed in the regulation: Local boards of education will need to develop policies that provide a framework for the Early Graduation Program, including performance descriptors and evaluation procedures. Local schools and districts will need to align to the Early Graduation Program requirements. The Kentucky Department of Education will need to provide implementation guidance to districts and schools.

(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 as a result of this amendment. The Kentucky Department of Education will be impacted by staff time to answer questions and provide guidance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): With a more comprehensive approach to the Early Graduation Program, students are the primary beneficiaries of the revisions. The updated program guidelines focus on both the academic and essential skills needed for success beyond high school.

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

(a) Initially: The Kentucky Department of Education will dedicate staff time to develop guidance to support schools and districts as they implement the Early Graduation Program. Staffing patterns at the local district may need to be adjusted in order to support schools in implementing program requirements.

(b) On a continuing basis: The Kentucky Department of Education has mechanisms in place to support ongoing costs related to staff time and resources needed to support schools and

districts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or 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; the Kentucky Department of Education, specifically the Office of Assessment and Accountability and the Office of Teaching and Learning; Council on Postsecondary Education; and the Kentucky Higher Education Assistance Authority may be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142 requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky core academic standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(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.

(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.

(c) How much will it cost to administer this program for the first year? While the exact cost is unknown, little to no additional expenses are expected as a result of amendment. Staffing patterns at the local district may need to be adjusted in light of minimum requirements and student needs. Local district budgets may be impacted by the need for resources to support interventions for students who need them. Kentucky Department of Education staff time will be impacted by the need for implementation guidance and answering questions from the field. This impact should decrease each year of implementation.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the Kentucky Department of Education will remain available to schools and districts to provide ongoing support. Little to no additional expenses are expected on an ongoing basis as a result of amendment. Staffing patterns at the local school and district and staff time may need to be adjusted depending upon their needs as it relates to the implementation of the Early Graduation Program performance-based portfolio, project or capstone.

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

administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

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

(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 amendment.

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. Obviously, the regulation is aimed at the minimum requirements for high school graduation. 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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Fiscal Management

(Amended After Comments)

907 KAR 1:008. Ambulatory surgical center services and reimbursement.

RELATES TO: KRS 205.520(3), 205.560(2), 42 C.F.R. 416.164 and 416.166, 447.271, Part 441 Subpart E or F

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), EO-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions and method for establishing payment for an ambulatory surgical center.

Section 1. Scope of Coverage. The Medicaid Program shall cover medically necessary, medically appropriate services rendered by a participating ambulatory surgical center (ASC) licensed by its respective state and certified for Medicare participation.

Section 2. Basis for Reimbursement. (1) Beginning with the

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effective date of this regulation, the Department for Medicaid Services shall utilize the January 1, 2022, ASC fee schedule published by the Centers for Medicare and Medicaid Services (CMS) to determine the ASC rates, subject to the following adjustments and updating procedures:

(a) Reimbursement for a procedure shall be the rate specific to that procedure as assigned by CMS, adjusted by the wage index utilized by CMS for the Cincinnati, OH, Core-Based Statistical Area, or its equivalent.

(b) Procedure codes that are considered a packaged service by CMS with a Medicare rate of \$0 shall be reimbursed at a rate of \$0.

(c) Medicaid covered procedures not included on the Medicare fee schedule shall be reimbursed at forty-five (45) percent of billed charges.

(d) Bilateral procedures shall be reimbursed at one hundred and fifty (150) percent of billed charges.

(e) Reimbursement shall follow applicable Medicare rules for multiple endoscopy discounting and multiple procedure discounting. In the event that both discounts apply to a single claim, the multiple endoscopy discount shall be applied first.

(f) Effective January 1, 2023, and each January 1 thereafter, the ASC fee schedule utilized for payment purposes shall be updated to reflect the latest January 1 Medicare ASC fee schedule published by CMS, inclusive of any applicable correction notices.

(2) Ambulatory surgical center coverage provisions shall be as established in 42 C.F.R. 416 Subpart F, including 42 C.F.R. 416.164 and 416.166. [1996 Medicare ambulatory surgical center group rates for the federal Cincinnati, Ohio – Kentucky region to reimburse for an ambulatory surgical center service. The following chart establishes the ambulatory surgical center reimbursement rate for each corresponding surgical group:

Ambulatory Surgical Center Group	Reimbursement Rate
Group 1	\$307.38
Group 2	\$412.79
Group 3	\$474.90
Group 4	\$582.25
Group 5	\$664.02
Group 6	\$775.59
Group 7	\$921.15
Group 8	\$944.55

(2) Reimbursement for a procedure shall be the surgical group rate specific to that procedure as assigned by the Centers for Medicare and Medicaid Services.

(3) Reimbursement for a procedure which does not have a surgical group rate shall be forty-five (45) percent of charges.

(4) Ambulatory surgical center group surgical and covered provisions are established in the Ambulatory Surgical Centers Manual.]

Section 3. Reproductive Services. (1) A reproductive service shall be reimbursable when performed in compliance with this administrative regulation and 42 C.F.R. Part 441 Subpart E or F, as relevant:

(2) The appropriate certification form or forms shall be completed and signed by the physician. A copy of the completed form and an operative report shall accompany each claim submitted for payment.

(3) If a sterilization is performed in conjunction with another surgical procedure and federal regulations governing payment for the sterilization have not been met, the department shall only make payment for the covered non-sterilization procedure.

(4) Claims for unilateral or laparoscopic surgical procedures that could result in sterilization shall be submitted with documentation verifying that the recipient was not sterilized as a result of the performed procedure.

Section 4. Documentation Requirements. (1) All services reimbursed by the department shall be:

(a) Medically necessary;

(b) Medically appropriate; and

(c) Related to the diagnosis or treatment of:

1. Illness;

2. Injury;

3. Impairment; or

4. Maternity care.

(2) Documentation in recipient medical records shall support necessity and substantiate the level of service billed.

(3) Medical necessity shall be determined in accordance with 907 KAR 3:130.

(4) The department shall have the authority to audit any:

(a) Claim;

(b) Medical record; or

(c) Documentation associated with any claim or medical record.

Section 5. Federal Approval and Federal Financial Participation. The cabinet's coverage and reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as relevant. [Incorporation by Reference. (1) "The Ambulatory Surgical Centers Manual", October 2002 edition, Department for Medicaid Services, is incorporated by reference.

(2) It may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

Section 6. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to this administrative regulation.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 12, 2022

FILED WITH LRC: October 12, 2022 at 3:00 p.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement rates and coverage provisions for procedures performed in ambulatory surgical centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the reimbursement rates and coverage provisions for procedures performed in ambulatory surgical centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the reimbursement rates and coverage provisions for ambulatory surgical centers as authorized by KRS 194A.030(3), 194A.050(1), and 205.560(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the reimbursement rates and coverage provisions for ambulatory surgical centers.

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

(a) How the amendment will change this existing administrative

regulation: This amendment moves certain requirements that were previously located within the ambulatory surgical centers manual into the body of the administrative regulation. The administrative regulation is further amended to update to the 2022 ambulatory surgical center fee schedule, and to establish an ongoing updating process to the most currently available ambulatory surgical center fee schedule. The administrative regulation also adds a new section relating to reproductive services. This language previously existed within the ambulatory surgical center manual and is being moved to the administrative regulation with the deletion of the manual. Another new section relating to documentation requirements is being included that contains requirements that were previously located in the Ambulatory Surgical Centers Manual. Language relating to the 1996 fee schedule is being deleted and the section relating to material incorporated by reference is also being deleted. The Amended After Comments version adds a new section that clarifies that MCOs are not required to reimburse pursuant to this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the clinical criteria established by 907 KAR 3:130.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by updating ambulatory surgical center reimbursement policies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by updating reimbursement policies and documentation requirements for services provided in ambulatory surgical centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Seventy-four (74) enrolled ambulatory surgical centers will be impacted by the amendment to the administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(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 will need to comply with documentation procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will benefit due to a process for updating and modernizing documentation and reimbursement.

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

(a) Initially: No additional expenditures are necessary to implement this amendment.

(b) On a continuing basis: No additional expenditures are necessary to implement this amendment.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish 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 C.F.R. 416 Subpart F.

(2) State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Subpart F of 42 C.F.R. 416 establishes and describes the broader categories of covered services and limitations of ambulatory surgical centers.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE

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

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

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment is expected to cost approximately an additional \$108,494 total annually, \$30,194 of which would be the state's responsibility. Estimate could vary depending on CMS updates to the fee schedule and utilization.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to cause additional costs in administering this program in subsequent years. This amendment is expected to cost approximately an additional \$108,494 total annually, \$30,194 of which would be the state's responsibility. Estimate could vary depending on CMS updates to the fee schedule and utilization.

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?

(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?

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)]

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)**

922 KAR 1:300. Standards for child-caring facilities.

RELATES TO: KRS 2.015, 13B.050, 17.165(6), 17.500(8), 189.125(3), 198B.050-198B.090, 199.011, 199.640, 199.642, 199.650, 199.660, 199.670, 211.350-211.380, 214.034(5), Chapter 271B Subtitle 8, 273.161(7), Chapter 424, 600.020(23), 605.080(3), 605.090(1), 610.110(6), 615.010, 615.030, 615.040, 620.020, 620.030, 620.090(2), 620.140(1), 620.230(3), 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5), 199.645, 605.150, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.640(5) requires the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. KRS 615.050 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 615. This administrative regulation establishes basic standards of care and service for child-caring facilities.

Section 1. Definitions. (1) "Aftercare" means a service provided to a child after discharge from a child-caring facility.

(2) "Board of directors" is defined by KRS 273.161(8).

(3) "Cabinet" is defined by KRS 199.011(3).

(4) "Case" means an individual child or family being provided services by a child-caring facility social worker or counselor.

(5) "Chemical restraint" means a drug used as a restraint that is a medication used to control behavior or to restrict the patient's freedom of movement and is not a standard treatment for the patient's medical or psychiatric condition.

(6) "Child" is defined by KRS 199.011(4) and 600.020(9) and may include:

(a) 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

(b) A person who meets the exceptions to the age of majority in accordance with KRS 2.015.

(7) "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).

(8) "Child-caring facility" is defined by KRS 199.011(5).

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

(10) "Child-caring program" means the method of delivering a child-caring service.

(11) "College or university" means:

(a) An institution accredited by one (1) of the 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.

(12) "Community resource" means a service or activity available in the community that supplements those provided by the child-caring facility or child-placing agency in the care and treatment of a child.

(13) "Corporal physical discipline" means reasonable physical discipline in accordance with KRS 199.640(6).

(14) "Crisis intervention unit" means a unit that serves a child in need of short-term intensive treatment, to avoid risk of placement to a higher level of care.

(15) "De-escalation plan" means a treatment method used to decrease the intensity of emotional conflict or aggressive behavior.

(16) "Direct child-care staff" means a child-caring facility employee or volunteer providing face-to-face care and supervision of a child.

(17) "Discharge" means a planned release of a child from a child-caring facility program.

(18) "Emergency discharge" means the release of a child from a program as a result of a circumstance that presents a risk to the health or safety of a child.

(19) "Emergency shelter child-caring facility" means a child-caring facility that meets the requirements of 922 KAR 1:380.

(20) "Executive director" means the person employed by the board of directors to be responsible for the administration and management of a child-caring facility.

(21) "Group home" is defined at KRS 199.011(11).

(22) "Independent living services" means services provided to an eligible child, as described in Section 11[8] of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently.

(23) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(24) "Indoor living area" means an area in the child-caring facility that is separate from a hallway, bedroom, kitchen, stairway, vestibule, bathroom, closet, unfinished basement, or attic.

(25) "Institution" is defined by KRS 199.011(12).

(26) "~~Latched seclusion~~[Latching device]" means an instrument is used to secure a seclusion room door that does not require the use of a key or combination.

(27) "Living unit" means a building or part thereof in which a child resides, not exceeding sixteen (16) beds.

(28) "Permanence" is defined by KRS 620.020(9).

(29) "Physical management" means a technique used by a specially-trained staff member for the purpose of restricting a child's freedom of movement in order to maintain a safe environment for the child and others.

(30) "Qualified mental health professional" is defined by KRS 600.020(52).

(31) "Qualified professional in the area of intellectual disabilities" is defined by KRS 202B.010(12).

(32) "Reasonable and prudent parenting standards" is defined by 42 U.S.C. 675(10).

(33) "Seclusion" means the temporary placement of a child in a room in a residential treatment facility to prevent harm to the child or others.

(34) "Sex crime" is defined by KRS 17.500(8).

(35) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his social environment.

(36) "Time-out" means a treatment intervention utilized by child-caring staff to separate a child from others in a non-secure area for a time-limited period, in order to permit the child to regain control over his behavior.

(37) "Treatment" means individualized management and

care of a child, utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving his or her emotional conflict or behavioral disorder.

(38)[(37)] "Treatment director" means an individual who oversees the day-to-day operation of the treatment program.

(39)[(38)] "Treatment professional" means an individual with the following credentials or an individual with a master's degree in a human services field practicing under the direct supervision of an individual with the following credentials:

- (a) A licensed psychiatrist;
- (b) A certified or licensed clinical psychologist;
- (c) A licensed clinical social worker;
- (d) A licensed marriage and family therapist;
- (e) A licensed professional clinical counselor;
- (f) A licensed professional art therapist;
- (g) A licensed clinical alcohol and drug counselor; or
- (h) A licensed behavior analyst.

(40)[(39)] "Treatment team" means a representative group of people who provide services to the child and the child's family.

(41)[(40)] "Unplanned discharge" means the release of a child from the child-caring facility that is not in accordance with the ITP.

Section 2. Operations and Services. (1) This administrative regulation establishes standards for the following child-caring facilities:

- (a) An emergency shelter child-caring facility, also governed by 922 KAR 1:380;
 - (b) An emergency shelter child-caring facility with treatment, also governed by 922 KAR 1:380, Section 3;
 - (c) A residential child-caring facility, including:
 - 1. A group home; and
 - 2. An institution; and
 - (d) A residential treatment program, including:
 - 1. A crisis intervention unit;
 - 2. A group home; and
 - 3. An institution.
- (2) Except for a child-caring facility maintaining a license prior to October 16, 2000, a child-caring facility shall not be located or operated on the grounds of a psychiatric hospital.

Section 3. Administration and Operation. (1) The licensing procedure for a child-caring facility shall:

- (a) Be administered as established in 922 KAR 1:305; and
 - (b) Based upon the services provided, meet the requirements of this administrative regulation, 922 KAR 1:290, and 922 KAR 1:380.
- (2) Board of directors.
- (a) The child-caring facility shall have a board of directors in accordance with KRS Chapter 271B, Subtitle 8.
 - (b) The board of directors shall:
 - 1. Consist of at least seven (7) members;
 - 2. Meet at least quarterly;
 - 3. Cause minutes of each meeting to be taken and kept in written form;
 - 4. Have the authority and responsibility to ensure continuing compliance with this administrative regulation and other relevant federal, state, and local law;
 - 5. Have procedures in place to ~~ensure~~insure that its staff receives ongoing training as defined in subsection (6)(o) of this section;
 - 6. Obtain a ~~background~~criminal records check consistent with KRS ~~199.642~~ and 922 KAR 1:290~~[47-165]~~ of prior convictions of the executive director prior to employment; and
 - 7. Approve a mission statement delineating:
 - a. The purpose;
 - b. Objective; and
 - c. Scope of service to be provided.
 - (3) Executive director.
 - (a) Duties of the executive director shall be determined by the board of directors.
 - (b) The executive director shall be responsible for the child-caring facility and its affiliates in accordance with the child-caring

facility's written policy.

(c) If the executive director is not on the premises and not available to make decisions, a designated staff person shall be responsible for the day-to-day operation of the child-caring program.

(d) The executive director shall oversee and report to the board on a quarterly basis, providing an evaluation of program services addressing measurable goals, staff training, and incident reports.

(e) The criteria and process of the quarterly evaluation shall be approved by the board.

(4) Staff qualifications.

(a) A person employed as an executive director after the effective date of this administrative regulation shall possess the following qualifications:

- 1. A master's degree in business administration or a human services field from a college or university, supplemented by two (2) years of work experience in or management of a human services program related to working with families and children; or
- 2. A bachelor's degree in a human services field from a college or university, supplemented by four (4) years' work experience in management of a human services program related to working with families and children.

(b) A treatment director or person employed by the child-caring facility in a position responsible for supervising, evaluating, or monitoring social work and related activities shall:

- 1. Hold at least a master's degree in a human service discipline; and
- 2. Have at least five (5) years' experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for the:
 - a. Supervision;
 - b. Evaluation; and
 - c. Monitoring of the:
 - (i) Treatment program;
 - (ii) Social work; and
 - (iii) Other treatment staff.

(c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(d) A residential child-caring facility providing a treatment service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director, if at least fifty (50) percent of his duties are spent supervising the treatment program. If an employee serves as both executive director and treatment director, the higher staff qualification requirements shall apply.

(e) An employee responsible for social work, counseling, or planning and coordinating these services for a child shall have at least a bachelor's degree in a human services field from a college or university.

(f) A person employed in a position responsible for supervising, evaluating, or monitoring the daily work of direct child-care staff shall possess at least:

- 1. Two (2) years of education from a college or university and two (2) years of work experience in a child-caring facility; or
- 2. A high school diploma, or an equivalence certificate, and at least five (5) years of work experience in a child-caring facility.

(g) A person employed in a position responsible for the daily direct care or supervision of a child shall possess at least a high school diploma or equivalency certificate.

(h) If an employee is responsible for varied job responsibilities and falls within more than one (1) of the categories specified, the employee shall meet the more rigorous qualifications.

(i) A child-caring facility contracting for the services of a social worker or treatment director not on the staff of the child-caring facility shall document that the social worker or treatment director meets the qualifications established in paragraphs (b) and (e) of this subsection. An agreement for provision of service shall be on file at the child-caring facility, and shall specify the qualifications of the social worker or social services professional.

(5) Staffing requirements.

(a) The child-caring facility shall have:

- 1. A written policy describing a child-to-direct-child-care-staff ratio that is consistent with the staff-to-child ratios required in

paragraph (b) of this subsection; and

2. An explanation of the assignment of staff in order to:
 - a. Ensure the health and safety of a child; and
 - b. Implement the child-caring program.

(b) Staff-to-child ratios for each type of facility shall be as follows:

1. An emergency shelter child-caring facility: one (1) staff member to ten (10) children at all times.
2. An emergency shelter child-caring facility with treatment: one (1) staff member to six (6) children at all times.
3. A residential child-caring facility:
 - a. One (1) staff member to ten (10) children age six (6) and over; and
 - b. One (1) staff member to five (5) children under age six (6).
4. A residential child-caring facility with treatment:
 - a. One (1) staff member to six (6) children; and
 - b. One (1) staff member to twelve (12) children during sleeping hours.
5. A crisis intervention unit:
 - a. One (1) staff member to four (4) children; and
 - b. One (1) staff member to six (6) children during sleeping hours.
6. A group home:
 - a. One (1) staff member to four (4) children; and
 - b. One (1) staff member to accompany a child while away from the home.
7. An institution: one (1) staff member to ten (10) children.

(c) There shall be at least one (1) staff member present in each child-caring facility building if a child is present.

(d) At least one (1) staff member certified in first aid and cardiopulmonary resuscitation shall be on the premises, if a child is present.

(e) The child-caring facility shall have a written work schedule and a policy that provides for utilization of relief staff.

(f) The child-caring facility shall employ an individual who is responsible for the overall planning and coordinating of social services for a family and child.

(g) Social services staff shall not carry a caseload of more than fifteen (15) children and their families.

(6) Personnel policy.

(a) A child-caring facility shall have and comply with a written personnel policy and procedure.

(b) An employee of the child-caring facility shall be at least eighteen (18) years of age and, effective July 1, 2022, newly-hired direct care staff shall be at least twenty-one (21) years of age unless the agency has an agreement with a college or university to employ students.

(c) The employment of an individual shall be governed by KRS 199.642 and 922 KAR 1:290[17.165], with regard to a background[criminal records] check.

(d) A new background[criminal record] check shall be completed at least every ten (10)[two (2)] years pursuant to 922 KAR 1:290 on each staff member, as defined by KRS 199.642(1)[employee or volunteer].

~~(e) [An employee under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with all children within the child-caring facility until the employee is cleared of the charge.]~~

~~(f) Each employee or volunteer shall submit to a check of the central registry pursuant to 922 KAR 1:470. An individual listed on the central registry shall not be a volunteer at or be employed by a child-caring facility.~~

(g) Each licensee shall report to the cabinet and each child-caring facility employee or volunteer shall report to the licensee or facility's director, an incident that occurs subsequent to the most recent background[central registry] check, if the employee or volunteer:

1. Is the subject of a cabinet child abuse or neglect investigation;
2. Has been found by the cabinet or a court to have abused or neglected a child; or
3. Has been indicted for or charged with a violent or sex crime as defined in KRS 17.165.

~~(f)(h) An individual shall not be left alone in the presence of any child if a central registry check has not been completed.~~

~~(i) Determination by the cabinet of risk of potential harm by an employee to a child in a child-caring facility shall result in:~~

1. Investigation of the employee for evidence of child abuse or neglect; and
2. The removal of the employee from direct contact with all children:

a. For the duration of the investigation or until 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; and

b. If substantiated and appealed, pending completion of the administrative appeal process in accordance with 922 KAR 1:320;

~~(g)(j)~~ A current personnel record shall be maintained for each employee that includes the following:

1. Name, address, Social Security number, date of employment, and date of birth;
2. Evidence of a current registration, certification, licensure, and college credentials, if required by the position;
3. Record of ongoing participation in an agency staff development program as specified in paragraphs (n) and (o) of this subsection;
4. Record of performance evaluation;
5. Background[Criminal records] check as required by paragraph (c) of this subsection;
6. ~~[Documentation of a central registry check completed every two (2) years in accordance with 922 KAR 1:470;~~
7. ~~Personnel action; and~~
8. ~~Application for employment, resume, or contract.~~

~~(h)(k)~~ A child-caring facility shall retain an employee personnel record for at least five (5) years after termination of employment.

~~(i)(l)~~ An employee shall document compliance with a requirement for meeting state or national professional standards, as set forth in the job description.

~~(j)(m)~~ The child-caring facility shall have a record of participation and successful completion of an ongoing staff and volunteer development program.

~~(k)(n)~~ The staff development program shall be under the supervision of a designated staff member; and

~~(l)(o)~~ Full-time direct child care staff shall have at least forty (40) hours, and part-time direct child care staff shall have at least twenty-four (24) hours, of training specific to the tasks to be performed and of annual training in the following:

1. Emergency and safety procedure;
2. Principle and practice of child residential care;
3. Behavior management, including de-escalation training;
4. Physical management for a child-caring facility using the technique;
5. First aid;
6. Personnel orientation; and
7. Trauma-informed care.

~~(m)(p)~~ A volunteer who functions as a professional or direct staff member without compensation shall meet the same general requirements and qualifications.

~~(n)(q)~~ A child-caring facility using physical management shall:

1. Develop and maintain clearly-written policy and procedure governing the use of physical management of a child, including a requirement for a de-escalation plan, in accordance with Section 8(3) of this administrative regulation;

2. Require a staff member who conducts physical management to complete at least sixteen (16) hours of annual training in approved methods of de-escalation and physical management from a nationally-recognized accreditation organization approved by the cabinet, as part of the annual training required by paragraph ~~(l)(o)~~ of this subsection, to include:

- a. Assessing physical and mental status, including signs of physical distress;
- b. Assessing nutritional and hydration needs;
- c. Assessing readiness to discontinue use of the intervention; and
- d. Recognizing when medical or other emergency personnel

are needed.

(o)(4) The program director shall review and analyze instances of physical management in order to:

1. Assure compliance with Section 5(2)(f) through (h) of this administrative regulation and the child-caring facility policy;
2. Provide documentation of a plan of action to prevent injury to a child or staff as a result of the use of physical management; and

3. Review each incident no later than one (1) working day after its use.

(p)(5) A child-caring facility shall develop and maintain clearly written policies and procedures governing professional boundaries for an employee or volunteer working with children.

(q)(4) A child-caring facility shall develop and maintain clearly written policies and procedures governing smoking prohibitions, in accordance with 20 U.S.C. 7183 and 922 KAR 2:120, Section 3(10).

(7) Interstate placement.

(a) Before accepting a child from another state or placing a child in another state, the child-caring facility shall be in compliance with:

1. Applicable provisions of the Interstate Compact on Placement of Children, KRS 615.030 or 615.040; and
2. The Interstate Compact for Juveniles, KRS 615.010.

(b) If a child committed to the cabinet makes a brief visit out of state for age- or developmentally-appropriate activities, not accompanied by child-caring facility personnel, the child-caring facility shall employ reasonable and prudent parenting standards for careful and sensible parental decisions that maintain the health, safety, and best interests of the child prior to determining whether to allow the child to participate in extracurricular, enrichment, cultural, and social activities.

(c) If an emergency placement of a child into a licensed child-caring facility is made, the placement source shall be responsible for compliance with KRS 615.030 to 615.040. If the receiving child-caring facility is aware of noncompliance by the placement source, the child-care facility shall notify the cabinet's interstate compact coordinator.

(8) Record retention. A child-caring facility shall:

(a) Retain all records, books, and reports related to financial conditions and status for auditing purposes for a minimum of five (5) years; and

(b) Make available all books, records, and financial information for review, inspection, auditing, and photocopying by the cabinet or cabinet designee, authorized federal and state agency reviewers and auditors.

(9) A residential child-caring facility shall become accredited by a nationally recognized accreditation organization within two (2) years of initial licensure.

Section 4. Physical Plant. (1) A child-caring facility shall comply with applicable state and local law relating to:

- (a) Construction;
- (b) Sanitation; and
- (c) Building maintenance.

(2) The child-caring facility shall conform to the Kentucky Standards of Safety in accordance with 815 KAR 10:060.

(3) A climate control system shall be provided as follows:

(a) A minimum temperature of sixty-five (65) degrees Fahrenheit maintained in occupied areas in cold weather conditions;

(b) In warm weather conditions and periods of extreme heat, an occupied area shall be properly ventilated;

(c) If not air-conditioned and the temperature in an occupied area exceeds eighty-five (85) degrees Fahrenheit, the child-caring facility director shall assure that the following occurs:

1. A fan is utilized to circulate air;
2. The child-caring facility is properly ventilated to outside air;
3. Ice water is readily available and served to residents; and
4. Staff frequently monitor residents for a sign or symptom of a heat-related illness.

(4) The water supply shall be from an approved source and easily available from the following:

- (a) Drinking fountain;

(b) Refrigerator; or

(c) Cold water tap.

(5) The plumbing and waste disposal systems shall comply with applicable provisions of the Uniform State Building Code, KRS 198B.050, and with laws regarding on-site sewage disposal, KRS 211.350 to 211.380, if applicable.

(6) Housekeeping and maintenance service.

(a) The building and its content shall be maintained in a clean and safe condition and in good repair.

(b) A maintenance plan shall be implemented.

(c) The child-caring facility shall ensure that the grounds and outdoor equipment are well kept and the exterior of the building is in good repair.

(d) The interior of the building and its contents shall be in good repair.

(e) Garbage and trash shall be:

1. Stored in an area separate from those used for the preparation and storage of food;

2. Removed from the premises regularly; and

3. Placed in a container that is cleaned regularly.

(f) Insecticides, pesticides, and chemical poisons shall be plainly labeled and stored in a secure, locked area. Access shall be given to:

1. The facility's maintenance personnel; and

2. A pest control company with which the facility has a contract.

(7) Bedroom.

(a) A bedroom shall be:

1. Of adequate size to permit at least three (3) linear feet between each bed or set of bunk beds; and

2. Constructed to allow no more than four (4) residents per room.

(b) A bedroom for a child above age three (3) shall be equipped with an individual bed for each child that shall be:

1. Long and wide enough to accommodate the child's size;

2. Developmentally appropriate for the child; and

3. Equipped with a support mechanism and a clean mattress.

(c) A bed occupied by a child shall be placed so that the child shall not experience discomfort because of:

1. Proximity to a radiator or heat outlet; or

2. Exposure to drafts.

(d) Siblings may share sleeping quarters, including siblings over the age of five (5) if indicated in an ITP.

(e) Storage space shall be provided for each child to accommodate his or her personal belongings in a:

1. Closet and drawers; or

2. Closet for the child's exclusive use and shelves within the closet.

(f) A child shall not be housed in a room, detached building, or enclosure that has not previously been inspected and approved for resident use.

(g) A child shall be provided with clean bed linens, laundered at least once a week, and a waterproof mattress covering.

(h) An exception to this subsection shall be documented with clear safety reasons for the exception and there shall be a written safety plan in place for the duration.

(8) Indoor living area. An indoor living area shall have:

(a) At least thirty-five (35) square feet per child; and

(b) Comfortable furnishings adequate for the number of children served.

(9) Bathroom.

(a) For every six (6) children residing in the living unit, a living unit shall have a minimum of:

1. One (1) wash basin with hot and cold water;

2. One (1) flush toilet; and

3. One (1) bath or shower with hot and cold water.

(b) A child shall be provided with access to:

1. Toilet paper;

2. Towels;

3. Soap; and

4. A wastebasket.

(c) Each bathtub and shower shall have an enclosure or screen for individual privacy. If more than one (1) toilet is located in

the same bathroom, each toilet shall:

1. Be partitioned; and
2. Include a door capable of remaining closed.

(d) A bathroom shall contain at least one (1) nondistorting mirror secured to the wall at a convenient height.

(10) The use of cameras to monitor youth bedrooms and bathrooms is prohibited except with the written consent of the director of the Division of Protection and Permanency or designee. A request for exception to this subsection shall include the reason for the request that relates to an immediate safety issue for the youth.

Section 5. Health, Safety, and Nutritional Requirements. (1) Health.

(a) A child-caring facility shall have written policy and procedure for health and medical care, to include provisions for:

1. The care and disposition of an ill child; and
2. Emergency care.

(b) The service of a physician, or other licensed qualified health professional, shall be made available to a child. If the service of a licensed physician or other professional is not available in the community, the child-caring facility shall request the assistance of the:

1. County health department; or
2. The Department for Public Health.

(c) Staff shall follow licensed physician orders for:

1. Medicine;
2. Prescription; and
3. Medical care.

(d) Except for a weekend or holiday, within forty-eight (48) hours of admission to a child-caring facility, a child shall have:

1. An initial health screening for illness, injury, and communicable disease or other immediate needs, by a nurse or trained child-care staff;

2. After the initial health screening, a physical examination by a licensed physician or a qualified person under the supervision of a licensed physician, within two (2) weeks of admission, unless it has been documented that the child has received an examination during the past twelve (12) months; and

3. The examining professional shall report, in writing, observations and findings including:

- a. Developmental history of the child, illnesses, operations, and immunizations if available to the professional;
- b. A limitation the child may have that may prevent participation in an activity scheduled by the child-caring facility;
- c. Visual and auditory examination results;
- d. Recommendation and order for future care, treatment, and examinations;
- e. TB skin test results, unless contraindicated by a qualified person under the supervision of a licensed physician; and
- f. Other tests for communicable disease as indicated by the medical and social history of the child.

(e) An annual physical examination shall be scheduled and documented as required by paragraph (d)3. of this subsection.

(f) Upon admission, the child-caring facility shall consult with a physician, or other licensed qualified health professional, if there is evidence that the child may require medical attention.

(g) The child-caring facility shall develop a procedure for a child requiring a specific provision for an infectious medical condition.

(h) A separate health record shall be maintained for each child, kept on the premises, and be made available to a:

1. Physician;
2. Nurse; or
3. Designated staff member.

(i) The health record shall contain the following:

1. Copy of each physical examination, including any recommendations for treatment;
2. Previous and continuing health and medical history, if available;
3. Record or report of each test, immunization, periodic reexamination, and physician order and instruction;
4. Report and date of each dental examination and treatment;

5. Authorization for regular and emergency medical, dental, and surgical care, signed at admission by the legal custodian;

6. Documentation of medication administered to the child; and

7. Documentation of a special provision made for the child in accordance with a physician's order.

(j) A child's medical need shall be provided for as recommended by a licensed physician or other licensed qualified health professional.

(k) The facility shall keep an immunization certificate on file for each child, in accordance with KRS 214.034(5).

(l) If a child dies while in the care of a child-caring facility or in a home operated or supervised by the child-caring facility:

1. The child-caring facility shall immediately notify the:

- a. County coroner;
- b. Child's parent;
- c. Guardian or custodian; and
- d. Cabinet staff;

2. A verbal report of the death shall be made immediately to the Commissioner of the Department for Community Based Services;

3. A written comprehensive report from the executive director outlining the incident shall be forwarded to the Office of the Commissioner, Department for Community Based Services, on the next working day following the verbal report; and

4. If a child's death occurred as a result of alleged abuse or neglect, the executive director of the child-caring facility shall make verbal and written reports as required by KRS 620.030(1) and (2).

(m) Upon discharge, medical information shall follow the child if a release form has been obtained.

(n) Unless a dental examination has been performed in the six (6) months preceding admission, the child-caring facility shall document within one (1) week after a child's admission a scheduled dental examination within thirty (30) days or the reason the dental examination was not obtained within the timeframe. The facility shall ensure the treatment of emergency dental needs by a licensed dentist as they arise.

(o) A child age two (2) years and above shall be examined at least annually by a licensed dentist.

(p) The child-caring facility shall:

1. Document the information required by this subsection; and
2. Assure the confidentiality of the information.

(q) The child-caring facility shall maintain a continuous program of personal hygiene.

(r) Medication shall be stored in a manner that is inaccessible to a child.

(s) A child-caring facility that accepts placement of a child with medical complexity shall:

1. Consult with the cabinet medically complex liaison about the child prior to accepting the placement;

2. Obtain written documentation from a licensed health care provider stating that the direct care staff has received training on meeting the specific needs of the child prior to placement;

3. Submit to the cabinet medically complex liaison written documentation containing the plan to meet the child's specific medical needs based on the licensed health care provider's plan of care and the training required by subparagraph 2. of this paragraph prior to placement;

4. Ensure that the facility is located within one (1) hour of a medical hospital with an emergency room and within thirty (30) minutes of a local medical facility; and

5. Require designated staff to have attended the cabinet training on children with medical complexity.

(2) Safety.

(a) A child shall be instructed in fire prevention, safety, and fire emergency procedures.

1. The child-caring facility shall maintain and post a current, written emergency fire evacuation plan and diagram to include:

- a. An evacuation route and procedure; and
- b. The location of fire extinguishers.

2. Emergency drills shall be performed quarterly and documented for each of the following emergency events;

- a. Fire;
- b. Tornado or severe thunderstorm warning; and

c. Flash flood, if applicable.
3. An emergency plan shall designate a suitable shelter in the event of an emergency.

(b) A child-caring facility with a swimming pool shall be staffed with a certified lifeguard in accordance with 902 KAR 10:120, Section 13.

(c) Donated home processed foods shall be prohibited.

(d) Transportation.

1. If transportation is provided directly, contracted for, or arranged, a child-caring facility shall require:

a. Compliance with state laws pertaining to vehicles, drivers, and insurance;

b. A seat for each child and that the child remain seated while the vehicle is in motion;

c. A seat belt be used to secure the child;

d. A vehicle used to transport a child off campus to provide a seat for each passenger as manufactured standard equipment;

e. That a child never be left unattended in a vehicle; and

f. Compliance with KRS 605.080(3) pertaining to court-ordered transportation.

2. The maximum number of children a driver shall supervise alone is four (4).

3. A child under the age of eight (8) who is less than fifty-seven (57) inches tall shall not be transported unless restrained in a safety seat that meets the requirements established in KRS 189.125(3).

4. A vehicle shall not pick up and deliver a child under the age of six (6) to a location that requires the child to cross a street or highway unless the child is accompanied by an adult.

5. If transportation is provided by a means other than licensed public transportation:

a. The vehicle shall be maintained in a safe mechanical and operable condition;

b. A thorough inspection of the vehicle shall be made and documented by a qualified mechanic at least annually; and

c. If the driver is not in his seat, the motor shall be turned off, keys removed, and brake set.

(e) A child with a history of aggressive behavior or sexual acting-out shall be assessed by the treatment team to ensure the safety of the child and other children in the facility, including sleeping arrangements, with the appropriate safety measures included in the child's ITP.

(f) If a child-caring facility accepts for placement a child who has been committed to the Department of Juvenile Justice for the commission of a sex crime, the child-caring facility shall have written policies and procedures for the segregation of the child from a child committed to the cabinet in accordance with KRS 605.090(1), 620.090(2), and 620.230(3).

1. Segregation shall include sight and sound separation of a child committed to the Department of Juvenile Justice from a child committed to the cabinet for the following functions within the facility or activities supervised by the facility:

a. Sleeping;

b. Personal hygiene; and

c. Toiletry.

2. During other functions within the facility or activities supervised by the facility, segregation shall include separation of a child committed to the Department of Juvenile Justice from a child committed to the cabinet to prohibit any physical contact and verbal communication between the children.

(g) Physical management shall be used in an emergency or a crisis situation only:

1. After attempts to de-escalate the situation have been made;

2. By trained staff; and

3. To prevent:

a. A child from injury to self or others; or

b. Serious property damage.

(h) Physical management shall not be used for:

1. Punishment;

2. Discipline;

3. The convenience of staff;

4. Forced compliance;

5. Retaliation; or

6. A substitute for appropriate behavioral support.

(i) Physical management shall be discontinued if a child displays adverse side effects including:

1. Illness;

2. Severe emotional or physical stress; or

3. Physical damage.

(3) Nutritional requirements.

(a) A child shall be served meals that:

1. Meet the nutritional guidelines of the U.S. Department of Agriculture that include foods from the five (5) basic food groups; and

2. Satisfy the quantity required to meet the needs of each child as to age, activity, and prescribed diet or ITP.

(b) A child shall be encouraged to eat the food served, but shall not be subjected to coercion.

(c) An order for a modified diet from a licensed physician shall be followed by the child-caring facility.

(d) A menu shall be planned at least one (1) week in advance, dated, posted, and kept on file for one (1) year.

(e) With the exception of a child receiving a meal at school, three (3) meals a day shall be provided at regular intervals and, except for weekends and holidays, no more than fourteen (14) hours shall lapse between the evening meal and morning meal.

1. A nourishing snack shall be provided and:

a. May be part of the daily food needs;

b. Shall not replace a regular meal; and

c. Shall be recorded on the menu.

2. A meal shall be scheduled at set times each day so that at least one (1) hot meal a day is not hurried, allowing time for conversation.

3. Food, or withholding of food, shall not be used as a punishment.

4. Only pasteurized milk and milk products, and U.S. government inspected meat shall be served to a child.

5. Food shall be prepared to preserve nutritive value and heighten flavor and appearance.

6. The same food shall be served to children under care and to staff members, unless a food is not suitable for a person because of:

a. The person's age;

b. A dietary restriction; or

c. A religious preference.

(f) Table service shall be provided for a child capable of eating at a table.

1. Tables and chairs shall be:

a. Of a height that corresponds to the size of the child served; and

and

b. Constructed of material that can be easily sanitized.

2. A child who has not had an opportunity to learn how to handle food with the usual table service shall be managed in a way that he shall not be embarrassed or subjected to ridicule.

(g) A written report of a food inspection by municipal, county, or federal authorities shall:

1. Be kept on file at the child-caring facility; and

2. Meet local, state, and federal regulations.

(h) If a child-caring facility subcontracts a food service, applicable federal and state administrative regulations shall apply.

Section 6. General Requirements. (1) An incident of suspected child abuse or neglect, human trafficking, or female genital mutilation shall be reported as required by KRS 620.030.

(2)(a) The facility shall, with regard to suspected child abuse or neglect by an employee:

1. Document each incident;

2. Keep each incident document on file; and

3. Make the files accessible to the cabinet.

(b) A child shall not be exploited for promotional purposes, or in a manner that shall cause the child or family to suffer discomfort or embarrassment.

(c) Except as indicated in paragraph (d) of this subsection, a child shall not be used personally for a fund-raising purpose for the child-caring facility.

(d) If a picture, slide, recording, or other private, personal effect

of a child is used in fund-raising or promotional effort of a child-caring facility, written permission shall be obtained from:

1. A parent or guardian; or
2. An authorized:
 - a. Representative of the cabinet;
 - b. Representative of the Department of Juvenile Justice; or
 - c. Legal representative.

(3) For an activity conducted away from a child-caring facility, the facility shall:

- (a) Safeguard the health and safety of the children during the activity;
- (b) Have a written policy and procedures governing the activity;
- (c) Maintain staff-to-child ratios in accordance with Section 3 of this administrative regulation; and

(d) Provide transportation in a manner that complies with Section 5(2)(d) of this administrative regulation.

(4) Clothing and personal possessions.

(a) Through agreement with the child's legal custodian, the child-caring facility shall provide a child with clothing and footwear that is clean, well-fitting, and seasonal.

(b) A child shall be provided individual articles of personal hygiene.

(c) The child-caring facility shall allow a child to have personal belongings and property consistent with this administrative regulation and child-caring facility policy.

(5) A child's money.

(a) The child-caring facility shall have written policy and procedure relating to money belonging to a child.

(b) A child shall have access to information regarding the balance of the child's fund.

(c) Within thirty (30) days of discharge, funds belonging to a child shall be transferred with or returned to the child.

(6) Visitation and communication shall include:

(a) Written policy on visitation and communication;

(b) An arrangement for visitation that is not in conflict with the ITP;

(c) Documentation of each visit in the case record; and

(d) Access to a telephone to make and receive a telephone call consistent with the child's ITP, current court orders, and the facility's child-caring policy.

(e) Allowing a child to contact cabinet staff by telephone within twenty-four (24) hours of the request of the child.

(7) Religion, culture, and ethnic origin.

(a) Facility policy shall demonstrate consideration for and sensitivity to:

1. The racial, cultural, ethnic, and religious background of a child in care; and

2. Availability of activities appropriate to the child's cultural or ethnic origin.

(b) With the exception of a religious practice that is destructive towards property or places a child or others in physical danger, an opportunity shall be provided for a child to:

1. Practice the religious belief and faith of the child's individual or family preference; and

2. Participate in a religious activity without coercion.

(8) Education.

(a) If a child-caring facility operates its own school program, it shall have written policy and procedure regarding the development and implementation of the educational program. The policy and procedure shall include:

1. School attendance;
2. Teaching staff;
3. School records;
4. Educational supplies and equipment;
5. Individual educational plans; and
6. Use of a community school.

(b) A child-caring facility shall ensure that a child attends an accredited educational program the number of days required by law.

(c) A child shall be enrolled in an accredited educational program within one (1) week of admission.

(d) A school-age child ineligible or unable to attend an accredited school shall have an educational program specific to the

individualized need of the child that may include a General Education Diploma or vocational training.

(e) If a child-care facility operates an educational program, maintenance of school records shall comply with state law and administrative regulations of the educational body having jurisdiction.

(f) The child-caring facility shall provide a quiet area and designated time for study.

(9) Work and chore assignment.

(a) An assigned chore or work assignment shall not place the child in physical danger.

(b) A chore assignment shall be posted within the child's living quarters.

(c) A child may be given a job in compliance with child labor laws for which he or she receives payment that shall be clearly differentiated from a chore expected of him to be completed in relation to the routine of daily living.

(d) A work assignment outside of a daily routine chore at the child-caring facility shall not be used as a form of punishment. An additional chore assignment beyond what is regularly assigned to a child may be:

1. Performed as restitution for intentional property damage made by the child; or

2. Given to a child for violation of a child-caring facility rule upon mutual agreement between the child and supervisory child-caring staff without the child being coerced to enter into an agreement.

(e) A child shall be given a rest period of at least ten (10) minutes during each hour worked.

(f) Use of a child to perform a chore or work assignment shall not negate the child-caring facility's ultimate responsibility for the maintenance of the child-caring facility nor the employment of staff sufficient to maintain the child-caring facility.

(10) Discipline.

(a) A child-caring facility shall have written policy and procedure governing disciplinary action.

(b) Discipline shall be:

1. Utilized as an educational tool and be related to the child's actions initiating the disciplinary process; and

2. Consistent with the child's ITP and in response to the child's lack of control or misbehavior.

(c) A group of children shall not be punished due to the misbehavior of one (1) or more individual group members.

(d) The following practices shall not be allowed:

1. Cursing;
2. Screaming;
3. Name calling;
4. Threatening of physical harm;
5. Intimidation;
6. Humiliation;
7. Denial of food or sleep;
8. Corporal physical discipline, except in accordance with KRS 199.640(6);
9. Hitting;
10. Unnecessarily rough handling;
11. Other physical punishment; or
12. Denial of visitation with family or custody holder as punishment.

(e) With the exception of a parent disciplining a child, a child shall not directly discipline another child.

(f) Handcuffs, weapons, mechanical restraints, chemical restraints, or other restraint devices shall not be used.

(g) A child placed in a time-out area shall be:

1. In sight or hearing of staff; and
2. Checked by staff at least every five (5) minutes until it is determined the child is ready to continue normal activity.

Section 7. Child-caring Program Services. (1) Admissions and intake.

(a) The child-caring facility shall have clearly defined written policy and procedure for an admission that identifies the age, sex, and detailed description of the type of child served.

(b) Acceptance of a referral shall be based on the assessment

that the child's need is one that:

1. The service of the child-caring facility is designed to address; and

2. Cannot be met in a less restrictive setting.

(c) The child-caring facility shall not accept into care a child for whom a service cannot be provided based on the child-caring program's mission statement and its available resources.

(d) The child-caring facility shall have a written placement agreement with the child's custodian.

(e) The child-caring facility shall conduct a:

1. Preadmission interview with the child; or

2. Screening of the child's available information, if a preadmission interview is not possible due to an emergency placement.

(f) The following information regarding the child shall be obtained by the child-caring facility from the child's custodian during intake, or it shall be documented that the information was requested and not available:

1. Commitment order or signed voluntary admission form;

2. Verification of birth;

3. Immunization record; and

4. Social history and needs assessment that includes medical, educational, developmental, and family history.

(g) A written consent pertaining to the child's care shall be obtained from the child's custodian for:

1. Photograph, video, and audio tape;

2. Emergency and routine medical care; and

3. Release of case record information.

(h) Before admission, the child and custodian shall be informed in writing of their rights and the child-caring facility's responsibilities, including policy pertaining to services offered to the child.

(i) A child shall be informed upon admission of the right to file a grievance.

(j) Upon admission, the child shall be oriented to life at the child-caring facility, including rules and consequences for violation of the rules.

(2) Casework planning.

(a) The child-caring facility shall have written policy and procedure for the ITP process including:

1. Assessment;

2. Assignment;

3. Designation of a case coordinator; and

4. Development, implementation, and evaluation of the ITP and family involvement.

(b) An initial assessment shall be completed by designated staff within twenty-four (24) hours of admission to include:

1. Identifying information;

2. Presenting problem;

3. History (developmental, social, emotional health, education); and

4. Current level of functioning including strengths and weakness.

(c) An initial ITP shall be developed by designated staff and implemented within twenty-four (24) hours of admission.

(3) Comprehensive assessment and treatment plan.

(a) A comprehensive emotional and behavioral assessment of a child shall be completed by the treatment team and entered in the case record within twenty-one (21) days of admission, including the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;

2. The child's current emotional, behavioral, and developmental functioning, including strengths and weakness;

3. A psychiatric or psychological evaluation if recommended by the treatment team;

4. Other functional evaluation of language, self-care, social effectiveness, and visual-motor functioning, if recommended by the treatment team;

5. Social assessment that includes:

a. Environment and home;

b. Religion;

c. Ethnic group;

d. Developmental history;

e. Family dynamics and composition; and

f. Education; and

6. Recommendation for provision of treatment.

(b) A coordinated treatment team approach shall be utilized in the development, implementation, and evaluation of a comprehensive ITP.

(c) A comprehensive ITP shall be developed and implemented, in accordance with KRS 199.640(5)(a)4, to improve child functioning based upon the individual need of the child, and the child's family if appropriate, and shall include at least the following components:

1. Goals and objectives for permanence;

2. Time frame projected for completion of each goal and objective;

3. Method for accomplishing each goal and objective, including utilization of community providers;

4. Person responsible for completion of each goal and objective; and

5. Projected discharge date and placement plan.

(d) The comprehensive ITP shall be developed within twenty-one (21) days of admission.

1. A treatment team review of the child's and family's progress toward meeting each treatment goal shall occur at least monthly.

2. Every effort shall be made to involve the child and his family in the monthly treatment team review.

3. Treatment team evaluation of the comprehensive ITP shall occur at least quarterly.

4. An additional assessment shall be completed upon the recommendation of the treatment team.

5. Evaluation and assessment information shall be documented and maintained in the child's record.

(e) The child shall be offered the opportunity to sign an ITP and ITP review, signifying understanding of the ITP.

1. If the child refuses to sign or is developmentally unable to understand the circumstance, this shall be documented in the record.

2. The child and his family or custodian shall receive a copy of the ITP.

(4) Treatment environment. The daily child-caring program shall be planned in the following manner in order to create an atmosphere conducive to treatment:

(a) The child-caring facility shall have written policy and procedure describing its daily routine, rules, activity, and child and staff interaction.

(b) The daily child-caring program shall be:

1. Planned to provide a framework for daily living; and

2. Reviewed and revised as the needs of the individual child or living group change.

(c) The daily routine shall be written and available to each child.

(d) Each rule shall be clearly stated in language that a child can understand.

(e) Staff shall interact with a child in a warm, supportive, constructive, and confidential manner and shall treat the child with respect.

(f) Counseling and interviewing a child and the child's family shall be conducted in a private area.

(g) A daily recreational activity shall be available to promote mastery of:

1. Developmental tasks;

2. Development of relationships; and

3. Increase in self-esteem, in accordance with the child's ITP.

(h) The child-caring facility shall provide recreational equipment, maintained in usable and safe condition, to implement the recreational program.

(5) The child-caring facility shall make available a quality program for substance abuse prevention and treatment in compliance with KRS 199.640(5)(a)7.

(6) Discharge and aftercare.

(a) The child-caring facility shall have written policy and procedure that describe the condition under which a child may be discharged, including criteria for an unplanned or emergency

discharge and a discharge inconsistent with the ITP.

(b) The approval of the program director shall be required for an unplanned or emergency discharge.

(c) Discharge planning shall begin with the development of the ITP and shall continue throughout subsequent ITP reviews. The treatment team shall consider the following matters related to discharge planning:

1. Identification of placement;
2. Community resources to provide support for youth; and
3. Family services.

(d) When a child is leaving a facility as a planned discharge, a predischarge conference shall be held to ensure that the child and family are prepared for successful transition into placement. The parent, guardian or custodian, the child, and the treatment team shall attend this conference.

(e) The child shall have at least one (1) preplacement visit prior to the planned discharge, or the facility shall document unsuccessful efforts to arrange a visit.

(f) The child-caring facility shall prepare a written discharge summary within fourteen (14) days following the date of discharge. A copy shall be provided to the custody holder. The summary shall include:

1. Information related to progress toward completion of each ITP goal;
2. Each barrier to treatment;
3. Each treatment method used in working with the child;
4. Date of discharge;
5. Reason for discharge; and
6. Name, telephone number, and address of person or child-caring facility to whom the child was discharged.

(g) An aftercare service shall be provided to a child where no other agency has responsibility for the child's transition or adjustment to a new environment. Upon discharge, the following needs of the child shall be assessed and a referral made for needed aftercare service:

1. Educational;
2. Medical;
3. Vocational;
4. Psychological;
5. Legal; and
6. Social.

(7) Case record. The child-caring facility shall:

(a) Maintain, in a confidential and secure manner, a current case record on each child, including:

1. Identifying information on the child to include:
 - a. Name, ethnic origin and gender;
 - b. Date of birth and Social Security number;
 - c. Former residence;
 - d. Name, address, and occupation of each parent, if available;
 - e. Date of admission; and
 - f. Type of commitment;
2. Commitment order or custodian's consent form for admission;

3. Birth and immunization certificates;
4. Education;
5. Medical and dental records that may be maintained separately from the case record;
6. Assessment data or social history;
7. ITP and each review;

8. Each incident report, with a paper or electronic copy maintained in a centralized location within the licensed facility;
9. Chronological recording;
10. Correspondence with court, family, and custody holder;
11. Discharge summary; and
12. Written consent;

(b) Document, at least weekly, progress made by the child and his family toward meeting the treatment goal;

(c) Record the aftercare service it provides until the service is terminated;

(d) Have a written policy regarding maintenance, security, and disposal of a case record maintained by, or in possession of, the child-caring facility;

(e) Not disclose information concerning a child or his family to

a person not directly involved in the case, without the written consent of the custodian of the child;

(f) Forward, within twenty-four (24) hours, a request made by an individual or an agency to review the case record of a committed child, to the:

1. Commissioner, Department for Community Based Services, if the child is committed to the cabinet; or
2. Other legal custodian, if the child is not committed to the cabinet;

(g) With the exception of a sealed adoptive record, release identifying or personal information including a Social Security card, birth certificate, or driver's license to the child at discharge;

(h) After the discharge of a child:

1. Maintain the case record at the child-caring facility for at least three (3) years; and
2. After three (3) years, the child-caring facility may archive the case record; or
3. Maintain the case record permanently at the child-caring facility;

(i) If the child-caring facility ceases to operate, transfer the case record to the cabinet;

(8) The cabinet shall maintain a file on each record transferred to one (1) of its record centers. The file shall include the following information:

- (a) The child's name, case number, date of birth; and
- (b) Date the case record was sent to the cabinet.

(9) All records maintained by the child-caring facility shall be made available to the cabinet or designee upon request.

Section 8. Residential Treatment Program. The requirements of this section shall apply to a residential child-caring facility that provides intensive treatment services.

(1) Professional treatment services.

(a) The facility shall secure needed services for a child who has an assessed need for a psychological, psychiatric, or other professional treatment service not provided by the residential child-caring facility.

(b) The admission decision shall be the responsibility of a treatment team comprised of clinical, social service, and other disciplines designated by the residential child-caring facility's treatment director.

(c)1. After assessment and development of the ITP in accordance with Section 7 of this administrative regulation, the treatment team shall identify services to meet the needs of the child and family.

2. The services shall:

- a. Be provided by the residential child-caring facility or arranged through contract with another qualified residential child-caring facility or child-placing agency, as established in 922 KAR 1:310, or a treatment professional; and
- b. Include, as developmentally appropriate, a minimum of weekly:

- (i) Individual therapy from a qualified mental health professional or other treatment professional; and
- (ii) Group therapy conducted by a qualified mental health professional or other treatment professional, as determined appropriate by the treatment team and under the supervision of the treatment director.

(d) Other services identified after the assessment and development of the ITP by the treatment team may include:

1. Psychiatric counseling;
2. Specialized therapy recognized by a mental health credentialing authority; or
3. Family counseling.

(2) Staffing requirement.

(a) Staff-to-child ratios shall be in accordance with Section 3(5) of this administrative regulation.

(b) The treatment director shall:

1. Hold at least a master's degree in a human service discipline; and
2. Have at least five (5) years' experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for the:

- a. Supervision;
- b. Evaluation; and
- c. Monitoring of the:
 - (i) Treatment program;
 - (ii) Social work; and
 - (iii) Other treatment staff.
- (c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.
- (d) 1. A residential child-caring facility providing a treatment service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director if at least fifty (50) percent of his or her duties are spent supervising the treatment program.
- 2. If an employee serves as both executive director and treatment director, the higher staff qualification requirements shall apply.
- (3) Seclusion.
 - (a) If seclusion is used, a residential child-caring facility shall:
 - 1. Before a child is placed in seclusion, develop and maintain clearly-written policy and procedures governing the placement of a child in seclusion, including a requirement for a de-escalation plan in the child's ITP that is consistent with accreditation standards;
 - 2. Provide a copy of the policy and procedures to staff members responsible for the placement of a child in seclusion;
 - 3. Require a staff member who uses seclusion to complete at least sixteen (16) hours of training in approved methods of de-escalation, physical management, and the use of seclusion from a nationally-recognized organization approved by the cabinet. This training shall count toward the forty (40) hours of annual training required by Section 3 of this administrative regulation and shall include the following topics:
 - a. Assessing physical and mental status, including signs of physical distress;
 - b. Assessing nutritional and hydration needs;
 - c. Assessing readiness to discontinue use of the intervention; and
 - d. Recognizing when medical or other emergency personnel are needed.
 - 4. Use seclusion only in an emergency or crisis situation when:
 - a. A child is in danger of harming himself or another; and
 - b. The effort made to de-escalate the child's behavior prior to placement was ineffective;
 - 5. Prohibit the use of seclusion for:
 - a. Punishment;
 - b. Discipline;
 - c. Convenience of staff;
 - d. Forced compliance;
 - e. Retaliation; or
 - f. A substitute for appropriate behavioral support.
 - 6. Provide that approval from the treatment director or treatment staff designee is obtained prior to or within fifteen (15) minutes of the placement of a child in seclusion.
 - 7. Place no more than one (1) child into the same seclusion room at a time;
 - 8. Remove an object that may be used for self-harm from a child before the child is placed in seclusion;
 - 9. Not remove a child's clothing, except for belt and shoes, while the child is placed in seclusion;
 - 10. Within a twenty-four (24) hour period of time, not to allow a child to remain in latched seclusion for more than:
 - a. Fifteen (15) minutes if the child is age nine (9) and younger; and
 - b. One (1) hour, if the child is age (10) and older;
 - 11. If a child's behavior is stabilized, release the child from seclusion prior to the time period specified in this section;
 - 12. Discontinue seclusion if a child displays adverse side effects including:
 - a. Illness;
 - b. Severe emotional or physical stress; or
 - c. Physical damage to self or items in seclusion;
 - 13. Provide a child in seclusion with food, water, and access to a lavatory; and

- 14. Use a room for seclusion that is:
 - a. Lighted, ventilated, and maintained at a temperature consistent with the rest of the child-caring facility;
 - b. Internally observable if the door is closed;
 - c. At least fifty-six (56) square feet in size; and
 - d. Free from an object that allows the child to do self-harm.
- (b) If a child requires repeated placement in seclusion, the treatment director shall conduct a treatment team meeting to reassess the child's ITP, including referring the child to a higher level of care.
- (c) A staff member shall observe visually every five minutes a child who is in seclusion.
- (d) Staff shall have visual contact with a child in latched seclusion at all times.
- (e) Staff shall document, in the child's record, the following information regarding seclusion of a child:
 - 1. An intervention to de-escalate the child's behavior prior to placement;
 - 2. Date and time of placement;
 - 3. Date and time of removal;
 - 4. Reason for placement;
 - 5. Name of each staff member involved;
 - 6. Treatment director's or designee's approval;
 - 7. Five (5) minute visual observation by staff of the child's placement; and
 - 8. Intervention provided by treatment staff when the child leaves seclusion.
- (f) Immediately upon the child's exit from seclusion, treatment staff shall provide therapeutic intervention.
- (4) Incident report.
 - (a) Exclusive of weekends and holidays, within twenty-four (24) hours of the physical management of a child, including a child's placement in seclusion, designated treatment staff shall complete an incident report that shall:
 - 1. Undergo an administrative review no later than seventy-two (72) hours after the use of physical management;
 - 2. Document an assessment by the treatment director or designee that shall include consideration of the:
 - a. Necessity of the physical management or seclusion;
 - b. Congruence of the physical management or seclusion with the residential child-caring facility's policy and procedures; and
 - c. Need for a corrective action;
 - 3. Contain documentation of written feedback provided by the treatment director or designee to all treatment staff involved in the incident; and
 - 4. Be signed by the treatment director or designee and the program director or designee.
 - (b) The residential child-caring facility shall establish a system to track the frequency, location, and type of critical incidents involving physical management of a child that occurs, including seclusion.

- Section 9. Crisis Intervention Unit. (1) An emergency service provided in a crisis intervention unit shall include the following:
- (a) A mental status evaluation and physical health questionnaire of the child upon admission;
 - (b) A treatment planning process;
 - (c) Procedure for crisis intervention; and
 - (d) Discharge and aftercare planning processes.
 - (2) A program shall have a written policy concerning the operation of a crisis intervention unit.
 - (a) Staffing.
 - 1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:
 - a. Four (4) children during normal waking hours; and
 - b. Six (6) children during normal sleeping hours.
 - 2. Administrative oversight of the program shall be provided by a staff member who shall be a:
 - a. Treatment director; or
 - b. Person qualified to be executive director.
 - (b) A licensed psychiatrist shall be available to evaluate, provide treatment, and participate in the treatment planning.
 - (c) Intake and service.

1.a. Upon admission, the crisis intervention program shall provide the child and parent, guardian, or other legal representative with a clearly written and legible statement of rights and responsibilities; or

b. If unable to read the statement of rights and responsibilities, the statement shall be read to the child and parent, guardian, or other legal representative.

2. Written policy and procedure developed in consultation with professional and direct-care staff shall provide:

a. For behavior management of a child, including the use of time-out; and

b. An explanation of behavior management techniques to a child and parent, guardian, or other legal representative.

(3) The crisis intervention unit shall prohibit the use of:

(a) Seclusion; or

(b) Mechanical restraints.

Section 10. Group Home. The following additional requirements shall apply to a group home program:

(1) Documentation of evidence of publication of a "notice of intent" in an area newspaper, in accordance with KRS Chapter 424, advertising that:

(a) A public hearing shall be held if requested by citizens in the community or an appropriate local governmental entity; and

(b) Information obtained at the hearing shall be made available to the public and the cabinet;

(2) A staff-to-child ratio in accordance with Section 3(5) of this administrative regulation; and

(3) Documentation of the use of community resources and efforts to encourage a child to participate in community activities.

Section 11. Independent Living Services. A child-caring facility shall:

(1) Provide independent living services:

(a) To a child:

1. In the custody of a state agency; and

2. ~~Fourteen (14) to twenty-one (21)~~ **Fourteen (14) to twenty-one (21)** years of age;

(b) As prescribed in the child's ITP; and

(c) 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. ~~Fourteen (14) to twenty-one (21)~~ **Fourteen (14) to twenty-one (21)** ~~years of age and older~~ **years of age**; and

(b) Developed in accordance with 922 KAR 1:340, Section 3(1)(e).

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 6, 2022

FILED WITH LRC: October 11, 2022 at 3 p.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for private child-caring facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure standards for all private child caring facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 199.640(5) and 199.645 require the cabinet to promulgate administrative regulations relating to standards of care and service for child-caring facilities.

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

the statutes by establishing the standards for private child-caring facilities.

(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 documentation and training requirements for child-caring facilities that accept the placement of a child with medical complexity who is in the custody of the cabinet. These requirements ensure that communication is taking place between the cabinet and the facility around providing for the child's medical needs. The amendment also includes references to the proposed administrative regulation, 922 KAR 1:290, pertaining to agency staff background check requirements pursuant to KRS 199.642 and makes conforming updates pertaining to 922 KAR 1:340 and the age of youth participating in independent living services. The administrative regulation is being further amended in response to written comments received to make corrections in definitions, correct terminology related to background checks, correct the age of youth being taught independent living services, and establish a process through which staff under investigation may be allowed to return to work consistent with 922 KAR 1:310.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the medical needs of medically complex children who are in the custody of the cabinet are met. Conforming amendments are also necessary for consistency with other recent regulatory amendments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates standards of care and service provided by child-caring facilities, as required by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures the care of medically complex children who are in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 30 private child-caring facilities licensed in Kentucky and eleven children or youth that are medically complex and placed in a residential setting.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Private child-caring facilities subject to this administrative regulation will have increased regulatory requirements ensuring that necessary documentation and training occur prior to the placement of a child with complex medical needs in order to ensure proper care of the child.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment only increases documentation and training that is provided by the cabinet for free; therefore, the cost is minimal, if any.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ensuring the needs of children with medical complexity are met.

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

(a) Initially: The amendment to this administrative regulation has no cost associated, but the administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the child-caring facility.

(b) On a continuing basis: The administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the residential child-caring facility

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment has no cost to the agency, but the administrative regulation will be implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the child-

caring facility.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation, as the requirements for these facilities are the same.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

(2) State compliance standards. KRS 194A.050(1), 199.640(5), 199.645, 605.150, 615.050

(3) Minimum or uniform standards contained in the federal mandate. 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation requires increased documentation and training prior to the placement of children with medical complexity.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This documentation and training will ensure that providers are prepared to care for children with medical complexity who are placed in their care.

FISCAL NOTE

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

The Cabinet for Health and Family Services, Department for Community Based Services and Office of Inspector General, will be impacted as the regulatory and monitoring agencies overseeing these facilities and the services they provide.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.640(5), 199.645, 605.150, 615.050.

(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 administrative regulation will not generate any revenue.

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

(c) How much will it cost to administer this program for the first year? The administrative body currently administers this program. There will be no new costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? The administrative body currently administers this program. There will be no new costs to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full

year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment seeks to ensure the needs of children with medical complexity are met through increased communication, documentation, and training. The amendment and administrative regulation are not expected to generate cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

(c) How much will it cost the regulated entities for the first year? This amendment requires increased communication, documentation, and training related to the placement of children with complex medical needs. The cabinet provides this one-day training at no costs to providers and is only necessary if a regulated facility agrees to accept the placement of a child with medical complexity.

(d) How much will it cost the regulated entities for subsequent years? This amendment requires increased communication, documentation, and training related to the placement of children with complex medical needs. The training is provided by the cabinet and the placement of a child with these needs are subject to a regulated entity's availability and agreement.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

OFFICE OF ATTORNEY GENERAL
Office of Consumer Protection
(Amendment)

40 KAR 2:150. Cremation forms and inspections.

RELATES TO: KRS 213.081, 213.098, 367.93103, 367.93105, 367.93115, 367.93117, 367.97501, 367.97504, 367.97507, 367.97511, 367.97514, 367.97517, 367.97521, 367.97524, 367.97527, 391.010

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.97501, 367.97504, 367.97534

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.180 authorizes the Attorney General to promulgate administrative regulations that will facilitate performing the duties and exercising the authority vested in the Attorney General and the Department of Law. KRS 367.150(4) requires the Department of Law to recommend administrative regulations in the consumers' interest. KRS 367.97501 and 367.97504 require the Attorney General to promulgate an administrative regulation to establish an application for a crematory authority license and report forms. KRS 367.97524 requires crematory authorities to obtain signed cremation authorization forms before conducting any cremations. KRS 367.97534(5) authorizes the Attorney General to promulgate administrative regulations necessary to carry out the provisions of KRS 367.97501 to 367.97537, pertaining to crematory authorities. This administrative regulation prescribes the license application form, and other forms, to be used by crematory authorities[establishes forms related to cremation as required by KRS 367.97501, 367.97504, and 367.97514]. This administrative regulation establishes the records and information that shall be retained by [the] crematory authorities[operator as identified in KRS 367.97504(5);] and permits crematory inspections by the Attorney General[establishes guidelines for crematory inspections regarding KRS 367.97504(1) and (5), 367.97511(4), 367.97514(5), and 367.97534].

Section 1. Crematory Authority License Application Form. An applicant for a crematory authority license shall complete and submit a Crematory Authority License Application Form to the Office of Attorney General before commencing business.

Section 2.[Section 4.] Cremation Authorization Form. Licensed crematory authorities shall complete and keep a Cremation Authorization Form for every cremation of human remains performed by them.[The Cremation Authorization, Form CR-1, required by KRS 367.97524, shall contain:

- (1) The name of the crematory authority;
- (2) The address of the crematory authority, including the city, state, and zip code;
- (3) The telephone number of the crematory authority;
- (4) A statement informing the authorizing agent that it is the policy of the crematory authority that it will accept a declarant or decedent for cremation only after all necessary authorizations have been obtained, and all prerequisites to be performed by the state regarding the death have taken place and any required forms or permits are attached;
- (5) The name, address (including the city, state, and zip code), age, date of birth, and gender of the declarant or decedent, and the place and date of death;
- (6) Whether or not the declarant's or decedent's death was due to an infectious disease and, if so, an explanation;
- (7) A statement that pacemakers, radioactive, silicon or other implants, mechanical devices or prosthesis may create a hazardous condition if placed in cremation chamber and subjected to heat, and that the authorizing agent instructs the crematory authority or funeral home to remove all devices that may become

hazardous during the cremation process;

(8) Whether the declarant's or decedent's remains contain any devices, including mechanical, prosthetic, implants or materials, which may have been implanted in or attached to the declarant or decedent, or any other device that may become hazardous during the cremation process;

(9) A description of any devices, including mechanical, prosthetic, implants, or materials, which may have been implanted in or attached to the declarant or decedent, or any other device that may become hazardous during the cremation process;

(10) A statement informing the authorizing agent of the following concerning identification of the declarant or decedent:

(a) Kentucky law requires the individual's remains to be identified before cremation can take place; and

(b) The individual making the identification may be the authorizing agent, a family member, friend, coroner, or any other person who has personal knowledge of the decedent or the ability to make positive identification and who accepts any liability arising from the identification;

(11) The name of the individual identifying the decedent's remains prior to cremation, the relationship of that individual to the decedent, and the signature of the individual identifying the body for cremation;

(12) Statements informing the authorizing agent of the following regarding cremation authorization:

(a) The person legally entitled to order the cremation of a declarant or decedent is the authorizing agent; and

(b) The right to control the disposition of the remains of a declarant or decedent devolves according to the order of authority of classes of authorizing agents listed in subsection (13) of this section;

(13) The selection of the class of authorizing agents having the right to authorize the cremation of the declarant's or decedent's body, in the following order of authority:

(a) The individual executing a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145, and that the original Funeral Planning Declaration shall be attached;

(b) The person named as the designee or alternate designee in a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145, and that the original Funeral Planning Declaration shall be attached;

(c) The person named in a United States Department of Defense form Record of Emergency Data (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces, and the original form shall be attached;

(d) The decedent through a Preneed Cremation Authorization, Form CR-3 completed and executed before July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3, and that the original Preneed Cremation Authorization, Form CR-3 shall be attached;

(e) The surviving spouse of the declarant or decedent;

(f) The surviving adult child of the declarant or decedent, or a majority of the adult children if more than one (1) adult child is surviving, or less than a majority of the surviving adult children by attesting in writing showing the reasonable efforts to notify the other adult surviving children of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children. The number of surviving adult children shall be written in the completed Cremation Authorization, Form CR-1;

(g) The surviving parent or parents of the declarant or decedent, or if one (1) parent is absent, the parent who is present has the right to control the disposition by attesting in writing showing the reasonable efforts to notify the absent parent. The

number of surviving parents shall be written in the completed Cremation Authorization, Form CR-1;

(h) The surviving adult grandchild of the declarant or decedent, or a majority of the adult grandchildren if more than one (1) adult grandchild is surviving, or less than a majority of the surviving adult grandchildren by attesting in writing showing the reasonable efforts to notify the other adult surviving grandchildren of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult grandchildren. The number of surviving adult grandchildren shall be written in the completed Cremation Authorization, Form CR-1;

(i) The surviving adult sibling of the declarant or decedent, or a majority of the adult siblings if more than one (1) adult sibling is surviving, or less than a majority of the surviving adult siblings by attesting in writing showing the reasonable efforts to notify the other adult surviving siblings of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult siblings. The number of surviving adult siblings shall be written in the completed Cremation Authorization, Form CR-1;

(j) The surviving individual or individuals of the next degree of kinship under KRS 391.010 to inherit the estate of the declarant or decedent, or a majority of those in the same degree of kinship if more than one (1) individual of the same degree is surviving, or less than a majority of the surviving individuals of the same degree of kinship by attesting in writing showing the reasonable efforts to notify the other individuals of the same degree of kinship of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the individuals of the same degree of kinship. The number of surviving individuals of the same degree of kinship, and a description of the relationship to the declarant or decedent, shall be written in the completed Cremation Authorization, Form CR-1;

(k) If none of the persons listed in paragraphs (a) through (j) of this subsection are available, one (1) of the following who attests in writing showing the good-faith effort made to contact any living individuals in an order of authority class described in paragraphs (a) to (j) of this subsection:

1. A person willing to act and arrange for the final disposition of the decedent; or

2. A funeral home that has a valid prepaid funeral plan that makes arrangements for the disposition of the decedent's remains, if the funeral director makes the written attestation described in this subsection; and

(l) The district court in the county of the decedent's residence or the county in which the funeral home or the crematory is located;

(14) Statements informing the authorizing agent of the following regarding other rights and responsibilities concerning cremations:

(a) The declarant or authorizing agent shall carefully read and understand the statements described in this subsection before signing the authorization;

(b) The declarant or authorizing agent shall direct the crematory authority on the final disposition of the cremated remains;

(c) The crematory authority shall not conduct any cremation nor accept a body for cremation unless it has a Cremation Authorization, Form CR-1 signed by the authorizing agent clearly stating the final disposition;

(d) The original form shall be attached to the Cremation Authorization, Form CR-1 if:

1. The cremation is being performed pursuant to a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145; or

2. A Preneed Cremation Authorization, Form CR-3 that was completed and executed before July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3;

(e) All cremations are performed individually and it is unlawful to cremate the remains of more than one (1) individual within the same cremation chamber at the same time;

(f) The consumer may choose cremation without choosing embalming services;

(g) If the crematory authority does not have a refrigerated holding facility, it shall not accept human remains for anything other than immediate cremation;

(h) The consumer is not required to purchase a casket for the purpose of cremation;

(i) The crematory authority requires that the body of the declarant or decedent shall be delivered for cremation in a suitable, closed container that shall be either a casket or an alternative cremation container for cremation, but the crematory authority shall not require that the body be placed in a casket before cremation or that the body be cremated in a casket, nor shall a crematory authority refuse to accept human remains for cremation because the remains are not in a casket;

(j) The container in which the body is delivered to the crematory for cremation shall be:

1. Composed of readily-combustible materials suitable for cremation;

2. Able to be closed to provide a complete covering for the human remains;

3. Resistant to leakage or spillage; and

4. Rigid enough to support the weight of the declarant or decedent;

(k) The crematory authority may inspect the casket or alternative container, including opening it if necessary, and the crematory authority shall not accept for holding a cremation container from which there is any evidence of leakage of the body fluids from the human remains in the container;

(l) The type of casket or cremation container selected for cremation;

(m) Due to the nature of the cremation process any personal possessions or valuable materials, such as dental gold or jewelry, as well as any body prostheses or dental bridgework, that are left with the declarant or decedent and not removed from the casket or alternative cremation container prior to cremation shall be destroyed or shall otherwise not be recoverable, unless authority to do so otherwise is specifically granted in writing;

(n) As the casket or alternative container will usually not be opened by the crematory authority to remove valuables, to allow for final viewing or for any other reason unless there is leakage or damage, the authorizing agent understands that arrangements shall be made to remove any possessions or valuables prior to the time the declarant or decedent is transported to the crematory authority;

(o) Cremated remains, to the extent possible, shall not be contaminated with foreign material;

(p) All noncombustible materials, such as dental bridgework, and materials from the casket or alternative cremation container, such as hinges, latches, and nails, shall be separated and removed, to the extent possible, by visible or magnetic selection and shall be disposed of by the crematory authority with similar materials from other cremations in a nonrecoverable manner, so that only human bone fragments and organic ash, including both human remains and container remains, remain, unless those objects are used for identification or as may be requested by the authorizing agent;

(q) As the cremated remains often contain recognizable bone fragments, unless otherwise specified, after bone fragments have been separated from the other material, they shall be mechanically processed or pulverized, which includes crushing or grinding into granulated particles of unidentifiable dimensions, virtually unrecognizable as human remains, prior to placement into the designated container; and

(r) While every effort shall be made to avoid commingling of cremated remains, inadvertent or incidental commingling of minute particles of cremated remains from the residue of previous cremations is a possibility, and the authorizing agent understands and accepts this fact;

(15) Instructions on disposition of the cremated remains, indicating whether the cremated remains will be:

(a) Interred and, if so, where;

(b) Scattered in a scattering area or garden and, if so, where;

(c) In any manner on private property with the permission of the owner and, if so, where;

(d) Delivered either in person or by a method that has an internal tracking system that provides a receipt signed by the person accepting delivery and, if so, to whom; or

(e) Picked up at the crematory office and, if so, by whom;

(16) The date the remains were received by the crematory authority, the cremation number, the date of cremation, and the name of the person performing the cremation;

(17) A statement informing the declarant or authorizing agent of the following regarding execution of the Cremation Authorization, Form CR-1:

(a) Executing the Cremation Authorization, Form CR-1 as authorizing agent, or as declarant, designee, or alternate designee if using a Funeral Planning Declaration, Form FPD-1, grants consent to the cremation of the decedent;

(b) Executing the Cremation Authorization, Form CR-1 as authorizing agent, or as declarant, designee, or alternate designee if using a Funeral Planning Declaration, Form FPD-1, warrants:

1. That all representations and statements contained on the Cremation Authorization, Form CR-1 are true and correct;

2. That the statements contained on the Cremation Authorization, Form CR-1 were made to induce the crematory authority to cremate the human remains of the declarant or decedent; and

3. That the person executing the Cremation Authorization, Form CR-1 has read and understands the provisions contained on the Cremation Authorization, Form CR-1; and

(c) If a written attestation is required, the authorizing agent shall select and complete an attestation:

1. For authorizing agent or agents listed in subsection (13)(f), (h), (i), or (j) of this section, an attestation that reasonable efforts have been made to notify the other members of the authorizing class and the authorizing agent or agents are not aware of any opposition to the final instructions, and stating the number of individuals in the authorizing class, the number of authorizing agents authorizing the cremation, the name of the decedent, a description of the reasonable efforts, and the number of other members of the authorizing class;

2. For an authorizing agent listed in subsection (13)(g) of this section, an attestation that reasonable efforts have been made to notify the other parent, and a description of the reasonable efforts; or

3. For authorizing agent or agents listed in subsection (13)(k) of this section, an attestation that a good-faith effort has been made to contact any living individual described in subsection (13)(a) through (j) of this section, and a description of the good-faith effort;

(18) Signature of each authorizing agent granting consent to the cremation of the decedent;

(19) The name of each authorizing agent and the relationship of the authorizing agent to the declarant or decedent;

(20) The address of the authorizing agent, including the city, state, and zip code;

(21) The telephone number of the authorizing agent;

(22) The name, address, city, state, zip code, telephone number, and signature of the funeral director or other individual as witness for the authorizing agent; and

(23) The date and location where the authorizing agent signed the Cremation Authorization, Form CR-1.]

Section 3.[Section 2.] Crematory Annual Report Form. Licensed crematory authorities shall complete and submit a Crematory Annual Report Form for each calendar year beginning January 1 and ending December 31. The completed Crematory Annual Report Form shall be filed with the Attorney General's Office by March 31 of the year following the calendar year reported.

Section 4. Statement of Supervision Form. Licensed crematory authorities shall complete and submit a Statement of Supervision for Registered Crematory Retort Operators Form for each trained retort operator before permitting the trained operator to operate a

retort.[The Crematory Annual Report, Form CR-2, required by KRS 367.97504(6), shall contain:

(1) The name of the crematory authority;

(2) The address of the crematory authority, including the city, state, and zip code;

(3) The number of retorts operated by the crematory authority;

(4) The number of cremations performed by the crematory authority in each retort during the preceding calendar year;

(5) The total number of cremations performed by the crematory authority during the preceding calendar year;

(6) A numerical breakdown of the disposition of cremated remains in the preceding year, indicating the number:

(a) Scattered;

(b) Interred, either in a niche or in-ground burial;

(c) Returned to the family or funeral home; or

(d) With other means of disposition. The other means of disposition used shall be briefly described;

(7) A list of the names and registration numbers of all crematory operators who worked for the crematory authority during the preceding year;

(8) The signature of the individual completing the form and the date on which the form was completed; and

(9) A statement requiring the remittance of a ten (10) dollar check or money order for the annual registration fee.

Section 3. Preneed Cremation Authorization Form.

(1) The Preneed Cremation Authorization, Form CR-3, shall not be completed or executed on or after July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3.

(2) A Preneed Cremation Authorization, Form CR-3, completed and executed prior to July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3, shall contain:

(a) The name of the crematory authority;

(b) The address, including the city, state, and zip code;

(c) The telephone number of the crematory authority;

(d) The name of the authorizing agent;

(e) The address of the authorizing agent, including the city, state, and zip code;

(f) The home telephone number of the authorizing agent;

(g) The age and gender of the authorizing agent;

(h) Whether the decedent authorizing agent has any infectious or contagious disease and, if so, an explanation;

(i) Whether the decedent authorizing agent's body contains a pacemaker, prosthesis, radioactive implant, or any other device that could be explosive;

(j) Whether the decedent authorizing agent has been treated with therapeutic radionuclides such as Strontium 89 or any other treatment that would result in residual radioactive material remaining as part of the decedent authorizing agent's remains and, if so, what the treatment was and the last date it was administered;

(k) A statement specifying that all cremations are performed individually and that it is unlawful to cremate the remains of more than one (1) individual within the same cremation chamber at the same time;

(l) A statement informing the authorizing agent that the agent may choose cremation without choosing embalming services and that if the crematory chosen does not have a refrigerated holding facility it shall not accept human remains for anything other than immediate cremation;

(m) A statement informing the authorizing agent that:

1. The agent is not required to purchase a casket for the purpose of cremation;

2. The crematory authority shall require the decedent authorizing agent to be delivered for cremation in a suitable container, which shall be either a casket or an alternative cremation container; and

3. An alternative cremation container shall be:

a. Composed of readily-combustible materials suitable for cremation;

b. Able to be closed to provide a complete covering for the human remains;

c. Resistant to leakage or spillage; and

d. Rigid enough to support the weight of the decedent;

(n) A statement informing the authorizing agent that the crematory may inspect the casket or alternative container, including opening if necessary, and if there is leakage or damage, the crematory shall refuse to accept the decedent authorizing agent's remains for the purpose of cremation or refrigeration;

(o) The type of casket or alternative container selected for cremation;

(p) A statement informing the authorizing agent that:

1. Due to the nature of the cremation process any personal possessions or valuable materials, such as dental gold or jewelry, as well as any body prostheses or dental bridgework, that are left with the decedent authorizing agent and not removed from the casket or alternative container prior to cremation shall be destroyed or shall otherwise not be recoverable; and
2. The casket or alternative container will usually not be opened by the crematory authority to permit the removal of valuables, to allow for final viewing or for any other reason unless there is leakage or damage, so the authorizing agent shall make arrangements to have any possessions or valuables removed prior to the time the remains are transported to the crematory authority;

(q) A statement informing the authorizing agent that:

1. To the extent possible, cremated remains shall not be contaminated with foreign material;
2. All noncombustible materials such as dental bridgework, and materials from the casket or alternative container, such as hinges, latches, and nails, shall be separated and removed, to the extent possible, by visible or magnetic selection and shall be disposed of by the crematory authority with similar materials from other cremations in a nonrecoverable manner, so that only human bone fragments and organic ash, including both human remains and container remains, remain;
3. As the cremated remains often contain recognizable bone fragments, unless otherwise specified, after the bone fragments have been separated from the other material, they shall be mechanically processed or pulverized, which includes crushing or grinding into granulated particles of unidentifiable dimensions, virtually unrecognizable as human remains, prior to placement into the designated container; and
4. While every effort shall be made to avoid commingling of cremated remains, inadvertent or incidental commingling of minute particles of cremated remains from the residue of previous cremations is a possibility, and the authorizing agent understands and accepts this fact;

(r) A statement informing the authorizing agent that:

1. The original copy of the Preneed Cremation Authorization, Form CR-3 shall be retained by the firm or person with which the arrangements are being made and a copy shall be provided to the authorizing agent; and
2. A person arranging his or her own cremation shall have the right to transfer or cancel this authorization at any time prior to death by notifying by certified mail, the firm or person with which the preneed authorization form is filed;

(s) A statement informing the authorizing agent that if there are not different or inconsistent instructions provided to the crematory authority at the time of death, the crematory authority shall release or dispose of the cremated remains as indicated on this Preneed Cremation Authorization, Form CR-3;

(t) A statement informing the authorizing agent that:

1. If there is a conflict between the authorizing agent's preneed authorization and the demands of the next class of authorizing agent, the crematory authority shall not accept for cremation the authorizing agent's remains without an order deciding the issues entered by the district court of the county of the decedent authorizing agent's residence or the county where the funeral home or the crematory authority is located;
2. The order may be issued by the court after a petition for a resolution has been initiated by any natural person in the next class of authorizing agent or the crematory authority; and
3. Unless extraordinary circumstances exist, the court shall

give due deference to the desires of the decedent authorizing agent as expressed in the Preneed Cremation Authorization, Form CR-3;

(u) Instructions on the disposition of the cremated remains, indicating whether the cremated remains will be:

1. Interred and, if so, where;
 2. Scattered in a scattering area or garden and, if so, where;
 3. Scattered on private property with the permission of the owner and, if so, where;
 4. Delivered either in person or by registered mail and, if so, to whom; or
 5. Picked up at the crematory office and, if so, by whom;
- (v) The printed name, signature, address (including city, state, and zip code) and home telephone of the authorizing agent, explicitly authorizing the crematory authority to cremate the human remains of the authorizing agent;
- (w) The date and location where the authorizing agent signed the Preneed Cremation Authorization, Form CR-3;
- (x) The signature of the funeral director or other individual as witness for the authorizing agent;
- (y) The name of the funeral director or other individual acting as witness for the authorizing agent;
- (z) The address of the funeral director or other individual acting as witness for the authorizing agent, including the city, state, and zip code; and
- (aa) The telephone number of the funeral director or other individual acting as witness for the authorizing agent.

Section 4. Statement of Supervision Form. The Statement of Supervision for Registered Crematory Retort Operators, Form CR-4, required by KRS 367.97514(6), shall contain the:

- (1) Name of the crematory retort operator who was supervised;
- (2) Name of the employer crematory authority;
- (3) Name of the supervising crematory operator, verifying that the crematory retort operator completed forty-eight (48) hours of on the job training supervised by the crematory operator;
- (4) Date on which the form was signed;
- (5) Signature of the crematory retort operator;
- (6) Signature of the crematory operator who supervised the crematory retort operator; and
- (7) Registration number of the crematory operator.

Section 5. Crematory Authority License Application Form. The Crematory Authority License Application, Form CR-5 required by KRS 367.97504(1), shall contain:

- (1) A statement informing the applicant that a crematory authority license shall be obtained from the Attorney General at least thirty (30) days prior to the opening of the crematory authority to conduct cremations;
- (2) A statement informing the applicant that a \$100 registration fee shall accompany the application, and that the application shall be signed by a person, officer, or agent with authority to do so, under oath, and the signature shall be notarized;
- (3) The date of the application;
- (4) The full legal name of the applicant;
- (5) The crematory name, if different from the applicant;
- (6) The business telephone number;
- (7) The physical address of the crematory, including the city, county, state, and zip code;
- (8) Mailing address, including city, state, and zip code, of the crematory authority, if different from the physical address;
- (9) The form of organization of the crematory, indicating whether it is a:
 - (a) Corporation, and if so indicate the state of incorporation;
 - (b) Limited liability company, and if so indicate the state of organization;
 - (c) Partnership, and if so indicate the state of formation;
 - (d) Individual; or
 - (e) Other, and if so, please explain and indicate the state of formation;
- (10) Evidence of authority to transact business in the Commonwealth of Kentucky, including a copy of the applicant's certificate of authority to transact business in the Commonwealth of

Kentucky issued by the Kentucky Secretary of State, or other evidence of authority to transact business in the Commonwealth of Kentucky and describing the other evidence;

(11) The name, position, home address, including the city, state, and zip code, driver's license number and state of issuance, and date of birth, of every owner of the applicant, or if the applicant is a business entity, every member, officer, and director of the applicant;

(12) The name, address, including city, state, and zip code, and account number, if applicable, of one (1) financial reference. Suitable financial references shall include financial institutions and industry suppliers. Personal references shall not be acceptable;

(13) The name and address, including city, state, and zip code, of the financial institution at which the applicant has its business bank account;

(14) The account number of the business bank account;

(15) Whether the applicant intends to solicit preneed funeral contracts. If yes, a completed application for a Preneed Merchandise Sellers Application, Form CPN-6, incorporated by reference in 40 KAR 2:155, shall be attached;

(16) A statement from the applicant's retort manufacturer, which shall include:

(a) The date on which the manufacturer delivered the retort to the applicant;

(b) Whether the manufacturer installed the retort and, if so, when the installation occurred; and

(c) Whether the retort was tested upon installation and, if so, the results of those tests;

(17) A statement informing the applicant that by submitting the application, the applicant represents, agrees to, and states under penalty of law, that:

(a) The information provided is true and accurate to the best of the applicant's knowledge;

(b) The applicant is required to notify the Attorney General immediately of any change in the information required by this section and that KRS 367.97504(2) governs when a new license application form is required to be filed;

(c) The applicant is not insolvent, has not conducted business in a fraudulent manner, and is duly authorized to do business in the state;

(d) The applicant is in a position to commence operating a crematory and that all relevant state and local permits required have been issued;

(e) Final judgment or conviction for any crime involving moral turpitude has not been entered against the applicant;

(f) The license may be denied pursuant to KRS 367.97504, and may be denied, suspended, or revoked pursuant to KRS 367.97534;

(g) The applicant understands that, pursuant to KRS 367.97504(2), changes in the persons, firm, partnership, ownership, association, or corporate structure as originally named in the application render the license, if granted, void, and that the crematory authority shall file a new application before the changes shall be official; and

(h) The applicant is authorized to complete the application on behalf of the applicant crematory; and

(18) A dated and notarized signature of the person making the application on behalf of the crematory, and that person's title or position held].

Section 5.[Section 6.] Required Records of the Crematory Authority. To comply with KRS 367.97504(5), a crematory authority shall keep and maintain the following records for all cremations occurring within the prior ten (10) years[The records maintained by the crematory authority required by KRS 367.97504(5) shall include]:

(1) The original or a[For all cremations occurring within the last ten (10) years:

(a) A copy of the completed Cremation Authorization, Form CR-1; and, if applicable, the]

(2) Any discontinued Preneed Cremation Authorization, Form CR-3 completed and executed prior to July 15, 2016[, which was the effective date of the amendments to KRS 367.97501 and

367.97527, which phased out the Preneed Cremation Authorization, Form CR-3; or]; and

(3)[(b)] Any[The] Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145.;]

[(2) A copy of the identification required to be attached to the outside of the cremation container by KRS 367.97507(2) and 367.97514(2); and

(3) A copy of any stainless steel identification tag that is placed with the human remains prior to cremation, is subjected to the cremation process with the human remains, survives the cremation process, and is left with the cremated remains after the cremation process is complete.];

Section 6.[Section 7.] Inspection of Crematory Authorities. The Attorney General may conduct announced and unannounced inspections of applicants' and licensed crematory authorities' premises during normal business hours to review records and ensure compliance with KRS 367.97501 to 367.97537 and related regulations. Applicants and licensed crematory authorities shall permit such inspections and make all requested records readily available to the Attorney General upon request.[An inspection of the crematory authority and its records, as required by KRS 367.97504(5), shall include annual, unannounced inspections of all crematory authority facilities and records and may include:

(1) An inspection of the crematory authority to determine if it is in active operation or is in a position to commence operation;

(2) An inspection of the retort for proper operation;

(3) An inspection of the crematory authority facility to determine if it is secure from unauthorized access;

(4) An inspection of the crematory authority facility to determine if the crematory authority license is displayed in a conspicuous place;

(5) An inspection of the refrigerated holding facility used for holding human remains to determine if it is secure from unauthorized access and functioning properly; and

(6) An inspection of crematory records for all cremations occurring within ten (10) years of the date of the inspection, including all information required to be kept by KRS 367.97504(5) and this administrative regulation.];

Section 7. Material Changes in Application and Reports. A licensed crematory authority shall notify the Attorney General within fourteen (14) days of any material change in the information provided in its applications or reports.

Section 8. Human Remains of Deceased Pregnant Mother. A licensed crematory may cremate the remains of a deceased pregnant woman together with the fetal remains of her unborn child(ren) within the same cremation chamber. Completion of a Cremation Authorization Form authorizing cremation of the deceased pregnant woman shall also authorize cremation of her unborn child(ren).

[Section 8. Inspection Completion Certificate. Each crematory authority that successfully passes an annual inspection shall receive an Inspection Completion Certificate, which shall contain:

(1) The name of the crematory authority;

(2) The address of the crematory authority, including city, state, and zip code;

(3) A certified statement that an inspection has been performed by the Kentucky Attorney General's Office;

(4) The date on which the inspection was performed; and

(5) The signature of an authorized representative of the Attorney General's Office.];

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Cremation Authorization", Form CR-1, Oct. 2022[04-17];

(b) "Crematory Authority Annual Report", Form CR-2, Oct. 2022[11-02];

(c) ["Preneed Cremation Authorization", Form CR-3, 11-02;]

[(d)] "Statement of Supervision for Registered Crematory Retort Operators", Form CR-4, Oct. 2022[11-02]; and

(d)[(e)] "Crematory Authority License Application", Form CR-5, Oct. 2022[07-16].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the Office's Web site, <https://ag.ky.gov/Pages/default.aspx>.

PHILIP R. HELERINGER, Executive Director

DANIEL CAMERON, Attorney General

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 2:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 29, 2022 at 10:00 a.m. Eastern Time at the Kentucky Office of Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Office in writing at least five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 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 B. Humphress, Asst. Attorney General, Office of Consumer Protection, Kentucky Office of Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone 502-696-5408, fax (502) 573-8317, email steve.humphress@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen B. Humphress

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the license application form, annual report, cremation authorization form, and crematory retort training report to be used, kept, and filed by crematory authorities. This administrative regulation establishes the records and information to be retained by crematory authorities and establishes guidelines for crematory inspections.

(b) The necessity of this administrative regulation: This regulation is necessary to provide the methods by which the Office of Attorney General, Office of Consumer Protection ("Office"), may perform its statutory obligations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.180 directs the Attorney General to promulgate administrative regulations that will facilitate the performance of duties vested in the Attorney General and the Department of Law. KRS 367.150(4) requires the Department of Law to study the operation of all laws, rules, administrative regulations, orders, and state policies affecting consumers and to recommend administrative regulations in the consumers' interest. KRS 367.97501 and 367.97504 require the Attorney General to promulgate an administrative regulation to establish an application for a crematory authority license and annual reports. KRS 367.97534(5) authorizes the Attorney General to promulgate administrative regulations necessary to carry out the provisions of KRS 367.97501 to 367.97537, pertaining to crematory authorities. KRS 367.97524(1) requires crematory authorities to possess signed cremation authorization forms before accepting or cremating any human remains.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the license application form,

annual report, cremation authorization form, and crematory retort training report to be used, kept, and filed by crematory authorities, establishes the records and information that shall be retained by crematory authorities, and establishes guidelines for inspection of those records and crematories.

(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: Through this amendment, the Office is revising the regulation to remove unnecessary language from the regulation as duplicative and which is already incorporated by reference in forms. The amendment includes updates incorporated forms that are easier to understand and consistent in appearance. It is intended that the new forms are easier for regulated crematory authorities to complete. The amended regulation provides better notice about when crematory authorities must file required forms. The regulation expressly permits the cremation of a deceased pregnant woman with the fetal remains of her unborn child.

(b) The necessity of the amendment to this administrative regulation: The crematory authorization form needs to be updated to reflect statutory changes resulting from HB 3 (2022), Senate Bill 38 (2020), and Senate Bill 66 (2020). The Office needs to update its regulations and forms to conform to KRS Chapter 13A drafting requirements. The Office also needs to update its regulation and forms to make both easier to understand by crematory authorities and consumers.

(c) How the amendment conforms to the content of the authorizing statutes: As previously explained, KRS 15.180, 367.150(4), 367.97501, 367.97504, and 367.97534(5) authorize the administrative regulation amendments.

(d) How the amendment will assist in the effective administration of the statutes: The regulation amendments will cause the regulations to be more easily understood by regulated entities. The regulation amendments will cause the crematory authority forms to be more easily understood and completed, provide better notice to consumers, allow easier processing by Office staff, and save administrative resources.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation amendment affects forty-six (46) licensed crematory authorities, individuals desiring to have human remains cremated, and the Office.

(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: Licensed crematory authorities will be required to use the new forms incorporated into this regulation. The Office will review the new forms for compliance with law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensed crematory authorities will have no additional costs. They will be able to download the new forms from the Office's website at no cost. The Office will have no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation amendments are intended to make the regulations more easily understood. In addition, it is intended that the required forms are more easily understood and completed, that the forms provide better notice to consumers, and that the forms allow easier processing by the Office.

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

(a) Initially: There are no costs to implement this administrative regulation amendment.

(b) On a continuing basis: There are no continuing costs to implement this administrative regulation amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional costs associated with implementing this administrative regulation amendment so no funding is needed.

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

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

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all crematory authorities.

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 is the only government agency expected to 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 15.180, 367.150(4), 367.97501, 367.97504, and 367.97534(5) authorize the administrative regulation amendments.

(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 Office does not expect that this amendment will require any additional government expenditures.

(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 by this administrative regulation amendment.

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

(c) How much will it cost to administer this program for the first year? There are no additional costs to administer this administrative regulation 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 administrative regulation amendment for each subsequent 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: There are no expected costs to administer this amendment.

(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 expected cost savings generated by this administrative regulation amendment for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no expected cost savings generated by this administrative regulation amendment for subsequent years.

(c) How much will it cost the regulated entities for the first year? There are no expected costs generated by this administrative regulation amendment for the first year.

(d) How much will it cost the regulated entities for subsequent years? There are no expected costs generated by this administrative regulation 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 (+/-):

Expenditures (+/-):

Other Explanation: There are no expected costs generated by this administrative regulation amendment.

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

GENERAL GOVERNMENT CABINET Auditor of Public Accounts (Amendment)

45 KAR 1:050. Audits of fiscal courts.

RELATES TO: KRS 43.070, 43.075, 64.810, 68.210, 31 U.S.C. 7501-7507

STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of the funds contained in county budgets (fiscal courts). This administrative regulation establishes the auditing standards, procedures, and formats for fiscal court audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures, and Formats. The financial and compliance audit of the funds contained in each county's budget shall be conducted in accordance with:

(1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:290[~~201 KAR 1:300, Section 3~~];

(2) Generally accepted government auditing standards, referenced in 201 KAR 1:290[~~201 KAR 1:300, Section 3~~]; and

(3) Fiscal Court Audit Guide, issued by the Auditor of Public Accounts, October 14, 2022[~~August 14, 2020~~].

Section 3. Auditor's Independent Judgement. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statements of a fiscal court are presented fairly, in all material respects, in accordance with a basis of accounting prescribed or permitted by the Department for Local Government, which is the regulatory basis of accounting or Generally Accepted Accounting Principles (GAAP).

(2) Any audit report of a fiscal court that is required to comply with the requirements of the Single Audit Act Amendments of 1996 and Title 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), shall include a statement concerning whether:

(a) The Schedule of Expenditure of Federal Awards is fairly stated, in all material respects, in relation to the financial statements taken as a whole; and

(b) The fiscal court has complied, in all material respects, with the requirements applicable to each of its major federal programs.

(3) An auditor shall make tests sufficient to determine whether:

(a) The fiscal court has complied with the requirements of the uniform system of accounts adopted under KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The county has complied with all other legal requirements relating to the management of public funds.

Section 5. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county fiscal court audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A county shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

- (a) Release of an audit report; and
- (b) Payment of fees for a fiscal court audit.

(3) Failure by an independent certified public accountant to comply with the Fiscal Court Audit Guide and this administrative regulation shall disqualify him from conducting fiscal court audits.

Section 6. Incorporation by Reference.

(1) The "Fiscal Court Audit Guide," Auditor of Public Accounts, October 14, 2022, [August 14, 2020] is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 209 Saint Clair Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

MIKE HARMON, Auditor of Public Accounts

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2022, at 10:00 a.m. Eastern Time at the will be held at the office of the Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Graham Gray, General Counsel, Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601; phone 502-209-2868; fax 502-564-2912; email Graham.Gray@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Graham Gray

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or KRS 64.810.

(b) The necessity of this administrative regulation: KRS 43.075 requires the Auditor of Public Accounts to promulgate this administrative regulation.

(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 promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or KRS 64.810.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists or will assist in the effective administration of the statute by promulgating uniform

standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or KRS 64.810.

(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 change the existing administrative regulation by replacing the "Fiscal Court Audit Guide," issued by the Auditor of Public Accounts, August 14, 2020, with "Fiscal Court Audit Guide," issued by the Auditor of Public Accounts, October 14, 2022, which is incorporated by reference, to make auditing procedures and report formats conform to the regulatory basis of accounting and applicable auditing standards. The amendment also updates the regulatory references in Section 2.

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation by incorporating the updated "Fiscal Court Audit Guide" is necessary to conform this administrative regulation to current fiscal court practices and procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 43.075, by updating current standards and procedures for conducting, and formats for reporting, fiscal court audits performed under KRS 43.070 or KRS 64.810.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute, KRS 43.075, by updating current standards and procedures for conducting, and uniform formats for reporting, all fiscal court audits performed under KRS 43.070 or KRS 64.810.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky counties, certified public accountants licensed in Kentucky who perform audits of fiscal courts, and the Auditor of Public Accounts, are 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 regulated entities identified in question (3) will not be impacted by the change to this administrative regulation that this amendment effectuates; the groups identified will continue to audit and be audited using uniform standards and procedures for conducting, and uniform formats for reporting, fiscal court audits.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will all benefit by having an updated "Fiscal Court Audit Guide" to follow in completing all audits of fiscal courts conducted pursuant to KRS 43.070 or KRS 64.810, consistent with the regulatory basis of accounting or Generally Accepted Accounting Principles (GAAP).

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency receipts of payments by the fiscal courts for the expense of the audits per KRS 43.070.

(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 the change in the amendment of this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering is not applicable to this amendment to this administrative regulation. Neither the amendment nor the administrative regulation disproportionately impact certain classes of regulated entities, as all fiscal courts are audited using the same uniform standards and procedures for conducting, and uniform formats for reporting, audits.

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? All 120 Kentucky counties, certified public accountants licensed in Kentucky that perform fiscal court audits, and the Auditor of Public Accounts are affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 43.075.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this amended administrative regulation on the expenditures and revenues of fiscal courts is neutral, resulting in no increase or decrease in 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? None.

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

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year, other than the expenses provided for under KRS 43.070.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years, other than the expenses provided for under KRS 43.070.

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

Revenues (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of fiscal courts is neutral, resulting in no increase or decrease in revenues.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the expenditures of fiscal courts is neutral, resulting in no increase or decrease in expenditures.

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. The effect of this amended administrative regulation on the expenditures and revenues of fiscal courts is neutral, resulting in no increase or decrease in expenditures or revenues.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The fiscal impact of this amendment to this administrative regulation on the revenues of fiscal courts is neutral, resulting in no increase or decrease in cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The fiscal impact of this amendment to this administrative regulation on the revenues of fiscal courts is neutral, resulting in no increase or decrease in cost savings.

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

year, other than the expenses provided for under KRS 43.070.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to administer this program for the first year, other than the expenses provided for under KRS 43.070.

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

Cost Savings (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of fiscal courts is neutral, resulting in no increase or decrease in cost savings.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of fiscal courts is neutral, resulting in no increase or decrease in cost savings.

Other Explanation: None.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment to this administrative regulation will not have a major economic impact. The fiscal impact of this amendment to this administrative regulation on the revenues and expenditures of fiscal courts is neutral, resulting in no increase or decrease in revenues or expenditures of fiscal courts. There will be no cost to administer this program for the first year or subsequent years, other than the expenses provided for under KRS 43.070.

PUBLIC PROTECTION CABINET Department of Professional Licensing Board of Registration for Professional Geologists (Amendment)

201 KAR 31:010. Fees.

RELATES TO: KRS 322A.050, 322A.060, 322A.070

STATUTORY AUTHORITY: KRS 322A.030(5), 322A.050, 322A.060(1), 322A.070(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.040, 322A.050, and 322A.060 authorize the board to establish application, registration, renewal, and examination fees. KRS 322A.070(3) authorizes the board to replace registrations if needed. This administrative regulation establishes the fees charged by the board to apply for registration or certification, sit for the examination, and renew and reinstate a registration or certification.

Section 1. Application Fee.

(1) The application fee for registration as a professional geologist or certification as a geologist-in-training shall be non-refundable pursuant to KRS 322A.050 and shall be paid with the filing of the application.

~~[(1) The application fee for registration as a professional geologist or certification as a geologist-in-training for each application filed from January 1 to September 30 of each odd numbered year shall be fifty (50) dollars.]~~

(2) The application fee for registration as a professional geologist or certification as a geologist-in-training ~~[for each application filed from October 1 of each odd numbered year to December 31 of each even numbered year shall be \$150(\$100)].~~

Section 2. Examination Fees. An applicant for registration as a professional geologist or certification as a geologist-in-training shall be responsible for payment of the required examination fee charged by the National Association of State Boards of Geology. [The fees established in subsections (1) and (2) of this section shall be paid with the filing of the registration or certification application in connection with the licensure examinations required by the board.]

~~(1) The fee for the Fundamentals of Geology (FG) portion of the examination shall be the prevailing fee charged by the National~~

Association of State Boards of Geology for that test plus a twenty-five (25) dollar processing fee for each initial and subsequent administration.

(2) The fee for the Practice of Geology (PG) portion of the examination shall be the prevailing fee charged by the National Association of State Boards of Geology for that test plus a twenty-five (25) dollar processing fee for each initial and subsequent administration.]

Section 3. Biennial Renewal Fees and Penalties. The fees established in subsections (1) through (5) of this section shall be paid in connection with licensure and certification renewals and late renewal penalties. (1) The biennial renewal fee for registration as a professional geologist or certification as a geologist-in-training shall be \$175[400].

(2) The late biennial renewal fee as a professional geologist or certification as a geologist-in-training, including penalty, for late renewal during the ninety (90) day grace period shall be \$225[450].

(3) The reinstatement fee for registration as a professional geologist or certification as a geologist-in-training renewal after the end of the ninety (90) day grace period and before the registration or certification is revoked pursuant to KRS 322A.060(3) shall be \$275[200].

(4) In lieu of paying the biennial renewal fee, a person may opt to renew his or her registration or certification as inactive.

(a) The biennial inactive renewal fee shall be \$100.

(b) A registration or certification may be renewed in inactive status indefinitely.

(c) The late biennial renewal fee shall be \$175.

(d) The reinstatement fee for registration as a professional geologist or certification as a geologist-in-training as an inactive renewal after the end of the ninety (90) day grace period and before the registration or certification is revoked pursuant to KRS 322A.060(3) shall be \$200.

(5) To reinstate a license from inactive status, a licensee shall remit the reinstatement fee in subsection (3) of this section.

Section 4. Duplicate Registration or Certification Fees. The fee for a duplicate of the original registration or certification certificate shall be ten (10) dollars.

JEREMY SYLVESTER, Board Counsel

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. on December 21, 2022, at the Public Protection Cabinet, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Zachary M. Zimmerer, Assistant Attorney General, Kentucky Office of the Attorney General, Office of Civil and Environmental Law, 700 Capital Avenue, Suite 118, 502-696-5300, 502-564-2894, email Zachary.Zimmerer@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Zachary M. Zimmerer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application, examination,

and renewal fees collected by the Board. This administrative regulation increases the application and renewal fees imposed by the Board and amends the Board's examination policy to be consistent with anticipated changes to the procedures used by National Association of State Boards of Geology. This administrative regulation also introduces the option of an inactive registration and certificate renewal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow the Board to charge appropriate application, examination, and renewal fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322A.040, 322A.050, and 322A.060 authorize the board to establish application, registration, renewal, and examination fees. This administrative regulation establishes the fees charged by the Board to apply for registration or certification, sit for the examination, and renew and reinstate a registration or certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the fees charged by the Board to apply for registration or certification, sit for the examination, and renew and reinstate a registration or certification.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation increases the Board's application and renewal fees and updates the Board's examination rules to be consistent with anticipated changes to the procedures used by National Association of State Boards of Geology.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to be consistent with anticipated changes to the procedures used by National Association of State Boards of Geology, the Board's testing provider. Additionally, this amendment is necessary to modernize the Board's application and renewal procedures.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 322A.040, 322A.050, and 322A.060 authorize the board to establish application, registration, renewal, and examination fees. This administrative regulation establishes the fees charged by the Board to apply for registration or certification, sit for the examination, and renew and reinstate a registration or certification.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the fees charged by the Board to apply for registration or certification, sit for the examination, and renew and reinstate a registration or certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board only regulates individuals. No businesses, organizations, or state and local governments will be affected by this administrative regulation. The Board currently has 1195 registrants and certification holders. The Board anticipates 58 new applications annually.

(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: The individuals identified in question (3) will be required to pay the increased application and renewal fees to obtain and maintain registration or certification. New applications will be required to make examination arrangements directly with National Association of State Boards of Geology, the Board's testing provider.

(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 individuals identified in question (3) will be required to pay the increased application and renewal fees to obtain and maintain registration or certification. New applications will be required to make examination arrangements directly with National Association of State Boards of Geology, the Board's testing provider.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): New applicants will incur an additional \$50 - \$100 cost to obtain a registration or certification. The amendment provides for a uniform cost without regard to odd or even numbered years. Renewing registrants and certification holders will incur an additional \$75 cost to maintain an active registration or certification.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): New applicants will enjoy a streamlined examination registration process by making examination arrangements directly with National Association of State Boards of Geology, the Board's testing provider. Current registrants and certificate holders may take advantage of the new inactive registration or certificate renewal option offered for a \$100 fee.

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

(a) Initially: There is no cost associated with implementing this administrative regulation.

(b) On a continuing basis: There is no continuing cost associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board is funded exclusively through license application and renewal fees. The Board will fund any implementation and enforcement costs through its application and renewal 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 will be necessary to implement the changes in 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 establish and increase existing fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No units, parts, or divisions of state or local government will be impacted by this administrative regulation beyond the Board itself.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322A.030, KRS 322A.050, 322A.060, 322A.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. There will be no effect on the expenditures of state or local government in the first full year this administrative regulation is in effect. The Board expects to realize an increase of \$67,400 in revenue in the first full year this administrative regulation is in effect compared to what the Board would have received under the existing fee structure. However, due to a decline in registration rolls, the Board's estimate of revenue for the next two-year period is only about \$8,000 more than the revenue available to pay for the Board's operational expenses incurred during FY 20 through FY 21. Moreover, it is important to note that this regulation will take effect during a renewal period that only occurs every other year.

(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 Board expects to realize an increase of \$67,400 in revenue in the first full year this administrative regulation is in effect compared to what would have been realized under the existing fee structure. Again, the first year for the amended regulation corresponds to the next renewal period in 2023. As noted above, the total revenue estimates for the next two years amount to only about \$8,000 more than the revenue available to the Board to meet operational expenses in FY20 and FY21.

(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 Board expects to realize an increase of approximately \$5,800 in revenue in the year after the first year after this administrative regulation goes into effect compared to what the Board would have received under the existing fee structure. After that year, the Board predicts marginally less increased revenue for each two-year renewal period based on the number of registrants and certificate holders continuing to decline.

(c) How much will it cost to administer this program for the first year? There is no 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 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 (+/-): +\$73,200 per two-year renewal cycle

Expenditures (+/-): 0

Other Explanation: It is difficult to estimate the increase in revenue for this regulation amendment. The Board expects a declining number of registrants over time. For example, 150 registrants and certificate holders chose not to renew during the last renewal period, which equates to about an 11 percent decline in revenue from renewal fees. The introduction of an inactive renewal registration also creates uncertainty with estimating revenue because that fee is \$50 less than the active renewal fee. The estimates provided here assume 20% of the registrants will choose an inactive registration during the next renewal period and that the Board will experience a 10% decline in total registrants and certificate holders in 2023.

(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. Regulated individuals and prospective applicants will incur additional expenditures to obtain and maintain a registration or certification.

(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.

(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.

(c) How much will it cost the regulated entities for the first year? New applicants will incur an additional \$50 cost to obtain a registration or certification. Renewing registrants and certification holders will incur an additional \$75 cost to maintain a registration or certification for the renewal period starting in 2023.

(d) How much will it cost the regulated entities for subsequent years? New applicants will incur an additional \$50 - \$100 cost to obtain a registration or certification, depending on whether they would have applied under the existing regulation providing for different fees in odd and even years. Renewing registrants and certification holders will incur an additional \$75 cost to maintain a registration or certification for subsequent biennial renewals.

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 (+/-): +\$75/per active registrant (every two years) and \$50-\$100/applicant

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. This administrative regulation will not have a major economic impact.

PUBLIC PROTECTION CABINET
Department of Professional Licensing
Board of Registration for Professional Geologists
(Amendment)

201 KAR 31:040. Applications and examinations.

RELATES TO: KRS 322A.030(3), (4), 322A.040(1)(c), 322A.045

STATUTORY AUTHORITY: KRS 322A.030(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.040(1)(c) requires administrative regulations governing the examination of applicants for registration. KRS 322A.045 requires the board to promulgate an administrative regulation governing the examination for an applicant for certification as a geologist-in-training. This administrative regulation establishes requirements concerning examinations.

Section 1. General Requirements. (1) The board shall furnish to applicants pertinent instructions [and establish the examination schedule—]which shall include: arranging to take the required examination(s), the place, the time, and the final date by which the board shall have received the applicant's materials.

(2) An applicant for examination shall submit a complete application and pay the application [and examination—]fees required by 201 KAR 31:010 [to the board when filing the application]. Once the application has been approved by the board, the applicant shall arrange to be scheduled to take the examination at the next regularly scheduled date.

(3) [If an applicant fails to appear for the scheduled examination and presents a valid reason in writing no later than thirty (30) days after the missed examination date for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date upon payment of a twenty-five (25) dollar fee.

—(4) If an applicant fails to appear for or to complete the examination without a valid reason, the applicant shall forfeit all examination fees paid.

—(5) If an applicant fails to appear for a second scheduled examination, without presenting a valid reason in writing such as illness or death in the immediate family, the application shall be terminated on the date of the examination, and the applicant shall be denied registration on the basis of failure of the examination by default. The applicant shall not engage in the public practice of geology or otherwise violate KRS 322A.090(2).

—(6) An applicant who fails to complete the application and examination process within one (1) year of the date of filing of the application shall file a new application and pay the fees required by 201 KAR 31:010 in order to be eligible for registration or certification [unless the applicant has obtained a deferral under subsection (3) of this section].

Section 2. Examination for Registration. (1) An applicant for registration shall submit to an examination composed of the Fundamentals of Geology (FG) and the Practice of Geology (PG) developed and owned by the National Association of State Boards of Geology (ASBOG®). The applicant shall obtain a scaled score equal to passage of seventy (70) percent on both the Fundamentals of Geology (FG) and the Practice of Geology (PG) examinations.

(2) [An applicant shall provide a current, government-issued, photographic identification when taking the examination.

—(3) If an applicant for registration fails one (1) or both of the examinations, the applicant may, with payment of the required fee, be rescheduled to take the examination at the next regularly scheduled examination date. An applicant who fails one (1) of the examinations shall be required to retake only the examination on which the applicant failed to achieve a passing scaled score.

[(4) If the applicant is practicing under a temporary permit, the applicant may continue to practice under the supervision of a registered geologist until achieving a passing score on the examination or until sixty (60) days after the second examination offered after the applicant has been approved for registration.]

Section 3. Examination for Certification as a Geologist-in-Training. An applicant for certification as a Geologist-in-Training shall:

(1) Submit to an examination composed of the Fundamentals of Geology (FG) developed and owned by the National Association of State Boards of Geology (ASBOG®);

(2) Obtain a scaled score equal to passage of seventy (70) percent; and

(3) Not take this examination prior to the applicant's final semester or quarter from an accredited college or university.

Section 4. Release of information. A registered geologist or certified geologist-in-training shall complete and submit the Authorization for Release of Records form to the Board to release a copy of his or her licensing or examination records to a third party.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Registration as a Professional Geologist", 10-10-2022; and [7-10-2013, is incorporated by reference.]

(b) "Authorization for Release of Records", 10-10-2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Kentucky Board of Registration for Professional Geologists, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601[941 Leawood Drive, Frankfort, Kentucky 40604], (502) 892-4261[564-3296], Monday through Friday, 8 a.m. to 5:00 p.m.

JEREMY SYLVESTER, Board Counsel

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. on December 21, 2022, at the Public Protection Cabinet, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Zachary M. Zimmerer, Assistant Attorney General, Kentucky Office of the Attorney General, Office of Civil and Environmental Law, 700 Capital Avenue, Suite 118, 502-696-5300, 502-564-2894, email Zachary.Zimmerer@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Zachary M. Zimmerer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements concerning applications and examinations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform prospective applicants of the procedure for applying for and taking the required examinations for registration and certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322A.040(1)(c) requires administrative regulations governing the examination of applicants for registration. KRS 322A.045 requires the board to promulgate an administrative regulation governing the examination for an applicant for certification as a geologist-in-training. This

administrative regulation establishes requirements concerning applications and examinations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs prospective applicants of the procedure for applying for and taking the required examinations for registration and certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes outdated application and examination instructions and modernizes the Board's application and examination procedures to be consistent with the National Association of State Boards of Geology, the Board's testing provider.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the Board's application and examination procedures to be consistent with the National Association of State Boards of Geology, the Board's testing provider.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 322A.040(1)(c) requires administrative regulations governing the examination of applicants for registration. KRS 322A.045 requires the board to promulgate an administrative regulation governing the examination for an applicant for certification as a geologist-in-training. This administrative regulation establishes requirements concerning applications and examinations.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes requirements concerning applications and examinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Sections 1 through 3 only apply to prospective applicants. Annually, the Board anticipates receiving 58 new applications. Section 4 would apply to any registrant or certificate holder who wishes to have his or her information released to another entity. The Board currently licenses 1195 individuals who could potentially seek to use this form.

(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: New applicants will be required to follow the examination instructions provided by the National Association of State Boards of Geology, the Board's testing provider. Regulated individuals seeking to have the Board release licensing records will be required to use the new records release form.

(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: New applicants will be required to follow the examination instructions provided by the National Association of State Boards of Geology, the Board's testing provider. Regulated individuals seeking to have the Board release licensing records will be required to use the new records release form.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Current registrants and certificate holders will have a means to request release of official licensing records. Prospective applicants will have the benefit of directly arranging for testing with the National Association of State Boards of Geology, the Board's testing provider.

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

(a) Initially: There is no cost associated with implementing this administrative regulation.

(b) On a continuing basis: There is no continuing cost associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The Board is funded exclusively through license application and renewal fees. The Board will fund any implementation and enforcement costs through its application and renewal 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 will be necessary to implement the changes in 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 existing fees.

(9) TIERING: Is tiering applied?. No. Tiering is not applied.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No units, parts, or divisions of state or local government will be impacted by this administrative regulation beyond the Board itself.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322A.030, 322A.040, and 322A.045.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no 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 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 (+/-): 0

Expenditures (+/-): 0

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. There is no expected cost savings for regulated entities during the first full year this regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no expected cost savings for regulated entities during the first full year this regulation is to be in effect.

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

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

(d) How much will it cost the regulated entities for subsequent years? There is no cost to 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 (+/-): 0

Expenditures (+/-): 0

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. This administrative regulation will not have a major economic impact.

**PUBLIC PROTECTION CABINET
Department of Professional Licensing
Board of Registration for Professional Geologists
(Amendment)**

201 KAR 31:050. Renewals.

RELATES TO: KRS 322A.060, 322A.070

STATUTORY AUTHORITY: KRS 322A.030(5), 322A.060, 322A.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.060 establishes conditions for the renewal, suspension, and revocation of certificates of registration. KRS 322A.070 authorizes the board to determine the initial and expiration dates for certificates of certification. KRS 322A.030(5) authorizes the board to promulgate administrative regulations required to perform its duties. This administrative regulation establishes procedures for the renewal of certificates of registration and certification.

Section 1. Registration and Certification Renewals. (1) A registered professional geologist or certified geologist-in-training shall before October 1 of each odd numbered year:

(a) Complete and file the Registration and Certification Renewal and Reinstatement form. [~~File a completed renewal application using the:~~

1. Application for Renewal as a Professional Geologist; or

2. Application for Renewal as a Geologist-in-Training;] and

(b) Pay to the board the renewal fee established by 201 KAR 31:010, Section 3[~~(1)~~].

(2)(a) A certificate of registration that is not renewed before October 1 of each odd numbered year shall expire as provided by KRS 322A.060(1).

(b) A certificate for a geologist-in-training that is not renewed before October 1 of each odd numbered year shall expire as provided by KRS 322A.070.

Section 2. Late Renewals. A ninety (90) day grace period shall be allowed beginning October 1 of each odd numbered year, during which a registered professional geologist or certified geologist-in-training may:

(1) Continue to practice; and

(2) Renew his or her certificate of registration or certification by filing a completed Registration and Certification Renewal and Reinstatement form [~~renewal application~~] and by paying the renewal fee as provided by 201 KAR 31:010, Section 3[~~(1)~~].

Section 3. Suspension for non-renewal. (1) A certificate of registration or certification that is not renewed on or before December 29 of each odd numbered year shall be suspended for non-renewal.

(2) Upon suspension, the registered professional geologist or certified geologist-in-training shall:

(a) Not practice geology in Kentucky;

(b) Be notified by the Board at the last known address available to the board of the suspension; and

(c) Be instructed to cease and desist the public practice of geology in Kentucky.

Section 4. Reinstatement. After the ninety (90) day grace period and before the end of two (2) years, a professional geologist or geologist-in-training suspended for failure to renew may have his or her certificate of registration or certification reinstated upon:

(1) Payment of the reinstatement fee as provided by 201 KAR

31:010, Section 3[~~(3)~~];

(2) Completion of the Registration and Certification Renewal and Reinstatement form [:

(a) Application for Reinstatement as a Professional Geologist; or

(b) Application for Reinstatement as a Geologist-in-Training;] and

(3) Documentation of employment and description of job duties from the time of suspension until the date of the renewal application.

Section 5. Inactive renewals and reactivation. (1) A person who renews his or her registration or certification as inactive shall complete and submit Registration and Certification Renewal and Reinstatement form and remit the fee in 201 KAR 31:010, Section 3.

(2) A person may maintain an inactive registration or certification indefinitely if he or she pays the required biennial inactive renewal fees when due

(3) A person with a registration or certification that is inactive shall not engage in the practice of geology and shall at all times be bound by the Board's Code of Conduct in 201 KAR 31:060, the provisions of KRS Chapter 322A, and any other administrative regulation promulgated by the Board.

(4) To reactivate a registration or certification, an inactive registrant or certificate holder shall complete and submit the Registration and Certification Renewal and Reinstatement form and remit the fee in 201 KAR 31:010, Section 3.

Section 6. Incorporation by Reference.

(1) The "Registration and Certification Renewal and Reinstatement form", 10-10-2022, is incorporated by reference. [The following material is incorporated by reference:

(a) "Application for Renewal as a Professional Geologist", July 10, 2013;

(b) "Application for Renewal as a Geologist-in-Training", July 10, 2013;

(c) "Application for Reinstatement as a Professional Geologist", July 10, 2013; and

(d) "Application for Reinstatement as a Geologist-in-Training", July 10, 2013.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Registration for Professional Geologists, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601[911 Leawood Drive, Frankfort, Kentucky 40604], (502) 892-4261[564-3296], Monday through Friday, 8 a.m. to 5:00 p.m.

JEREMY SYLVESTER, Board Counsel

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Contact person: Zachary M. Zimmerer, Assistant Attorney General, Kentucky Office of the Attorney General, Office of Civil and Environmental Law, 700 Capital Avenue, Suite 118, 502-696-5300, 502-564-2894, email Zachary.Zimmerer@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Zachary M. Zimmerer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the renewal of certificates of registration and certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for the renewal of certificates of registration and certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322A.060 establishes conditions for the renewal, suspension, and revocation of certificates of registration. KRS 322A.070 authorizes the board to determine the initial and expiration dates for certificates of certification. KRS 322A.030(5) authorizes the board to promulgate administrative regulations required to perform its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures for the renewal of certificates of registration and certification.

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

a) How the amendment will change this existing administrative regulation: This amendment streamlines the required renewal and reinstatement forms, converting four forms into one, and introduces a new renewal option for existing registrants and certificate holders.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update existing forms used by the Board and to make available an inactive renewal option.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 322A.060 establishes conditions for the renewal, suspension, and revocation of certificates of registration. KRS 322A.070 authorizes the board to determine the initial and expiration dates for certificates of certification. KRS 322A.030(5) authorizes the board to promulgate administrative regulations required to perform its duties.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes procedures for the renewal of certificates of registration and certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board only regulates individuals. No businesses, organizations, or state and local governments will be affected by this administrative regulation. The Board currently has 1194 registrants and certification holders. The Board annually anticipates 58 new applications.

(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: The individuals identified in question (3) will be able to take advantage, should they choose, of a new renewal option for inactive registration status. Additionally, the forms required to renew or reinstate a registration or certification will be modified and consolidated.

(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 individuals identified in question (3) will be required to use new forms to renew or reinstate a registration or certification.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals identified in question (3) will benefit from this amendment because their license renewal and reinstatement process will be streamlined. Additionally, the individuals identified in question (3) may take

advantage of a new registration renewal option.

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

(a) Initially: There is no cost associated with implementing this administrative regulation.

(b) On a continuing basis: There is no continuing cost associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board is funded exclusively through license application and renewal fees. The Board will fund any implementation and enforcement costs through its application and renewal 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 will be necessary to implement the changes in 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 existing fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No units, parts, or divisions of state or local government will be impacted by this administrative regulation beyond the Board itself.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322A.030, 322A.060, 322A.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. There will be no effect on the expenditures of state or local government in the first full year this administrative regulation is in effect.

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

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

(c) How much will it cost to administer this program for the first year? There is no 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 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 (+/-): 0

Expenditures (+/-): 0

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. There is no expected cost savings for regulated entities during the first full year this regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no expected cost savings for regulated entities during the first full year this regulation is to be in effect.

(b) How much cost savings will this administrative regulation

generate for the regulated entities for subsequent years? There is no expected cost savings for regulated entities for subsequent years.

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

(d) How much will it cost the regulated entities for subsequent years? There is no cost to 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 (+/-): 0

Expenditures (+/-): 0

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. This administrative regulation will not have a major economic impact.

TOURISM, ARTS, AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:015. Feeding of wildlife.

RELATES TO: KRS 150.015

STATUTORY AUTHORITY: 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015 requires the department to protect and conserve the wildlife of this Commonwealth. KRS 150.025(l)(h) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150. This administrative regulation establishes restrictions on the feeding of wildlife that will serve to protect wildlife from disease and toxic substances that may cause harm to the wildlife population if left unregulated. [~~EO-2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.~~]

Section 1. Definitions.

(1) "Captivity" means confinement by fence or other structure, or restraint intended to prevent escape.

(2) "Curtilage of the home" means the area encompassing the grounds immediately surrounding any home or group of homes used in the daily activities of domestic life, and may or may not be enclosed by a fence or other barrier, and includes areas occupied by captive cervids as established in 301 KAR 2:083 and wildlife held in captivity for rehabilitation purposes as established in 301 KAR 2:075 or held in captivity as established in 301 KAR 2:081 and 2:082.

(3) "Feeding" means willingly, wantonly, or knowingly depositing, distributing, or scattering of shelled, shucked, or unshucked corn, millet, milo, safflower seed, sunflower seed, salt, mineral, or other attractants, thistle, wheat, or other grain, or any manufactured feed or food product to be consumed by wildlife, but shall not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting practices or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

Section 2. Recreational Feeding of Wildlife.

(1) Wildlife shall not be fed from March 1 through July[~~May~~] 31 except as provided in subsections (2) and (3) of this section.

(2) Wildlife may only be fed year-[-]round:

(a) In public areas ~~that is not~~ open to legal hunting or trapping, unless otherwise prohibited by statute, administrative regulation, or municipal ordinance;

(b) Within the curtilage of the home; and

(c) In a zoo or other facility that lawfully keeps or exhibits wildlife for rehabilitation, rescue, or public viewing.

(3) Fish may be fed year-[-]round.

Section 3. Chronic Wasting Disease. In a department-designated Chronic Wasting Disease Surveillance Zone or Management Zone county, specified on the department's Web site at fw.ky.gov, persons shall not bait or feed using grain, salt, mineral, or other ingested attractants, except that the following shall be exempted:

(1) Normal agricultural practices;

(2) Wildlife food plots or plantings;

(3) Bird feeders within the curtilage of the home; and

(4) Furbearer trapping, except that trappers shall not use grain, salt, or mineral.

RICH STORM, Commissioner

APPROVED BY AGENCY: October 14, 2022

FILED WITH LRC: October 14, 2022 at 11:13 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 29, 2022, at 10:00 a.m. at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes restrictions on the feeding of wildlife that will serve to protect wildlife from disease and toxic substances that may cause harm to the wildlife population if left unregulated.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage wildlife populations in Kentucky while protecting them from disease concerns.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.015 requires the department to protect and conserve the wildlife of this Commonwealth. KRS 150.025(l)(h) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing requirements for feeding of wildlife.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes applicable dates in the existing regulation in regards to feeding of wildlife.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to extend the applicable range of dates in the existing regulation in regards to feeding of wildlife.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: Anyone feeding fish or wildlife.

(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: Not placing bait in areas or during the range of dates prohibited by this regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Healthier wildlife populations.

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

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

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Additional fees or funding for direct implementation of this regulation are not necessary because the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish nor increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because all individuals feeding fish or wildlife are treated the same.

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 Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the Department of Fish and Wildlife to make regulations as to game and fish.

(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. n/a

(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?

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

(d) How much will it cost to administer this program for subsequent years? No cost will be incurred 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 (+/-): n/a

Expenditures (+/-): n/a

Other Explanation: n/a

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

(a) How much cost savings will this administrative regulation

generate for the regulated entities for the first year? n/a

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? n/a

(c) How much will it cost the regulated entities for the first year? n/a

(d) How much will it cost the regulated entities for subsequent years? n/a

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)]

DEPARTMENT OF AGRICULTURE Office of Agricultural Marketing (Amendment)

302 KAR 40:010. Certification of organic production, processing, or handling operations.

RELATES TO: KRS 260.020, 260.030, 260.038, 7 C.F.R. 205

STATUTORY AUTHORITY: KRS 260.020(3), 260.030(1)(k), 7 C.F.R. 205

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.020(3) authorizes the commissioner of the Kentucky Department of Agriculture to promulgate administrative regulations to carry out any programs established under the Office for Agricultural Marketing ~~[and Product Promotion]~~ and to establish fees for the administration of those programs. KRS 260.030(1)(k) requires the Office of ~~[for]~~ Agricultural Marketing ~~[and Product Promotion]~~—to establish an Organic Agricultural Product Certification Program. This administrative regulation establishes the procedures for certification of organically-produced agricultural products.

Section 1.

(1) A producer, processor, or handler of organic agricultural products shall comply with:

(a) 7 C.F.R. Part 205, the National Organic Program;

(b) The [KDA] Organic Certification Program Quality Manual; and

(c) The standards contained in the certification application required by Section 2(1) of this administrative regulation.

(2) The department shall administer the Organic Certification Program in accordance with the [KDA] Organic Certification Program Quality Manual.

Section 2. Certification.

(1) To receive or maintain organic certification, a completed Organic Certification Application ~~[application]~~ form shall be submitted to the department annually.

~~[(a) A producer shall submit an Organic Farm Certification Application.~~

~~(b) A processor or handler shall submit:~~

~~1. An Organic Processing/Handling Certification Application; and~~

~~2. An Organic Product Profile for each product to be certified.~~

~~(c) A producer requesting certification of livestock shall also submit an Organic Livestock Certification Application.]~~

~~(d)] Relevant supporting documentation required by the [an] application shall be submitted with the application.~~

(2) The production, processing, or handling operation shall be inspected by the department.

(a) The inspector shall be trained as required by the [KDA

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[Organic Certification Program Quality Manual.

(b) The applicant shall be present during an unannounced [the] inspection.

(c) The inspector shall complete the appropriate field inspection report:

1. The [KDA Organic] Crop Inspection Report;
2. The [KDA Organic] Livestock Inspection Report; or
3. The KDA Processing/Handler Organic Inspection Report.

(d) An exit interview shall be conducted using the Organic Inspection Exit Interview form.

(e) Upon receipt of a field inspection report, the department shall make a determination of certification and notify the applicant in writing of its decision. If the written application and the field inspection report demonstrate compliance with this administrative regulation and 7 C.F.R. 205, the department shall grant certification.

(3) The department shall conduct an annual inspection of every certified organic entity.

(4) Except as provided by subsection (5) of this section and Section 3 of this administrative regulation, a producer, processor, or handler shall pay a certification fee of \$500[\$250] for the initial certification scope and each year thereafter when renewed. Subsequent scopes beyond the initial shall be charged at \$250[\$125] and each year thereafter when renewed. Except as provided by subsection (5) of this section and Section 3 of this administrative regulation, processors and handlers shall pay an additional fee of \$200[\$100] per each \$100,000 increment of gross receipts that exceed \$100,000. Fees, including additional fees, shall be calculated in accordance with the application [Organic Program Fee Schedule].

(5) A production, processing, or handling operation with gross agricultural income from organic sales of less than \$5,000 annually shall register with the department by using the Exempt Organic Operation Registration form. There shall not be a fee to register.

(6) To withdraw a certification application, a Voluntary Withdrawal Form [Withdrawal of USDA National Organic Program Certification Application form] shall be submitted to the department. The withdrawal procedures listed on the form shall be followed.

(7) To voluntarily surrender an organic certification, a Voluntary Surrender Form [of USDA National Organic Program Certification form] shall be submitted to the department. The surrendering procedures listed on the form shall be followed.

[Section 3. Nonprofit, Educational, or Charitable Organization.

(1) If a nonprofit, educational, or charitable organization, as defined by the Internal Revenue Code, 26 U.S.C. 501(c)(3), has at least \$5,000 gross sales of organic products, it shall be certified and pay the required fees in accordance with Section 2 of this administrative regulation.

(2) If a nonprofit, educational, or charitable organization, as defined by the Internal Revenue Code, 26 U.S.C. 501(c)(3), has less than \$5,000 gross sales of organic products, it shall be registered for production, processing, or handling organic products by using the Exempt Organic Operation Registration form. There shall not be a fee to register.]

Section 3. [Section 4.] Organic Agriculture Advisory Committee.

(1) The Organic Agriculture Advisory Committee shall consist of seven (7) members. At least three (3) of the members shall be farmers who produce organic products. The other four (4) members may include consumers, advocates, handlers, or processors of organic products.

(2) The committee shall be appointed by the commissioner and serve a term of two (2) years. Members may be reappointed to additional two (2) year terms.

(3) The committee shall develop recommendations to promote and expand the organic agricultural products industry in Kentucky.

(4) Members shall receive reimbursement for mileage only for meetings of the full committee.

Section 4. [Section 5.] Exports. If export documentation is requested, the procedures established in the [KDA] Organic Certification Program Quality Manual shall be followed. The

applicant shall pay an additional fee of fifty (50) dollars [—in accordance with the Organic Program Fee Schedule].

Section 5. [Section 6.] Material Incorporated [Incorporation] by Reference.

(1) The following material is incorporated by reference:

(a) "Organic Certification Application", September 2021;
(b) "Processing and Handling Organic System Plan", August 2022;

(c) "Livestock & Poultry Organic System Plan", November 2021;

(d) "2022 Crop Organic System Plan", November 2021;

(e) "Single ingredient product list", October 2022;

(f) "Multiple ingredient product list", October 2022;

(g) "Voluntary Withdrawal Form", January 2020;

(h) "Voluntary Surrender Form", January 2020;

(i) "Organic Certification Program Quality Manual", November 2021;

(j) "Exempt Organic Operation Registration", October 2022;

(k) "Organic Inspection Exit Interview", November 2019;

(l) "Crop Inspection Report", October 2022;

(m) "Livestock Inspection Report", October 2022;

(n) "KDA Processing/Handler Organic Inspection Report", 2017.

[a) "Organic Farm Certification Application", December 2013;

b) "Organic Processing/Handling Certification Application", December 2013;

c) "Organic Livestock Certification Application", December 2013;

d) "Organic Certification Program Fee Schedule", October 2013;

e) "Organic Product Profile", December 2013;

f) "Withdrawal of USDA National Organic Program Certification Application", October 2013;

g) "Voluntary Surrender of USDA National Organic Program Certification", October 2013;

h) "KDA Organic Certification Program Quality Manual", December 2013;

i) "Exempt Organic Operation Registration", December 2013;

j) "Organic Inspection Exit Interview", May 2002;

k) "KDA Organic Crop Inspection Report", December 2013;

l) "KDA Organic Livestock Inspection Report", December 2013; and

m) "Processing/Handler Organic Inspection Report", December 2013.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing [and Product Promotion], 109 Corporate Drive [100 Fair Oaks], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the department Web site at www.kyagr.com.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 14, 2022 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort

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Kentucky 40601, phone (502) 330-6360, email
clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing creates the rules and process for certification of organic operations by the KDA.

(b) The necessity of this administrative regulation: This filing is necessary to create a uniform set of rules and processes for organic certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set rules and processes for organic certification. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This filing assists with the statute by incorporating the federal NOP manual and the forms the KDA uses in the 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: This filing updates the fee structure and forms used.

(b) The necessity of the amendment to this administrative regulation: Updated forms are needed for the program. Updated fees are required to attempt to offset some of the program costs to the KDA.

(c) How the amendment conforms to the content of the authorizing statutes: This filing helps fulfill the statutory command to the KDA.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes the program updated, particularly as to the forms used in administration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects entities and persons seeking organic certification through the KDA. Approximately 167 entities are currently certified by the KDA.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons seeking organic certification shall need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity chooses to participate in. Costs are based on the number of scopes and the gross sales made.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be able to sell products as certified organic.

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

(a) Initially: The KDA estimates \$585,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$585,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fee increases are required to attempt to cover part of the program costs.

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

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 KDA and the USDA NOP.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.020, 260.030, 260.038, 7 C.F.R. 205

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Prior to the proposed fee increase, revenue is about \$70,475 annually. With the doubling of fees, the KDA expects this figure to double as well.

(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 KDA anticipates \$140,000 or more as the popularity of the organics program increases.

(c) How much will it cost to administer this program for the first year? The cost to administer the organic program is \$585,000

(d) How much will it cost to administer this program for subsequent years? The cost to administer the organic program for subsequent years is estimated to be at least \$585,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will still be a fraction of the cost of alternative certifiers, despite a doubling of fees.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will still be a fraction of the cost of alternative certifiers, despite a doubling of fees in subsequent years.

(c) How much will it cost the regulated entities for the first year? Costs will depend on the number of scopes and gross sales. The minimum cost is a single scope of \$500.

(d) How much will it cost the regulated entities for subsequent years? Costs will depend on the number of scopes and gross sales. The minimum cost is a single scope of \$500.

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)] Fees and the increase will not exceed the major economic impact threshold.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 C.F.R. 205

(2) State compliance standards. KRS 260.020, 260.030, 260.038,

(3) Minimum or uniform standards contained in the federal mandate. The federal act and regulations create the minimum guidelines for the National Organic Program.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The KDA does not believe that stricter or any additional standards are created.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 63:060. List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

RELATES TO: KRS 224.10-100, 224.20-110, 40 C.F.R. Part 63, Part 70, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides the list of hazardous air pollutants pursuant to 42 U.S.C. 7412(b) as amended in 40 C.F.R. Part 63, Subpart C and the list of source categories and subcategories.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given to them in 40 C.F.R. 63.2.

(1) "Hazardous air pollutant" means a substance listed in Section 2 of this administrative regulation.

(2) "MACT" means maximum achievable control technology.

(3) "Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants, or a lesser quantity which the cabinet may establish on the basis of the potency, persistence, potential for bioaccumulation, or other characteristics or relevant factors pertaining to the pollutant.

(4) "NESHAP" means national emission standards for hazardous air pollutant.

Section 2. List of Hazardous Air Pollutants. The following chemicals are hazardous air pollutants:

CAS number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride

92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrachloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106945	1-Bromopropane (1-BP)
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidine
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)

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106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate(MDI)
101779	4,4'-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane

127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds ¹
0	Glycol ethers ²
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers ³
0	Nickel Compounds
0	Polycyclic Organic Matter ⁴
0	Radionuclides (including radon) ⁵
0	Selenium Compounds

Footnotes: For all listings in the table that contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical as part of that chemical's infrastructure.

¹ X'CN where X = H' or any other group where a formal dissociation may occur.

² Glycol ethers include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n-OR'.

Where:

n = 1, 2, or 3;

R = alkyl C7 or less; or

R = phenyl or alkyl substituted phenyl;

R' = H or alkyl C7 or less; or

OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

³ Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter one (1) micrometer or less.

⁴ Includes organic compounds with more than one (1) benzene ring and that have a boiling point greater than or equal to 100°C.

⁵ A type of atom that spontaneously undergoes radioactive decay.

Section 3. List of Categories and Subcategories of Hazardous Air Pollutants. The following are major and area source categories and subcategories:

(1) Major sources:

- (a) Aerospace industries;
- (b) Asphalt processing and asphalt roofing manufacturing;
- (c) Auto and light duty truck (surface coating);
- (d) Boat manufacturing;
- (e) Brick and structural clay products;
- (f) Cellulose products manufacturing:
 - 1. Cellulose ethers production:
 - a. Methyl cellulose;
 - b. Carboxymethylcellulose; or
 - c. Cellulose ethers; or
 - 2. Miscellaneous viscose processes:
 - a. Cellulose food casing;
 - b. Rayon;
 - c. Cellulosic sponge; or
 - d. Cellophane;
- (g) Chemical recovery combustion sources at kraft, soda, sulfite and stand-alone semi[-]chemical pulp mills - MACT II;
- (h) Chromium electroplating:
 - 1. Chromic acid anodizing;
 - 2. Decorative acid; or
 - 3. Hard chromium electroplating;
- (i) Clay ceramics ceramics manufacturing;
- (j) Coke ovens: charging, top side and door leaks;
- (k) Coke ovens: pushing, quenching and battery;
- (l) Combustion turbines;
- (m) Commercial sterilizers;
- (n) Dry cleaning:
 - 1. Commercial dry cleaning dry-to-dry;
 - 2. Commercial dry cleaning transfer machines;
 - 3. Industrial dry cleaning dry-to-dry; or
 - 4. Industrial dry cleaning transfer machines;
- (o) Engine test cells/stands;
- (p) Fabric printing, coating, and dyeing;
- (q) Ferroalloys production: silicomanganese and ferromanganese;
- (r) Flexible polyurethane foam fabrication operations;
- (s) Flexible polyurethane foam production;
- (t) Friction materials manufacturing;
- (u) Gasoline distribution (Stage 1);
- (v) Generic MACT I:
 - 1. Acetal resins production;
 - 2. Acrylic fibers/modacrylic fibers production;
 - 3. Hydrogen fluoride production; or
 - 4. Polycarbonates production;
- (w) Generic MACT II:
 - 1. Carbon black production;
 - 2. Spandex production;
 - 3. Cyanide chemicals manufacturing; or
 - 4. Ethylene processes;
- (x) Hazardous waste combustors;
- (y) Hydrochloric acid production;
- (z) Industrial/commercial/institutional boilers and process heaters;
 - (aa) Industrial process cooling towers;
 - (bb) Integrated iron and steel manufacturing;
 - (cc) Iron and steel foundries;
 - (dd) Large appliance (surface coating);
 - (ee) Leather finishing operations;
 - (ff) Lime manufacturing;
 - (gg) Magnetic tapes (surface coating);
 - (hh) Manufacturing of nutritional yeast;
 - (ii) Marine vessel loading operations;
 - (jj) Metal can (surface coating);
 - (kk) Metal coil (surface coating);
 - (ll) Metal furniture (surface coating);
 - (mm) Mineral wool production;
 - (nn) Miscellaneous coatings manufacturing;
 - (oo) Miscellaneous metal parts and products (surface coating);
 - (pp) Miscellaneous organic chemical manufacturing:
 - 1. Alkyd resins;
 - 2. Ammonium sulfate production-caprolactum by-products;
 - 3. Benzyltrimethylammonium chloride;
 - 4. Carbonyl sulfide;
 - 5. Chelating agents;
 - 6. Chlorinated paraffins;
 - 7. Ethylidene norbornene;
 - 8. Explosives;
 - 9. Hydrazine;
 - 10. Maleic anhydride copolymers;
 - 11. OBPA/1, 3-diisocyanate;
 - 12. Photographic chemicals;
 - 13. Phthalate plasticizers;
 - 14. Polyester resins;
 - 15. Polymerized vinylidene chloride;
 - 16. Polymethyl methacrylate resins;
 - 17. Polyvinyl acetate emulsions;
 - 18. Polyvinyl alcohol;
 - 19. Polyvinyl butyral;
 - 20. Quaternary ammonium compounds;
 - 21. Rubber chemicals; or
 - 22. Symmetrical tetrachloropyridine;
 - (qq) Municipal solid waste landfills;
 - (rr) Off-site waste and recovery operations;
 - (ss) Oil and natural gas production;
 - (tt) Organic liquids distribution (non-gasoline);
 - (uu) Paper and other web (surface coating);
 - (vv) Pesticide active ingredient production:
 - 1. 4-chloro-2-methyl acid production;
 - 2. 2,3 salts and esters production;
 - 3. 4,6-dinitro-o-cresol production;
 - 4. Butadiene furfural cotrimer;
 - 5. Captafol production;
 - 6. Captan production;
 - 7. Chloroneb production;
 - 8. Chlorothalonil production;
 - 9. Dacthal (tm) production;
 - 10. Sodium pentachlorophenate production; or
 - 11. Tordon (tm) acid production;
 - (ww) Petroleum refineries - catalytic cracking units, catalytic reforming units, and sulfur recovery units;
 - (xx) Petroleum refineries - other sources not distinctly listed;
 - (yy) Pharmaceuticals productions;
 - (zz) Phosphate fertilizers production and phosphoric acid manufacturing:
 - (aaa) Plastic parts and products (surface coating);
 - (bbb) Plywood and composite wood products;
 - (ccc) Polyether polyols production;
 - (ddd) Polymers and resins:
 - 1. Butyl rubber;
 - 2. Epichlorohydrin elastomers;
 - 3. Ethylene-propylene rubber;
 - 4. Hypalon (tm);
 - 5. Neoprene;
 - 6. Nitrile butadiene rubber;
 - 7. Polybutadiene rubber;
 - 8. Polysulfide rubber; or
 - 9. Styrene-butadiene rubber and latex;
 - (eee) Polymers and resins II:
 - 1. Epoxy resins; or
 - 2. Non-nylon polyamides;
 - (fff) Polymers and resins III—Amino/phenolic resins;
 - (ggg) Polymers and resins IV:
 - 1. Acrylonitrile-butadiene-styrene;
 - 2. Methyl methacrylate-acrylonitrile-butadiene-styrene;
 - 3. Methyl methacrylate-butadiene-styrene terpolymers;
 - 4. Nitrile resins;
 - 5. Polyethylene terephthalate;
 - 6. Polystyrene; or
 - 7. Styrene-acrylonitrile;
 - (hhh) Polyvinyl chloride and copolymers;
 - (iii) Portland cement manufacturing;
 - (jjj) Primary aluminum;
 - (kkk) Primary copper smelting;
 - (lll) Primary lead smelting;
 - (mmm) Primary magnesium refining;
 - (nnn) Printing and publishing (surface coating);

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(ooo) Publicly owned treatment works;
(ppp) Pulp and paper production (MACT I and III);
(qqq) Reciprocating internal combustion engines;
(rrr) Refractory products manufacturing;
(sss) Reinforced plastic composites production;
(ttt) Rubber tire manufacturing;
(uuu) Secondary aluminum production;
(vvv) Secondary lead smelting;
(www) Semiconductor manufacturing;
(xxx) Shipbuilding and ship repair (surface coating);
(yyy) Site remediation;
(zzz) Solvent extraction for vegetable oil production;
(aaaa) Steel pickling - HCl process facilities and hydrochloric acid regeneration plants;
(bbbb) Synthetic organic chemical manufacturing - hazardous organic NESHAP – tetrahydrobenzaldehyde manufacture;
(cccc) Taconite iron ore processing;
(dddd) Wet-formed fiberglass mat production;
(eeee) Wood building products (surface coating);
(ffff) Wood furniture (surface coating); or
(gggg) Wool fiberglass manufacturing;
(2) Area sources:
(a) Acrylic fibers/modacrylic fibers production;
(b) Agricultural chemicals and pesticide manufacturing;
(c) Aluminum foundries;
(d) Asphalt processing and asphalt roofing manufacturing;
(e) Autobody refinishing paint shops;
(f) Carbon black production;
(g) Chemical manufacturing: Chromium compounds;
(h) Chemical preparations;
(i) Chromic acid anodizing;
(j) Clay products manufacturing (clay ceramics manufacturing);
(k) Commercial sterilization facilities;
(l) Copper foundries;
(m) Cyclic crude and intermediate production;
(n) Decorative chromium electroplating;
(o) Dry cleaning facilities;
(p) Electrical and electronic equipment – finishing operations;
(q) Fabricated metal products;
(r) Fabricated plate work;
(s) Fabricated structural metal manufacturing;
(t) Ferrous alloys production: Ferromanganese and Silicomanganese;
(u) Flexible polyurethane foam fabrication operations;
(v) Flexible polyurethane foam production;
(w) Gas distribution stage 1;
(x) Halogenated solvent cleaners;
(y) Hard chromium electroplating;
(z) Hazardous waste incineration;
(aa) Heating equipment, except electric;
(bb) Hospital sterilizers;
(cc) Industrial boilers fired by coal, wood and oil;
(dd) Industrial inorganic chemical manufacturing;
(ee) Industrial machinery and equipment – finish operations;
(ff) Industrial organic chemical manufacturing;
(gg) Inorganic pigments manufacturing;
(hh) Institutional/commercial boilers fired by coal, wood and oil;
(ii) Iron and steel forging;
(jj) Iron foundries;
(kk) Lead acid battery manufacturing;
(ll) Medical waste incinerators;
(mm) Mercury cell chlor-alkali plants;
(nn) Miscellaneous organic NESHAP;
(oo) Municipal landfills;
(pp) Municipal waste combustors (MWC);
(qq) Nonferrous foundries;
(rr) Oil and natural gas production;
(ss) Paint strippers;
(tt) Paints and allied products manufacturing;
(uu) Pharmaceutical production;
(vv) Plastic materials and resins manufacturing;
(ww) Plastic parts and products (surface coating);
(xx) Plating and polishing;

(yy) Polyvinyl chloride and copolymers production;
(zz) Portland cement;
(aaa) Prepared feeds materials;
(bbb) Pressed and blown glass and glassware manufacturing;
(ccc) Primary copper (not subject to MACT);
(ddd) Primary metal products manufacturing;
(eee) Primary nonferrous metals (Zn, Cd and Be);
(fff) Public owned treatment works;
(ggg) Secondary copper smelting;
(hhh) Secondary lead smelting;
(iii) Secondary nonferrous metals;
(jjj) Sewage sludge incineration;
(kkk) Stainless and nonstainless steel manufacturing electric arc furnace;
(lll) Stationary internal combustion engines;
(mmm) Steel foundries;
(nnn) Synthetic rubber manufacturing;
(ooo) Valves and pipe fittings; or
(ppp) Wood preserving.

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: September 22, 2022

FILED WITH LRC: October 13, 2022 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A virtual public hearing on this administrative regulation amendment will be held on December 22, 2022, at 10:00 a.m. (Eastern Time). The public hearing can be accessed at the following Web site address: <https://us02web.zoom.us/j/84744885330>; meeting ID: 847 4488 5530 and can be accessed by phone: +1 (309)205-3325 using access code 84744885330#. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Lisa.C.Jones@ky.gov or mail this information to Lisa Jones, Division for Air Quality, 300 Sower Building, 2nd Floor, Frankfort, Kentucky 40601. Please put "List of hazardous air pollutants, petitions process, lesser quantity designations and source category list" as the subject line, and state in the body of the message if you plan to speak during the hearing. If no one registers to speak by December 15, 2022, then the hearing will be cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Lisa Jones, Environmental Scientist III, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-1288, fax (502) 564-4245, email Lisa.C.Jones@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lisa Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the list of hazardous air pollutants (HAPs) pursuant to 42 U.S.C. 7412(b) of the Clean Air Act (CAA) and as promulgated in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for source categories in 40 C.F.R. Part 63 by the U.S. EPA.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to identify HAPs which have been reasonably determined to endanger public health or welfare. This administrative regulation is necessary to be consistent with the federal regulations codified at 40 C.F.R. Part 63, and for the Energy and Environment Cabinet (Cabinet) to retain delegation of authority for implementation and enforcement of the standards established under 40 C.F.R. Part 63.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the

Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. 42 U.S.C. 7416 requires that state authorities not adopt or enforce emission standards or limitations that are less stringent than the federal standards. This administrative regulation updates the HAPs list to be consistent with the federal HAP list.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enable the Cabinet to continue to implement and enforce the control of emissions associated with requirements established in 40 C.F.R. Part 63, pursuant to Section 112 of the CAA.

(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 the existing administrative regulation to include an amendment to 42 U.S.C. 7412(b) which adds 1-Bromopropane as a new HAP.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the state emission standards for NESHAPs to be consistent with the federal requirements established in 40 C.F.R. Part 63. This amendment is necessary for the Cabinet to retain delegation of authority to continue to implement and enforce the federal NESHAP program, and be no less stringent than the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by adopting a listing of hazardous pollutants consistent with the list established in 40 C.F.R. Part 63.

(d) How the amendment will assist in the effective administration of statutes: The amendment adopts federally regulated HAPs to provide for consistency between federal and state regulations for source categories. The control of the new NESHAP pollutant will be enforceable by the Cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are no specifically identified individuals, businesses, organizations, or state and local governments affected by this administrative regulation. However, emissions of 1-BP will be included in a permit applicant's emissions calculations. This could potentially change the applicant's permitting classification. Sources will be impacted upon EPA promulgation of updated or new NESHAP regulations which set emissions standards for the newly listed HAP. The Cabinet will retain delegation of authority for implementation and enforcement of these requirements.

(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 will not be subject to any additional requirements due to this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the regulated entities to comply with this amendment as the amendment simply adds a HAP to the list of regulated HAPs. This amendment will allow the Cabinet to retain delegation of authority for implementation and enforcement of the NESHAPs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no compliance with this administrative regulation.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The Cabinet will not incur any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The Cabinet's current operating budget will be used for the implementation and enforcement of the amendment to this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation lists HAPs consistent with the federal HAP list.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. U.S. EPA promulgated the federal regulations related to the HAP listings in 40 C.F.R. Part 63, pursuant to 42 U.S.C. 7412.

(2) State compliance standards. This administrative regulation provides the list of HAPs pursuant to 42 U.S.C. 7412(b) as amended in 40 C.F.R. Part 63, Subpart C and the list of source categories and subcategories.

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7412 requires that the U.S. EPA promulgate NESHAPs for source categories.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation is being amended to adopt the same standards as the federal regulations codified in 40 C.F.R. Part 63.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities or requirements are not imposed.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet will continue to permit sources in accordance with 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 224.10-100(5), 224.20-110, 40 C.F.R. Part 63, Part 70, 42 U.S.C. 7401-7671q.

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

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

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

(c) How much will it cost to administer this program for the first year? The Cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Cabinet's operating budget will be used to administer the 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no 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? The proposed administrative regulation will not generate cost savings for any regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The proposed administrative regulation will not generate cost savings for any regulated entities in subsequent years.

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

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

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

Cost Savings (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no 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 proposed administrative regulation will not have a major economic impact.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

701 KAR 8:010. Charter school student application, lottery, and enrollment.

RELATES TO: KRS 157.196, 157.200, 158.030, 158.050, 158.070, 158.100, 158.281, 159.010, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 160.346, 161.141, 387.010(2), 20 U.S.C. 1400 et seq., 1681, 29 U.S.C. 794, 42 U.S.C. 1981-2000h-6

STATUTORY AUTHORITY: KRS 160.1591

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1591(6)(7) requires the Kentucky Board of Education to promulgate an administrative regulation to guide student application, lottery, and enrollment in public charter schools. This administrative regulation establishes the requirements for charter school student application, lottery, and enrollment.

Section 1. Definitions. (1) "Academically behind" means at risk of academic failure.

(2) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(3) "Applicant" is defined by KRS 160.1590(3)(2).

(4) "At risk" means at risk of academic failure.

(5) "At risk of academic failure" means:

(a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support or intervention;

(b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;

(c) Current achievement two (2) or more grade levels below the student's age group;

(d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of the past four (4) school years;

(e) Consistent absence or tardy and absence twenty-five (25)

or more unexcused "student attendance days", as defined by KRS 158.070, in the last two (2) school years and an overall grade average below a C;

(f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;

(g) Family history of dropping out or lack of family support for the student in the completion of school;

(h) Little or no participation in school cocurricular or extracurricular programs;

(i) Below grade level in reading or math skills;

(j) Indication of being socially isolated; or

(k) An applicant's definition for this term in the applicant's authorizer approved charter application, pursuant to KRS 160.1594(2).

(6) "Authorizer" or "public charter school authorizer" is defined by KRS 160.1590(13)(15).

(7) "Charter application" is defined by KRS 160.1590(4)(3).

(8) "Charter contract" or "contract" is defined by KRS 160.1590(5)(4).

(9) "Charter school" means a public charter school as defined by KRS 160.1590(14).

(10) "Charter school board of directors" is defined by KRS 160.1590(6)(5).

(11) "Cocurricular programs" means school programs that have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(12) "Computerized randomization" means use of a computer software program for randomization.

(13) "Conversion public charter school" is defined by KRS 160.1590(7)(6).

(14) "Days" means calendar days calculated pursuant to KRS 446.030.

(15) "Education service provider" is defined by KRS 160.1590(8).

(16) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(17) "Enrollment" means the process for the charter school to register a student for attendance at the charter school.

(18) "Enrollment preference" means the priority of the student application from other students applications pursuant to KRS 160.1591(5)(4).

(19) "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.

(20) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(21) "Human randomization" means randomization without the use of computer randomization.

(22) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(23) "Local school district" is defined by KRS 160.1590(10).

(24) "Lottery" means the transparent, open, equitable, and impartial process that is competently conducted with randomization in accordance with the targeted student population and service community as established in KRS 160.1593(3) for the charter school to choose students for enrollment and attendance at the charter school if the student applications received by the charter school exceed the charter school's capacity.

(25) "Multiple" means a person who was born as a result of the same pregnancy as at least one (1) other sibling.

(26) "Notice" means written notice.

(27) "Notify" means provide written notice.

(28) "Parent" is defined by KRS 160.1590(11).

(29) "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter public schools identified for comprehensive support and improvement pursuant to KRS 160.346.

(30) "Person with custody or charge" means any adult,

pursuant to KRS 159.010, who falls within the definition for "interested person or entity" as defined by KRS 387.010(2) for interested person or entity and with whom the student resides.

(31) "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.

(32) "Public charter school" is defined by KRS 160.1590[(12)](14).

(33) "Randomization" means to leave to chance alone and eliminate bias and interference.

(34) "Secondary enrollment preference" means the priority of a resident student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school's capacity has not been exceeded for that school year.

[(35)] "Start-up public charter school" is defined by KRS 160.1590(17).

[(35)](36) "Student" is defined by KRS 160.1590[(19)](18) and includes any person who is entitled to enrollment and attendance at a school program as established in KRS 158.030 and 158.100.

[(36)](37) "Student application" means an application submitted to a charter school for student enrollment in the charter school.

[(37)](38) "Students with special needs" or "Special needs students" means:

(a) An "exceptional children and youth student", as defined by KRS 157.200, who is eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. for an individual education plan, as established in KRS 157.196, or an individual education program, as defined by KRS 158.281; or

(b) A student who is eligible for services pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to prevent substantial limitation of one (1) or more major life activities.

[(39)] "Traditionally underperforming" means at risk of academic failure.

[(38)](40) "Year", "academic year," or "school year" means school year as established in KRS 158.050.

Section 2. Student Application. (1) Any parent, person with custody or charge, adult student, or emancipated youth student who has the ability to enroll the student pursuant to Kentucky law may initiate a student application to a charter school for the student who is eligible for attendance at the charter school pursuant to KRS 158.030, 158.100, or 160.1591(5) [or (6)].

(2) Any adult student or emancipated youth student may initiate the student's own application to a charter school.

(3) (a) A student application for enrollment in a charter school shall list the grade level the parent, person with custody or charge, adult student, or emancipated youth student understands to be the most appropriate grade level for the student based on available information.

(b) Any future determination by the resident local school district or the charter school that the student should be placed in a different grade level shall not invalidate the student's application unless the charter school determines that the parent, person with custody or charge, adult student, or emancipated youth student knowingly misrepresented the grade level most appropriate for the student on the student application.

(4) Consent of the parent, person with custody or charge, adult student, or emancipated youth student to serve on the charter school board of directors shall not be a condition for student application to the charter school.

(5) The charter school shall not limit the number of applications that it accepts from students based on ethnicity, national origin, religion, sex, income level, disabling condition, proficiency in the English language, or academic or athletic ability, in violation of the Civil Rights Act of 1964, 42 U.S.C. secs. 1981 to 2000h-6, as amended, Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, as amended, KRS 160.1591(5), or KRS 160.1592(19).

[(6)] For a start-up charter school, the enrollment preference described in KRS 160.1591(5)(d) shall only be available to:

—(a) A child of a Kentucky resident who is on the board of directors and resides within the charter school's enrollment

boundaries; or

—(b) A child of a Kentucky resident who will be a full-time employee of the charter school and resides within the charter school's enrollment boundaries.]

[(6)](7) The charter school shall utilize a uniform application process for all student applications, including use of the Kentucky Charter School Student Application.

Section 3. Lottery. (1) A charter school board of directors shall create and publish policies and procedures on its Web site for conducting the lottery that include:

(a) Identification and designation of duties for charter school board members, any education service provider, charter school staff, and volunteers prior to the lottery event;

(b) Segregation of duties to decrease the likelihood of errors, mitigate the risk of interference, and increase the public perception that the lottery is a randomized, transparent, open, equitable, and impartial process that is competently conducted;

(c) Provision for breaks during the lottery;

(d) Retention of records from the lottery for at least the length of the charter contract;

(e) Creation of minutes from the lottery; and

(f) Procedures for receipt, investigation, and handling of written complaints regarding the lottery with concurrent provision of all documents to the authorizer, the commissioner of education, and the Kentucky Board of Education. Procedures shall include:

1. Any remedies the charter school shall provide upon determination that student selection during the lottery was affected by an error committed by individuals acting on behalf of the charter school during the application or lottery processes;

2. Transparency in the charter school's remedying of an error; and

3. Actions to prevent reoccurrence of errors in the application and lottery processes in future years.

(2) A charter school shall conduct the lottery in compliance with the requirements of KRS 160.1591, 160.1592, 701 KAR Chapter 8, and its policies and procedures as established in subsection (1) of this section, which may include, as allowed by the authorizer:

(a) Selection of numbers assigned to individual students; and

(b) Human randomization or computerized randomization.

(3) The charter school shall offer primary enrollment preferences and secondary enrollment preferences only to students as established in:

(a) KRS 160.1591, 160.1592, and this administrative regulation;

(b) The charter application; and

(c) The charter contract.

(4) A charter school shall not conduct a lottery for enrollment if the number of student applications does not exceed the capacity of the charter school for that school year, as stated in the charter school's charter contract.

(5) If the number of student applications exceeds the capacity of the charter school for the school year, then pursuant to KRS 160.1591(5)(c), the charter school shall reserve space for enrollment of returning students and then conduct the lottery for the other student applications.

(6) If the number of student applications with enrollment preferences meeting the requirements of subsection (3) of this section exceeds the capacity of the charter school for the school year, the charter school shall include in the lottery for enrollment only those students with enrollment preferences.

(7) Selection in the lottery of a student who is a multiple shall also result in:

(a) The automatic selection of the student's multiple sibling or siblings who have submitted a student application to that charter school for attendance that school year, unless this would exceed the capacity of the charter school; or

(b) If the automatic selection of the student's multiple sibling or siblings would exceed the capacity of the charter school for that school year, the automatic placement of the student's multiple siblings at the top of the wait list.

(8) At least thirty (30) days prior to conducting a lottery, the charter school shall publish on its Web site, and provide to parents,

persons with custody or charge, adult students, and emancipated youth students who have submitted student applications to the charter school, notice of the lottery and information on the lottery. The Web site publication and notice shall include:

(a) The date and location of the lottery and the information meeting to be held prior to the lottery pursuant to subsection (9) of this section;

(b) Information on the legal requirements and policies and procedures for holding the lottery;

(c) Information for filing a written complaint regarding the lottery monitor;

(d) Information for filing a written complaint regarding an error committed by individuals acting on behalf of the charter school during the application or lottery processes; and

(e) Identification of the charter school for the lottery.

(9) At least twenty (20) days prior to conducting a lottery, the charter school shall hold a meeting to provide the lottery information in subsection (8) of this section to parents, persons with custody or charge, adult students, and emancipated youth students.

(10) The authorizer may include in the charter contract a requirement for the charter school to conduct a practice lottery, in the presence of the lottery monitor, to:

(a) Reduce charter school community shareholder concerns;

(b) Identify potential issues and perceptions with the selected lottery method; and

(c) Build the charter school's capacity to conduct the lottery.

(11) The charter school shall not require the presence of the parent, person with custody or charge, adult student, or emancipated youth student at the lottery for inclusion in the lottery or for eligibility for enrollment.

(12) The charter school shall not require the consent of the parent, person with custody or charge, adult student, or emancipated youth student to serve on the charter school board of directors for inclusion in the lottery or for eligibility for enrollment.

(13) If a charter school determines capacity by grade level, then the charter school shall hold lotteries only in those grade levels for which student applications exceeded the charter school's capacity and shall hold separate lotteries, which may occur on the same date, for each of those grade levels. A student shall be eligible for the lottery for the grade level listed on the student's application, unless the charter school and the parent, persons with custody or charge, adult student, or emancipated youth student agree otherwise.

(14) The lottery and the information meeting required in subsection (9) of this section shall each be held in accordance with the Open Meetings Act, KRS 61.800 et seq., at a time and location convenient to parents, persons with custody or charge, adult students, and emancipated youth students who have submitted a student application for enrollment in the charter school.

(15) The lottery shall be monitored by a competent, independent, impartial party, the lottery monitor, who shall be selected by the charter school, to ensure compliance with KRS 160.1591 and 160.1592.

(a) The charter school shall include the identity, qualifications, and affiliations of the lottery monitor in the information provided to the public by the deadline established in subsection (8) of this section, and in the lottery information meeting held pursuant to subsection (9) of this section.

(b) Complaints regarding the competence, independence, or impartiality of the lottery monitor shall be provided in writing to the commissioner of education, who shall conduct an investigation and render a decision within seven (7) days of receipt of the written complaint.

(c) If the lottery monitor is determined by the commissioner of education to lack competence, independence, or impartiality, the commissioner of education shall appoint an individual who does meet these requirements to serve as a monitor for the lottery selection process.

(16) In the lottery, the charter school shall select students for enrollment up to the capacity of the school for that school year, and then the charter school shall select students for inclusion on the wait list above the school capacity as established in paragraphs (a)

through (g) of this subsection. A charter school shall:

(a) Continue to select students for placement on the wait list until the charter school has exhausted the student applications for that school year;

(b) Ensure that lottery drawing for the wait list shall be separate from the lottery for selection of students for enrollment and that each parent, person with custody or charge, adult student, and emancipated youth student, who submitted a student application to the charter school and is placed on a wait list, shall be notified in writing of the student's inclusion on the wait list and the student's position on the wait list after the conclusion of the wait list lottery process;

(c) Place students on the wait list in the order the students are drawn during that portion of the lottery process;

(d) Maintain and continuously update accurate records of the order of the wait list;

(e) Update the wait list as students are admitted;

(f) Weekly publish on its Web site updated information on each student's position on the wait list as well as the last date for enrollment for that year. The charter school shall weekly provide each parent, person with custody or charge, or student with notice of the student's updated position on the wait list as well as the last date for enrollment for that year; and

(g) Place student applications received after the lottery on the wait list, in the order received, after the students placed on the wait list through the lottery process in this section.

Section 4. Student Enrollment. (1) A charter school shall include in its policies and procedures on student enrollment:

(a) The status of an enrollment preference and eligibility for enrollment and attendance for a student if the student ceases to reside within the charter school's enrollment boundaries prior to or during the school year;

(b) The status of an enrollment preference for a sibling pursuant to KRS 160.1591(5)(b) if the student who was enrolled the previous school year withdraws from the charter school;

(c) The status of an enrollment preference for a student pursuant to KRS 160.1591(5)(c) if the student ceases to reside within close proximity to the school, as governed by the charter contract.

(d)(e) The status of an enrollment preference for a student pursuant to KRS 160.1591(5)(d) if the resident ceases to be a member of the board of directors or ceases to be a full-time employee of the charter school prior to or during the school year;

(e)(d) The status of an enrollment preference for a student pursuant to KRS 160.1591(5)(e) if the student ceases to be eligible for free or reduced price meals prior to or during the school year; and

(f)(e) The status of an enrollment preference for a student pursuant to KRS 160.1591(5)(e) if the student's former school ceases to be a persistently low-achieving public school or a persistently low-achieving noncharter public school prior to the school year the student shall attend the charter school.

(2) A charter school shall accept student applications for enrollment and attendance from all local school district resident students who are eligible for enrollment based on KRS 158.030, 158.100, 160.1591(5) ~~or (6)~~.

(a) Only a student who resides within the boundaries established by the charter school's [enrollment boundaries] resident and non-resident enrollment policy by the student's first day of student attendance shall be eligible for enrollment and attendance at the charter school that school year.

(b) A student who attended the public charter school the previous year shall be automatically re-enrolled for attendance each school year unless:

1. The student has been awarded a high school diploma after meeting or exceeding the minimum requirements for high school graduation established by the Kentucky Board of Education pursuant to 704 KAR 3:305;

2. The charter school has expelled the student pursuant to KRS 158.150;

3. A court has ordered placement of the student in another

school or a local school district outside the charter school's enrollment boundaries;

4. The student has voluntarily withdrawn from enrollment in the charter school; or

5. The student no longer resides within the charter school's enrollment boundaries.

(3) In addition to the requirements of KRS 160.1592(14), a charter school shall not discourage, restrict, or prohibit enrollment of a student, including based on:

(a) Whether the emancipated youth student, adult student, parent, or person with custody or charge gives consent for the charter school unilaterally to unenroll or withdraw the student from the charter school without providing the due process protections established in KRS 158.150;

(b) The student's disability, academic performance, athletic ability, or the ability of the parent or person with custody or charge to volunteer at the charter school;

(c) The student's ability to meet academic minimum requirements;

(d) The student's English competence;

(e) The student's status as a student with special needs or special needs student;

(f) The student's status as a student at risk of academic failure, at risk, academically behind, ~~or traditionally underperforming;~~

(g) The student's status as a homeless child or youth, under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11301 et seq.; or

(h) The student's eligibility for free or reduced price meals, under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.

(4) In addition to the requirements of KRS 160.1592(14), a charter school shall not:

(a) Require or request

1. An interview prior to enrollment;

2. Letters of recommendation;

3. Essays;

4. Resumes or information regarding a student's school or community activities;

5. Grades;

6. Test scores;

7. Attendance records;

8. Special needs student status or special needs student disability information, at risk student information, free or reduced price lunch student eligibility information, or other education record information, except to the extent allowed by the authorizer in the charter contract for the purpose of confirming and providing an enrollment preference to the student pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

9. Disciplinary history except pursuant to KRS 158.155;

10. Proof of a Social Security card or number, U.S. birth certificates, visa, or citizenship;

11. Information on the legal residence or presence in the United States of the student, parent, or person with custody or charge; or

12. Information regarding the cause of any student's residency with a person other than the parent;

(b) Require a family member or person with custody or charge of the student to volunteer at the charter school or provide payment to the school, except:

1. As allowed in KRS 160.1592(14) for fees required on the same basis and to the same extent as other public schools; and

2. The charter school may encourage involvement by parents, persons with custody or charge, adult students, and emancipated youth students in the charter school if involvement is not required and there are no adverse consequences for the family or student who cannot be involved; or

(c) Require or request a parent, person with custody or charge, adult student, or emancipated youth student to consent to the charter school's withdrawal or unenrollment of the student from the charter school without providing the due process protections established in KRS 158.150.

(5) A charter school shall enroll a student in compliance with KRS 158.032 and KRS 159.010.

(6) By the first day of a student's attendance, a charter school shall verify the residence of the student within the local school district and use methods similar to those employed by a local school district to verify residence.

(7) A conversion public charter school shall accept for enrollment student applications with secondary enrollment preference after accepting student applications with primary enrollment preference, if the conversion public charter school's capacity has not been exceeded for that school year. After complying with the primary enrollment preference requirement in KRS 160.1591(5)(b)(a), a conversion public charter school may utilize the enrollment preferences in KRS 160.1591(5)(e)(b) through (e) in enrolling additional local school district resident students pursuant to KRS 160.1591(5)(b)(a).

(8) A charter school shall conduct enrollment as follows:

(a) A charter school shall establish and publish on its Web site an open enrollment period during which the charter school shall accept applications for enrollment of new students;

(b) A charter school shall establish and publish on its Web site a specific deadline for notification to parents, persons with custody or charge, adult students, or emancipated youth students of the charter school's acceptance of the student's application for enrollment;

(c) A charter school shall notify parents, persons with custody or charge, adult students, and emancipated youth students with accepted applications of their opportunity to enroll in the charter school and the deadlines and required documentation for enrollment;

(d) A charter school shall establish and publish on its Web site a specific deadline during the open enrollment period for parents, persons with custody or charge, adult students, or emancipated youth students with accepted applications to notify the school of their enrollment decision and to initiate enrollment of the student in the charter school. Failure of the parent, person with custody or charge, adult student, or emancipated youth student to accept the enrollment offer and enroll the student by the deadline established by the charter school during the open enrollment period may result in the forfeiture of an enrollment preference and result in enrollment of the student that school year only if capacity of the school has not been exceeded for that school year. Prior to forfeiture of the student's enrollment offer, a charter school shall attempt to enroll the student by again contacting the parent, person with custody or charge, adult student, or emancipated youth student through at least two (2) of the following methods, until the charter school is successful in contacting the parent, person with custody or charge, adult student, or emancipated youth student:

1. Phone;

2. Email;

3. Mailed correspondence; or

4. Home visit; and

(e) A charter school shall allow a parent, person with custody or charge, adult student, or an emancipated youth student to enroll the student for attendance at the charter school in the grade level the parent, person with custody or charge, adult student, or emancipated youth student understands to be the most appropriate grade level based on available information. Any future determination by the resident local school district or the charter school that the student should be placed in a different grade level shall not invalidate the student's enrollment.

(9) A charter school shall only require the following documentation or information for student enrollment:

(a) Proof of the student's identity and age, as required pursuant to KRS 158.032;

(b) Immunization records, as required by KRS 158.035;

(c) Proof of residency in the local school district, as required by the resident local school district;

(d) Home language survey, as required by 703 KAR 5:070, as a first screening process to identify students who are English learners; and

(e) Proof of the student's current grade level.

(10) A charter school may request additional information with the consent of the authorizer only to process the student applications, conduct the lottery, or enroll the charter school

students, but the refusal or failure to provide additional information shall not be a cause for denial of enrollment or for withdrawal of a student.

(11) A charter school shall accept student applications from students who reside within the charter school's enrollment boundaries and enroll additional students who reside within the charter school's enrollment boundaries for that school year after the end of the open enrollment period if the charter school has capacity to educate additional students at that grade level for that school year.

Section 5. Incorporation by Reference. (1) "Kentucky Charter School Student Application", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, ~~Legislative and Communication~~ Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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., Board Chairperson

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:42 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 21, 2022, at 11 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 December 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 regulation outlines the procedures to be used by public charter schools in accepting student applications for enrollment.

(b) The necessity of this administrative regulation: This administrative regulation is required under KRS 160.1591.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administration outlines the required elements of a student application for enrollment to a public charter school.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by KRS 160.1591. It provides clarity to charter authorizers related to the requirements for student applications for enrollment.

(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 regulation amendments include those changes

required by House Bill 9 (2022). It includes updated definitions, updated enrollment preference requirements, and makes technical amendments to conform to the amended statute.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to conform to statutory amendments made by House Bill 9 (2022).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment includes updates prompted by House Bill 9 (2022) including updated definitions, updated enrollment preferences, and technical amendments as required to conform to the statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is required to ensure that public charter school authorizers remain in compliance with KRS 160.1590 through 160.1599 as amended by House Bill 9 (2022).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, public charter school authorizers, parents, students.

(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: Charter schools shall ensure compliance with this administrative regulation for all student application and enrollment activities. Parents and students will likewise be required to submit applications in compliance with the language in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes to this administrative regulation will not result in any additional cost to any of the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation ensures compliance with KRS 160.1590 to 160.1599. It also ensures and equitable student enrollment process for all public charter schools.

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

(a) Initially: This regulation will not increase costs.

(b) On a continuing basis: This regulation will not create continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation does not create new costs or continuing costs; as such, 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: This administrative regulation will not result in the collection of fees.

(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.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation as it applies equally to all public charter school authorizers.

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 public charter school authorizers, which may include public school districts or state universities, and public charter schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 157.196, 157.200, 158.030, 158.050, 158.070, 158.100, 158.281, 159.010, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 160.346, 161.141, 387.010(2), 20 U.S.C. 1400 et seq., 1681, 29 U.S.C. 794, 42 U.S.C. 1981-2000h-6

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

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

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

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

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

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

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 result in cost savings.

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

(c) How much will it cost the regulated entities for the first year? There is no additional cost to implement this administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? There is no additional cost to implement this administrative regulation.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): \$0.00

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 as defined by KRS 13A.010(13).

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)**

701 KAR 8:020. Evaluation of charter school authorizers.

RELATES TO: KRS 158.070, 158.649, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.141

STATUTORY AUTHORITY: KRS 160.1596

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1596 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance.

This administrative regulation establishes requirements for the competence, performance, and evaluation process for charter school authorizers.

Section 1. Definitions. (1) "Academically behind" means at risk of academic failure.

(2) "Achievement gap" is defined by KRS 160.1590[(2)](1) and [KRS]158.649(1).

(3) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(4) "Applicant" is defined by KRS 160.1590[(3)](2).

(5) "Areas of exceptionality" means categories of disabilities of students with special needs.

(6) "At risk" means at risk of academic failure.

(7) "At risk of academic failure" means:

(a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support and improvement;

(b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;

(c) Current achievement two (2) or more grade levels below the student's age group;

(d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of the past four (4) school years;

(e) Consistent absence or tardy and absence twenty-five (25) or more unexcused student attendance days in the last two (2) school years and an overall grade average below a C;

(f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;

(g) Family history of dropping out or lack of family support for the student in the completion of school;

(h) Little or no participation in school cocurricular or extracurricular programs;

(i) Below grade level in reading or math skills;

(j) Indication of being socially isolated; or

(k) An applicant's definition for this term in the applicant's authorizer approved charter application, pursuant to KRS 160.1594(2).

(8) "Authorizer" or "public charter school authorizer" is defined by KRS 160.1590[(43)](15).

(9) "Authorizer's board of directors" means:

(a) The board of education for the local school district for an authorizer defined by KRS 160.1590[(43)](15)(a); and

(b) The boards of education that have collaborated to set up a regional public charter school for an authorizer defined by KRS 160.1590[(43)](15)(b).

(10) "Bilingual students" means students who are fluent in English and a foreign language, which can include American Sign Language.

(11) "Charter" means charter contract.

(12) "Charter application" is defined by KRS 160.1590[(4)](3).

(13) "Charter contract" or "contract" is defined by KRS 160.1590[(5)](4).

(14) "Charter school" means a public charter school.

(15) "Charter school board of directors" is defined by KRS 160.1590[(6)](5).

(16) "Cocurricular programs" means school programs that have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(17) "Comprehensive learning experiences" or "Expanded learning opportunities" means daily, rigorous learning experiences that build on a student's talents, challenge the student's skills and understandings, and develop the student's ability to reason, problem solve, collaborate, and communicate to prepare the student for success in postsecondary.

(18) "Conversion public charter school" or "conversion charter school" is defined in KRS 160.1590[(7)](6).

(19) "Days" means calendar days calculated pursuant to KRS 446.030.

(20) "District of location" is defined by KRS 160.1590(7).

(21)[(20)] "Education service provider" is defined by KRS 160.1590(8).

(22)[(21)] "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(23)[(22)] "Enrollment preference" means the priority of the student application from other students' applications pursuant to KRS 160.1591(5).

(24)[(23)] "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.

(25)[(24)] "Fiscal year" is defined by KRS 160.450.

(26)[(25)] "Foreign entity" is defined by KRS 14A.1-070(10).

(27)[(26)] "Gifted" means a gifted and talented student as defined by KRS 157.200(1)(n).

(28)[(27)] "Governing board of the authorizer" means the authorizer's board of directors.

(29)[(28)] "Governing body of the authorizer" means the authorizer's board of directors.

(30)[(29)] "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(31)[(30)] "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(32)[(31)] "Local school district" is defined by KRS 160.1590(10).

(33)[(32)] "Parent" is defined by KRS 160.1590(11).

(34)[(33)] "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter schools identified for comprehensive support and improvement pursuant to KRS 160.346.

(35)[(34)] "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition for interested person or entity as defined by KRS 387.010(2) for an interested person or entity and with whom the student resides.

(36)[(35)] "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.

(37)[(36)] "Public charter school" is defined by KRS 160.1590[(12)](14).

[(37)] "Regional achievement academy" is defined by KRS 160.1590(15).

[(38)] "Regional achievement zone" is defined by KRS 160.1590(16).

(38)[(39)] "School level" or "Level" or "Educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(39)[(40)] "Secondary enrollment preference" means the priority of a [resident] student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school's capacity has not been exceeded.

(40)[(41)] "Start-up public charter school" [is defined by KRS 160.1590(17).] means a public charter school that did not exist as a noncharter public school prior to becoming a public charter school.

(41)[(42)] "Student" is defined by KRS 160.1590[(19)](18) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(42)[(43)] "Student attendance day" is defined by KRS 158.070(1)(e).

(43)[(44)] "Students with special needs" or "Special needs students" means:

(a) Exceptional children and youth students, as defined in KRS 157.200, who are eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. for an individual education plan, as described in KRS 157.196, or an individual education program, as described in KRS 158.281; or

(b) Students who are eligible for services under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 794, to prevent substantial limitation of one (1) or more major life activities.

(44)[(45)] "Substantial hardship" means a significant, unique,

and demonstrable economic, technological, legal, or other impact on a local school district that impairs the district's ability to continue to successfully meet the requirements of educational programs or services for the district's students.

(45)[(46)] "Superintendent" means the local school district employee tasked with the duties established in KRS 160.370.

(46)[(47)] "Traditionally underperforming" means at risk of academic failure.

(47)[(48)] "Unilateral imposition of conditions" means the authorizer has placed or attempted to place conditions or requirements that are not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(48)[(49)] "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places or attempts to place:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(49) "Urban academy" is defined by KRS 160.1590(19).

(50) "Year", "academic year", or "school year" means school year as established in KRS 158.050.

Section 2. Policies and Procedures. Pursuant to KRS 160.1594, an authorizer shall create policies and procedures governing the authorizer's performance of its duties under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and shall include in its policies and procedures:

(1) The authorizer's strategic vision for chartering, including a clear statement of any preference for a charter application that demonstrates the intent, capacity, and capability to provide comprehensive learning experiences or expanded learning opportunities to students identified in KRS 160.1594(2) or [KRS 160.1592(19);

(2) Identification of any charter application preferences of the authorizer pursuant to KRS 160.1594(2);

(3) Information on the authorizer's performance contracting requirements, including:

(a) Academic, financial, and operational measures, and the performance frameworks, that the authorizer has developed for public charter school oversight and evaluation and with which the authorizer shall evaluate the charter school's performance under the charter contract, in accordance with KRS 160.1594 and 701 KAR Chapter 8; and

(b) Requirements for executing a contract with a charter school board of directors that articulates:

1. The rights and responsibilities of each party regarding school autonomy;

2. Funding;

3. Administration and oversight;

4. Outcomes;

5. Measures for evaluating success or failure;

6. Performance consequences; and

7. Other material terms;

(4) The evidence the authorizer shall require, the evaluation the authorizer shall conduct using the performance framework, and other aspects of the authorizer's ongoing monitoring of the charter school including:

(a) Ensuring a charter school's legally entitled autonomy;

(b) Protecting student's civil, disability, safety, and educational rights;

(c) Ensuring the establishment of a food program as required by KRS 160.1592(3)(r).

(d)[(e)] Informing intervention, revocation, and renewal decisions; and

(e)[(f)] Providing annual reports as required by [KRS 160.1597(5)]KRS 160.1596;

- (5) The requirements for reporting to the public;
- (6) The authorizer's authority to intervene in charter schools, if necessary;
- (7) Guidelines concerning the format and content essential for an applicant to demonstrate the capacities necessary to establish and operate a public charter school, pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;
- (8) The timeline for submission, acceptance, review, decision, and appeal for a charter application, and a request for renewal which includes clear deadlines. An authorizer described in KRS 160.1590[(13)](15)(c) and (d) shall consult with the superintendent of the resident local school district if planning this timeline;
- (9) A template of the assurances an authorizer shall require in a charter contract;
- (10) The following evidence sufficiency requirements for the charter application:
 - (a) The charter school board of directors' ability to meet the financial solvency and sustainability demands of their proposed budget;
 - (b) Competent and timely charter school start-up and operation;
 - (c) Foreseen and unforeseen closure; and
 - (d) All debts and obligations during each fiscal year of the charter contract and during the entire contract term;
- (11) The financial transparency requirements that shall apply to a charter school, including specific provisions regarding publication on the authorizer's website and the charter school's Web site;
- (12) The charter school closure protocol and requirements;
- (13) A description of the authorizer's organizational capacity, including its commitment of human and financial resources necessary to conduct authorizing duties effectively and efficiently;
- (14) The authorizer's requirements for solicitation and evaluation of a charter application, including its implementation of a comprehensive application process that includes use of the Kentucky Charter School Application and Addendum, and rigorous criteria, and approval of only a charter application that demonstrates a strong capacity to establish and operate a charter school;
- (15) The authorizer's charter renewal and revocation processes and rigorous criteria, including its design and implementation of a transparent and rigorous process that uses comprehensive academic, financial, and operational performance data to make merit-based renewal and revocation decisions; and
- (16) The requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for an applicant, a board of directors, an education service provider, a charter school, and their employees.

Section 3. Standards of Authorizer Performance Generally.

- (1) Prior to authorizing a charter school, an authorizer as established in KRS 160.1590[(13)](15)(c) and (d) shall file the Notice of Intent with the Kentucky Board of Education.
- (2) An authorizer shall restrict the expenditure of funds received as a result of charter authorization and oversight to the purpose of fulfilling authorizing obligations pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.
- (3) Pursuant to KRS 160.1596[(5)](17)(e), an authorizer shall include in its report and place in a publicly accessible location on its website information on the following:
 - (a) The oversight and any services provided by the authorizer to the public charter schools under the authority of the authorizer;
 - (b) The authorizing functions provided by the authorizer to the public charter schools under its jurisdiction, including the operating costs and expenses of the authorizer as detailed in annual audited financial statements that conform to generally accepted accounting principles;
 - (c) All use of charter authorizing revenue including expenditures, contracts, and revenues, in the format required by the commissioner of education; and
 - (d) The reports that an authorizer is required to make pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.
- (4) (a) Pursuant to KRS 160.1594 and except as specified in Section 3(4)(b) of this administrative regulation, prior to evaluating a charter application, each authorizer or member of the authorizer's

board of directors or governing board shall complete six (6) hours of training, as approved by the Commissioner of Education, that shall include the following topics pertinent to authorizer responsibility and charter school formation and operation:

- 1. Financial governance and transparency;
 - 2. Conflict of interest;
 - 3. Charter application;
 - 4. Charter school contracting;
 - 5. Charter school monitoring;
 - 6. Charter school renewal, nonrenewal, and revocation;
 - 7. Charter school closure;
 - 8. Ethics;
 - 9. Curriculum and instruction;
 - 10. Educational services provided for special needs, at risk, English learner, gifted, and other special population students; and
 - 11. Physical restraint and seclusion of students; and
- (b) An authorizer or member of the authorizer's board of directors or governing board that completed all training requirements pursuant to Section 3(4)(a) of this administrative regulation in the immediately preceding twelve (12) months prior to receipt of a charter school application shall be exempt from completing training pursuant to Section 3(4)(a) of this administrative regulation prior to evaluating that charter school application.
- (5) An authorizer shall submit to the department a written assurance of a charter school's compliance with the pre-operating requirements in this administrative regulation and in the charter contract before the opening of the charter school.
- (6) An authorizer shall require the sharing of best practices between the charter school and the resident local school district.

Section 4. Standards of Authorizer Performance Concerning Charter Applications. (1) Pursuant to KRS 160.1591 and 160.1594(1)(e)2., and to the extent not prohibited by federal law, an authorizer shall not approve a charter application that is:

- (a) From an applicant that is or includes:
 - 1. A for-profit organization, or its designee;
 - 2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
 - 3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A; or
 - (b) That has in the proposed board of directors:
 - 1. A for-profit organization, or its designee;
 - 2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
 - 3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A.
- (2) An authorizer shall require a charter application to be submitted on the Kentucky Charter School Application and Addendum and may require additional information from the applicant.
- (3) An authorizer shall publish a copy of a submitted charter application on its website within three (3) days of submission by the applicant to the authorizer.
- (4) An authorizer shall provide a copy of a submitted charter application to the resident local school district superintendents and to any other authorizer of charter schools in that local school district within three (3) days of submission by the applicant to the authorizer.
- ~~[(5) An authorizer established in KRS 160.1590(13)(a) or (b) shall provide a copy of a submitted charter application for a regional achievement academy within a regional achievement zone to the superintendents of the other local school districts of the regional achievement zone within three (3) days of submission by the applicant to the authorizer.]~~

~~(5)~~~~(6)~~—An authorizer shall allow a resident local school district superintendent to file a letter with supporting evidence objecting to the approval of the charter application on the basis of the substantial hardship that may result for the students of the resident local school district who do not attend the charter school. An authorizer shall publish a copy of the letter and supporting evidence from the resident local school district superintendent on the authorizer's website within three (3) days of submission by the superintendent to the authorizer and the authorizer shall review this evidence prior to approving a charter application.

~~(6)~~~~(7)~~ An authorizer shall allow a resident local school district superintendent to file a letter of support for a charter application and shall publish a copy of the resident local school district superintendent letter on the authorizer's website within three (3) days of submission by the superintendent to the authorizer.

~~(7)~~~~(9)~~ An authorizer shall require a resident local school district superintendent to provide information and evidence regarding the academic performance of the students identified in the charter application as the targeted student body or community. An authorizer shall publish a copy of this information on the authorizer's Web site~~[website]~~ within three (3) days of submission by the superintendent to the authorizer, to the extent not prohibited by confidentiality laws.

~~(8)~~~~(9)~~ An authorizer shall comply with the following requirements in reviewing the charter application:

(a) Request and secure a certificate of existence from the Secretary of State, pursuant to KRS 14A.2-130, for any business entity or its designee included in the applicant or in the proposed charter school board of directors; and

(b) If the applicant or the board of directors includes a foreign entity, request and secure a certificate of authorization for the foreign entity from the Secretary of State, pursuant to KRS 14A.2-140.

~~(9)~~~~(40)~~ An authorizer shall require an applicant or proposed board of directors for a charter school to include in the charter application:

(a) Performance information, financial information, and closure information for any charter school under the applicant or board of directors;

(b) Details and documentation of the outreach the applicant or proposed board of directors has had with the students or community that is the focus of the charter application;~~—and~~

(c) Details of whether the charter application replicates or substantially replicates:

1. A charter application that the applicant, the proposed board of directors, or another entity previously withdrew from consideration and the reasons the charter application was withdrawn;

2. A charter application that was rejected by an authorizer and the reasons the charter application was rejected; or

3. A charter school that was previously closed and the reasons for the closure;~~and~~;

~~(d) A memorandum of understanding as required by KRS 160.1593(3)(f)(3).~~

~~(10)~~~~(44)~~ An authorizer shall provide on the authorizer's website the names of all persons, and their roles, who are involved in the review of charter applications. Review of charter applications shall be conducted pursuant to the requirements of the Open Meetings Act, KRS 61.800 et seq.

~~(11)~~~~(42)~~ An authorizer shall not approve a charter application that does not meet the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

~~(12)~~~~(43)~~ Within five (5) days of the authorizer's approval, the authorizer shall submit an approved charter application to the commissioner of education~~—for review and approval in accordance with Section 5(11) of this administrative regulation~~.

Section 5. Standards of Authorizer Performance Concerning Charter Contracts. (1) Prior to negotiating a charter contract with a board of directors, an authorizer shall verify the charter school board of directors' registration as a non-profit business entity with the Kentucky Secretary of State pursuant to KRS Chapter 14A.

(2) An authorizer shall negotiate and enter a charter contract

with a charter school board of directors in compliance with KRS 160.1590~~(5)~~~~(4)~~ and ~~(6)~~~~(5)~~; 160.1591(2); 160.1592(3), (7), (8), (9), (10), (11), and (20); 160.1593(3); 160.1594(1); 160.1596(1); 160.1597(1), (2), and (6); and 160.1598(1), (5), (6), and (7).

(3) An authorizer shall include pre-opening requirements or conditions in the charter contract as follows:

(a) An authorizer shall establish mutually agreed upon pre-opening requirements or conditions to:

1. Monitor the start-up progress of a newly approved public charter school;

2. Ensure that the charter school is prepared to open timely and smoothly on the date agreed; and

3. Ensure that the charter school meets all benchmarks related to facilities, health, safety, insurance, school personnel, enrollment, curriculum and instruction, operations and fiscal management, governance, and other legal requirements for the charter school opening; and

(b) Failure by the charter school to comply with the pre-opening requirements or conditions may result in the immediate revocation of the charter contract and:

1. May result in the delay in the opening of the charter school by up to one (1) year if the authorizer does not determine that the charter school is more likely than not to close during the school year; or

2. Shall result in the delay in the opening of the charter school by up to one (1) year if the authorizer does determine that the charter school is more likely than not to close during the school year.

(4) An authorizer shall include in the charter contract with the charter school board of directors provisions for charter school financial solvency and sustainability, including:

(a) A requirement that no member of the charter school board of directors, no education service provider, and no charter school employee shall knowingly recommend and no member of the charter school board of directors shall knowingly vote for an expenditure in excess of the charter school's income and revenue of any fiscal year, as shown by the budget adopted by the charter school board of directors and approved by the authorizer;

(b) A requirement that a member of the charter school board of directors, an education service provider, or a charter school employee who knowingly expends or authorizes the expenditure of charter school funds or who knowingly authorizes or executes any employment, purchase, or contract, in violation of this section, shall be jointly and severally liable in person and upon any official fidelity bond given to the authorizer to the extent of any payments on the void claim; and

(c) A requirement that, if at any time during any fiscal year of the charter school's existence, a member of the charter school board of directors, an education service provider, or a charter school employee knows or reasonably should know that the charter school has or will become unable to pay in full its projected expenses as they fall due, the charter school shall immediately so advise the department and the authorizer, and shall provide the department and the authorizer with all financial information relating to revenues and expenses of the charter school necessary for the department and the authorizer to determine the extent and cause of any potential operating deficit. If the member of the charter school board of directors, the education service provider, or the charter school employee fails to provide the notice to the department and the authorizer required by this subsection or fails to cooperate with the department and the authorizer in the production of financial information pursuant to this subsection:

1. The authorizer shall determine if grounds exist to revoke the charter contract; and

2. The knowingly acting member of the charter school board of directors, the education service provider, or the charter school employee may be subject to the liability established in paragraph (4)(b) of this section.

(5) An authorizer shall include in the charter contract the specific, exclusive reasons and timelines for closure initiated by the charter school board of directors and the closure protocol and policies and procedures applicable to closure of the charter school.

(6) An authorizer shall require in the charter contract the

closure requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(7) An authorizer shall require in the charter contract that the charter school shall not prohibit a student from attending and shall not unenroll or withdraw a student unless the charter school has complied with KRS 158.150.

(8) An authorizer shall require in the charter contract that the charter school board of directors maintain separate accountings of all funds received and disbursed by each charter school under the charter school board of directors.

(9) An authorizer shall require in the charter contract that any contract the charter school board of directors enters with an education service provider has to be approved by the authorizer prior to execution and that any contract the charter school board of directors enters with an education service provider shall comply with the following:

(a) Clearly establish the primacy of the charter contract over the contract between the charter board of directors and the education service provider;

(b) Clearly identify the charter school board of directors as the party ultimately responsible for the success or failure of the charter school, and clearly define the education service provider as a vendor of services;

(c) Prohibit the education service provider from selecting, approving, employing, compensating, or serving as members of the charter school board of directors;

(d) Require the charter school board of directors to directly select, retain, and compensate the charter school's legal counsel, finance staff, audit firm, and school leader;

(e) Provide for payments to the charter school to be made to an account controlled by the charter school board of directors, not the education service provider;

(f) Require all instructional materials, furnishings, and equipment purchased or developed with charter school funds be the property of the charter school, not the education service provider;

(g) Identify and describe the roles and responsibilities of the charter school board of directors and the education service provider, including all services to be provided under the contract between the charter school board of directors and the education service provider;

(h) Identify and describe the performance measures and consequences by which the charter school board of directors shall hold the education service provider accountable for performance, aligned with the performance measures in the charter contract;

(i) Identify and describe with specificity all compensation to be paid to the education service provider, including all fees, bonuses, and the conditions, consideration, and restrictions on the compensation;

(j) Identify and describe the terms of any facility agreement that may be part of the relationship between the charter school board of directors and the education service provider;

(k) Identify and describe financial reporting requirements and provisions for the charter school board of directors' financial oversight of the education service provider and the charter school;

(l) Identify and describe all other financial terms of the contract, including disclosure and documentation of all loans or investments by the education service provider to the charter school board of directors, and provision for the disposition of assets upon closure in accordance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(m) Include assurances that the charter school board of directors, at all times, shall maintain independent fiduciary oversight and authority over the charter school budget and ultimate responsibility for the charter school's performance;

(n) Include provisions for contract termination without penalties for the charter school and without costs beyond the pro-rated value of the services provided by the education service provider;

(o) Assure:

1. That the charter school board of directors shall be structurally independent from the education service provider and shall set and approve charter school policies;

2. That the terms of the contract between the charter school

board of directors and the education service provider are reached through arm's-length negotiations in which the charter school board of directors is represented by legal counsel that does not also represent the education service provider; and

(p) Identify and describe the respective responsibilities of the charter school board of directors and the education service provider in the event of school closure.

(10) An authorizer shall prohibit a charter school board of directors, in the charter contract, from delegating the charter school board of directors' responsibilities in subsection (9) of this section to the education service provider.

~~[(11) An authorizer shall not enter a charter contract for start-up, conversion, or renewal of a charter school, or agree to any charter contract amendment, unless the charter contract or amendment is approved by the commissioner of education as follows:~~

~~(a) An authorizer shall provide the commissioner of education a copy of a proposed charter contract or proposed amendment;~~

~~(b) Within fifteen (15) days of receipt of the proposed charter contract or amendment from the authorizer, pursuant to KRS 160.1594(9), the commissioner of education shall provide to an authorizer and the charter school board of directors approval of the contract or:~~

~~1. The reasons for a denial and any suggestions for remedy of these reasons; and~~

~~2. Notice of the opportunity for resubmission of the remedied contract or amendment to the commissioner of education; and~~

~~(c) Any failure to meet the commissioner of education's requirements for approval shall render the charter contract or its amendment void.]~~

Section 6. Standards of Authorizer Performance Concerning Charter School Monitoring. (1) An authorizer that determines a charter school board of directors has governance over more than one (1) charter school and has failed to meet the requirements of KRS 160.1592, shall commence an investigation to determine if the charter school board of directors is in compliance with the charter contracts for every other charter school under the authorizer's jurisdiction.

(2) An authorizer shall monitor the performance of the charter contract by a charter school board of directors, and any educational service provider. If the authorizer believes there is an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, the authorizer shall commence an investigation.

(3) An authorizer that verifies an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the commissioner of education and may request assistance from the commissioner of education in addressing and remedying the issue.

(4) An authorizer that verifies an issue with any aspect of the performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the charter school of the issue and take necessary action, including unilateral imposition of conditions on the charter school, revocation, or nonrenewal of the charter contract, to resolve the issue and to provide notice of the issue and the resolution to the charter school's adult students, emancipated youth students, parents, persons with custody or charge, and the department.

(5) An authorizer shall at least monthly review the financial budget reports of the charter school and take the following action:

(a) If the budget projections indicate that the charter school's annual operating expenses may at any time during the school year cause the annual operating ~~[revenues to fall below two (2) percent]~~ expenses to exceed ninety-eight (98) percent of the total projected annual operating revenues included in the school's approved budget, the charter school shall provide specific notice of this to the authorizer and the authorizer shall:

1. Require the charter school to implement a cash management plan approved by the authorizer;

2. Commence a more in-depth review, and an audit if necessary, of the charter school's financial budget reports, expenditures, and revenues;

3. Request financial management assistance for the charter school from the department; and

4. Restrict the charter school's expenditures and require the authorizer's approval prior to expenditure of charter school funds for the remainder of the school year; and

(b) If the charter school defaults on a financial obligation or if the authorizer otherwise suspects the charter school may close prior to the end of the school year or the charter contract term, the authorizer shall:

1. Consult with the commissioner of education;

2. Communicate with the charter school board of directors to determine the need for charter contract revocation;

3. Commence actions under paragraph (a) of this subsection;

4. Review the closure protocol;

5. Review the charter contract termination provisions;

6. Communicate with the charter school board of directors regarding the closure protocol and contract provisions for termination; and

7. Notify students and resident local school districts, as soon as necessary to ensure all students and resident local school districts are provided adequate time to prepare for the student transitions and to provide free and appropriate public education to any returning students.

(6) An authorizer shall revoke the charter contract and determine the timeline for closure if the authorizer determines the charter school:

(a) Is financially insolvent;

(b) Is financially unsustainable for the remainder of the school year or the charter contract term; or

(c) Has violated or threatened the health and safety of the students of the public charter school, pursuant to KRS 160.1598(7).

(7) The department shall develop a charter contract performance framework that an authorizer may utilize in developing a charter contract performance framework. In addition to the requirements of KRS 160.1596, the authorizer's charter contract performance framework shall include academic, financial, and organizational performance frameworks, and targets in the following areas:

(a) Student assessment and accountability;

(b) Student graduation rates;

(c) Student promotion rates;

(d) Student attendance rates;

(e) Student admission and enrollment in postsecondary institutions; and

(f) Other outcomes.

Section 7. Standards of Authorizer Performance Concerning Charter Approval, Revocation, Renewal, and Nonrenewal. (1) An authorizer shall not approve a charter application, contract with, or renew a contract with a charter school board of directors for a charter school that:

(a) Does not operate:

1. A breakfast program under the Child Nutrition Act of 1966, 42 U.S.C. 1773, as amended (CNA), and a lunch program under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq. (NSLA); or

2. A breakfast and lunch program with provision of meals at no cost to students who qualify for free meals under the CNA and NSLA and with the provision of meals at a reduced cost to students who qualify for reduced price meals under the CNA and NSLA; or

(b) Does not provide initial and continuing evidence and assurances of the charter school's financial solvency and financial sustainability, as demonstrated initially by the financial plan in the charter application, to cover the expenses of start-up or conversion, operation, and any foreseen or unforeseen closure of the charter school during the fiscal year or during the contract term.

(2) An authorizer shall require for approval of a charter application, for contracting with a charter board of directors, for performance of a charter contract, and for renewal of a charter

contract, the following:

(a) Inclusion of at least two (2) local school district resident parents or persons with custody or charge of local school district resident students who will attend the charter school in a charter school board of directors;

(b) Exercise by a charter school board of directors of their authority in KRS 160.1592(3)(p)4 and 5 only as allowed for a local board of education in KRS 160.540;

(c) Participation of all members of a charter school board of directors in annual training, approved by the commissioner of education, on topics of charter school governance and operation including financial governance and transparency; conflict of interest; curriculum and instruction; educational services provided for special needs, at risk, English learner, gifted, and other special population students; physical restraint and seclusion of students; and ethics. Fulfillment of this requirement shall occur through:

1. Twelve (12) hours of annual training for a new charter school board member or a member with zero to eight (8) years of experience as a charter school board member and eight (8) hours for a charter school board member with more than eight (8) years of experience as a charter school board member; or

2. Competency-based annual training;

(d) Attendance by the authorizer, or its designee for authorizing, or at least one (1) member of the authorizer's board of directors at any due process hearing conducted pursuant to KRS 158.150 to suspend or expel a charter school student. A charter school board of directors, with the consent of the parent, person with custody or charge, adult student, or emancipated youth student, and as otherwise allowed by confidentiality laws, may invite the resident local district superintendent to attend the due process hearing and to provide information to the charter school board of directors as to the educational services the resident local school district would provide the student:

1. If the student is expelled from the charter school; and

2. If the charter school board of directors determines, on the record and supported by clear and convincing evidence, that the charter school cannot provide or assure that educational services are provided to the student in an appropriate alternative program or setting because the expelled student posed a threat to the safety of other students or school staff and could not be placed into a state-funded agency program;

(e) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of the Individual with Disabilities Education Act dispute resolution procedures, 707 KAR 1:340, regarding a student attending a charter school or the services provided by a charter school;

(f) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of physical restraint or seclusion of charter school students;

(g) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of allegations received or substantiation of violation of any health, safety, civil rights, and disability rights of students, staff, or parents or persons with custody or charge;

(h) Pursuant to KRS 160.1592(14), adherence by the charter school board of directors, and any education service provider, to the requirements of KRS 160.330 and 702 KAR 3:220 for the waiver of fees for students eligible for free or reduced price lunch;

(i) Provision, to the authorizer and to the public by the charter school board of directors and any education service provider, updates on the charter school's performance of the charter contract, according to the charter contract and performance framework;

(j) Restriction on expenditure of charter school resources and funds for school purposes only;

(k) Prohibition on the expenditure of charter school resources and funds in excess of the fair market value of the product, service, or consideration received;

(l) Prohibition on the disposal of charter school resources for less than the fair market value of the resource disposed;

(m) Restriction on the addition or moving of any location of the

charter school without the written consent of the authorizer and amendment of the charter contract; and

(n) Provision, to the authorizer by the charter school board of directors and any education service provider, of student enrollment and attendance records and data at least monthly during the school year.

(3) An authorizer shall revoke, effective at the end of the school year, a charter contract for any of the reasons in KRS 160.1598(6).

(4) An authorizer shall require continuous enrollment at a charter school of at least eighty (80) percent of the charter contract minimum student enrollment requirements and shall monitor and take action as follows if that minimum is not met:

(a) The charter school shall provide reports to the authorizer on student enrollment and attendance at least twice a month; and

(b) Failure of the charter school to maintain this continuous, minimum student enrollment shall result in an immediate review by the authorizer of:

1. The charter school's operations;
2. The charter school's financial solvency;
3. The charter school's financial sustainability through the end of the school year and the end of the charter contract term;
4. The potential for closure;
5. Violation of the charter contract; and
6. The need for imposition of unilateral conditions, amendment, nonrenewal, or revocation of the charter contract, or immediate revocation of the charter contract pursuant to KRS 160.1598(7).

(5) An authorizer shall not approve a charter application for a start-up public charter school or conversion charter school if the applicant or proposed member of the board of directors has been previously found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, and the authorizer shall ensure compliance with this requirement as follows:

(a) The authorizer shall consult with the Kentucky Board of Education's designated agency to ensure compliance with this requirement;

(b) The Kentucky Board of Education's designated agency may provide copies of its relevant written reports described in 702 KAR 7:065 Section 3(17) to the authorizer; and

(c) If the authorizer does determine a member of the applicant or the proposed board of directors has previously been found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, the authorizer may only approve a charter application, contract with, or renew a charter for a start-up public charter school or conversion charter school that does not sponsor interscholastic athletic activities, unless the charter school's sponsorship of interscholastic athletic activities is approved by the Kentucky Board of Education.

(6) An authorizer shall remove a member of a board of directors that has been convicted of a crime described in KRS 61.040 and remove any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure when the member or members threaten the health, safety, civil rights, or disability rights of the students or the community pursuant to KRS 160.1598(11).

(7) An authorizer shall revoke or nonrenew a charter school contract if the commissioner of education has determined a member of the board of directors, or an education service provider at the direction of a member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Assessment Program or KRS 160.1592(3)(g), for a student assessment included in:

- (a) The performance framework of the charter contract; or
- (b) The state accountability system.

(8) For issues in a charter school's performance that do not require immediate action by the authorizer, as stated in KRS 160.1590 to 160.1599, and 701 KAR Chapter 8, or otherwise to protect the health, safety, civil rights, disability rights, and well-being of students and the community, an authorizer may utilize a progressive system of monitoring consequences including notices

of deficiencies or conditions unilaterally imposed on the charter school prior to revocation or nonrenewal. An authorizer shall share publicly a notice of deficiency or a condition unilaterally imposed on the charter school as well as the underlying charter school performance issue and shall provide a copy to the commissioner of education and to the Kentucky Board of Education.

(9) An authorizer shall comply with the following prior to approving a charter application for a charter school or renewing a charter school contract:

(a) Holding in the resident local school district a public hearing to allow for public comment on the charter application; and

(b) Allowing public comment to be submitted in writing prior to the hearing, or oral or written public comment at the hearing and allowing comment at the public hearing by a resident superintendent who has filed an objection to the charter application.

Section 8. Standards of Authorizer Performance Concerning Charter Closure. (1) An authorizer's charter school closure protocol shall include the following:

(a) Provision, to the authorizer by the charter school, of contact information and resident local school district information for all parents, persons with custody or charge, adult students, and emancipated youth students;

(b) Notification to all parents, persons with custody or charge, adult students, and emancipated youth students of:

1. The closure decision;
2. The closure process;
3. Information on student instruction and reassignment;
4. Information on courses, levels, and credits completed by the student;

5. Information on the process for obtaining a copy of the student's education records; and

6. Contact information for additional information;

(c) Notification to the resident local school districts and the department of:

1. The closure decision;
2. The closure date;
3. The closure process;
4. Availability and timeline for appeals and their intersection with the closure protocol;

5. A copy of the notification provided to charter school parents, persons with custody or charge, adult students, and emancipated youth students;

6. Information on student instruction and reassignment; and

7. Contact information for additional information;

(d) Budget review and revision to limit expenditures to only those in the approved budget required for fulfilling the obligations through closure;

(e) Communication of the budget information to parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and the Kentucky Board of Education;

(f) Meeting of the authorizer with the charter school board of directors and charter school employees to notify and coordinate:

1. The closure;
2. The closure process;
3. The closure timeline and dates;
4. Information on student instruction and reassignment;
5. Employment, payroll, and benefits information;
6. Transfer of federal and state funds and assets according to the federal and state requirements; and
7. Contact information for additional information;

(g) Additional and final notification to parents and resident local school districts, including:

1. Information on the existence and role of any appeal of the closure;
2. Identifying the last student attendance day;
3. Detailing end of the year activities and transition activities for students; and
4. Providing information and assistance for reassignment of students;

(h) Procedures and requirements for establishment of

transition teams, development of closure plan, and assignment of roles for closure;

(i) Procedures and requirement for scheduling closure meetings with the transition team, parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and employees;

(j) Procedures and requirements for a final report from the charter school board of directors to the authorizer and the department detailing completion of the closure plan;

(k) Maintenance of the charter school facilities;

(l) Identification and notification of all creditors and debtors of the board of directors and the Teachers' Retirement System and the County Employees Retirement System;

(m) Notification of federal, state, local, and private grantors;

(n) Termination of any contract with an education service provider;

(o) Accounting, inventory, and protection of assets;

(p) Notification of employee benefit providers;

(q) Notification of all contractors and termination of all contracts;

(r) Transfer of student and personnel records;

(s) Notification of the IRS;

(t) Issuance of final grades to students;

(u) Dissolution of the charter school;

(v) Maintenance of records; and

(w) Completion of an independent final audit within six (6) months of the closure of the charter school that may function as the annual audit, and that includes at least:

1. An accounting of all financial assets, including cash and accounts receivable and an inventory of property, equipment, and other items of material value;

2. An accounting of the liabilities, including accounts payable and any reduction in apportionments as a result of audit findings or other investigations, loans or grants, and unpaid staff compensation; and

3. An assessment of the disposition of any restricted funds received by or due to the charter school.

(2) An authorizer's charter school closure protocol shall include the following regarding distribution of assets upon closure:

(a) The assets of the charter school, if sufficient to satisfy all the outstanding debts of the charter school, shall be distributed in the following order:

1. To satisfy outstanding payroll obligations for employees of the public charter school;

2. To creditors of the charter school; and

3. To the resident local school districts, in direct proportion to the percentage of the charter school student body that will be returning to each resident local school district after closure;

(b) If the assets of the public charter school are insufficient to satisfy all debts of the charter school, the prioritization of the distribution of assets may be determined by a court of law; and

(c) A charter school board of directors shall distribute its assets within six (6) months of closure of the charter school, unless granted an extension by the authorizer or ordered otherwise by a court of law.

(3) The commissioner of education, upon request by the authorizer, may appoint an independent third-party, paid from the charter school's funds, to manage the closure with assistance from the department. The commissioner of education may remove an appointed independent third-party for cause and appoint a replacement.

(4) The department shall develop a charter closure protocol guide that an authorizer may utilize in developing the closure protocol.

Section 9. Investigation of an Authorizer. (1) The Kentucky Board of Education shall conduct a special review of an authorizer as follows:

(a) If there is persistently unsatisfactory performance of the portfolio of the public charter schools of the authorizer;

(b) If there is a pattern of well-founded complaints about the authorizer or its public charter schools; or

(c) If the Kentucky Board of Education finds other objective

circumstances warranting investigation.

(2) The Kentucky Board of Education shall request investigation by the commissioner of education.

(3) In reviewing and evaluating the performance of an authorizer, the Kentucky Board of Education shall apply nationally recognized standards for quality in charter authorizing, in addition to the standards of performance included in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) If at any time the Kentucky Board of Education determines that an authorizer is not in compliance with an existing charter contract or the requirements for an authorizer, the Kentucky Board of Education shall either:

(a) Notify the authorizer in writing of any identified problem and the authorizer shall have a reasonable opportunity to respond and remedy the problem; or

(b) If deemed necessary, take action against the authorizer under Section 10.

Section 10. Consequences. (1) The Kentucky Board of Education may, in addition to its authority over authorizers and their action on a charter application, renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter school pursuant to KRS 160.1595~~(1)~~⁽²⁾, place an authorizer on probation and require the following during probation of an authorizer:

(a) Additional training for the authorizer;

(b) Meeting with the commissioner of education to provide status reports and solicit feedback on charter school performance during a charter contract;

(c) Written and in-person status reports to the Kentucky Board of Education on the authorizer's monitoring of charter schools and other authorizing activity;

(d) Approval by the commissioner of education on the authorizer's monitoring activities, imposition of unilateral conditions, and revocation decisions;

(e) Approval of the Kentucky Board of Education for any renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter contract; and

(f) Any other consequences the Kentucky Board of Education deems necessary to ensure compliance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) The Kentucky Board of Education shall establish the length and extent of the probation of the authorizer's authority and reporting requirements for the authorizer to report on the progress of the charter schools authorized by the authorizer.

(3) The Kentucky Board of Education shall state in its order probating the authority of the authorizer:

(a) The extent of the probation of the authorizer's authority;

(b) The length of the probation of the authorizer's authority;

(c) The grounds under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for the probation of the authorizer's authority; and

(d) The anticipated changes that would have to occur for the Kentucky Board of Education to consider ending the probation of the authorizer's authority under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) The Kentucky Board of Education may entertain a request by the authorizer for termination of the probation if the authorizer submits, at least forty-five (45) days prior to the Kentucky Board of Education's regular meeting, the following:

(a) The authorizer's request for ending the probation; and

(b) The authorizer's evidence of:

1. Its efforts to correct the grounds for the probation of its authorizing authority;

2. The changes required in the Kentucky Board of Education's order; and

3. Its plan to ensure future compliance with the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

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

(a) "Kentucky Charter School Application and Addendum", October 2022~~[February 2018]~~; and

(b) "Notice of Intent", February 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Legal Services, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:42 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 21, 2022, at 11 am 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 December 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 regulation outlines the procedures to be used by public charter school authorizers as they solicit, review, approve, and monitor charter schools.

(b) The necessity of this administrative regulation: This administrative regulation is required under KRS 160.1598.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation outlines the procedures to be used by public charter school authorizers as they solicit, review, approve, and monitor charter schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by KRS 160.1598. This regulation outlines the procedures to be used by public charter school authorizers as they solicit, review, approve, and monitor charter schools.

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

(a) How the amendment will change this existing administrative regulation: The regulation amendments include those changes required by House Bill 9 (2022). It includes updated definitions, updated enrollment preference requirements, and makes technical amendments to conform to the amended statute.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to conform to statutory amendments made by House Bill 9 (2022).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment includes updates required by House Bill 9 (2022) including updated definitions, updated enrollment preferences, and technical amendments as required to conform to the statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is required to ensure that public charter school authorizers remain in compliance with KRS 160.1590 through 160.1599 as amended by House Bill 9 (2022).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, public charter school authorizers, charter school boards, parents, students.

(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 regulation outlines the procedures to be used by public charter school authorizers as they solicit, review, approve, and monitor charter schools. The regulation identifies required policies and documents that are part of the application process, dictates that authorizers must use Kentucky's standardized charter school application, and outlines the steps necessary to review, accept or deny, and appeal a charter decision.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes to this administrative regulation will not result in additional costs to any of the identified entities. Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation ensures compliance with KRS 160.1590 to 160.1599.

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

(a) Initially: This regulation amendment will not increase costs to the administrative body. The administrative body will experience costs in the form of staff time and resources to provide technical assistance.

(b) On a continuing basis: This regulation amendment will not increase costs to the administrative body. The administrative body will experience costs in the form of staff time and resources to provide technical assistance.

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

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

(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.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation as it applies equally to all public charter school authorizers.

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 public charter school authorizers, which may include public school districts or state universities, and the Kentucky Department of Education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 158.070, 158.649, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.141

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

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

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

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

(c) How much will it cost to administer this program for the first year? Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal. The administrative body will experience costs in the form of staff time and resources to provide technical assistance.

(d) How much will it cost to administer this program for subsequent years? Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal. The administrative body will experience costs in the form of staff time and resources to provide technical assistance.

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

Revenues (+/-): \$0.00

Expenditures (+/-): Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal. The administrative body will experience costs in the form of staff time and resources to provide technical assistance. Costs are dependent upon the number of applications and requests for technical assistance.

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 result in cost savings.

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

(c) How much will it cost the regulated entities for the first year? Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal. Costs are dependent upon the number of applications received by an authorizer.

(d) How much will it cost the regulated entities for subsequent years? Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal. Costs are dependent upon the number of applications received by an authorizer.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): Charter school authorizers (included local school districts) will incur costs in the form of time and expense for training, application review and consideration, and potential legal expenses in the event of an appeal. Costs are dependent upon the number of applications received by an authorizer.

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)] Whether this administrative regulation will have a major economic impact as defined by KRS 13A.010(13) is dependent on the number of applications for charter schools received by authorizers throughout the state. If a substantial number of applications are received, then there will be a major economic impact in the form of time and expenses (including legal fees) related to applications and appeals in the aggregate for all public school districts. However, if a de minimis number of applications are received, there will be no major economic impact as defined by KRS 13A.010(13).

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)**

701 KAR 8:030. Charter school appeal process.

RELATES TO: KRS Chapter 13B, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599

STATUTORY AUTHORITY: KRS 13B.170, 160.1598

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1598 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to appeal a decision of an authorizer denying a charter application or a charter contract amendment request, unilaterally imposing conditions on the applicant or charter school, or revoking or nonrenewing a charter contract. This administrative regulation establishes the requirements for the appeal process.

Section 1. Definitions. (1) "Appellant" means the applicant or charter school board of directors filing the appeal of an authorizer's decision denying a charter application or a charter contract amendment request, unilaterally imposing conditions on the applicant or charter school, or revoking or nonrenewing a charter contract.

(2) "Applicant" is defined by KRS 160.1590~~(3)~~(2).

(3) "Authorizer" or "public charter school authorizer" is defined by KRS 160.1590~~(13)~~(15).

(4) "Charter" means charter contract.

(5) "Charter application" is defined by KRS 160.1590~~(4)~~(3).

(6) "Charter contract" or "contract" is defined by KRS 160.1590~~(5)~~(4).

(7) "Charter school" means a public charter school.

(8) "Charter school board of directors" is defined by KRS 160.1590~~(6)~~(5).

(9) "Days" means calendar days calculated pursuant to KRS 446.030.

(10) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(11) "Local school district" is defined by KRS 160.1590(10).

(12) "Notice" means written notice.

(13) "Public charter school" is defined by KRS 160.1590~~(12)~~(14).

(14) "Unilateral imposition of conditions" means the authorizer has placed or attempted to place conditions or requirements that are not required by KRS 160.1590 through 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(15) "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 through 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places or attempts to place:

(a) On the applicant in the authorizer's formal action approving

the charter application; or

(b) On the charter school in the charter contract or an amendment.

Section 2. Policies and Procedures. The authorizer shall create and publish on its website policies and procedures for its implementation of KRS 160.1595 and 160.1598 as ~~established~~established in subsections (1) through (5) of this section. The authorizer shall include in its policies and procedures:

(1) A rubric for its evaluation of a charter application and its rubric for evaluation of charter contract performance for renewal pursuant to KRS 160.1598;

(2) The circumstances that shall result in automatic revocation or nonrenewal of a charter contract, only as allowed in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(3) The requirements and timeline for timely notification of the prospect of revocation or nonrenewal of the charter contract and of the reasons for the possible closure;

(4) The reasonable deadline and requirements for a charter school's opportunity to respond to the authorizer's notice of the prospect of revocation or nonrenewal of the charter contract; and

(5) The requirements for appeal of an authorizer decision denying a charter application or a charter amendment request, nonrenewing or revoking a charter contract, or imposing unilateral conditions on an applicant or charter school.

Section 3. Appeal. (1) The appellant shall submit its appeal of an authorizer's decision denying a charter application or a charter amendment request, nonrenewing or revoking a charter contract, or imposing unilateral conditions on an applicant or charter school to the commissioner of education, to receive the appeal on behalf of the Kentucky Board of Education, as established in paragraphs (a) through (d) of this subsection.

(a) The deadline for appeals to the Kentucky Board of Education under KRS 160.1595 shall be thirty (30) days, as evidenced by the face of the authorizer's notice to the charter school or applicant of the decision to deny a charter application or charter contract amendment request, to impose unilateral conditions on the applicant or the charter school, or to revoke or nonrenew the charter contract.

(b) The appeal shall include the name, phone number, mailing address, and email address of the contact for the appellant and any legal counsel.

(c) The appeal shall include a statement from the appellant whether there is a request for a hearing, and whether the hearing is requested to be held in the local school district in which the charter school lies or would lie.

(d) The appeal shall be submitted on the Notice of Appeal and include any necessary additional documentation.

(2) The Kentucky Board of Education shall affirm the decision of the authorizer based on the appellant's failure to timely file the appeal, pursuant to KRS 160.1595(2) and subsection (1)(a) of this section, and may affirm the decision of the authorizer based on the failure of an appellant to meet any of the other deadlines of this administrative regulation or the hearing process.

(3) Within five (5) days of the commissioner's receipt of the appeal, the commissioner of education on behalf of the Kentucky Board of Education shall provide notice to the appellant and the authorizer acknowledging receipt of the appeal, and:

(a) If a hearing is requested in the appeal, the commissioner of education shall designate a hearing officer to set the prehearing schedule, to conduct a KRS Chapter 13B public hearing before the Kentucky Board of Education on the appeal, and to set the location of the public hearing; or

(b) If a hearing is not requested in the appeal or if the appellant waives its right at any time to a hearing by providing written notice of its waiver to the commissioner of education or to any previously appointed hearing officer, the hearing officer shall set the schedule for written pleadings under KRS 13B.090(2) to be submitted to the Kentucky Board of Education without a hearing.

(4) The written decision of the Kentucky Board of Education shall be issued no later than forty-five (45) days following receipt of the notice of appeal as required by KRS 160.1595(2)(c) ~~seven (7)~~

~~days after the conclusion of the hearing or the meeting to decide upon the written pleadings, which shall be held within the time allowed in KRS 160.1595(3)(a)].~~

Section 4. Emergency Action. Emergency action taken by the authorizer pursuant to KRS 160.1598(7) shall be taken in accordance with KRS 13B.125.

Section 5. Automatic Revocation or Nonrenewal. The Kentucky Board of Education shall affirm revocation or nonrenewal of a charter school for whom the commissioner of education has determined a member of the charter school board of directors, or an education service provider at the direction of a member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Educational Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in the performance framework of the charter contract or the state accountability system after:

(1) The department's presentation of a preponderance of evidence at a KRS Chapter 13B hearing before the Kentucky Board of Education that a member of the charter school board of directors, or an education service provider at the direction of a member of the charter school board of directors, or an employee at the direction of a member of the charter school board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Educational Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in:

(a) The performance framework of the charter contract; or

(b) The state accountability system; or

(2) The charter school board of directors waives its right to a KRS Chapter 13B hearing under this section.

Section 6. Incorporation by Reference.

(1) "Notice of Appeal", October 2022 ~~February 2018~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, ~~Legislative and Communication~~ Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:42 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 21, 2022, at 11 am 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 December 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 regulation outlines the procedures to be used by public charter schools that wish to appeal a decision made by a charter authorizer.

(b) The necessity of this administrative regulation: This administrative regulation is required under KRS 160.1598.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation outlines the procedures to be used by public charter schools that wish to appeal a decision made by a charter authorizer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by KRS 160.1598. This regulation outlines the procedures to be used by public charter schools that wish to appeal a decision made by a charter authorizer.

(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 regulation amendments include those changes required by House Bill 9 (2022). It includes updated timelines and technical amendments.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to conform to statutory amendments made by House Bill 9 (2022).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment includes updates prompted by House Bill 9 (2022). It includes updated timelines and technical amendments.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is required to ensure that public charter school authorizers remain in compliance with KRS 160.1590 through 160.1599 as amended by House Bill 9 (2022).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, public charter school authorizers, parents, students.

(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 regulation outlines the procedures to be used by public charter schools in the event that they wish to appeal a decision made by an authorizer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes to this administrative regulation will not result in any additional cost to any of the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation ensures compliance with KRS 160.1590 to 160.1599.

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

(a) Initially: Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not increase those costs.

(b) On a continuing basis: Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not create additional continuing costs.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This

administrative regulation will not result in the collection of any increased fees.

(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.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation as it applies equally to all public charter school authorizers.

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 public charter school authorizers, which may include public school districts or state universities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599

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

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

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

(c) How much will it cost to administer this program for the first year? Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not create additional costs.

(d) How much will it cost to administer this program for subsequent years? Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not create additional costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not create additional costs. The actual costs will be dependent on the number of appeals to the Kentucky Board of Education.

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 result in cost savings.

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

(c) How much will it cost the regulated entities for the first year? There is no direct cost to implement this administrative regulation, but indirect costs such as legal fees for appeal representation are possible.

(d) How much will it cost the regulated entities for subsequent years? There is no direct cost to implement this administrative regulation, but indirect costs such as legal fees for appeal representation are possible.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): \$0.00

Expenditures (+/-): There is no direct cost to implement this administrative regulation, but indirect costs such as legal fees for appeal representation are possible.

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)] Whether this administrative regulation will not a major economic impact as defined by KRS 13A.010(13) is dependent on the number of appeals received by the Kentucky Board of Education. If a substantial number of appeals are received, then there will be a major economic impact in the form of time and expenses (including legal fees) related to appeals. However, if a de minimis number of appeals are received, there will be no major economic impact as defined by KRS 13A.010(13).

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)**

701 KAR 8:040. Conversion charter school petition, conversion, and operation.

RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.011, 161.141, 161.800

STATUTORY AUTHORITY: KRS 160.1599

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1599 requires the Kentucky Board of Education to promulgate an administrative regulation to govern the processes and procedures for the petition, the conversion, and the operation of a conversion public charter school. This administrative regulation establishes requirements for conversion public charter schools.

Section 1. Definitions. (1) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(2) "Applicant" is defined by KRS 160.1590[(3)](2).

(3) "Charter application" is defined by KRS 160.1590[(4)](3).

(4) "Charter contract" or "contract" is defined by KRS 160.1590[(5)](4).

(5) "Charter school" means a public charter school.

(6) "Charter school board of directors" is defined by KRS 160.1590[(6)](5).

(7) "Conversion public charter school" or "conversion charter school" is defined by KRS 160.1590[(7)](6).

(8) "Days" means calendar days calculated pursuant to KRS 446.030.

(9) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(10) "Enrollment" means the process for the charter school to register a student for attendance at the charter school.

(11) "Grade" or "grade level" means a single elementary, middle, or high school grade of school.

(12) "Local board of education" means local school board as defined by KRS 160.1590(9).

(13) "Local school district" is defined by KRS 160.1590(10).

(14) "Lottery" means the transparent, open, equitable, and impartial process that is competently conducted with randomization in accordance with the targeted student population and service community as established in KRS 160.1593(3) for the charter

school to choose students for enrollment and attendance at the charter school if the student applications received by the charter school exceed the charter school's capacity.

(15) "Notice" means written notice.

(16) "Notify" means provide written notice.

(17) "Parent" is defined by KRS 160.1590(11).

(18) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition for "interested person or entity" as defined by KRS 387.010(2) for an interested person or entity and with whom the student resides.

(19) "Petitioner" means the persons or organizations initiating and circulating a petition to convert an existing public school to a charter school.

(20) "Public charter school" is defined by KRS 160.1590[(12)](14).

(21) "School level", "level", or "educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(22) "Student" is defined by KRS 160.1590[(19)](18) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(23) "Student application" means an application submitted to a charter school for student enrollment in the charter school.

(24) "Superintendent" means the local school district employee tasked with the duties established in KRS 160.370.

(25) "Year", "academic year", or "school year" means school year as defined by KRS 158.050.

Section 2. Conversion Petition and Charter Application. (1) The department shall annually publish on its website a list of noncharter public schools, by school level, level, or educational level, that are eligible for charter school conversion through the petition process pursuant to KRS 160.1599(2)(a).

(2) Prior to circulation of a petition to convert an existing public school to a charter school, a petitioner shall file a notice of intent with the resident board of education.

(3) If a charter application proposes that a newly converted charter school is to be established and prepared to enroll students for the next school year, both the charter application and the petition, determined to be valid pursuant to subsection (9) of this section, proposing the conversion of an existing public school to a charter school shall be submitted to the authorizer on or before October 30.

(4) A petitioner shall utilize the Public Charter School Conversion Petition and shall include the following information in a petition to convert an existing public school to a charter school:

(a) A written statement that the petition seeks to convert the existing public school to a charter school;

(b) A written statement of the reasons the petitioner believes the existing public school should be converted to a charter school, including descriptions of how the conversion public charter school shall accomplish the purposes of KRS 160.1591(2); and

(c) Information for filing a written complaint to the commissioner of education regarding the petition or the petitioner.

(5) For the signatures on the petition to count toward the requirements of KRS 160.1599(2)(a) or (b), a petitioner shall ensure inclusion of the following from each of the existing public school's resident parents, persons with custody or charge, adult students, or emancipated youth students signing the petition:

(a) Their printed names;

(b) Their mailing and street address, phone number, and email address, as available; and

(c) Their signature in ink or indelible pencil;

(6) The inclusion of signatures, from adult students, emancipated youth students, or parents or persons with custody or charge, on behalf of students who do not attend the existing public school as residents of the local school district and under the attendance zone boundary policies and procedures of the local board of education for the local school district, shall not count toward the requirements of KRS 160.1599(2)(a) or (b).

(7) Signatures from parents, persons with custody or charge, adult students, and emancipated youth students shall count toward the requirements of KRS 160.1599(2)(a) or (b) up to but not in

excess of the number of students attending the existing public school for whom those individuals are parents or persons with custody or charge or the students themselves.

(8) The inclusion of an invalid signature on the petition shall not invalidate the entire petition, but shall instead result in the invalid signature being stricken and not counted.

(9) Within thirty (30) days of receipt of a petition for conversion of an existing public school, a local school district designee of the local board of education shall conduct and complete an examination of the signatures on the petition and any necessary investigation to make a determination of whether the petition contains enough signatures of qualified resident adult students, emancipated youth students, and parents and persons with custody or charge of students attending the existing public school to meet the requirements of KRS 160.1599(2)(a) or (b).

(10) Within three (3) days of making the determination in subsection (9) of this section, the local school district designee of each local board of education that has authority over the existing public school shall provide notice as to whether the petition met the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b):

- (a) On the local school district website; and
- (b) To the following:
 1. The petitioner;
 2. The existing public school's principal;
 3. Any school-based decision making council of the existing public school established under KRS 160.345; and
 4. Each local board of education with authority over the existing public school.

(11) For a petition under KRS 160.1599(2)(b), each local board of education's majority vote to convert the existing public school to a charter school shall be conducted at its next regular meeting or an earlier special meeting.

(12) Any person who has reason to believe that the petition process was not conducted pursuant to the requirements of this administrative regulation or that the signatures on the petition were procured through fraud, intimidation, bribery, or harassment, may file a written complaint with the commissioner of education and the commissioner of education shall:

- (a) Cause an investigation to determine the validity of the petition;
 - (b) Ensure the investigation is completed within thirty (30) days of receipt of the complaint; and
 - (c) Render a determination as to the validity of the petition.
- (13) If the petition fails to meet the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b) or if the commissioner of education determines the petition to be invalid, the existing public school shall not be eligible for conversion to a charter school unless:

- (a) Each local board of education with authority over the existing public school acts pursuant to KRS 160.1599(2)(c); or
- (b) Another petition is circulated and determined to be valid pursuant to KRS 160.1599(a) or (b) and this administrative regulation.

(14) After any vote by each local board of education required pursuant to KRS 160.1599(2)(a), (b) or (c), an applicant shall submit to the authorizer a charter application to convert an existing public school to a charter school during the same school year as:

- (a) Each local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or
- (b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);
- 2. The issuance of the determination in subsection (9) of this section that the petition is valid; and
- 3. A majority vote of each local board of education with authority over the existing public school, if required by KRS 160.1599(2)(b).

(15) After any vote by each local board of education required pursuant to KRS 160.1599(2)(b) or (c), the authorizer shall allow submission of a charter application to convert the existing public school to a charter school during the same school year as:

- (a) Each local board of education's vote to convert the existing

public school to a charter school, pursuant to KRS 160.1599(2)(c); or

- (b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each local board of education with authority over the existing public school, if required by KRS 160.1599(2)(b).

(16) The authorizer shall commence the charter application review and approval process pursuant to KRS 160.1594 and 701 KAR Chapter 8 upon receipt of a charter application to convert an existing public school to a charter school within the same school year as either:

- (a) Each local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or

- (b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each local board of education, if required by KRS 160.1599(2)(b).

(17) The authorizer shall review the petition and a submitted charter application and only approve the conversion of an existing public school if the charter application meets the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and if:

- (a) The petition meets the requirements of KRS 160.1599 and this administrative regulation during the same school year as the filing of the charter application, and if the commissioner of education has not determined the petition to be invalid; or

- (b) Each local board of education with authority over the existing public school has voted within the same school year to convert an existing public school to a charter school.

(18) The department shall create a charter school conversion petition and application guidance document that petitioners, applicants, authorizers, and local boards of education may utilize.

Section 3. Conversion. (1) No conversion public charter school shall begin operation after the beginning of a school year.

(2) After each local board of education's vote to convert an existing public school to a charter school or completion of the petition process requirements of KRS 160.1599(2)(a) or (b) and this administrative regulation, and after the authorizer's approval of a charter application to establish a conversion public charter school, each superintendent of a district with authority over the existing public school shall:

- (a) Notify resident students of the conversion of the existing public school and provide information for student application to the conversion charter school during the time that information on other school programs in the local school district is provided;

- (b) Create with the conversion charter school board of directors a plan for conversion of the existing public school that shall include, at a minimum, timelines, roles, responsibilities, and notification requirements for the following:

- 1. Coordination of student application, lottery, enrollment, and transfer to and from the conversion charter school; and

- 2. Transfer of management and operation of the conversion charter school in the same public school facility for the school years included in the conversion charter school's operation under the charter contract;

- (c) Meet during the first year of the charter contract with the charter school board of directors to coordinate student application, lottery, enrollment, and transfer of students; and

- (d) Meet throughout the charter contract with the charter school board of directors regarding the usage and maintenance of the facility by the charter school board of directors.

(3) Each local board of education with authority over the existing public school and the conversion charter school board of directors shall execute a lease for the public school facility prior to the operation of a conversion public school.

- (4) The department shall create a charter school conversion

process guidance document that an authorizer, local board of education, and a charter school board of directors may utilize.

Section 4. Employees. (1) Local school district employees placed in the existing public school prior to conversion, who are not hired by the conversion charter school board of directors to work in the converted charter school, shall retain their employment rights with the local school district, pursuant to KRS Chapter 161 and under the provisions of any collective bargaining agreement with the local school district. Conversion of an existing public school of the local school district may result in the circumstances described in KRS 161.800 and 161.011 necessitating the local school district superintendent's review of the necessity for a reasonable reduction in the number of teachers and classified employees employed by the local school district under KRS 161.800 and 161.011.

(2) A teacher, with continuing status pursuant to KRS Chapter 161, who is employed by a Kentucky local school district, who is hired by the conversion charter school board of directors to work in the converted charter school, and who is granted leave by the employing local board of education pursuant to [KRS 460.4593(22)]KRS 160.1592(22), shall notify the local school district of the teacher's intent to work in the converted charter school or to return to employment with the local school district the next school year by April 15 of each year of the granted leave.

(3) The department shall create a charter school conversion employee transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 5. Students. (1) Each local school district with authority over the existing public school shall provide, to the students and parents and persons with custody or charge of students who attend an existing public school that has been approved for conversion to a charter school, information and any plan the local school district shall use to address the educational needs and placements of students who choose not to attend or who otherwise shall not be attending the conversion charter school.

(2) The department shall create a charter school conversion student transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 6. Operation and Reversion of a Conversion Charter School.

(1) An authorizer may otherwise renew, non-renew, revoke, or take other action regarding a conversion public charter school as provided in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) If a closed conversion charter school is reverting back to its noncharter status, each local board of education with authority over the existing public school shall solicit feedback on the future of the school from parents, persons with custody or charge, adult students, and emancipated youth students of the school prior to the reversion.

Section 7. Incorporation by Reference. (1) "Public Charter School Conversion Petition", October 2022~~[February 2018]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal~~Legislative and Communication~~ Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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, E.D. Commissioner
LU S. YOUNG, Ed.D., Board Chairperson

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:42 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be

held on December 21, 2022, at 11 am 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 December 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 regulation outlines the procedures to be used to convert an existing public school to a public charter school. It outlines the requirements and processes for petitioning a local board of education and managing a conversion.

(b) The necessity of this administrative regulation: This administrative regulation is required under KRS 160.1598.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation outlines the procedures to be used to convert an existing public school to a public charter school. It outlines the requirements and processes for petitioning a local board of education and managing a conversion.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by KRS 160.1598. It outlines the procedures to be used to convert an existing public school to a public charter school. It outlines the requirements and processes for petitioning a local board of education and managing a conversion.

(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 regulation amendments include those changes required by House Bill 9 (2022). It outlines the procedures to be used to convert an existing public school to a public charter school. It outlines the requirements and processes for petitioning a local board of education and managing a conversion.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to conform to statutory amendments made by House Bill 9 (2022).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment includes updates prompted by House Bill 9 (2022) including updated definitions, updated enrollment preferences, and technical amendments as required to conform to the statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is required to ensure that public charter school authorizers remain in compliance with KRS 160.1590 through 160.1599 as amended by House Bill 9 (2022).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, public charter school authorizers, parents, students.

(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 regulation outlines the procedures to be used to convert an existing public school to a public charter school. It outlines the requirements and processes for petitioning a local board of education and managing a conversion.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes to this administrative regulation will not result in any additional cost to any of the identified entities. In the event of a conversion pursuant to the regulation, substantial cost to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation ensures compliance with KRS 160.1590 to 160.1599.

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

(a) Initially: This regulation amendment will not increase costs to the administrative body.

(b) On a continuing basis: This regulation amendment will not create continuing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation amendment does not create new costs or continuing costs to the administrative body. In the event of a conversion pursuant to the regulation, substantial cost to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

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

(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.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation as it applies equally to all public charter school authorizers.

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 public charter school authorizers, which may include public school districts or state universities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.011, 161.141, 161.800

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

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

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

(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 administrative body. Costs to local school districts will depend on whether they receive a petition for conversion. In the event of a conversion pursuant to the regulation, substantial costs to school

districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administer this program for the administrative body. Costs to local school districts will depend on whether they receive a petition for conversion. In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? Costs to local school districts will depend on whether they receive a petition for conversion. In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

(d) How much will it cost the regulated entities for subsequent years? Costs to local school districts will depend on whether they receive a petition for conversion. In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): Costs to local school districts will depend on whether they receive a petition for conversion. In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion. State and local funds will be utilized to cover these costs.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Whether this administrative regulation will result in a major economic impact as defined by KRS 13A.010(13) is dependent on whether conversion petitions are received. In the event of a conversion pursuant to the regulation, substantial costs to school districts are possible in the

form of administrative expenses managing a conversion, legal expenses related to a conversion, and loss of use of school buildings utilized for a conversion, which may result in a major economic impact as defined by KRS 13A.010(13).

**PUBLIC PROTECTION CABINET
Department of Insurance
Health Life and Managed Care Division
(Amendment)**

806 KAR 17:280. Registration, utilization review, and internal appeal.

RELATES TO: KRS 217.211, 304.2-140, 304.2-310, 304.17-412, 304.17A-005, 304.17A-163, 304.17A-1631, 304.17A.167, 304.17A-168, 304.17A-535, 304.17A-600, 304.17A-607, 304.17A-619, 304.17A-623, 304.17C-010, 304.17C-030, 304.18-045, 304.32-147, 304.32-330, 304.38-225, 304.47-050

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-609, 304.17A-613, 304.17A-1631

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-609 requires the department to promulgate administrative regulations regarding utilization review and internal appeal and KRS 304.17A-1631 requires the commissioner to promulgate administrative regulations regarding step therapy protocols and exceptions. KRS 304.17A-613 requires the department to promulgate administrative regulations to develop a process for the registration of insurers or private review agents. This administrative regulation establishes requirements for the registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions and step therapy exception request denials.

Section 1. Definitions.

- (1) "Adverse determination" is defined by KRS 304.17A-600(1).
- (2) "Authorized person" is defined by KRS 304.17A-600(2).
- (3) "Board" means one (1) of the following governing bodies:
 - (a) The American Board of Medical Specialties;
 - (b) The American Osteopathic Association; or
 - (c) The American Board of Podiatric Surgery.
- (4) "Coverage denial" is defined by KRS 304.17A-617(1).
- (5) "Department" means Department of Insurance.
- (6) "Enrollee" is defined by KRS 304.17C-010(2).
- (7) "Health benefit plan" is defined by KRS 304.17A-005(22).
- (8) "Health Care Provider" or "provider" is defined in KRS 304.17A-005(23) and includes pharmacy as required under 806 KAR 17:580.
- (9) "Insurer" is defined by KRS 304.17A-005(29).
- (10) "Internal appeals process" is defined by KRS 304.17A-600(9).
- (11) "Limited health service benefit plan" is defined by KRS 304.17C-010(5).
- (12)~~[(44)]~~ "Nationally recognized accreditation organization" is defined by KRS 304.17A-600(10).
- (13)~~[(42)]~~ "Notice of coverage denial" means a letter, a notice, or an explanation of benefits statement advising of a coverage denial.
- (14)~~[(43)]~~ "Policies and procedures" means the documentation which outlines and governs the steps and standards used to carry out functions of a utilization review program.
- (15)~~[(44)]~~ "Private review agent" is defined by KRS 304.17A-600(11).
- (16)~~[(45)]~~ "Registration" is defined by KRS 304.17A-600(14).
- (17) "Step therapy exception" is defined in KRS 304.17A-163(1)(f).
- (18) "Step therapy protocol" is defined in KRS 304.17A-163(1)(g).
- (19)~~[(46)]~~ "Utilization review" is defined by KRS 304.17A-600(17)).

~~(20)~~~~[(47)]~~ "Utilization review plan" is defined by KRS 304.17A-600(18).

Section 2. Registration Required for Utilization Review.

- (1) The department shall issue a registration to an applicant that has met the requirements of KRS 304.17A-600 through 304.17A-619 and KRS 304.17A-623, if applicable, and Sections 2 through 11 of this administrative regulation.
- (2) An applicant seeking registration to provide or perform utilization review shall:
 - (a) Submit an application to the department as required by Section 4 of this administrative regulation; and
 - (b) Pay an application fee as required by Section 3 of this administrative regulation.
- (3) If an insurer or private review agent desires a renewal of registration to perform utilization review, an application for renewal of registration shall be submitted to the department at least ninety (90) days prior to expiration of the current registration.

Section 3. Fees.

- (1) An application for registration shall be accompanied by a fee of \$1,000.
- (2) A submission of changes to utilization review policies or procedures to the department shall be accompanied by a fee of fifty (50) dollars.
- (3) A fee as established in subsection (1) or (2) of this section shall be made payable to the Kentucky State Treasurer.

Section 4. Application Process for Utilization Review.

- (1) An applicant for registration shall complete and submit to the department an application, HIPMC-UR-1 and HIPMC-MD-1, and except as provided in subsection (3) of this section, documentation to support compliance with KRS 304.17A-600 through 304.17A-623, as applicable, including:
 - (a) A utilization review plan;
 - (b) The identification of criteria used for all services requiring utilization review;
 - (c) Types and qualifications of personnel, employed directly or under contract, performing utilization review in compliance with KRS 304.17A-607, including names, addresses, and telephone numbers of the medical director and contact persons for questions regarding the filing of the application;
 - (d) A toll-free telephone number to contact the insurer, limited health service benefit plan, or private review agent, as required by KRS 304.17A-607(1)(e) and 304.17A-609(3);
 - (e) A copy of the policies and procedures required by:
 1. KRS 304.17A-163;
 2. KRS 304.17A-1631;
 3. [By-]KRS 304.17A-167;
 - 4.~~2.~~ [By-]KRS 304.17A-603;
 - 5.~~3.~~ [By-]KRS 304.17A-607, and including the policies and procedures required by KRS 304.17A-607(1)(f) and (i); and
 - 6.~~4.~~ [By-]KRS 304.17A-609(4);
 - (f) A copy of the policies and procedures by which:
 1. A limited health service benefit plan provides a notice of review decision which complies with KRS 304.17A-607(1)(h) to (j) and includes:
 - a. Date of service or preservice request date;
 - b. Date of the review decision; and
 - c. Instructions for filing an internal appeal; or
 2. An insurer or private review agent provides a notice of review decision, which complies with KRS 304.17A-607(1)(h) to (j) and 806 KAR 17:230, and includes:
 - a. Date of service or preservice request date;
 - b. Date of the review decision;
 - c. Instructions for filing an internal appeal, including information concerning:
 - (i) The availability of an expedited internal appeal and a concurrent expedited external review;
 - (ii) For an adverse determination, the right to request that the appeal be conducted by a board eligible or certified physician pursuant to KRS 304.17A-617(2)(c); and
 - (iii) The insurer's contact information for conducting appeals,

which shall include an address and direct ten (10) digit[including a] telephone number, and which shall be bolded and more prominently displayed than the contact information of the department[and address]; and

d. Information relating to the availability of:

(i) A review of a coverage denial by the department following completion of the internal appeal process; or

(ii) A review of an adverse determination by an independent review entity following completion of the internal appeal process, in accordance with KRS 304.17A-623;

(g) If a part of the utilization review process is delegated, a description of the:

1. Delegated function;

2. Entity to whom the function was delegated, including name, address, and telephone number; and

3. Monitoring mechanism used by the insurer or private review agent to assure compliance of the delegated entity with paragraph (f) of this subsection;

(h) A sample copy of an electronic or written notice of review decision, which complies with paragraph (f) of this subsection;

(i) A copy of the policies and procedures by which a covered person, authorized person, or provider may request an appeal of an adverse determination, or coverage denial in accordance with KRS 304.17A-617, including:

1. The method by which an appeal may be initiated, including:

a. An oral request followed by a brief written request, or a written request for an expedited internal appeal;

b. A written request for a nonexpedited internal appeal; and

c. If applicable, the completion of a specific form, including a medical records release consent form with instructions for obtaining the required release form;

2. Time frames for:

a. Conducting a review of an initial decision; and

b. Issuing an internal appeal decision;

3. Procedures for coordination of expedited and nonexpedited appeals;

4. Qualifications of the person conducting internal appeal of the initial decision in accordance with KRS 304.17A-617(2)(c);

5. Information to be included in the internal appeal determination in accordance with KRS 304.17A-617(2)(e), including the:

a. Title and, if applicable, the license number, state of licensure, and certification of specialty or subspecialty of the person making the internal appeal determination;

b. Clear, detailed decision; and

c. Availability of an expedited external review of an adverse determination; and

6. A sample copy of the internal appeal determination in compliance with paragraph (i)5 of this subsection; and

(j) A copy of the policies and procedures, which:

1. Address and ensure the confidentiality of medical information in accordance with KRS 304.17A-609(5), 806 KAR 3:210, and 806 KAR 3:230;

2. Comply with requirements of KRS 304.17A-615 if the insurer or private review agent fails to:

a. Provide a timely utilization review decision; or

b. Be accessible, as determined by verifiable documentation of a provider's attempts to contact the insurer or private review agent, including verification by:

(i) Electronic transmission records; or

(ii) Telephone company logs;

3. Comply with requirements of KRS 304.17A-619, regarding the submission of new clinical information prior to the initiation of the external review process;

4. Address and ensure consistent application of review criteria for all services requiring utilization review; and

5. Comply with requirements of KRS 304.17A-607(1)(k), as applicable.

(2) Upon review of an application for registration, [or] submitted changes to utilization review policies and procedures in accordance with KRS 304.17A-607(3), or submitted changes to internal appeals policies and procedures in accordance with KRS 304.17A-617(3), the department shall:

(a) Inform the applicant if supplemental information is needed;

(b) Identify and request that supplemental information be submitted to the department within thirty (30) days;

(c) If requested information is not provided to the department within the timeline established in paragraph (b) of this subsection:

1. Deny the application for registration or proposed changes to utilization review or internal review policies and procedures; and

2. Not refund the application or filing fee; and

(d) Approve or deny registration or proposed changes to utilization review or internal review policies and procedures.

(3) In order to be registered to perform utilization review in Kentucky, an applicant who[which] holds accreditation or certification in utilization review by a nationally recognized accreditation organization in accordance with KRS 304.17A-613(10) shall be required to submit with its completed application to the department:

(a)

1. Evidence of current accreditation or certification in utilization review, including an expiration date; and

2. Documentation to demonstrate compliance with requirements of KRS 304.17A-613(10) and that the standards of the accreditation organization sufficiently meet the minimum requirements in subsection (1) of this section.

(b) If the national accreditation standard does not meet all the requirements as established in subsection (1) of this Section, then the applicant shall submit the additional information required under subsection (1) of this section.

Section 5. Denial or Revocation Hearing Procedure. Upon denial of an application for registration, or suspension or revocation of an existing registration, the department shall:

(1) Give written notice of its action; and

(2) Advise the applicant or registration holder that if dissatisfied, a hearing may be requested and filed in accordance with KRS 304.2-310.

Section 6. Complaints Relating to Utilization Review.

(1) A written complaint regarding utilization review shall be reviewed by the department in accordance with KRS 304.17A-613(8).

(2) Upon receiving a copy of the complaint, an insurer or private review agent shall provide a response in accordance with KRS 304.17A-613(8)(a), including:

(a) Any information relating to the complaint;

(b) All correspondence or communication related to the denial between any of the parties, including the insurer, the member, provider, and private review agent; and

(c) Corrective actions to address the complaint, if applicable, including a timeframe for each action.

(3) Within thirty (30) days of implementation of a corrective action, as identified in subsection (2) of this section, an insurer or private review agent shall notify the department in writing of the implementation of the corrective action.

(4) If an insurer or private review agent fails to comply with this section, the department may impose a penalty in accordance with KRS 304.2-140.

(5) The number, recurrence, and type of complaints, as identified in subsection (1) of this section, shall be considered by the department in reviewing an application for registration pursuant to KRS 304.17A-613(9).

Section 7. Internal Appeals for a Health Benefit Plan. In addition to the requirements of KRS 304.17A-617, and as part of an internal appeals process, an insurer or private review agent shall:

(1) Allow a covered person, authorized person, or provider acting on behalf of a covered person to request an internal appeal at least sixty (60) days following receipt of a denial letter;

(2) Provide written notification of an internal appeal determination decision as required by KRS 304.17A-617(2)(a), (b), and (e), which shall include the:

(a) Title and, if applicable, the license number, state of licensure and specialty or subspecialty certifications of the person

performing the review;

(b) Elements required in a letter of denial in accordance with 806 KAR 17:230, Sections 4 and 5, if applicable;

(c) Position and telephone number of a contact person who may provide information relating to the internal appeal;

(d) Date of service or preservice request date; and

(e) Date of the internal appeal decision;

(3) Maintain written records of an internal appeal, including the:

(a) Reason for the internal appeal;

(b) Date that the internal appeal was received by the insurer or private review agent, including the date any necessary or required authorizations were received;

(c) Date of the internal appeal decision;

(d) Internal appeal decision; and

(e) Information required by Section 4(1)(i)5 of this administrative regulation; and

(4) Retain a record of an internal appeal decision for five (5) subsequent years in accordance with 806 KAR 2:070.

Section 8. Internal Appeals for a Limited Health Service Benefit Plan.

(1) An insurer offering a limited health service benefit plan shall have an internal appeals process which shall:

(a) Be disclosed to an enrollee in accordance with KRS 304.17C-030(2)(g); and

(b) Include provisions, which:

1. Allow an enrollee, authorized person, or provider acting on behalf of the enrollee to request an internal appeal within at least sixty (60) days of receipt of a notice of adverse determination or coverage denial or if applicable, a step therapy exception denial; and

2. Require the limited health service benefit plan to provide a written internal appeal determination within thirty (30) days following receipt of a request for an internal appeal.

(2) A notice of adverse determination or coverage denial or if applicable, a step therapy exception denial shall include a disclosure of the availability of the internal appeals process.

Section 9. Internal Appeals for a Step Therapy Exception Denial. In addition to the requirements of KRS 304.17A-617, and as part of the internal appeals process for a step therapy exception denial, an insurer, private review agent, or pharmacy benefit manager shall:

(1) Allow a covered person or provider acting on behalf of a covered person to request an internal appeal of a step therapy exception denial;

(2) Require the insurer, private review agent, or pharmacy benefit manager to provide a written internal appeal determination within forty-eight (48) hours following receipt of a request for an internal appeal of a step therapy exception denial;

(3) Provide written notification of an internal appeal determination decision as required by KRS 304.17A-617(2)(a), (b), and (e) and KRS 304.17A-163(4)(a), which shall include the:

(a) Title and, if applicable, the license number, state of licensure and specialty or subspecialty certifications of the person performing the review;

(b) Elements required in a letter of denial in accordance with 806 KAR 17:230, Sections 4 and 5, if applicable;

(c) Position and telephone number of a contact person who may provide information relating to the internal appeal;

(d) Date of service or preservice request date; and

(e) Date and time the internal appeal was received;

(f) Date and time of the internal appeal decision;

(g) Maintain written records of an internal appeal, including the:

1. Reason for the internal appeal;

2. Date that the internal appeal was received by the insurer or private review agent, including the date any necessary or required authorizations were received;

3. The clinical review criteria used to make the step therapy exception appeal determination;

4. Date of the internal appeal decision;

5. Internal appeal decision; and

6. Information required by Section 4(1)(i)5. of this

administrative regulation; and

(4) Retain a record of an internal appeal decision for five (5) years from the date of decision in accordance with 806 KAR 2:070.

Section 10.~~[Section 9.]~~ Reporting Requirements. By March 31 of each calendar year, an insurer or private review agent shall complete and submit to the department a HIPMC-UR-2, and a HIPMC-STE-1~~]~~ for the previous calendar year.

Section 11.~~[Section 10.]~~ Maintenance of Records. An insurer or private review agent shall maintain documentation to assure compliance with KRS 304.17A-163, 304.17A-163.1, 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147, 304.32-330, 304.38-225, and 304.47-050, including:

(1) Proof of the volume of reviews conducted per the number of review staff broken down by staff answering the phone;

(2) Information relating to the availability of physician consultation;

(3) Information which supports that based on call volume, the insurer or private review agent has sufficient staff to return calls in a timely manner;

(4) Proof of the volume of phone calls received on the toll-free phone number per the number of phone lines;

(5) Telephone call abandonment rate; and

(6) Proof of the response time of insurer or private review agent for returned phone calls to a provider if a message is taken.

Section 12.~~[Section 11.]~~ Cessation of Operations to Perform Utilization Review.

(1) Upon a decision to cease utilization review operations in Kentucky, an insurer or private review agent shall submit the following to the department thirty (30) days or as soon as practicable prior to ceasing operations:

(a) Written notification of the cessation of operations, including the proposed date of cessation and the number of pending utilization review decisions with projected completion dates; and

(b) A written action plan for cessation of operations, which shall be subject to approval by the department prior to implementation.

(2) Annual reports required pursuant to Section 9 of this administrative regulation shall be submitted to the department within thirty (30) calendar days of ceasing operations.

Section 13.~~[Section 12.]~~ Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) Form HIPMC-UR-1, "Utilization Review Registration Application", 10/2022[09/2020] edition;

(b) Form HIPMC-UR-2, "Annual Utilization Review (UR) Report Form", 09/2020 edition;~~and]~~

(c) Form HIPMC-MD-1, "Medical Director Report Form", 09/2020 edition; and

(d) Form HIPMC-STE-1, "Step Therapy Annual Report", 10/2022 edition.

(2) This material may be inspected, copied or obtained subject to applicable copyright law, at the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, 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

AGENCY APPROVED: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on December 28, 2022 at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public

hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Title: Executive Advisor, Address: 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 a process and requirements for the registration of insurers or private review agents, and utilization review process, including internal appeal decisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 304.17A-065, KRS 304.17A-609, and KRS 304.17A-613, which require the Commissioner to promulgate regulations regarding utilization review, internal appeal for the registration of insurers or private review agents and includes limited health service benefit plans and national accreditation organizations in the registration, utilization review, and internal appeal process. KRS 304.17A-1631 requires the commissioner to promulgate administrative regulations regarding step therapy protocols and exceptions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1), authorizes the Commissioner to promulgate administrative regulations to aid in effectuation of the Insurance Code. KRS 304.17A-609 states that the department shall promulgate emergency administrative regulations regarding utilization review and internal appeal, including the specification of information required of insurers and private review agents. 304.17A-613, requires the department to establish the process for application review, fees, and registration of insurers and private review agents. KRS 304.17A-1631 requires the commissioner to promulgate administrative regulations regarding step therapy protocols and exceptions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will comply by setting forth the utilization review process, internal appeal, registration process, and step-therapy protocol processes required by 304.17A-609, 304.17A-613, and KRS 304.17A-6131.

(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: These amendments set forth the requirements for Internal Appeals of a Step Therapy Exception Denial and lay out the reporting process for insurers and pharmacy benefit managers to annually report to the Department the total number of step therapy exceptions denied/approved (and what category of services were denied/approved) on the Form HIPMC-STE-1 by March 31 of each year. Other amendments are technical in nature.

(b) The necessity of the amendment to this administrative regulation: The amendments to this regulation are to ensure proper enforcement of KRS 304.17A-163 and KRS 304.17A-1631 (SB 140 2022 Reg. Session)

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-1631 requires the department to set forth reporting requirements and processes for insurers and PBMs to report to the commissioner the number of step-therapy exception appeals and denials, and this administrative regulation prescribes the format of the annual report and the process for filing an internal appeal for a step-therapy exception denial.

(d) How the amendment will assist in the effective

administration of the statutes: These amendments set forth the reporting requirements defined in KRS 304.17A-1631 concerning step-therapy protocol exception appeals and denials.

(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 insurers offering health plans and limited health benefit plans, private review agents, and pharmacy benefit managers. There are 868 companies licensed to write health insurance here in Kentucky. This includes workers compensation insurers, life insurers, and MCOs. There are 54 licensed PBMs. This does not mean that all these entities are actively writing health plans; we have found that there are 12 insurers actively writing health benefit plans in the commercial market in Kentucky. The Department currently has 113 registered UR agents; some are registered as Private Review Agents, some as insurers, and some as Limited Health Service Organization reviewers.

(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 must allow insureds or a provider (on behalf of insureds) to request an internal appeal for a step therapy exception denial and the entity must provide a determination within 48-hours of receipt of the appeal. When providing written notice of the appeal determination decision, the entity must include specific information to the insured or provider as well as keep record of the correspondence for five (5) years. Regulated entities are also required to report the number of total step therapy exceptions denied/approved, and what category of services were denied/approved, for the previous plan year to the commissioner by March 31 of each year on the HIPMC-STE-1 Form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost should be minimal considering regulated entities have previously been required to report and should have the appropriate processes in place to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities which are in compliance with Acts Chapter 19 (2022 Reg. Session) will not incur penalties for non-compliance with the statutes.

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

(a) Initially: There is no cost associated with this administrative regulation.

(b) On a continuing basis: There is no cost associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department's operational budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this time, the Department does not foresee an increase in fees, but in the future, it may need to request an expansion of funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all health insurers, pharmacy benefit managers, and private review agents.

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 Insurance as the implementer.

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

that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.17A-609, 304.17A-613, and 304.17A-1631.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department is currently in the process of proposing a memorandum of agreement to contract with staff pharmacists or pharmacy consultants to assist with enforcing the provisions of KRS 304.17A-163 and 1631, and 806 KAR 17:280 and 17:290. The Department does not currently have the expertise on staff to review the clinical appropriateness of step-therapy protocols. Thus, the MOA is for a maximum of \$100,000 per year.

(d) How much will it cost to administer this program for subsequent years? The cost should be the same for next year but could change depending on the terms of the renewal contract every two years.

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

Revenues (+/-): None expected

Expenditures (+/-): \$100,000

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? No cost savings are associated with this regulation or amendments for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None cost savings are associated with this regulation or amendments for regulated entities

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

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

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: There is no cost associated with this administrative regulation and therefore no fiscal impact for regulated entities.

(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)] At this time, the Department is not aware of a major economic impact.

PUBLIC PROTECTION CABINET

Department of Insurance

Health and Life and Managed Care Division (Amendment)

806 KAR 17:290. Independent External Review Program.

RELATES TO: KRS 304.1-050, 304.2-100, 304.2-230, 304.2-310, 304.17A-005, 304.17A-505, 304.17A-600, 304.17A-617, 304.17A-621-304.17A-631, 304.17A-1631, 304.17A-168, 304.17A-535, 304.17A-607

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-629, 304.17A-163

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner 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-629 requires the department to promulgate administrative regulations regarding the Independent External Review Program, and KRS 304.17A-1631 requires the commissioner to promulgate administrative regulations regarding step therapy protocols and exceptions. This administrative regulation establishes the insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions and step therapy exception request or step therapy internal appeal denials. This administrative regulation also establishes the disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.

Section 1. Definitions.

(1) "Adverse determination" is defined by KRS 304.17A-600(1).

(2) "Assign" or "assignment" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(3) "Authorized person" is defined by KRS 304.17A-600(2).

(4) "Commissioner" is defined by KRS 304.1-050(1).

(5) "Coverage denial" is defined by KRS 304.17A-617(1).

(6) "Covered person" is defined by KRS 304.17A-600(4).

(7) "Department" is defined by KRS 304.1-050(2).

(8) "External review" is defined by KRS 304.17A-600(5).

(9) "Financial hardship" means the:

(a) Gross income of the covered person is below 200 percent of the federal poverty level based upon family size as shown by a federal income tax return for the previous year; or

(b) Covered person's participation in one (1) of the following programs:

1. National Prescription Drug Patient Assistance;
2. Kentucky Transitional Assistance Program (K-TAP);
3. Kentucky Medical Assistance Program; or
4. Unemployment Insurance.

(10) "Health Care Provider" or "Provider" is defined by KRS 304.17A-005(23).

(11) "Independent review entity" is defined by KRS 304.17A-600(7).

(12) "Insurer" is defined by KRS 304.17A-600(8).

(13) "Reviewer" means an individual selected by the independent review entity to conduct an external review and make a recommended decision to the independent review entity.

(14) "Step therapy exception" is defined by KRS 304.17A-163(1)(f).

(15) "Step therapy protocol" is defined by KRS 304.17A-163(1)(g).

Section 2. Requirements of an Insurer.

(1) An insurer shall:

(a) Disclose to a covered person in a clear, concise, written format the following information concerning an external review:

1. At enrollment, the right to an external review in accordance with KRS 304.17A-505(1)(g);
2. The availability of an external review, including expedited

external review, in the insurer's notice of an adverse determination in accordance with KRS 304.17A-623(1);

3. Instructions for initiating an external review in the internal appeal decision letter upholding an adverse determination, including:

- a. Whether the appeal shall be in writing;
- b. How to request and complete any necessary forms, including a medical records release form or written authorization of representation;
- c. Applicable time frames;
- d. The position and telephone number of a contact person who can provide additional information about an external review; and
- e. Additional documentation that may be necessary to initiate the external review; and

4. The right of a covered person to request an external review within sixty (60) days of receiving notice that, pursuant to KRS 304.17A-617(3)(d), the insurer has elected to afford an opportunity for external review;

(b) Allow a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, to submit an oral request, followed by a brief written request, for an expedited external review;

(c) Provide the following information relating to an external review in the policy or certificate of coverage issued to a covered person and upon request:

1. The circumstances under which the following types of external review shall be provided:

- a. Nonexpedited external review in accordance with KRS 304.17A-623(3), (4) and (6), and (13); and
- b. Expedited external review in accordance with KRS 304.17A-623(10), (11) and (12);

2. The filing fee for requesting an external review in accordance with KRS 304.17A-623(5);

3. Notice that the cost of an external review by an independent review entity shall be paid by the insurer in accordance with KRS 304.17A-625(5);

4. The procedure for submitting:

- a. An oral request followed up by a brief written request, or a written request for an expedited external review;
- b. A written request for a nonexpedited external review; and
- c. Any specific forms required by the insurer to initiate an external review, including a written authorization of personal representation or a consent to release medical records form;

5. The time frame for:

a. Submitting a request for external review in accordance with KRS 304.17A-623(4);

b. Rendering a decision by an independent review entity in accordance with KRS 304.17A-623(12) and (13); and

c. Implementation of a decision of the independent review entity in accordance with KRS 304.17A-625(11) through (13);

6. A statement relating to the confidential treatment of medical records and information relating to the external review; and

7. A statement of the availability of a complaint process through the department relating to:

a. A covered person's right to an external review in accordance with KRS 304.17A-623(8); and

b. The action of an independent review entity in accordance with KRS 304.17A-625(16);

(d) If an external review is requested by an authorized person or provider acting on behalf of a covered person, obtain the:

- 1. Written authorization of representation; and
- 2. Consent to release medical records to the independent review entity;

(e) Determine if an external review is warranted in accordance with KRS 304.17A-623(3) and (10), and notify the person who requested the external review of its determination within the following time periods:

1. For expedited reviews, within twenty-four (24) hours of receipt of the request, pursuant to KRS 304.17A-623(11); or

2. For nonexpedited reviews, within five (5) business days of receipt of the request;

(f) Upon a determination that an expedited external review is warranted:

1. By telephone, request acceptance of assignment of the external review by an independent review entity, which was selected pursuant to KRS 304.17A-623(7) from a list of certified independent review entities maintained by the department at <http://insurance.ky.gov>; and

2. Notify the independent review entity by telephone that the following documents shall be forwarded to the independent review entity in accordance with KRS 304.17A-623(11):

a. The written consent of the covered person authorizing release of medical records as required by KRS 304.17A-623(4);

b. Information to be considered as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Face Sheet, HIPMC-IRE-6;

(g) Upon a determination that a nonexpedited external review is warranted:

1. By telephone, request acceptance of assignment of the external review by an independent review entity which was selected pursuant to KRS 304.17A-623(7) from the list of certified independent review entities as identified in paragraph (f)1 of this subsection; and

2. Within three (3) business days of assignment, deliver to the independent review entity the documentation as identified in paragraph (f)2 of this subsection;

(h) Upon assignment of an external review, complete and send to the department an Assignment of Independent Review Entity Form, HIPMC-IRE-2, within one (1) business day via email to DOI.UtilizationReview@ky.gov;

(i) Upon receipt of a decision relating to external review from an independent review entity, implement the decision in accordance with KRS 304.17A-625(11) through (13) and provide the department with a reprocessed explanation of benefits or other payment documentation showing the implementation of the overturned decision;

(j) Upon receipt of an invoice relating to an external review, pay the independent review entity within thirty (30) days;

(k) Maintain a written record of each external review for a period of not less than five (5) years pursuant to 806 KAR 2:070, Section 1; and

(l) Upon written notice of termination of an independent review entity pursuant to Section 3(21)(a) or (c) of this administrative regulation, reassign an external review in accordance with paragraphs (f) and (g) of this subsection.

(2)(a) If a request for external review is denied by an insurer, written notification shall be provided by the insurer to the person requesting the external review, which shall include:

1. The date the request for external review was received by the insurer;

2. A statement relating to the nature of the request;

3. The rationale of the insurer for denying the request;

4. A statement relating to the availability of review by the department if a dispute arises regarding the right to external review;

5. The toll-free telephone number of the department; and

6. The name and telephone number of a contact person who shall provide information relating to the denial of the request.

(b) If requested by the department, the insurer shall provide:

1. A copy of the written notification described in paragraph (a) of this subsection; and

2. Information or documentation that the insurer relied upon to deny the request for external review.

Section 3. Requirements of an Independent Review Entity. An independent review entity shall:

(1) Accept a request for assignment unless:

(a) A conflict of interest exists;

(b) Confidentiality issues exist; or

(c) Due to circumstances beyond the control of the independent review entity, an appropriate reviewer becomes unavailable;

(2) Upon receipt of a request for assignment from an insurer determine if a condition of subsection (1)(a) through (c) of this section exists;

(3) Within twenty-four (24) hours of receipt of a request for assignment:

(a) Immediately provide verbal notification, followed by written notification to the insurer and department of the rejection of an assignment if a condition of subsection (1)(a) through (c) of this section exists; or

(b) Provide written notification to an insurer and the department via DOI.UtilizationReview@ky.gov of the acceptance of an assignment; and

(4) Maintain a written record of:

(a) Whether the external review relates to an adverse determination or coverage denial, a step therapy exception denial, or step therapy internal appeal denial which requires resolution of a medical issue;

(b) The specific question or issue, as identified by the independent review entity, to be resolved by the external review; and

(c) Whether the external review is expedited or nonexpedited;

(5) For each external review, obtain and maintain a signed statement of a reviewer that the reviewer has no conflict of interest;

(6) Not limit the basis of an external review decision to the standards, criteria, and clinical rationale used by the insurer to make its decision pursuant to KRS 304.17A-625(1), (2), and (7);

(7) Have a reviewer with expertise in:

(a) Health insurance benefits and contracts, who shall serve as a reviewer with a healthcare professional reviewer, in an external review of a coverage denial, step therapy exception request denial, or step therapy internal appeal denial which requires the resolution of a medical issue in accordance with KRS 304.17A-617(3)(d); and

(b) Health care, who shall:

1. Conduct an external review of a step therapy exception request denial, step therapy internal appeal denial, or an adverse determination or coverage denial which requires resolution of a medical issue in accordance with the requirements of KRS 304.17A-623 ~~and an adverse determination which requires resolution of a medical issue~~; and

2. Meet the following requirements:

a. Hold active licensure in a state of the United States;

b. Have recent experience or familiarity with current body of knowledge and applicable specialty or subspecialty practice;

c. Have at least five (5) years of experience in the specialty or subspecialty of the external review; and

d. Hold current board certification by:

(i) The American Board of Medical Specialties if the reviewer is a medical doctor;

(ii) The American Osteopathic Association if the reviewer is a doctor of osteopathic medicine;

(iii) The American Board of Podiatric Surgery if the reviewer is a doctor of podiatric medicine; or

(iv) Other recognized health professional board pursuant to KRS 304.17A-627;

(8) Establish criteria in accordance with KRS 304.17A-627 for:

(a) Selection of a qualified reviewer, including the initial verification and reverification every three (3) years of credentials of the reviewer;

(b) Ensuring that an appropriate:

1. Reviewer performs the external review; and

2. Number of reviewers are used for the external review; and

(c) Ensuring that at least one (1) reviewer qualified in each medical specialty and subspecialty is available for external review;

(d) Provide a listing of the reviewers to the department including each reviewer's name, date of licensure, license number and specialty, including any subspecialty in accordance with KRS 304.17A-627(5) and (6);

(9) Have a medical director or clinical director with professional postresidency experience in direct patient care who shall:

(a) Hold a current license to practice medicine in a state of the United States;

(b) Provide guidance for the medical aspects of the external review process; and

(c) Oversee the medical aspects of the:

1. Quality management program; and

2. Reviewer credentialing program;

(10) Establish and implement criteria for determination of the need for a time extension pursuant to KRS 304.17A-623(12) and (13);

(11) Provide written notification of a decision as required by KRS 304.17A-625(6), which shall include the:

(a) Title, professional license number, state of licensure and specialty or subspecialty certifications, if any, of the reviewer;

(b) Date the decision was rendered; and

(c) A statement that:

1. The decision shall be final and binding on the insurer; and

2. If dissatisfied with the decision, a comment, question, or complaint may be submitted in writing to the department;

(12) Within two (2) business days of rendering a decision, provide written notification of the decision to the:

(a) Covered person or authorized person, treating provider, and insurer; and

(b) Department via email at DOI.UtilizationReview@ky.gov by:

1. Copying the department on the written notification to the covered person; and

2. Completing an External Review Decision Notification Form, HIPMC-IRE-3;

(13) Establish written policies and procedures for maintenance and the confidential treatment of external review records in accordance with KRS 304.17A-623(9), 806 KAR 3:210, and 806 KAR 3:230;

(14) Maintain a written record of an external review for a minimum of five (5) years in accordance with 806 KAR 2:070, which shall include, as applicable:

(a) All documentation relating to the external review pursuant to KRS 304.17A 625(1)(a);

(b) The independent review entity's decision regarding each issue identified in the external review request;

(c) The name, credentials, and specialty or subspecialty of the reviewer;

(d) Medical records and information considered during the review;

(e) References to any medical literature, research data, or national clinical criteria upon which the independent review entity's decision was based;

(f) A copy of the covered person's health benefit plan;

(g) A copy of the adverse determination or coverage denial, the step therapy exception request denial, or the step therapy internal appeal denial which requires resolution of a medical issue, and the internal appeal decision; and

(h) A copy of all correspondence and communication between the independent review entity, reviewer, and any other person regarding the external review, including a copy of the final external review decision letter;

(15) Provide toll-free telephone access that:

(a) Operates at a minimum from 9 a.m. until 5 p.m. of each business day in each time zone if the services under review are in dispute; and

(b) Allows for:

1. Receiving after-hours requests for external review; and

2. Acting upon expedited external review requests in accordance with KRS 304.17A-623(12);

(16) If an external review function, or any portion of this function, is delegated or subcontracted to another person or organization, submit to the department:

(a) Policies and procedures relating to oversight activities to ensure compliance with requirements of an independent review entity as established in KRS 304.17A-623 and 304.17A-625, and this section; and

(b) A copy of the delegation or subcontract agreement;

(17) Establish and maintain a written quality assurance program in accordance KRS 304.17A-627, which shall be made available to the public upon request and shall include a written plan, which addresses:

(a) Scope and objectives;

(b) Program organization;

(c) Monitoring and oversight mechanisms; and

(d) Evaluation and organizational improvement of external review activities, including:

1. Objectives and approaches used in the monitoring and evaluation of external review activities, including the systematic evaluation of complaints for patterns and trends;

2. The implementation of an action plan to improve or correct an identified problem; and

3. The procedures to communicate the results of an action plan to its employees and reviewers, as applicable;

(18) Submit a copy of any change to information provided on the Application for Certification of an Independent Review Entity, HIPMC-IRE-1, in writing to the department for approval. A change shall not become effective until approved by the commissioner;

(19) Submit a new application for certification if requested by the department following notification of a material change in the application information as required by KRS 304.17A-627(2);

(20) Establish a fee structure, to be available upon request, for each type or level of external review, including at a minimum, a fee for:

(a) A completed external review of:

1. A coverage denial, step therapy exception request denial, or step therapy internal appeal denial which requires resolution of a medical issue; and

2. An adverse determination; and

(b) An incomplete external review;

(21) Immediately terminate an external review and provide notice by telephone, followed by a written notification to the department and, if appropriate, the insurer requesting the external review if:

(a) A conflict of interest or confidentiality issue is discovered at any time during the external review process;

(b) A reversal of a coverage denial, step therapy exception request denial, step therapy internal appeal denial, or adverse determination is received in writing from the insurer; or

(c) The independent review entity or a reviewer becomes unavailable for reasons beyond the control of the independent review entity, including acts of God, natural disasters, epidemics, strikes or other labor disruptions, war, civil disturbances, riots, or complete or partial disruptions of facilities;

(22) If more than one (1) reviewer is utilized in making a decision:

(a) Render an overall decision based upon the majority decision of the reviewers; or

(b) If the reviewers are evenly split as to whether the recommended or requested health care service or treatment shall be covered, request an additional reviewer to make a binding majority decision;

(23) Implement a written policy and procedure for each aspect of an external review process, including:

(a) Processing of the request for assignment of an external review from an insurer;

(b) Receipt and maintenance of medical records and information from insurer;

(c) Ensuring access to appropriate qualified reviewers pursuant to subsection (8) of this section;

(d) Ensuring the credentialing, selection, and notification of a reviewer who performs an external review;

(e) Rendering a timely decision and issuing notification of the decision;

(f) Ongoing monitoring and evaluation of the performance of a reviewer;

(g) Monitoring and oversight of a delegated external review function, if any;

(h) Billing and collection of fees for external review, including:

1. Filing fee of the covered person; and

2. Cost of external review for the insurer;

(i) Collecting and reporting data;

(j) Termination of external review; and

(k) Response to a request for information relating to a complaint filed with the department; and

(24)

(a) Conduct annually, a program for training reviewers, which:

1. Provides information relating to the requirements of the Kentucky Independent External Review Program; and

2. Describes the policies and procedures of the independent

review entity, as applicable; and

(b) Provide a written record of the training to the department, upon request.

Section 4. Application Process for Certification to Perform External Reviews.

(1) To perform an external review, an independent review entity shall be certified in accordance with requirements established in KRS 304.17A-627, and this administrative regulation.

(2) To be certified to perform an external review, an independent review entity shall:

(a) Complete and submit to the department, an Application for Certification of an Independent Review Entity, HIPMC-IRE-1;

(b) Submit a fee with the application for certification as required by Section 5 of this administrative regulation; and

(c) Enclose with the application for certification, written documentation which supports compliance with the requirements of an independent review entity established in KRS 304.17A-627 and Section 3 of this administrative regulation.

(3) In renewing a certification, an independent review entity shall submit an application for certification to the department at least ninety (90) days prior to expiration of the current certification.

Section 5. Fees.

(1) Department fees.

(a) An application for certification as an independent review entity shall be submitted with \$500.

(b) Pursuant to KRS 304.17A-627(2), a change in application information after certification shall be submitted with fifty (50) dollars.

(c) Fees submitted to the department shall be made payable to the Kentucky State Treasurer.

(2) Independent review entity fees.

(a) 1. Except for a fee which meets the criteria established in HIPMC-IRE-5, Approval of an External Review Fee in Excess of \$800, the total fee charged for an external review shall not exceed \$800; and

2. The fee proposed by the independent review entity in excess of \$800 shall be submitted to the department for approval prior to billing the insurer with the justification defined in HIPMC-IRE-5, Approval of an External Review Fee in Excess of \$800.

(b) The twenty-five (25) dollar filing fee to be paid by the covered person shall:

1. Be billed by the independent review entity upon assignment; or

2. Be waived if it creates a financial hardship pursuant to KRS 304.17A-623(5).

Section 6. Department Review of Application for Certification or Change in Information Provided on the Application.

(1) Upon review of an application for certification or a change in information provided on the application, the department shall:

(a) Notify the applicant of any missing or necessary information;

(b) Identify and request submission of the information identified in paragraph (a) of this subsection within thirty (30) days;

(c) If requested information is not provided to the department within the time frame established in paragraph (b) of this subsection:

1. Disapprove the application for certification or the change of information provided on the application; and

2. Not refund the applicable fee submitted in accordance with Section 5(1) of this administrative regulation; and

(d) Approve or deny certification or a change to information provided on the application of an independent review entity within ninety (90) days of submission.

(2) An independent review entity certification shall expire on the second anniversary of the certification date unless the certification is renewed by the independent review entity, which submits a new application for certification in accordance with Section 4(2) of this administrative regulation.

Section 7. Denial, Decertification, or Suspension Hearing Procedure. Upon the denial of certification, decertification, or suspension of a certification, the department shall:

- (1) Give written notice of its action; and
- (2) Advise the applicant or certificate holder that a request for a hearing may be filed in accordance with KRS 304.2-310.

Section 8. Independent Review Entity Complaint Process.

(1) A copy of the complaint filed pursuant to KRS 304.17A-625(16) and a letter from the department requesting a written response to the complaint shall be sent to the independent review entity.

(2) Within ten (10) business days of receipt of the letter from the department, the independent review entity shall submit a written response to the department, including the following:

- (a) Information relating to the complaint;
- (b) If applicable, corrective actions to address the complaint, including time frames for actions; and
- (c) A mechanism to evaluate the corrective action, if applicable.

(3) Upon receipt of the written response of the independent review entity, the department shall:

- (a) If applicable, take action pursuant to KRS 304.17A-625(16); and
- (b) Notify the complainant of the department's findings and action taken, if any.

Section 9. Department Investigations. The commissioner may conduct an investigation of an independent review entity pursuant to KRS 304.2-100 and 304.2-230.

Section 10. Reporting Requirements. An independent review entity shall complete and submit to the department by March 31 of each year for the previous calendar year, the Annual Independent Review Entity Report Form, HIPMC-IRE-4.

Section 11. Cessation of Participation. Upon a decision to terminate participation in the independent external review program as established in KRS 304.17A-621, an independent review entity shall:

- (1) Immediately notify the department in writing of its decision to cease accepting new assignments; and
- (2) Except for reasons beyond its control, submit the following to the department for approval at least thirty (30) days prior to termination:
 - (a) Written notification of the termination, including:
 1. Date of termination; and
 2. Number of pending external reviews with corresponding assignment dates; and
 - (b) A written action plan for terminating participation.

Section 12. Incorporated by Reference.

(1) The following material is incorporated by reference:

- (a) Form HIPMC-IRE-1, "Application for Certification of an Independent Review Entity", 10/2022 edition~~[09/2020 edition]~~;
- (b) Form HIPMC-IRE-2, "Assignment of Independent Review Entity Form", 10/2022 edition~~[09/2020 edition]~~;
- (c) Form HIPMC-IRE-3, "External Review Decision Notification Form", 09/2020 edition;
- (d) Form HIPMC-IRE-4, "Annual Independent Review Entity Report Form", 10/2022 edition~~[09/2020 edition]~~;
- (e) Form HIPMC-IRE-5, "Approval of an External Review Fee in Excess of \$800", 09/2020 edition; and
- (f) Form HIPMC-IRE-6, "External Review Information Face Sheet", 10/2022 edition~~[09/2020 edition]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. 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

AGENCY APPROVED: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 9:00 a.m. on December 28, 2022 at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 p.m. on December 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

Contact Person: Abigail Gall, Title: Executive Advisor, Address: 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 insurer requirements and procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions and step therapy exception request denials or step therapy internal appeal denials. This administrative regulation also establishes the disclosure requirements of the external review process to be included in the health benefit plan issued at the enrollment of a covered person.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to set forth the processes and procedures required for the certification of independent review entities, as well as the process for initiating and conducting external review of utilization review decisions and step therapy exception request denials or step therapy internal appeal denials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.17A-629 requires the commissioner to promulgate administrative regulations regarding the independent external review program and to provide forms for external review. KRS 304.17A-1631 requires the commissioner to promulgate administrative regulations regarding step therapy protocols and exceptions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will comply by setting forth the requirements for independent review entity certification, how to initiate and conduct external reviews based on utilization review decisions, as well as step therapy exception request denials or step therapy internal appeal denials required by KRS 304.17A-629, KRS 304.17A-163, and KRS 304.17A-1631(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 amendments subject step therapy exception denials and step therapy internal appeal denials to the external review processes of an independent review entity as required by KRS 304.17A-163 (SB 140 2022 Reg. Session). This filing also amends the incorporated forms to include step therapy exception request denials and step therapy internal appeal denials within independent review entities' certification, assignments, reporting procedures, and updates.

(b) The necessity of the amendment to this administrative regulation: The amendments to this regulation are to ensure proper enforcement of KRS 304.17A-163 and KRS 304.17A-1631 (SB 140

2022 Reg. Session)

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-623 requires every insurer to have an external review process and KRS 304.17A-163 requires an insurer, health plan, private review agent, or pharmacy benefit manager to allow insureds the right to an external review based on step therapy exceptions and step therapy appeals denials issued.

(d) How the amendment will assist in the effective administration of the statutes: These amendments ensure that those independent review agencies/private review entities can appropriately address step therapy exceptions and step therapy appeals denials, that the external review process includes both of these circumstances, and that step therapy exception external reviews are reported on an annual basis.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department currently has 10 companies that hold certifications to perform Independent External Review cases in Kentucky. 1 company is currently enrolled in the application process.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Independent External Review Entities regulated under this regulation will need to utilize the newly incorporated forms to adhere to the processes set forth in these administrative regulations and the related statutes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost should be minimal considering regulated entities have previously been required to report and should have the appropriate processes in place to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities which are in compliance with Acts Chapter 19 (2022 Reg. Session) will not incur penalties for non-compliance with the statutes.

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

(a) Initially: There is no cost associated with this administrative regulation.

(b) On a continuing basis: There is no cost associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department's operational budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this time, the Department does not foresee an increase in fees, but in the future, it may need to request an expansion of funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all independent external review entities certified in this state.

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 Insurance as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.17A-629, 304.17A-163, and 304.17A-1631.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? The Department is currently in the process of proposing a memorandum of agreement to contract with staff pharmacists or pharmacy consultants to assist with enforcing the provisions of KRS 304.17A-163 and 1631, and 806 KAR 17:280 and 17:290. The Department does not currently have the expertise on staff to review the clinical appropriateness of step-therapy protocols. Thus, the MOA is for a maximum of \$100,000 per year.

(d) How much will it cost to administer this program for subsequent years? The cost should be the same the subsequent year but could change depending on the renewal contract every two years.

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

Revenues (+/-): None expected

Expenditures (+/-): \$100,000

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? No cost savings are associated with this regulation or amendments for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are associated with this regulation or amendments for regulated entities.

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

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

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: There is no cost associated with this administrative regulation and therefore no fiscal impact for regulated entities. The Department has reached out to the certified IREs in the state to see if they could perform the Step Therapy Exception external reviews and they indicated that they could (and that they currently provide these services for other states).

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

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Amendment)

808 KAR 1:170. Licensing and registration.

RELATES TO: KRS Chapter 286.4, 286.8-010, 286.8-020, 286.8-030(1), 286.8-032, 286.8-034, 286.8-036, 286.8-060, 286.8-070, 286.8-080, 286.8-090(1), 286.8-140(2)(b), 286.8-255, 286.8-260, 286.8-290, 286.9-010, 286.9-020, 286.9-030, 286.9-040, 286.9-050, 286.9-060, 286.9-071, 286.9-073, 286.9-080

STATUTORY AUTHORITY: KRS 286.4-420, 286.4-425, 286.4-430, 286.4-440, 286.4-450(1)(b), 286.4-480, 286.4-610(1), 286.8-032, 286.8-034, 286.8-100, 286.8-140(1), (4), 286.8-255, 286.8-285, 286.9-050, 286.9-060, 286.9-070, 286.9-090(1), 286.9-107

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4. KRS 286.4-430(1) authorizes the commissioner to prescribe the form of the application for a license under KRS Chapter 286.4. KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-050 and 286.9-060 authorize the commissioner to prescribe the form and materials required to apply for a license under KRS Chapter 286.9. This administrative regulation establishes licensing and registration requirements for consumer loan companies, check cashing and deferred deposit service businesses, mortgage loan companies, mortgage loan brokers, mortgage loan branches, mortgage loan originators, and procedures for using the Nationwide Multistate[mortgage] Licensing System (NMLS).

Section 1. Definitions.

(1) "Audited financial statement" means a financial statement prepared by a certified public accountant in accordance with generally accepted accounting principles.

(2) "Nationwide Multistate Licensing System" is defined by KRS 286.8-010(20).

(3) "Surety bond" means a bond furnished by a surety company authorized to conduct business in Kentucky.

Section 2. Consumer Loan Company Licensure. A person applying for licensure as a consumer loan company shall submit:

(1) A completed NMLS Company Form available online at <http://mortgage.nationwidelicensingsystem.org>;

(2) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicensingsystem.org>;

(3) A Form CL-4, State License Confirmation Form completed by each state or jurisdiction in which the person is licensed or registered if the person applying for licensure as a consumer loan company is licensed or registered in any other state or jurisdiction to operate a business making loans of \$15,000 or less at the time of application;

(4) The nonrefundable application investigation fee established in KRS 286.4-440(1); and

(5) The annual license fee established in KRS 286.4-440(1).

Section 3. Check Cashing and Deferred Deposit Service Business Licensure. (1) Initial Application. A person applying for an initial check cashing license shall submit:

(a) A completed NMLS Company Form available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicensingsystem.org> for each control person designated on the "direct owners and executive officers" section of the NMLS Company Form;

(c) The nonrefundable investigation fee established in KRS 286.9-060(1);

(d) Form COMB-1, State License Confirmation Form for Check Cashing License or Deferred Deposit Service Business License,

incorporated by reference in 808 KAR 9:050, if the applicant has a license, registration, or claim of exemption related to the financial services industry in any other state;

(e) An audited financial statement, which includes a balance sheet, income statement, statement of cash flows, and all relevant notes, dated as of the previous year end. If the applicant is a startup company, an initial statement of condition and a proforma income statement shall be submitted instead of the income statement and statement of cash flows;

(f) Evidence that the applicant has complied or will comply with all workers' compensation and unemployment compensation laws of Kentucky; and

(g) One (1) of the following, which shall be deposited with and made payable to the commissioner:

1. An irrevocable letter of credit in an amount required by KRS 286.9-040(1)(a);

2. An Electronic Surety Bond, available online at <http://mortgage.nationwidelicensingsystem.org>, in an amount required by KRS 286.9-040(1)(b). The name of the principal insured on the bond shall match exactly the full legal name of the applicant; or

3. Form COMB-3, Escrow Agreement for Check Cashing License or Deferred Deposit Service Business License, incorporated by reference in 808 KAR 9:050, accompanied by:

a. Evidence that the applicant has established an account in a federally insured financial institution in Kentucky and has deposited money of the United States in an amount required by KRS 286.9-040(1)(c); or

b. A savings certificate of a federally insured financial institution in Kentucky established by the applicant that is not available for withdrawal except by direct order of the commissioner in an amount required by KRS 286.9-040(1)(d).

(2) Renewal Application. A licensee applying for renewal of a check cashing license or deferred deposit service business license pursuant to KRS 286.9-080(1) shall complete and submit the following on or before December 31 of each year:

(a) The required updates and attestation ensuring the accuracy of all information in the person's record maintained by the <http://mortgage.nationwidelicensingsystem.org>; and

(b) The nonrefundable license fee established in KRS 286.9-080(1).

(3) Reinstatement Application. A licensee applying for reinstatement of a check cashing license or deferred deposit service business license pursuant to KRS 286.9-080(2) shall complete and submit the following prior to January 31 of the year that the renewal application was due:

(a) The required updates and attestation ensuring the accuracy of all information in the person's record maintained by the <http://mortgage.nationwidelicensingsystem.org>;

(b) The nonrefundable license fee established in KRS 286.9-080(1); and

(c) The nonrefundable late fee and reinstatement fee established in KRS 286.9-080(2).

Section 4. Licensure as a Mortgage Loan Company or Mortgage Loan Broker. (1) Initial Application. A person applying for licensure as a mortgage loan company or mortgage loan broker shall submit:

(a) A completed NMLS Company Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A completed NMLS Individual Form as available online at <http://mortgage.nationwidelicensingsystem.org> for each control person designated on the "direct owners and executive officers" section of the NMLS Company Form;

(c) An audited financial statement, which includes a balance sheet, income statement, statement of cash flows, and all relevant notes, dated the previous year end to the date of submission of the NMLS Company Form. If applicant is a startup company, an initial statement of condition and a proforma income statement shall be submitted instead of the income statement and statement of cash flows;

(d) An Electronic Surety Bond available online at <http://mortgage.nationwidelicensingsystem.org> in an amount not

less than the amount required by KRS 286.8-060(1). The name of the principal insured on the bond shall match exactly the full legal name of applicant.[-]

(e) A certified copy of the following:

1. If a corporation, the Corporate Charter or Articles of Incorporation and Bylaws;

2. If a limited liability company, the Articles of Organization and Operating Agreement; or

3. If a partnership of any form, the Partnership Agreement;

(f) A Certificate of Authority or a Certificate of Good Standing issued by the Kentucky Secretary of State dated not more than sixty (60) days prior to the submission of the NMLS Company Form;

(g) If applicant will be operating in Kentucky under a name other than its legal name, a file-stamped copy of the Certificate of Assumed Business Name issued by the Kentucky Secretary of State;

(h) If required to do so by KRS 286.8-032(6), documentation that a managing principal designated by applicant has successfully completed the educational training set forth in KRS 286.8-032(6);

(i) If the principal office will be located in a residence, a completed Form ML-6, Disclosure of Location at a Residence Form; and

(j) The fees set forth in KRS 286.8-034(1).

(2) Renewal Application.

(a) A person applying for renewal of a mortgage loan company or mortgage loan broker license prior to December 1 shall submit:

1. The required updates and attestation ensuring that all information in the person's record maintained by the ~~NMLS[nationwide mortgage licensing system]~~ operated by the State Regulatory Registry, LLC is correct as available online at <http://mortgage.nationwidelicensingsystem.org>; and

2. The fee set forth in KRS 286.8-034(3).

(b) A person applying for renewal of a mortgage loan company or mortgage loan broker license through reinstatement shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee required by KRS 286.8-034(4)(b).

(c) The fee set forth in KRS 286.8-034(3) shall be calculated based on data filed by the licensee on the Mortgage Call Report (MCR), which shall be submitted through the NMLS, for the twelve (12) month period ending September 30. The licensee shall submit the MCR no later than November 1st of each year. The department shall apply the following criteria if the licensee has not submitted four (4) quarters of data:

1. If a licensee has not held a license with the department for twelve (12) months, the fee shall be based on the volume of loans originated and closed in Kentucky during the time frame the licensee has held a license in Kentucky;

2. If a licensee does not file the third quarter MCR, which contains data as of September 30, on or before November 1, the department shall:

a. Estimate the twelve (12) month loan volume based on previously filed MCR reports by annualizing the loan volume contained in the prior three (3) quarterly MCR report;

b. Recalculate the actual renewal fee owed once the third quarter MCR is filed; and

c. Send a subsequent fee bill to the licensee for any renewal fee owed based on the actual loan volume reported on the MCR data versus the amount estimated by the department using the annualized loan volume in 2(a).

3. Pursuant to KRS 286.8-044, the department may pursue an administrative action against any licensee that fails to file a timely and accurate MCR. The department may pursue administrative action against any licensee for inaccurate filings of MCR reports resulting in insufficient renewal fee payments.

(3) Change of address, name, control, or agent for service.

(a) A licensee changing its address, name, or agent for service of process shall notify the commissioner:

1. At least ten (10) days prior to the change of address or name; and

2. Five (5) days prior to the change of agent for service of process.

(b) A licensee that wants to engage in a transaction resulting in

a change of control shall notify the commissioner at least thirty (30) days in advance with the information necessary for the commissioner to determine whether the requirements of KRS Chapter 286.8 will be satisfied upon the change of control. The commissioner shall notify the licensee whether the request is approved or denied within thirty (30) days of a completed submission of the notice of change of control.

(c) A licensee changing its address, name, control, or agent for service of process shall update this information in ~~NMLS[nationwide mortgage licensing system]~~ (NMLS) within the same time periods set forth in this section.

Section 5. Registration of a Mortgage Loan Company Branch.

(1) A mortgage loan company branch shall not be approved unless it is controlled, managed, and supervised by the applicant's principal office.

(2)(a) A person applying for registration of a branch shall submit the following:

1. (a) A completed NMLS Branch Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

2. (b) A copy of the lease or deed for the branch;

3. (c) A completed Form ML-7, Branch Authorization Form; and

4. (d) If the branch will be located in a residence, a Form ML-6, Disclosure of Location at a Residence Form; and

(e) The fee set forth in KRS 286.8-034(1)(b).

(b) An additional fee for branch registration shall not be required by the department.

(3) A person applying for renewal of a branch registration prior to December 1 shall submit all materials required by Section 4(2)(a) of this administrative regulation.

(4) A person applying for renewal of a branch registration through reinstatement shall submit all materials required by Section 4(2)(a) of this administrative regulation and the reinstatement fee required by KRS 286.8-034(6)(4).

Section 6. Registration of a Mortgage Loan Originator.

(1) Initial registration. A person applying for registration as a mortgage loan originator pursuant to KRS 286.8-255(2) shall submit:

(a) A completed NMLS Individual Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A request to submit a Federal Bureau of Investigation background records check and a credit report to the department;

(c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255; and

(d) The fee set forth in KRS 286.8-255(2)(b).

(2) Renewal registration.

(a) A person applying for renewal of a mortgage loan originator registration pursuant to KRS 286.8-255(4) shall submit:

1. The required updates and attestation ensuring that all information in the person's record maintained by the ~~NMLS[nationwide mortgage licensing system]~~ operated by the State Regulatory Registry, LLC is correct as available online at <http://mortgage.nationwidelicensingsystem.org>;

2. A request to submit a Federal Bureau of Investigation background records check and a credit report to the department;

3. Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260; and

4. The fee set forth in KRS 286.8-255(4).

(b) A person applying for renewal of a mortgage loan originator registration through reinstatement shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee required by KRS 286.8-255(5).

(3) The cost of any Federal Bureau of Investigation background records check or credit report required by this section shall be borne by the applicant.

Section 7. Mortgage Loan Originator Bond Requirements. In addition to the requirements set forth in this administrative regulation, an applicant applying for registration, renewal, or renewal through reinstatement as a mortgage loan originator shall

provide proof that the mortgage loan originator holds or is covered by a bond. If the mortgage loan originator is procuring his or her own bond, the applicant shall submit an Electronic Surety Bond available online at <http://mortgage.nationwidelicensingsystem.org> in an amount determined by annual loan origination as follows: (1) If the annual loan volume of the applicant is less than \$10,000,000, the surety bond shall be in an amount not less than \$15,000; or

(2) If the annual loan volume of the applicant is \$10,000,000 or more, the surety bond shall be in an amount not less than \$20,000.

Section 8. Factors Used to Determine Approval or Disapproval of an Application. (1) A mortgage loan originator applicant seeking registration, renewal, or renewal through reinstatement under KRS 286.8-255 shall demonstrate the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle.

(2) An applicant shall authorize the commissioner to obtain a credit report containing a credit score to aid in making this determination.

(3) The applicant shall have met the requirement of financial responsibility if he or she possessed a credit score of 600 or higher at the time of application. If the applicant possesses a credit score of less than 600, the commissioner may review the applicant's credit report for the following information to make this determination:

(a) Any outstanding judgments, excluding judgments arising solely from medical expenses for the applicant or an immediate family member;

(b) Any outstanding tax liens or other governmental liens;

(c) Any foreclosures occurring within five (5) years of the date of application or renewal;

(d) Any bankruptcies occurring within five (5) years of the date of application or renewal; and

(e) Any delinquent accounts occurring within five (5) years of the date of application or renewal.

(4) The factors of character and general fitness shall be determined by the commissioner after review of all relevant information, including information shown on the applicant's credit report, the applicant's criminal history, and any administrative or civil actions taken against the applicant.

Section 9. Electronic Submission of Filings and Fees through the ~~NMLS[Nationwide Mortgage Licensing System]~~ Operated by the State Regulatory Registry, LLC. (1) A person applying for licensure, registration, renewal, or renewal through reinstatement pursuant to Sections 2, 3, 4, 5, 6, and 7 of this administrative regulation shall electronically submit the following with the State Regulatory Registry, LLC, at <http://www.stateregulatoryregistry.org/NMLS>, as part of the ~~NMLS[nationwide mortgage licensing system]~~:

(a) All forms, updates, attestations, and requests required by Sections 2, 3, 4, 5, 6, and 7 of this administrative regulation, as applicable;

(b) Fingerprints and any other information or authorizations necessary to obtain the background records checks and credit reports referenced in Section 6 of this administrative regulation; and

(c) All fees referenced in this administrative regulation.

(2) All forms, documentation, fees, or information that are not available for electronic submission directly through the nationwide ~~multistate[mortgage]~~ licensing system operated by the State Regulatory Registry, LLC shall be submitted directly to the department.

(3) Any fees assessed by the State Regulatory Registry, LLC, to process the electronic submissions referenced in subsection (1) of this section shall be borne by the applicant.

Section 10. Abandoned Applications. If an applicant fails to provide or respond to a request for additional information ~~from the department~~ within ninety (90) days~~—of submission to the department~~, the application shall be deemed incomplete and

abandoned. An applicant seeking licensing or registration after its application has been abandoned shall reapply and resubmit all required information.

Section 11. Inactive Status for Members of the Armed Forces. (1) A member of the Armed Forces who holds a license or registration in good standing under this administrative regulation may request that the commissioner place the license or registration in inactive status during the period of time that the member is mobilized or deployed, and for a period of six (6) months following termination of the mobilization or deployment.

(2) To request inactive status for a license or registration, a person shall complete Form ML-8, Request for Inactive Status Due to Military Service, and submit it along with proof of mobilization or deployment to the commissioner for approval.

(3) A person whose license or registration has been placed in inactive status shall not engage in the activity requiring the license or registration under KRS Chapter 286.8.

(4) The fee set forth in KRS 286.8-255(4) shall not accrue against a person whose license or registration is in inactive status.

(5) A person may reactivate an inactive license or registration by submitting a written request to the commissioner and attaching proof of compliance with KRS 286.8-255(10) and 286.8-260, if applicable. Upon receipt of a written request and confirmation of compliance with KRS 286.8-255(10) and 286.8-260, the commissioner shall issue an approval for reactivation.

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

(a) Form CL-4, "State License Confirmation Form", updated December~~[-]~~ 2019;

(b) Form ML-6, "Disclosure of Location at a Residence Form", updated December~~[-]~~ 2019;

(c) Form ML-7, "Branch Authorization Form", updated December~~[-]~~ 2019; and

(d) Form ML-8, "Request for Inactive Status Due to Military Service", updated December~~[-]~~ 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 500 Mero St 2SW19, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at <http://www.kfi.ky.gov>.

CHARLES VICE; Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: October 14, 2022

FILED WITH LRC: October 14, 2022 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 29, 2022, at 10:00 a.m., at 500 Mero Street 2SW19, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Gary Stephens, Asst. General Counsel, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601, 502-782-9046, fax 502-573-8787; Gary.Stephens@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensing and registration requirements for consumer loan companies, check cashing and

deferred deposit service businesses, mortgage loan companies, mortgage loan brokers, mortgage loan branches, and mortgage loan originators, and procedures for using the Nationwide Multistate Licensing System, (NMLS).

(b) The necessity of this administrative regulation: This regulation authorizes the commissioner to promulgate administrative regulations for proper conduct and to prescribe the form and requirements for the application for a licensure and registration of the check cashing and deferred deposit service businesses, mortgage loan companies, mortgage loan brokers, mortgage loan branches, and mortgage loan originators in the State of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require participant's in the above referenced financial industries to apply for licensure with the commissioner. This regulation prescribes the procedures and forms to be filed, along with required supporting documentation, for registration and renewal of applicable licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By proscribing specific forms, documents and procedures, along with coordinating with a nationwide database, participants in the applicable industries will

(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 qualify the specific documentation required to be submitted by a licensee for renewal or reinstatement of a mortgage license.

(b) The necessity of the amendment to this administrative regulation: The applicable mortgage statute was amended, therefore, the regulation will clarify the document requirements that correlate to the amended language in the mortgage statute related to renewal and reinstatements of mortgage licenses.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment specifies the exact documents required to be submitted to the Department and the relative time frames for the required financial information to make a determination on the renewal or reinstatement fees.

(d) How the amendment will assist in the effective administration of the statutes: The regulation language clearly indicates the specific documents required for submission and allows for the Department to access documents relevant for renewal or reinstatement review in an orderly and efficient manner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The mortgage industry participants required to be licensed by the mortgage statute and the Department of Financial Institutions.

(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 mortgage licenses will be required to provide relevant documents to the Department, through the NMLS system, specific to the time frame indicated in the amended language, for review and renewal or reinstatement of licensure

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The required documents and access to the NMLS system are current requirements of the mortgage licensees. Costs to comply with submission requirements will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department will benefit from having access to timely and relevant mortgage company financial information in a centralized database system, NMLS, that allows of efficient use of Department resources for renewal of licenses.

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

(a) Initially: The costs to the Department will be minimal.

(b) On a continuing basis: These costs will be determined,

based on document review, complexity of document submissions and Department resources. The ongoing costs are anticipated to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current Department budget allocations for the Non Depository Division of the Department.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An assessment cannot be determined 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 directly increase fees. The amended language is in support of a statutory change in fee calculation for mortgage license renewals and reinstatement.

(9) TIERING: Is tiering applied? Tiering was not applied in this regulation. The amended language did not require tiering be applied.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.4-420, 286.4-425, 286.4-430, 286.4-440, 286.4-450(1)(b), 286.4-480, 286.4-610(1), 286.8-032, 286.8-034, 286.8-100, 286.8-140(1), (4), 286.8-255, 286.8-285, 286.9-050, 286.9-060, 286.9-070, 286.9-090(1), 286.9-107.

(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 specific regulatory language does not address expenditures or revenues for the Department, nor does it require a significant allocation of resources. Therefore, the costs for the Department in the first year will be minimal.

(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 specific regulatory amendment language does not impose additional fees. Therefore, there will be no change in revenue for the Department.

(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 Department does not anticipate additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The Department will utilize existing resources to implement this change, therefore the costs will be minimal.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There will be a minimal fiscal impact on the Department as a result of this regulatory change. This regulation clarifies the specific documents that are to be submitted to the Department, the relevant time frame for the documents and the manner of submission in order to be compliant with renewal or reinstatement requirements.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. Regulated entities will be able to submit required documents through a database that is currently utilized by the industry. Compliance with

the procedures for document submission will provide efficiencies for the regulated entities and streamline the renewal or reinstatement process.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for the industry cannot be adequately determined at this time.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings in subsequent years cannot be adequately determined at this time. The requirements for document submission through an established database is anticipated to provide a long term benefit to the industry.

(c) How much will it cost the regulated entities for the first year? These costs cannot be determined at this time.

(d) How much will it cost the regulated entities for subsequent years? Long term costs in subsequent years cannot be determined at this time.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: The Department does not anticipate a significant cost to either the industry or the Department to implement these procedural changes. Utilization of the national database system, NMLS, is a regular practice of industry participants.

(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)] These regulatory changes will not have a major economic impact.

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

907 KAR 3:160. Specialized children's services clinics.

RELATES TO: KRS 205.560, 205.557(1)(c), 314.011(14), 620.020(4), 620.050

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), ~~EO-2004-726~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.]~~ The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the requirements for providers and reimbursement by the Medicaid program for services provided by a specialized children's services clinic.

Section 1. Definitions. (1) "Affiliation agreement" means a written agreement between a provider and a children's advocacy center to perform a child ~~[sexual abuse]~~ medical evaluation~~[examination]~~.

(2) "Approved behavioral health practitioner" means an independently licensed practitioner who is:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i) A licensed professional clinical counselor;

(j) A licensed marriage and family therapist;

(k) A licensed professional art therapist;

(l) A licensed clinical alcohol and drug counselor; or

(m) A licensed behavior analyst."~~"Child sexual abuse medical~~

~~examination" means an examination to determine child sexual abuse that includes:~~

~~(a) A medical history taken from the child and a nonimplicated parent, guardian or primary caretaker;~~

~~(b) A physical examination with detailed attention to the anogenital area;~~

~~(c) If clinically indicated, a colposcopic examination; and~~
~~(d) A mental health screening, provided on the same day and at the same location as the physical examination, to determine the impact of the alleged abuse on the mental health status of the child and the need for mental health services.]~~

(3) "Approved behavioral health practitioner under supervision" means an individual under billing supervision of an approved behavioral health practitioner who is:

(a)1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

2. A certified psychologist working under the supervision of a board-approved licensed psychologist;

3. A marriage and family therapy associate;

4. A certified social worker;

5. A licensed professional counselor associate;

6. A licensed professional art therapist associate;

7. A licensed clinical alcohol and drug counselor associate;

8. A certified alcohol and drug counselor; or

9. A licensed assistant behavior analyst; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(4) "Child medical evaluation" is defined by KRS 205.557(1)(c).

(5) [(3)] "Children's advocacy center" is defined in KRS 620.020(4).

(6) [(4)] "Department" means the Department for Medicaid Services or its designated agent.

(7) [(5)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(8) "Sexual assault nurse examiner" or "SANE" is defined in KRS 314.011(14).

[(6)] "Mental health professional" means:

(a) A psychologist as defined in KRS 319.010(8);

(b) A licensed clinical social worker in accordance with KRS 335.100;

(c) An advanced registered nurse practitioner as defined in KRS 314.011(7);

(d) A licensed marriage and family therapist as defined in KRS 335.300(2);

(e) A certified professional counselor as defined in KRS 335.500(2); or

(f) A certified professional art therapist as defined in KRS 309.130(2).]

(9) [(7)] "Specialized children's services clinic" means a clinic enrolled with the Kentucky Medicaid program that provides child ~~[sexual abuse]~~ medical ~~evaluations~~~~[examinations]~~ and that meets the requirements of Section 3 of this administrative regulation.

[(8)] "Usual and customary charge" means the amount a provider bills to the general public.]

Section 2. Covered Services. (1) A child medical evaluation~~[child sexual abuse medical examination]~~ provided as a clinic service by a specialized children's services clinic shall be covered if medically necessary and provided to a recipient who is under the age of eighteen (18) years.

(2) Consistent with KRS 205.557(1)(c), a child medical evaluation is any combination of one (1) or more of the following services:

(a) A medical history taken from the child and a nonimplicated

parent, guardian, or primary caretaker:

- (b) A comprehensive physical examination;
- (c) Laboratory services;
- (d) Photo documentation;
- (e) Follow-up evaluation;

(f) A mental health screening to determine the impact of the alleged abuse on the mental health status of the child and the need for mental health services; or

(g) An evidence-based trauma screening approved by the Children's Advocacy Centers of Kentucky, or its successor agency.

(3) A child medical evaluation[~~child sexual abuse medical examination~~] shall be performed by:

(a) A licensed physician, advance practice registered nurse, physician assistant, or sexual assault nurse examiner who:

- 1. Completes the medical history and physical examination;
- 2. Is employed by, under contract with, or has an affiliation agreement with a specialized children's services clinic;
- 3. Has received specialized training in the medical examination of sexually-abused children; and
- 4. [Has received specialized training in the use of a colposcope and has access to a colposcope in the specialized children's services clinic; and

5.] Shall make reports resulting from child medical evaluations[~~child sexual abuse medical examinations~~] available for peer review and maintain confidentiality in accordance with Section 7[6] of this administrative regulation; and

(b) As necessary, an approved behavioral health practitioner or an approved behavioral health practitioner under supervision[a mental health professional] who:

- 1. Performs a mental health screening or evidence-based trauma screening to determine the mental health status of the child and the need for further mental health services;
- 2. Is [directly-]supervised by the physician, physician assistant, or advanced practice registered nurse who performs the medical examination and evaluation;
- 3. Is employed by, under contract with, or has an affiliation agreement with a specialized children's services clinic; and
- 4. Has received specialized training in the mental health screening or evidence-based trauma screening and assessment of sexually-abused children.

(4) The following mental health treatment services may be offered by a specialized children's services clinic to a person who is involved with or impacted by the subject matter of a child medical evaluation:

(a) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder, a substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder;

3. Establish the need for an in-depth assessment;

4. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:

a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan;

4. Not include a psychological or psychiatric evaluation or assessment; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under

supervision.

(c) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for an individual with a behavioral health disorder;

3. Shall be provided:

a. On-site at a specialized children's clinic;

b. As an immediate relief to the presenting problem or threat; and

c. In a one-on-one encounter between the provider and the recipient, which is delivered either in-person or via telehealth if appropriate pursuant to 907 KAR 3:170;

4. May include:

a. Verbal de-escalation, risk assessment, or cognitive therapy;

or

b. Further service planning including:

(i) Lethal means reduction for suicide; or

(ii) Substance use disorder or relapse prevention;

5. Shall be followed by a referral to non-crisis services if applicable; and

6. Shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(d)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care for a mental health disorder;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week for adults;

d. Be provided at least six (6) hours per week for adolescents;

e. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan; and

f. Be provided in-person.

2. During psycho-education, the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a specialized services clinic shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(e) Individual outpatient therapy shall:

1. Be provided to promote the:
 - a. Health and wellbeing of the individual; and
 - b. Restoration of a recipient to the recipient's best possible functional level from a mental health disorder;
2. Consist of:
 - a. An in-person or via telehealth as appropriate pursuant to 907 KAR 3:170, one-on-one encounter between the provider and recipient; and
 - b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;
3. Be aimed at:
 - a. Reducing adverse symptoms;
 - b. Reducing or eliminating the presenting problem of the recipient; and
 - c. Improving functionality;
4. Not exceed three (3) hours per day; and
5. Be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision.

(f)1. Family outpatient therapy shall consist of an in-person, or via telehealth as appropriate pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided:

- a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and
- b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals, including multiple members from one (1) family, who participate in the session.

3. Family outpatient therapy shall:

- a. Be provided to promote the:
 - (i) Health and wellbeing of the individual; or
 - (ii) Restoration of a recipient to their best possible functional level from a mental health disorder; and
- b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(g)1. Group outpatient therapy shall:

- a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;
- b. Be provided to promote the:
 - (i) Health and wellbeing of the individual; and
 - (ii) Restoration of a recipient to their best possible functional level from a mental health disorder;
- c. Consist of an in-person, or via telehealth as appropriate pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;
- d. Be provided to a recipient in a group setting:
 - (i) Of nonrelated individuals; and
 - (ii) Not to exceed twelve (12) individuals in size;
- e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;
- f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
- g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and
- h. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. A family outpatient therapy group shall have a:

- a. Deliberate focus; and
- b. Defined course of treatment.

3. The subject of a group receiving group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Family outpatient therapy shall be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(h)1. Collateral outpatient therapy shall:

- a. Consist of an in-person or appropriate telehealth, provided pursuant to 907 KAR 3:170, behavioral health consultation:
 - (i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and
 - (ii) That is provided in accordance with the recipient's treatment plan; and
- b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(i)1. Peer support services shall:

- a. Be emotional support that is provided by:
 - (i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder to a recipient by sharing a similar mental health disorder in order to bring about a desired social or personal change;
 - (ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a mental health disorder to a parent or family member of a child sharing a similar mental health disorder in order to bring about a desired social or personal change; or
 - (iii) An individual, who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing as a child or youth an emotional, social, or behavioral disorder that is defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders;
- b. Be an evidence-based practice;
- c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;
- d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;
- e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;
- f. Be identified in each recipient's plan of care;
- g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care; and
- h. Be provided face-to-face or via telehealth, as established pursuant to 907 KAR 3:170.

2. To provide peer support services, a specialized children's services clinic shall:

- a. Have demonstrated:
 - (i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and
 - (ii) Experience in serving individuals with behavioral health disorders;
- b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;
- c. Use an approved behavioral health practitioner to supervise

peer support specialists:

d. Have the capacity to coordinate the provision of services among team members;

e. Have the capacity to provide ongoing continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients to provide no more than thirty (30) hours per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting not exceeding eight (8) individuals within any group at a time.

(5) Ongoing mental health treatment services shall be provided by:

(a) 1. An approved behavioral health practitioner; or

2. An approved behavioral health practitioner under supervision; and

(b) 1. A provider who is an employee of the specialized children's services clinic; or

2. A provider who has a contractual relationship with the specialized children's services clinic and who does not duplicate the provided behavioral health services to the recipient for another Medicaid provider.

Section 3. Provider Requirements. (1) A provider shall be enrolled with the department as a specialized children's services clinic.

(2) A specialized children's services clinic shall be a children's advocacy center whose providers are employed by, under contract with, or have a signed affiliation agreement with the clinic.

(3) A SANE who is a registered nurse, but not an APRN, shall be under the supervision of a physician, APRN, or physician assistant who is employed or contractually associated with the specialized children's services clinic for billing purposes.

Section 4. Billing for Services. (1) A child medical evaluation[~~child sexual abuse medical examination~~] shall be billed by a specialized children's services clinic as a comprehensive clinic service which shall include:

(a) The services of the:

1. Physician;

2. Advanced practice registered nurse;

3. Physician assistant; or

4. SANE.

(b) Mental health screening services provided by an approved behavioral health practitioner or an approved behavioral health practitioner under supervision[~~a mental health professional~~];

(c) Services and supplies furnished as an incidental part of the [physician's] professional services performed by a provider listed in paragraph (a) of this subsection in the course of diagnosis and treatment; or[~~and~~]

(d) Medical services provided by other clinic employees under the direct supervision of the physician, advanced practice registered nurse, physician assistant, or SANE; or

(e) Follow-up services provided by the physician, advanced practice registered nurse, physician assistant, SANE, approved behavioral health practitioner, or approved behavioral health practitioner under supervision.

(2) Child medical evaluation services provided by a physician, advanced practice registered nurse, physician assistant, SANE, or an approved behavioral health practitioner or an approved behavioral health practitioner under supervision[~~mental health professional~~] employed by, under contract with, or having a signed affiliation agreement with a specialized children's services clinic shall be billed under the clinic's provider number using a single reimbursement code designated by the department.

(3) Mental health treatment by an approved behavioral health practitioner or approved behavioral health practitioner under supervision shall be billed per encounter by the specialized children's services clinic as consistent with the Outpatient Behavioral Health Fee Schedule, or its successor fee schedule, and Section 2 of this administrative regulation.

(4)(a) A specialized children's services clinic may provide laboratory services directly if:

1. The clinic has the appropriate CLIA certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, advanced practice registered nurse, physician assistant, or SANE who has a contractual relationship with the clinic.

(b) If a specialized children's services clinic does not have the appropriate CLIA certificate to perform necessary laboratory testing, it shall establish a contractual relationship with a laboratory or facility with the appropriate CLIA certificate in order to perform any laboratory service required pursuant to this administrative regulation. The contracted laboratory shall not separately bill for any services provided for a specialized children's services clinic that are also submitted for reimbursement pursuant to this administrative regulation.

(c) Laboratory services may be administered, as appropriate, by:

1. A physician;

2. An APRN;

3. A physician assistant;

4. A SANE;

5. An approved behavioral health practitioner; or

6. An approved behavioral health practitioner under supervision.

Section 5. Reimbursement. (1) The department shall establish a prospective payment[a statewide reimbursement] rate or rates for each specialized children's services clinic based on an annual cost report or survey[~~a review of cost data and a consideration of rates paid to providers for similar services~~].

(a) The prospective payment rate will reflect a true and actual cost for a specialized children's services clinic as established by expenses from the previous year.

(b) The prospective reimbursement rate shall incorporate additional expected expenses for the next year, including expected inflation for the next year.

(2)(a) A managed care organization shall accept the surveys submitted by the department and the department's determination of a prospective reimbursement rate for each and any specialized children's services clinic.

(b) A managed care organization shall not require separate submission of a cost report by a specialized children's services clinic to the managed care organization.[~~The initial rate of reimbursement for a child sexual abuse medical examination shall be the lesser of:~~

(a) An all-inclusive statewide rate of \$538 per examination; or

(b) The provider's usual and customary charge for the service.

(3) The department shall determine the statewide rate using updated cost data submitted on an annual cost report from the center.]

(3)(a) The department shall utilize the rates established pursuant to subsection (1) of this section to inform the prospective reimbursement rate.

(b) 1. A cost report shall be submitted by each center annually or upon request by the department.

2. A specialized children's clinic may submit a cost report to the department at any time that there is an increase of five (5) percent in cost during the year.

(4)(a) An ongoing mental health treatment service shall be billed consistent with Section 4(3) of this administrative regulation.

(b) The department and each managed care organization shall reimburse at least at the minimum of the rates published on the Outpatient Behavioral Health Fee Schedule, or its successor fee schedule, for services related to ongoing mental health treatment.

Section 6. Reimbursement Prior to Implementation of a Prospective Payment Rate. The department and each managed care organization (MCO) shall reimburse pursuant to this subsection until a prospective payment rate is established pursuant to Section 5. At that time, this section shall become nonoperational.

(1)(a) The department and each managed care organization shall reimburse at least twenty-five (25) percent greater than the Physician's Fee Schedule established pursuant to 907 KAR 3:010

for each service related to a child medical evaluation.

(b) The department may establish and publish a "Specialized Children's Clinic Fee Schedule" for use by specialized children's clinics.

(c) The department shall establish any additional procedure codes needed to perform services pursuant to this administrative regulation.

(2) The department and each managed care organization shall reimburse at least at the minimum of the rate for a specialized children's services clinic established pursuant to subsections (1) or (3) of this section.

(3) In the alternative, a specialized children's services clinic may bill a comprehensive rate for services rendered during the time that this section is operational, not including a follow-up evaluation:

(a) The initial rate shall be no less than \$894, and shall be updated, if necessary, for inflation.

(b) The department may collaborate with designated representatives of the children's advocacy centers to establish a comprehensive rate that is based on any increases in fees or rates established pursuant to subsection (1) of this section.

(c) A separate bill may be submitted by a specialized children's clinic for a follow-up evaluation.

(4)(a) An ongoing mental health treatment service shall be billed consistent with Section 4(3) of this administrative regulation.

(b) The department and each managed care organization shall reimburse at least at the minimum of the rates published on the Outpatient Behavioral Health Fee Schedule, or its successor fee schedule, for services related to ongoing mental health treatment.

Section 7.[Section 6.] Medical Records and Confidentiality. (1) Except to the department, duly authorized representatives of federal or state agencies, multidisciplinary team members acting pursuant to KRS 620.050 or a physician, physician assistant, APRN, SANE, or an approved behavioral health practitioner participating in a peer review of a specific child sexual or physical abuse or neglect case, a specialized children's services clinic shall not disclose any information concerning an eligible recipient without:

- (a) Written consent of:
 - 1. The recipient; or
 - 2. If the recipient is a minor, the recipient's parent, legal guardian, or attorney; or
- (b) A subpoena from a court of appropriate jurisdiction.
- (2) A specialized children's services clinic shall:
 - (a) Maintain a recipient's medical records in accordance with 907 KAR 1:672;
 - (b) Maintain up-to-date recipient medical records at the site where the medical services are provided;
 - (c) Ensure that a recipient's medical record shall be readily retrievable, complete, organized, and legible and shall reflect sound medical recordkeeping practices; and
 - (d) Safeguard medical records against loss, destruction, and unauthorized use.

Section 8.[Section 7.] Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 9. The department may administer any benefits or services related to a specialized children's services clinic outside of the managed care benefit.

Section 10. Federal Approval and Federal Financial Participation. The cabinet's coverage and reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as relevant.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 26, 2022

FILED WITH LRC: September 30, 2022 at 9:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 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 requirements for providers and reimbursement by the Medicaid program for services provided by a specialized children's services clinic.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing reimbursement provisions and requirements regarding services provided by specialized children's services clinics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing reimbursement provisions and requirements regarding services provided by specialized children's services clinics.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation to incorporate changes made by the 2022 Regular Session's SB 8. The changes include defining new terms to modernize behavioral health treatment and behavioral health treatment providers within this administrative regulation. In addition, the previous term of a "child sex abuse medical examination" is being removed in favor of the broader concept of a "child medical evaluation" as found in the 2022 Regular Session's SB 8. The new term will also allow for investigation of physical abuse and neglect by the children's advocacy centers. In addition, new provider types of physician assistants, advanced practice registered nurses, and sexual assault

nurse examiners are allowed to provide services within these facilities. This concept of a child medical evaluation is further being expanded to include a Children's Advocacy Centers of Kentucky approved evidence-based trauma screening.

The department is also introducing nine (9) ongoing outpatient behavioral health services and a modernized listing of approved behavioral health practitioners and practitioners under supervision. The new services include screening, assessment, crisis intervention, intensive outpatient program, individual outpatient therapy, group therapy, family therapy, collateral therapy, and peer support services. The services may be provided by any of 13 behavioral health practitioner types or nine behavioral health practitioner types under supervision. The payment methodology of a child medical evaluation is being expanded to meet SB 8's requirement of paying the "true and actual cost" of the child advocacy centers/specialized children's services clinics. On an initial basis, two reimbursement sections will be included. As the bill is implemented, an enhanced fee schedule will be utilized. In the alternative, and at the option of the child advocacy center, during the implementation phase an updated comprehensive rate could be billed. As cost surveys are developed and prepared, a prospective payment system rate (PPS) reimbursement will be implemented. The managed care organizations (MCOs) will be required to utilize the cost reports and cost surveys developed and implemented by DMS in consultation with the child advocacy centers. In both reimbursement sections, the new behavioral health services will be conducted outside of the enhanced fee schedule or PPS rate. DMS and the MCOs will be required to reimburse mental health services at least at 100% of the established rates on the Outpatient Behavioral Health Fee Schedule. In addition, additional requirements and standards for laboratory services are being included. The department is also reserving the ability to completely remove this benefit and provider type from managed care in order to lessen administrative burden. Finally, a federal financial participation clause is being included to further modernize the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to expand reimbursement for services provided within children's advocacy centers as required by SB 8. In addition, three new providers will be able to provide and participate in a child medical evaluation. In addition, several new behavioral health services will be able to be provided by these facilities.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating changes made by 2022 RS SB 8.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by implementing reimbursement changes made by 2022 RS SB 8.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation affects approximately 15 children's advocacy centers and satellite facilities providing services within each of Kentucky's Area Development 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to follow any new reimbursement provisions and covered service policy requirements established in the administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will receive a "true and actual cost" reimbursement driven by the payment of an enhanced fee schedule and a prospective payment rate. In addition, expanded behavioral health services will be available.

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

(a) Initially: DMS will absorb any costs to implement this administrative regulation on an initial basis consistent with requirements established in the state executive branch budget pursuant to HB 1 of the 2022 Regular Session.

(b) On a continuing basis: DMS will absorb any costs to implement this administrative regulation on a continuing basis consistent with requirements established in the state executive branch budget pursuant to HB 1 of the 2022 Regular Session.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.557

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

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

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

(c) How much will it cost to administer this program for the first year? DMS will absorb any costs to implement this administrative regulation on an initial basis consistent with requirements established in the state executive branch budget pursuant to HB 1 of the 2022 Regular Session.

(d) How much will it cost to administer this program for subsequent years? DMS will absorb any costs to implement this administrative regulation on an initial basis consistent with requirements established in the state executive branch budget pursuant to HB 1 of the 2022 Regular Session.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

a result of the amendments to this administrative regulation in the first year. This administrative regulation will result in higher reimbursement for regulated entities.

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Health Care Policy

(Amendment)

907 KAR 20:050. Presumptive eligibility.

RELATES TO: KRS 205.520(3), 205.5375(7), 205.592, 42 U.S.C. 1396a(a)(47), r-1

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. KRS 205.592 establishes Medicaid eligibility requirements for pregnant women and children up to age one (1). This administrative regulation establishes requirements for the determination of presumptive eligibility and the provision of services to individuals deemed presumptively eligible for Medicaid-covered services.

Section 1. Providers Eligible to Grant Presumptive Eligibility.

(1) A determination of presumptive eligibility regarding:

(a) A pregnant woman shall be made by a qualified provider who is:

1. A family or general practitioner;
2. A pediatrician;
3. An internist;
4. An obstetrician or gynecologist;
5. A physician assistant;
6. A certified nurse midwife;
7. An advanced practice registered nurse;
8. A federally-qualified health care center;
9. A primary care center;
10. A rural health clinic; or
11. A local health department; or

(b) An individual whose income standard for Medicaid eligibility purposes is a modified adjusted gross income shall be made by an

inpatient hospital participating in the Medicaid Program.

(2) An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be an individual identified in 907 KAR 20:100 as having a modified adjusted gross income as the Medicaid income eligibility standard.

Section 2. Provider Responsibilities. (1) A qualified provider who determines that an individual is presumptively eligible for Medicaid based on criteria established in Section 3 of this administrative regulation shall:

(a) Complete the paper or electronic application approved by the department pursuant to Section 8 of this administrative regulation;

(b) Enter the data into the department's Integrated Eligibility and Enrollment System (IEES) self-service portal for a real-time eligibility determination;

(c) 1. [Notify the department and obtain an authorization number;

(b)] Inform the individual at the time the determination is made that the individual is required to make an application for Medicaid benefits through the individual's local DCBS office or via the IEES self-service portal; and

2. Inform the individual of any other requirements pursuant to KRS 205.5375(2)(b);

(d) [(e)] Inform the individual of the location of the individual's local DCBS office;

(e) [(f)] Issue presumptive eligibility identification to the presumed eligible individual; [and]

(f) [(g)] Maintain a record of the presumptive eligibility screening for each applicant for at least five (5) years; and

(g) Complete and securely submit the form described in Section 8(3) of this administrative regulation to the department or the department's designee.

(2) If an individual is determined not to be presumptively eligible, the qualified provider shall inform the individual of the following in writing:

(a) The reason for the determination;

(b) That the individual may file an application for Medicaid if the individual wishes to have a formal determination made; and

(c) The location of the individual's local DCBS office.

(3) A qualified provider shall, as appropriate, assist the patient with a full Medicaid application pursuant to KRS 205.5375(2)(e).

Section 3. Eligibility Criteria. Presumptive eligibility shall be granted to:

(1) A woman if she:

(a) Is pregnant;

(b) Is a Kentucky resident;

(c) Does not have income exceeding 218[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) and as consistent with 907 KAR 4:030;

(d) Does not currently have a pending Medicaid application on file with the DCBS;

(e) Is not currently enrolled in Medicaid;

(f) Has not been previously granted presumptive eligibility for the current pregnancy; and

(g) Is not an inmate of a public institution, except as established in 907 KAR 20:005, Section 7(2); or

(2) An individual whose Medicaid income eligibility standard is a modified adjusted gross income if the individual:

(a) Is a Kentucky resident;

(b) Does not have income exceeding:

1. 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); or

2. 218[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), if the individual is a targeted low-income child, as consistent with 907 KAR 4:020;

(c) Does not currently have a pending Medicaid application on file with the DCBS;

(d) Is not currently enrolled in Medicaid; and

(e) Is not an inmate of a public institution except as established in 907 KAR 20:005, Section 7(2).

Section 4. Presumptive Eligibility Period. (1) Presumptive eligibility for an individual shall begin on the date on which a qualified provider[:

(a)] determines that the individual is presumptively eligible based on the criteria specified in Section 3 of this administrative regulation[~~if the qualified provider obtains an authorization number from the department on:~~

1. ~~That day; or~~
2. ~~If the department is closed, the next business day the department is open; or~~

(b) ~~Obtains an authorization number from the department if it is not the day specified in paragraph (a) of this subsection].~~

(2) The presumptive eligibility period shall end on:

(a) The day preceding the date the presumptively-eligible individual is granted full eligibility in the Medicaid Program by the DCBS; or

(b) The last day of the month following the month in which a qualified provider made the presumptive eligibility determination if the presumed eligible individual:

1. Does not apply for the full Medicaid benefit package; or
2. Applies for and is found ineligible for the full Medicaid benefit package.

(3) To illustrate the presumptive eligibility period, if an individual became presumptively eligible on July 7, 2014, the individual shall remain presumptively eligible through August 31, 2014.

(4) For a woman who gains presumptive eligibility by being pregnant, only one (1) presumptive eligibility period shall be granted for each episode of pregnancy.

Section 5. Covered Services. (1)(a) Payment for a covered service provided to a presumptively-eligible individual shall be in accordance with the current Medicaid reimbursement policy for the service unless the service is provided to an individual who is enrolled with a managed care organization.

(b) A managed care organization:

1. Shall not be required to reimburse in the same manner or amount as the department reimburses for a Medicaid-covered service provided to a presumptively eligible individual; or

2. May elect to reimburse in the same manner or amount as the department reimburses for a Medicaid-covered service provided to a presumptively eligible individual.

(2) Covered services for a presumptively-eligible:

(a) Pregnant woman shall be limited to ambulatory prenatal care services delivered in an outpatient setting and shall include:

1. Services furnished by a primary care provider, including:

a. A family or general practitioner;

b. A pediatrician;

c. An internist;

d. An obstetrician or gynecologist;

e. A physician assistant;

f. A certified nurse midwife; or

g. An advanced practice registered nurse;

2. Laboratory services provided in accordance with 907 KAR 10:014 and 907 KAR 1:028;

3. Radiological services provided in accordance with 907 KAR 10:014 and 907 KAR 1:028;

4. Dental services provided in accordance with 907 KAR 1:026;

5. Emergency room services provided in accordance with 907 KAR 10:014;

6. Emergency and nonemergency transportation provided in accordance with 907 KAR 1:060;

7. Pharmacy services provided in accordance with 907 KAR 23:010;

8. Services delivered by rural health clinics provided in accordance with 907 KAR 1:082;

9. Services delivered by primary care centers, federally-qualified health centers, and federally-qualified health center look-alikes provided in accordance with 907 KAR 1:054; or

10. Primary care services delivered by local health

departments provided in accordance with 907 KAR 1:360; or

(b) Individual who is not a pregnant woman shall include:

1. Services furnished by a primary care provider, including:

a. A family or general practitioner;

b. A pediatrician;

c. An internist;

d. An obstetrician or gynecologist;

e. A physician assistant;

f. A certified nurse midwife; or

g. An advanced practice registered nurse;

2. Laboratory services provided in accordance with 907 KAR 10:014 and 907 KAR 1:028;

3. Radiological services provided in accordance with 907 KAR 10:014 and 907 KAR 1:028;

4. Dental services provided in accordance with 907 KAR 1:026;

5. Emergency room services provided in accordance with 907 KAR 10:014;

6. Emergency and nonemergency transportation provided in accordance with 907 KAR 1:060;

7. Pharmacy services provided in accordance with 907 KAR 23:010;

8. Services delivered by rural health clinics provided in accordance with 907 KAR 1:082;

9. Services delivered by primary care centers, federally-qualified health centers, and federally-qualified health center look-alikes provided in accordance with 907 KAR 1:054;

10. Primary care services delivered by local health departments provided in accordance with 907 KAR 1:360; or

11. Inpatient or outpatient hospital services provided by a hospital.

Section 6. Appeal Rights. (1) The appeal rights of the Medicaid Program shall not apply if an individual is:

(a) Determined not to be presumptively eligible; or

(b) Determined to be presumptively eligible but fails to file an application for Medicaid with the DCBS before the individual's presumptive eligibility ends and therefore loses presumptive eligibility at the end of the presumptive eligibility period[is determined to be ineligible for Medicaid benefits].

(2) The appeal rights of the Medicaid Program shall apply if an individual is:

(a) Determined to be presumptively eligible; and

(b) Files an application with the DCBS but is determined ineligible for Medicaid benefits.

(3) Except as specified in subsection (1) of this section, an appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with:

(a) 907 KAR 1:563 if the individual is:

1. Not enrolled with a managed care organization; or

2. Enrolled with a managed care organization and the individual has exhausted the MCO internal appeal process in accordance with 907 KAR 17:010 and requests an appeal of an adverse decision by the MCO; or

(b) 907 KAR 17:010 if the individual is enrolled with a managed care organization.

(4) Except as specified in subsection (1) of this section, an appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(5) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 7. Quality Assurance and Utilization Review.

(1) The cabinet shall evaluate, on a continuing basis, access, continuity of care, health outcomes, and services arranged or provided by a Medicaid provider to a presumptively eligible individual in accordance with accepted standards of practice for medical service.

(2) A hospital's determination that an individual does not meet criteria for presumptive eligibility shall be consistent with KRS 205.5375 and Section 2 of this administrative regulation.

Section 8. Department Established Training and Presumptive

Eligibility Form.

(1)(a) As required by KRS 205.5375, and in collaboration with the Kentucky Hospital Association and each academic medical center, the department shall institute and conduct a training at least once every twelve (12) months that addresses current state and federal laws related to presumptive eligibility for all qualified hospitals.

(b) The training may include a component that demonstrates and clarifies use of the most current presumptive eligibility application form that is designated by the department for use by the qualified hospitals.

(c)1. The training required pursuant to this subsection shall be available in an on-demand format for review by all interested qualified hospital staff.

2. At the request of the department, the Kentucky Hospital Association, or any of the academic medical centers the training may also be conducted virtually or in-person.

3. The most current on-demand version of the training shall be hosted on the department's Web site at: <https://chfs.ky.gov/agencies/dms/Pages/training.aspx>.

(2) The department, in consultation with the Kentucky Hospital Association and any academic medical center, shall establish a comprehensive and thorough presumptive eligibility application form for use by each qualified hospital when making presumptive eligibility determinations.

(a) The form shall be:

1. Updated within thirty (30) days of a relevant or substantial change in applicable state and federal law relating to presumptive eligibility;

2. A current and comprehensive document that assists a hospital contractor, employee, or volunteer in completing and making an accurate determination relating to the presumptive eligibility status of an individual; and

3. Available on the department's Web site at: <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/hospital.aspx>

(b) The form may be utilized by a qualified hospital as a paper application or within an eligibility application as allowable pursuant to current state and federal law.

(3)(a) In accordance with KRS 205.5375(2)(a), the department, in consultation with the Kentucky Hospital Association and any academic medical center, shall establish a notification form for a qualified hospital to use to notify the department, or designee, of a determination that an individual is presumptively eligible for Medicaid.

(b) The form shall be:

1. Updated within thirty (30) days of a relevant or substantial change in applicable state and federal law relating to notifications of presumptive eligibility; and

2. Available on the department's Web site at: <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/hospital.aspx>

(4) The department and a qualified hospital shall observe appropriate privacy and confidentiality standards of state and federal law, including 45 C.F.R. Part 164, in transmitting a completed form that is determined to contain protected health information. This may include:

(a) Use of encrypted email;

(b) Use of other encrypted electronic file transfer systems; or

(c) Any other department approved secure method of sharing personally identifiable health information that is allowable pursuant to state and federal law.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 6, 2022

FILED WITH LRC: October 11, 2022 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 2022, five (5) workdays prior to the hearing, of their intent to

attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the determination of presumptive eligibility and the provision of services to individuals deemed presumptively eligible for Medicaid-covered services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for the determination of presumptive eligibility and the provision of services to individuals deemed presumptively eligible for Medicaid-covered services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements for the determination of presumptive eligibility and the provision of services to individuals deemed presumptively eligible for Medicaid-covered services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing requirements for the determination of presumptive eligibility and the provision of services to individuals deemed presumptively eligible for Medicaid-covered services.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation by incorporating changes made by 2022's HB 7. The administrative regulation requires DMS to collaborate with the KHA and academic medical centers to institute an annual training process, and to establish a comprehensive form to assist with the use of presumptive eligibility within the qualified hospital setting. In addition a form and process for informing DMS of a presumptive eligibility decision within 5 days is being created. The administrative regulation also clarifies expected privacy standards for transfer of documents by qualified hospitals and DMS.

(b) The necessity of the amendment to this administrative regulation: The amendment is required to reflect changes made to presumptive eligibility by 2022's HB 7.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment complies with 2022's HB 7's changes to the department's presumptive eligibility procedures.

(d) How the amendment will assist in the effective administration of the statutes: The amendment incorporates changes made by 2022's HB 7.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts the department and more than 70 public and private hospitals who may provide presumptive eligibility services as qualified hospitals.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Regulated entities will need to comply with HB 7, and utilize the application forms implemented by the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). DMS will be developing training and application forms as a part of this legislative implementation. DMS expects that costs to regulated entities to comply will be minimal, if any.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The regulated entities will be able to continue providing presumptive eligibility determinations.

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

(a) Initially: DMS will absorb any costs to implement this administrative regulation on an initial basis consistent with requirements established in the state executive branch budget pursuant to HB 1 of the 2022 Regular Session.

(b) On a continuing basis: DMS will absorb any costs to implement this administrative regulation on a continuing basis consistent with requirements established in the state executive branch budget pursuant to HB 1 of the 2022 Regular Session.

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

(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? is not applied in this administrative regulation as it applies equally to all entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315, 42 U.S.C. 1396a(e)(14)(C) and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

(3) Minimum or uniform standards contained in the federal mandate. The federal law prohibits the application of a resource test to the MAGI population or to the former foster care population.

(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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5375

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

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

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

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

(c) How much will it cost to administer this program for the first year? DMS will absorb any costs to implement this administrative regulation on an initial basis consistent with requirements established in the state executive branch budget pursuant to HB 1 of the 2022 Regular Session.

(d) How much will it cost to administer this program for subsequent years? DMS will absorb any costs to implement this administrative regulation on an initial basis consistent with requirements established in the state executive branch budget pursuant to HB 1 of the 2022 Regular Session.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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*.

**SECRETARY OF STATE
(New Administrative Regulation)**

30 KAR 009:010. Forms.

RELATES TO: KRS 14.025, 118.126

STATUTORY AUTHORITY: KRS 118.126(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.025(4) requires the Department of State, Office of Elections to be responsible for candidate filings and assisting the Secretary of State in his or her duties as the chief election official of Kentucky. KRS 118.126(1) requires Secretary of State to accept the designation of Lieutenant Governor from each candidate for Governor. This administrative regulation establishes the form for such filing.

Section 1. The following reporting forms shall be filed in accordance with the referenced statutes: Pursuant to KRS 118.126, a candidate for Governor will file the "Designation of Candidate for Lieutenant Governor" with the Secretary of State no later than 4 p.m. on the second Tuesday in August preceding the regular election for the office of Governor.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference: "Designation of Candidate for Lieutenant Governor," SOS 01, October 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at <http://www.sos.ky.gov>.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: October 7, 2022

FILED WITH LRC: October 7, 2022 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2022, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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: Jennifer Scutchfield, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the form for filing of Lieutenant Governor.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the form for filing of Lieutenant Governor.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to

fulfill its duties under KRS 14.025, this administrative regulation is necessary to establish the form for filing of Lieutenant Governor.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish the form for filing of Lieutenant Governor.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects persons running for Governor and Lieutenant Governor.

(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: Individuals identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: N/A.

(b) On a continuing basis: N/A.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

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

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

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Office of the Secretary of State.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 14.025.

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

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The administration cost is minimal.

(d) How much will it cost to administer this program for subsequent years? The administration cost will be minimal.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate any cost savings for state or local governments 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 any cost savings for state or local governments during the first year.

(c) How much will it cost the regulated entities for the first year? There is minimal cost.

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FINANCE AND ADMINISTRATION CABINET **Teachers' Retirement System** **(New Administrative Regulation)**

102 KAR 1:361. Disability retirement for TRS 4 members with less than five (5) years of service.

RELATES TO: KRS 161.661(19)

STATUTORY AUTHORITY: KRS 161.310, 161.661(19)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Teachers' Retirement System of the State of Kentucky (TRS) to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.661(19) authorizes the board to promulgate administrative regulations regarding disability benefits for individuals in TRS 4, which consists of those who became members on or after January 1, 2022. This administrative regulation establishes the disability retirement benefits for those new members.

Section 1. For TRS 4 members who have less than five (5) years of creditable Kentucky service, the disability retirement benefits, including all eligibility and other conditions, shall be those disability retirement benefits for non-hazardous positions provided under KRS 61.621 (the Fred Capps Memorial Act).

Section 2. The members described in Section 1 shall not be eligible for benefits provided by KRS 161.661 or 161.663.

Section 3. Administrative Provisions. (1) An application for duty-related injury disability benefits shall be filed on the TRS 4 Disability Retirement Application – Less Than Five Years of Service (application) and shall include:

(a) A photocopy of the member's certified birth certificate;

(b) A photocopy of the member's signed Social Security card;

(c) A voided or cancelled check from the institution where monthly disbursements shall be electronically transmitted;

(d) The Physician's Disability Evaluation Report and supporting documentation regarding the member's duty-related injury;

(e) The Applicant's Disability Statement; and

(f) If the duty-related injury was the result of external violence, a copy of any incident or police report filed at the time of the incident.

(2) TRS shall submit the application and supporting documentation to the medical review committee for evaluation and written disposition as required by KRS 161.661(14).

(3) If the application is approved, payment of these disability benefits shall be effective on the applicable date set forth in KRS 161.661(11).

Section 4. A member described in Section 1 of this regulation shall be subject to providing ongoing and current medical reports upon request by TRS to confirm that the conditions for disability benefits eligibility remain in place.

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

(a) "TRS 4 Disability Retirement Application-Less Than Five Years of Service", September 2022;

(b) "Physician's Disability Evaluation Report", September 2022; and

(c) "Applicant's Disability Statement", September 2022.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

BRENDA MCGOWN, Chair

APPROVED BY AGENCY: September 14, 2022

FILED WITH LRC: September 22, 2022 at 1:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, 21 December 2022, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, 14 December 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on Saturday, 31 December 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: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, or email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes that new members who enter the retirement system after January 1, 2022, who have less than five (5) years of service credit, shall be provided disability retirement.

(b) The necessity of this administrative regulation: This administrative regulation shall provide duty-related injury disability benefits for new members. The potential exists for a member to become disabled and be entitled to benefits that would be ongoing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 161.661 as amended by HB 258 (2021 RS) which requires the board to promulgate an administrative regulation to provide disability retirement for new TRS 4 members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will identify for members entering the retirement system after January 1, 2022, who have less than five (5) years of service credit that disability retirement shall be provided to them.

(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: NA

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: TRS Members who enter the retirement system after January 1, 2022, who have less than five (5) years of service credit and become disabled. TRS has had less than twenty (20) individuals become disabled for at least ten (10) years.

(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: New members will file an application for disability benefits under KRS 61.621(2).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to the new members is part of the retirement contribution they make to TRS.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): New members who sustain a duty-related injury after January 1, 2022, will be eligible to file for, and receive, duty-related injury disability retirement.

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

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

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all

members are treated the same.

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? Teachers' Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310, 161.661

(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. None.

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

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

(c) How much will it cost to administer this program for the first year? Administrative costs will be dependent upon the number of applications processed and cannot be quantified at this time. Given the very small number of members that will likely be impacted, however, administrative costs will be very low.

(d) How much will it cost to administer this program for subsequent years? Administrative costs will be dependent upon the number of applications processed and cannot be quantified at this time. Given the very small number of members that will likely be impacted, however, administrative costs will be very low.

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:

(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 regulation provides disability retirement provisions for new tier members as required by law and does not result in any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This regulation provides disability retirement provisions for new tier members as required by law and does not result in any cost savings.

(c) How much will it cost the regulated entities for the first year? This regulation provides disability retirement provisions for new tier members as required by law and does not result in any cost to regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This regulation provides disability retirement provisions for new tier members as required by law and does not result in any cost to regulated entities.

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

Cost Savings (+/-):

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 provides

for disability retirement provisions for new tier members as required by law and does not result in a major economic impact as defined by this question.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Repealer)**

105 KAR 1:071. Repeal of 105 KAR 1:070.

RELATES TO: KRS 61.505, 61.555

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. 105 KAR 1:070 provided special appropriation for up to four (4) years of military service credit pursuant to KRS 61.555(4). KRS 61.555(4) was repealed in 2021, as a result 105 KAR 1:070 has no statutory authority. This administrative regulation repeals 105 KAR 1:070.

Section 1. 105 KAR 1:070, Allocation of special appropriation for military service credit, is hereby repealed.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: October 12, 2022

FILED WITH LRC: October 13, 2022 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, December 21, 2022, at 10:00 a.m. Eastern Time at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 105 KAR 1:070.

(b) The necessity of this administrative regulation: This administrative regulation is necessary due to repeal of statutory authority KRS 61.555(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.555(4), the statutory authority for 105 KAR 1:070, was repealed.

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

statutes by repealing 105 KAR 1:070 since it no longer has statutory authority.

(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 repealer.

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

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Unknown number of individuals. No businesses, organizations, or state or local governments will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: There are no costs associated with the implementation of this repealer.

(b) On a continuing basis: There are no costs associated with the implementation of this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All affected public retirement systems are treated in the same manner by this repealer.

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.

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

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

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

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

(c) How much will it cost to administer this program for the first year? Nothing.

(d) How much will it cost to administer this program for

subsequent years? Nothing.

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: 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? 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? Unknown.

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

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

Cost Savings (+/-): Unknown.

Expenditures (+/-): None.

Other Explanation: The fiscal impact of this repealer is minimal, if there is any fiscal impact at all. The service credit provided for in KRS 61.555(4) and 105 KAR 1:070 had not received funding for many years prior to the repeal of KRS 61.555(4).

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

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Repealer)

105 KAR 1:371. Repeal of 105 KAR 1:370.

RELATES TO: KRS 61.645(9)(e), 61.505

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: Kentucky Revised Statutes 61.645(9)(e) authorizes the Board of Trustees of the Kentucky Retirement Systems to "promulgate all administrative regulations, not inconsistent with the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705, necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705." 105 KAR 1:370 established the Kentucky Retirement Systems' Personnel Policies. KRS 61.505 created the Kentucky Public Pensions Authority to administer and operate the personnel system for the Kentucky Retirement Systems, and as a result 105 KAR 1:370 is no longer needed. This administrative regulation repeals 105 KAR 1:370.

Section 1. 105 KAR 1:370 Kentucky Retirement Systems Personnel Policies, is hereby repealed.

JOHN CHILTON, Chief Executive Officer

APPROVED BY AGENCY: September 21, 2022

FILED WITH LRC: October 13, 2022 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, December 21, 2022, at 10:00 a.m. Eastern Time at

the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, email Legal.Non-Advocacy@kyret.ky.gov, telephone (502) 696-8800 ext. 8570, facsimile (502) 696-8615.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 105 KAR 1:370.

(b) The necessity of this administrative regulation: This administrative regulation is necessary due to the creation of the Kentucky Public Pensions Authority, in KRS 61.505, to administer and operate the personnel system for the Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Kentucky Revised Statutes (KRS) 61.645(9)(e) authorizes the Board of Trustees of the Kentucky Retirement Systems to "promulgate all administrative regulations, not inconsistent with the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705, necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the administration of the statutes by repealing 105 KAR 1:370 since it is no longer necessary.

(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 repealer.

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

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Unknown number of individuals. No businesses, organizations, or state or local governments will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: There is no costs associated with the implementation of this repealer.

(b) On a continuing basis: There is no costs associated with the implementation of this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All affected public retirement systems are treated in the same manner by this administrative regulation.

FISCAL NOTE

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.645(9)(e).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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: 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? 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: Their will be no costs associated with this repealer.

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

administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a "major economic impact" because it will not have a negative or adverse economic impact on the Kentucky Employees Retirement System, or the State Police Retirement System.

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

105 KAR 1:411. Hospital and medical insurance for retired members and Kentucky Retirement Systems Insurance Fund Trust.

RELATES TO: KRS 16.505, 16.576(4), 61.505(1)(g), 61.510, 61.701, 61.702, 78.510, 78.5536, 26 U.S.C. 105(b), 115, 213(d), 42 U.S.C. 1395y(b), Pub.L. 111-148

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.702, 78.5536

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer hospital and medical insurance coverage to recipients (including retired members and some beneficiaries of deceased members), their spouses, and their disabled or dependent children, and require the promulgation of administrative regulations concerning requirements for medical insurance reimbursement programs. This administrative regulation establishes procedures for the administration of the hospital and medical insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement, and forms.

Section 1. Definitions.

(1) "Agency" means:

(a) Prior to April 1, 2021, the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System; and

(b) Beginning April 1, 2021, the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

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

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

(4) "Dependent child" is defined in KRS 16.505(17) and 78.510(49).

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

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

(7) "MEM" means:

(a) A Medicare eligible member who is retired and reemployed with a participating employer which offers the member a hospital and medical insurance benefit, or by a participating employer

which is prevented from offering a hospital and medical benefit to the member as a condition of reemployment under KRS 70.293, 95.022, or 164.952; and

(b) A Medicare eligible member who is retired and whose spouse meets the following criteria:

1. The spouse is also a retired member;

2. The spouse is reemployed with a participating employer which offers the spouse a hospital and medical insurance benefit, or by a participating employer which is prevented from offering a hospital and medical benefit to the spouse as a condition of reemployment under KRS 70.293, 95.022, or 164.952; and

3. The premium required to provide the spouse with hospital and medical insurance plan coverage is fully or partially paid based on the Medicare eligible retired member's benefits as provided in KRS 61.702(4) and 78.5536(4).

(8) "Member" is defined in KRS 16.505(21), 61.510(8), and 78.510(8).

(9) "Monthly contribution rate" means:

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

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

(10) "Premium" means the monthly dollar cost required to provide hospital and medical insurance plan coverage for a recipient, a recipient's spouse, or a disabled or dependent child.

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

(12) "Qualifying event" means a change in life circumstances that meet the agency's requirement for a member to alter an existing hospital and medical insurance plan, or sign up for a new one outside of new or open enrollment when the alteration is consistent with the change; the agency shall provide a list of qualifying events annually to the members.

(13) "Recipient" is defined in KRS 16.505(26), 61.510(27), and 78.510(26).

(14) "Retired member" is defined in KRS 16.505(11), 61.510(24), and 78.510(23).

(15) "Retirement allowance" is defined in KRS 16.505(12), 61.510(16), and 78.510(16).

(16) "Retirement office" is defined in KRS 16.505(28), 61.510(31), and 78.510(29).

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

Section 2. Trust Fund. (1) Pursuant to KRS 61.701, fund assets shall be dedicated for use toward health benefits, as provided in KRS 61.702 and 78.5536, and as permitted under 26 U.S.C. 105 and 106 of the United States Internal Revenue Code, to retired recipients and employees of employers participating in the systems. Certain dependents or beneficiaries shall be included, such as qualified beneficiaries as described in 42 U.S.C. 300bb-8(3) of the United States Public Health Service Act.

(2) The Boards may adopt a trust agreement and take all action authorized by KRS 61.701(6).

Section 3. Contribution Rates. (1)(a) The Boards shall adopt monthly contribution rates as follows:

1. Medicare eligible coverage;
2. Non-Medicare eligible coverage; and
3. MEM coverage.

(b) The Boards may choose to adopt a monthly contribution rate for MEM coverage that is separate from the monthly contribution rate the Boards adopts for Medicare and non-Medicare eligible coverage, or may choose to adopt a monthly contribution rate that is the same for Non-Medicare eligible coverage and MEM

coverage.

(2) The Boards shall adopt a contribution plan for each monthly contribution rate in subsection (1) of this section.

(3) The Boards may adopt separate contribution rates for:

(a) Tobacco and non-tobacco users, and

(b) Wellness or wellbeing promise completion and incompleteness.

Section 4. Payments by the Boards. (1) The monthly contribution rate paid by the Boards towards premiums for a recipient or eligible spouse or dependent child shall not exceed the monthly contribution rate to which the recipient is entitled under KRS 61.702 and 78.5536.

(2) For a retired member who retired based on reciprocity with any other state-administered retirement system, the Boards shall not pay more than a portion of the single monthly contribution rate for the hospital and medical insurance plan chosen by the retired member based on the retired member's service credit with the systems.

(3)(a) A retired member who is not Medicare eligible or is a MEM may cross-reference health insurance coverage with a spouse enrolled in the same hospital and medical insurance plan.

(b) A retired member identified in paragraph (a) of this subsection who has hazardous service and a membership date prior to July 1, 2003 may be able to use any unused portion of the monthly contribution rate the retired member is entitled to receive toward the premium cost attributable to the spouse, if the spouse's portion of the premium is not fully paid by the Boards pursuant to KRS 61.702 and 78.5536.

(4) Pursuant to KRS 61.702(4)(d), 61.702(4)(e)5., 78.5536(4)(d), and 78.5536(4)(e)5., funds from the insurance trust fund or the 401(h) accounts provided for in KRS 61.702(3)(b) and 78.5536(3)(b) shall be used to pay a percentage of the monthly contribution rate for family coverage for eligible spouses and dependent children as defined in KRS 16.505(17) and 78.510(49).

(5)(a) Members not eligible for Medicare who began participation in the system on or after July 1, 2003 and have accrued an additional full year of service as a participating employee beyond his or her career threshold may receive an additional five dollar (\$5) contribution toward monthly hospital and medical insurance premiums in accordance with KRS 61.702(4)(e)6.b. and 78.5536(4)(e)6.b.

(b)1. If a member who is eligible for an additional five dollar (\$5) contribution pursuant to paragraph (a) of this subsection has service in multiple systems operated by the agency, each system in which the member participates that meets the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii shall pay a portion of the additional five (5) dollar contribution based on the percentage of the member's service in each system.

2. If a member who is eligible for an additional five (5) dollar contribution pursuant to paragraph (a) of this subsection has service in multiple systems operated by the agency, and not all of the systems in which the member participates meet the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii, only those systems that meet the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii shall pay a portion of the additional five (5) dollar contribution based on the percentage of the member's service in each system.

Section 5. Premiums Paid by Recipient. (1) Any premium amount that is not paid or payable by the insurance trust fund established under KRS 61.701 or a 401(h) account in accordance KRS 61.702 and 78.5536 shall be deducted from the monthly retirement allowance of the recipient.

(2)(a) If the amount of a premium is not fully paid by the insurance trust fund established under KRS 61.701, a 401(h) account, and the recipient's monthly retirement allowance, then the recipient shall pay the balance of the premium monthly by electronic transfer of funds by filing a complete Form 6131, Bank Draft Authorization for Direct Pay Accounts, at the retirement office.

(b) If a complete Form 6131, Bank Draft Authorization for Direct Pay Accounts, is required and is not filed at the retirement

office, then the recipient, their spouse, and any disabled or dependent children shall not be enrolled in a hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(c)1. If the electronic transfer of funds based on a complete Form 6131, Bank Draft Authorization for Direct Pay Accounts, on file at the retirement office fails, then the agency shall provide an invoice to the recipient.

2. If a recipient fails to remit the balance of the premium by the date provided on the invoice, then the enrollment of the recipient, their spouse, and any disabled or dependent children in the hospital and medical insurance plan shall be cancelled the month after the last month the recipient paid the premium.

(d) If the hospital and medical insurance plan coverage of a recipient, their spouse, or any disabled or dependent children is cancelled pursuant to this subsection, the recipient shall not be eligible to enroll in a hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536 until the next open enrollment period for hospital and medical insurance plan coverage.

Section 6. Eligibility to Participate in Hospital and Medical Insurance Plans. (1) A person shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 until the person is a recipient of a monthly retirement allowance, except as provided in KRS 16.576(4).

(2) A person who retires under disability retirement shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 until the month the person receives his or her first monthly retirement allowance payment.

(3) A recipient's spouse, disabled child, or dependent child shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 unless the recipient is participating in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536.

(4) An alternate payee shall not be eligible for participation in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536.

Section 7. Participation in a Hospital and Medical Insurance Plan. (1) A recipient, spouse, or disabled or dependent child who is Medicare eligible, except individuals identified in subsection (2) of this section, shall participate in the hospital and medical insurance plan established for Medicare eligible recipients pursuant to KRS 61.702 and 78.5536.

(2) MEMs, and spouses of MEMs and disabled or dependent children of MEMs who are Medicare eligible, shall participate in the group hospital and medical insurance plan established for MEMs pursuant to KRS 61.702(2)(b)3.b. and 78.5536(2)(b)3.b..

(3) A recipient, spouse, or disabled or dependent child who is not Medicare eligible shall participate in a non-Medicare eligible group hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(4) If a recipient, spouse, or disabled or dependent child is eligible for Medicare but the other persons enrolled in a group hospital and medical insurance plan are not, then the recipient, spouse, or disabled or dependent child who is not eligible for Medicare may continue to participate in the non-Medicare eligible group hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(5) Members identified in subsections (1) through (4) of this section may waive enrollment in the hospital and medical insurance plan by filing:

(a) A completed form 6200, KPPA Health Plans for Medicare Eligible Persons, for Medicare eligible recipients, or

(b) A completed form 6200, Retiree Health Insurance Enrollment/Change Form, for MEMs and non-Medicare eligible recipients.

(6) Members identified in subsections (1) through (4) of this section who do not enroll in or waive the hospital and medical insurance plan shall be automatically enrolled in an appropriate default plan in accordance with Section 9 of this administrative

regulation.

Section 8. Required Forms. (1) If the Boards use the group hospital and medical insurance provided by the Kentucky Department of Employee Insurance to provide health insurance coverage for its non-Medicare eligible recipients, spouses, disabled or dependent children, and MEMs, then the agency shall provide these recipients and MEMs with the Form 6200, Retiree Health Insurance Enrollment/Change Form, required for enrollment, waiver, or changes to the group hospital and medical insurance plan.

(2) On behalf of the Boards, the agency shall arrange hospital and medical insurance coverage for Medicare eligible recipients, spouses, and disabled or dependent children, except MEMs. The agency shall provide these recipients with the Form 6200, KPPA Health Plans for Medicare Eligible Persons, required for enrollment, waiver, or changes to the hospital and medical insurance plans.

(3) The agency shall provide the Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, for recipients to complete to receive health insurance contributions toward an eligible spouse and dependent children who are between the ages of eighteen (18) and twenty-two (22).

Section 9. Default Plans. (1) The Boards shall adopt a default plan for new retired members upon initial enrollment, and for recipients who do not file a complete insurance enrollment form during annual open enrollment, when required.

(2) The Boards shall adopt a default plan for retired members and recipients who are Medicare eligible, and a default plan for retired members and recipients who are non-Medicare eligible and recipients who are subject to 42 U.S.C. 1395y.

Section 10. Initial and Annual Enrollment and Qualifying Events. (1)(a) The recipient shall file complete insurance enrollment forms as described in Section 8 of this administrative regulation at the retirement office by the last day of the month the initial retirement allowance is paid.

(b) If the recipient fails to file the complete insurance enrollment forms as described in Section 8 of this administrative regulation at the retirement office by the last day of the month prior to the month the initial retirement allowance is paid, the retired member shall be automatically enrolled in the appropriate default plan adopted by the Boards as described in Section 9 of this administrative regulation.

(c) If the recipient identified in paragraph (a) of this subsection files the completed insurance enrollment forms as described in Section 8 of this administrative regulation by the last day of the month in which he or she receives his or her initial retirement allowance payment, the retired member will be enrolled in the selection indicated on the form effective the first day of the following month.

(2) If a recipient has a qualifying event, the recipient shall file the complete insurance enrollment forms as described in subsections (1) or (2) of Section 8 of this administrative regulation at the retirement office within the time period prescribed by state and federal law and the health insurance plan documents.

(3)(a) The recipient shall file the complete insurance enrollment forms as described in Section 8 of this administrative regulation at the retirement office by the last day of the month of the annual open enrollment period when enrollment is mandatory.

(b) If the recipient fails to file the complete insurance enrollment forms as described in Section 8 of this administrative regulation at the retirement office by the last day of the month of the annual open enrollment period when enrollment is mandatory, the recipient shall be automatically enrolled in the default plan adopted by the Boards as described in Section 9 of this administrative regulation..

(c) When enrollment is not mandatory, the recipient, and the recipient's spouse and disabled or dependent children as applicable, will remain in the same plan with the same level of coverage as the previous plan year.

(4)(a)1. In order to receive health insurance contributions toward an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22), the recipient shall file a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, by November 30th of the calendar year prior to the calendar year in which coverage is effective, regardless of whether enrollment is mandatory or not mandatory.

2. If a qualifying event results in a new eligible spouse or dependent child, in order to receive health insurance contributions toward the eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22), the recipient shall file a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions.

(b)1. If the recipient does not file a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, in accordance with paragraph (a) of this subsection, health insurance contributions shall not be paid toward the premiums for an eligible spouse or dependent children unless a complete Form 6256 is filed at the retirement office in the calendar year in which coverage is in effect.

2. If the recipient files a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, between December 1 and December 31 of the calendar year prior to the calendar year in which coverage is effective, then health insurance contributions may be paid for an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22) as of January of the calendar year in which coverage is effective. If the health insurance contributions are not paid for an eligible spouse or a dependent child as of January of the calendar year in which coverage is effective, then health insurance contributions shall be paid starting in February of the calendar year in which coverage is effective and the recipient shall also be reimbursed for the January health insurance contributions for the eligible spouse or dependent child.

3. If the recipient files a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, prior to December 31 of the calendar year in which coverage is in effect, health insurance contributions shall be paid toward premiums for an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22) in any month in the calendar year in which coverage is effective after the Form 6256 is filed at the retirement office. If a complete Form 6256 is filed at the retirement office prior to December 31 of the calendar year in which coverage is in effect, the recipient shall also be reimbursed for up to three (3) months of health insurance contributions for the eligible spouse and dependent children.

Section 11. Changes in Spouse and Disabled or Dependent Child Eligibility. (1) Recipients, spouses, and disabled or dependent children shall notify the agency of any change that may affect the eligibility of the spouse, disabled child, or dependent child to enroll in a hospital and medical insurance plan offered by the agency or the eligibility of the spouse or dependent child to have all or a portion of their premiums paid for by the Boards in accordance with KRS 61.702 and 78.5536.

(2)(a) The recipient shall be required to repay any premiums that were paid by the Boards after the spouse or dependent child ceased to be eligible to have all or portion of their premiums paid in accordance with KRS 61.702 and 78.5536.

(b) If the agency is unable to recover from the recipient the full amount of premiums paid in accordance with paragraph (a) of this subsection, the agency may withhold any remaining amount from the recipient's monthly retirement allowance payment.

(c) If the agency is not able to recover the full amount of the premiums paid in accordance with paragraphs (a) and (b) of this subsection, the agency may recover any remaining amount from the spouse or dependent child.

Section 12. Medical Insurance Reimbursement Plan for Recipients Living Outside of Kentucky. (1) A recipient may participate in the medical insurance reimbursement plan pursuant to KRS 61.702(6) and 78.5536(6) if the recipient lives in an area

outside of the coverage of the group hospital and medical insurance plans offered by the agency.

(2) The medical insurance reimbursement plan shall be available in any month the recipient:

(a) Resides outside of Kentucky,

(b) Is not eligible for the same level of hospital and medical benefits as recipients who resided inside of Kentucky with the same Medicare status, and

(c) Has paid hospital and medical insurance plan premiums capable of being reimbursed.

(3) Recipients eligible to participate in the medical insurance reimbursement plan shall be reimbursed up to the applicable monthly contribution rate for premiums paid for hospital and medical coverage less any premiums paid by the recipient's employer.

(4)(a) In order to receive the applicable reimbursement, an eligible recipient shall file a Form 6240, Application for Out of State Reimbursement for Medical Insurance, and as applicable Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, at the retirement office with one (1) or more of the following as proof of coverage and payment of premiums for hospital and medical insurance that covers the entire time period for the requested reimbursement:

1. Form 6241, Employer Certification of Health Insurance for Health Insurance Reimbursement Plan, completed by the employer;

2. Form 6242, Insurance Agency/Company Certification of Health Insurance for Health Insurance Reimbursement Plan, completed by the insurance agency or company;

3. A signed statement from the employer listing individual(s) covered, dates of hospital and medical insurance coverage, amount of premiums deducted from wages, and the cost of the single coverage; or

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

(b)1. If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

2. The agency may verify the recipient's eligibility for reimbursement for hospital and medical insurance by requesting verification of coverage and payments directly from the insurance company indicated on the Form 6240, Application for Out of State Reimbursement for Medical Insurance.

(5) An eligible recipient may file for reimbursement quarterly each calendar year in accordance with subsection (4) of this section.

(6) If the eligible recipient files for reimbursement in accordance with subsection (4) of this section, the eligible recipient shall be reimbursed on the following schedule:

(a) In February, when all documentation is filed at the retirement office by January 20;

(b) In May, when all documentation is filed at the retirement office by April 20;

(c) In August, when all documentation is filed at the retirement office by July 20; or

(d) In November, when all documentation is filed at the retirement office by October 20.

(7) The agency shall not reimburse an eligible recipient for premiums for a calendar year in which the eligible recipient failed to file a request for reimbursement in accordance with subsection (4) of this section by March 20 of the following calendar year.

(8)(a) If a recipient receives a payment from the agency that does not qualify as a premium reimbursement, the recipient shall return the payment to the agency at the retirement office.

(b) If the recipient fails to return the payment, the agency may withhold the payment from the recipient's monthly retirement allowance payment.

Section 13. Dollar Contribution Medical Insurance Reimbursement Plan for Recipients Hired on or after July 1, 2003.

(1) Beginning January 1, 2023, a recipient with a hire date on or after July 1, 2003 may participate in the hospital and medical insurance dollar contribution reimbursement plan pursuant to KRS 61.702(6) and 78.5536(6), if the recipient chooses to purchase a hospital and medical insurance plan not provided by the systems.

(2) Recipients eligible to participate in the dollar contribution medical insurance reimbursement plan shall be reimbursed up to the applicable monthly contribution rate for premiums paid for hospital and medical coverage less any premiums paid by the recipient's employer.

(3)(a) In order to receive the applicable reimbursement, an eligible recipient shall file a Form 6280, Application for Dollar Contribution Reimbursement for Medical Insurance, at the retirement office with one (1) or more of the following as proof of payment of premiums for hospital and medical insurance coverage that covers the entire time period for the requested reimbursement:

1. Form 6281, Employer Certification of Health Insurance for Dollar Contribution Reimbursement Plan, completed by the employer;

2. Form 6282, Insurance Agency/Company Certification of Health Insurance for Dollar Contribution Reimbursement Plan, completed by the insurance agency or company;

3. A signed statement from the employer listing individual(s) covered, dates of hospital and medical insurance coverage, amount of premiums deducted from wages, and the cost of the single coverage; or

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

(b)1. If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

2. The agency may verify the recipient's eligibility for reimbursement for hospital and medical insurance by requesting verification of coverage and payments directly from the insurance company indicated on the Form 6280, Application for Dollar Contribution Reimbursement for Medical Insurance.

(4) An eligible recipient may file for reimbursement in accordance with subsection (3) of this section, quarterly each calendar year.

(5) If the eligible recipient files a request for reimbursement in accordance with subsection (3) of this section, the eligible recipient shall be reimbursed on the following schedule:

(a) In February, when all documentation is filed at the retirement office by January 20;

(b) In May, when all documentation is filed at the retirement office by April 20;

(c) In August, when all documentation is filed at the retirement office by July 20; or

(d) In November, when all documentation is filed at the retirement office by October 20.

(6) The agency shall not reimburse an eligible recipient for premiums for a calendar year in which the eligible recipient failed to file a request for reimbursement in accordance with subsection (3) of this section by March 20 of the following calendar year.

(7)(a) If a recipient receives a payment from the agency that does not qualify as a premium reimbursement, the recipient shall return the payment to the agency at the retirement office.

(b) If the recipient fails to return the payment, the agency may withhold the payment from the recipient's monthly retirement allowance payment.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6131, "Bank Draft Authorization for Direct Pay Accounts", April 2021;

(b) Form 6200, "KPPA Health Plans for Medicare Eligible Persons", September 2022;

(c) Form 6200 "Retiree Health Insurance Enrollment/Change Form", September 2022;

(d) Form 6256, "Designation of Spouse and/or Dependent

Child for Health Insurance Contributions", September 2022;

(e) Form 6240, "Application for Out of State Reimbursement for Medical Insurance," September 2022;

(f) Form 6241, "Employer Certification of Health Insurance for Health Insurance Reimbursement Plan", September 2022;

(g) Form 6242, "Insurance Agency/Company Certification of Health Insurance for Health Insurance Reimbursement Plan", September 2022;

(h) Form 6280, "Application for Dollar Contribution Reimbursement for Medical Insurance", September 2022;

(i) Form 6281, "Employer Certification of Health Insurance for Dollar Contribution Reimbursement Plan", September 2022;

(j) Form 6282, "Insurance Agency/Company Certification of Health Insurance for Dollar Contribution Reimbursement Plan", September 2022;

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

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: October 12, 2022

FILED WITH LRC: October 13, 2022 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, December 21, 2022 at 10:00 a.m. at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8570, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the administration of the health and hospital insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement, and forms.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for the administration of the health and hospital insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, and forms. In addition, this administrative regulation satisfies the requirements in KRS 61.702(6) and 78.5536(6) to promulgate an administrative regulation to establish medical insurance reimbursement programs for members who began participating in the system on or after July 1, 2003 and purchase their own hospital and medical insurance, and for retirees who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer hospital and medical insurance coverage to recipients (including retired members and some beneficiaries of deceased members), their spouses, and their disabled or dependent children, this administrative regulation conforms to the authorizing statute by establishing procedures for the administration of the health and hospital insurance benefits by the systems. Additionally, this administrative regulation satisfies the requirements in KRS 61.702(6) and 78.5536(6) to promulgate an administrative regulation to establish medical insurance reimbursement programs for members who began participating in the system on or after July 1, 2003 and purchase their own hospital and medical insurance, and for retirees who are not eligible for the same level of hospital and medical benefits as recipients living 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 procedures for the administration of the health and hospital insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement, and forms in accordance with KRS 61.702 and 78.5536.

(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, not an amendment to an existing regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation, not an amendment to an existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation, not an amendment to an existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation, not an amendment to an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for three (3) public pensions systems: Kentucky Public Pensions Authority (the public pension systems are the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System). Potentially, as many as 401,043 individuals who are members of the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, and the spouses, disabled or dependent children, and beneficiaries of these members.

(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 administrative regulation requires the Boards of Trustees responsible for the governance of the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System to adopt monthly contribution rates that comply with KRS 61.702 and 78.5536. The Kentucky Public Pensions Authority must administer the health and hospital insurance plans as well as the reimbursement programs required by KRS 61.702 and 78.5536.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative

regulation for the Kentucky Public Pensions Authority and the systems for which it provides day-to-day operations should be negligible, as this administrative regulation is already being administered as written.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Public Pensions Authority and the systems for which it provides day-to-day operations will have greater assurance that the statutory requirements for administering the health and hospital insurance benefits and reimbursement programs are met.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The costs associated with the implementation of this administrative regulation should be negligible.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All regulated entities are subject to the same processes and procedures.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Public Pensions Authority and the three systems for which it provides day-to-day operations (the County Employees Retirement System, the Kentucky Employees Retirement System, and the State Police Retirement System).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g), 61.702, 78.5536.

(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 will not significantly affect 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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The cost to Kentucky Public Pensions Authority to administer this administrative regulation should be negligible because this administrative regulation is already being administered as written.

(d) How much will it cost to administer this program for subsequent years? The cost to Kentucky Public Pensions Authority to administer this administrative regulation should be negligible because this administrative regulation is already being administered as written.

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: The fiscal impact of this administrative regulation should be negligible because this administrative regulation is already being administered as written.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? Unknown.

(d) How much will it cost the regulated entities for subsequent years? Unknown.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): None.

Expenditures (+/-): Unknown.

Other Explanation: The fiscal impact of this administrative regulation should be negligible because this administrative regulation is already being administered as written.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have a "major economic impact" because this administrative regulation is already being administered as written.

BOARD OF OPTOMETRIC EXAMINERS (New Administrative Regulation)

201 KAR 5:038. Advertising.

RELATES TO: KRS 320.295, 326.060

STATUTORY AUTHORITY: KRS 320.240(4), (7), 320.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.295 prohibits false, misleading, or deceptive advertising. This administrative regulation describes what an advertisement shall include to avoid being characterized as false, misleading, or deceptive. This includes advertising in all forms including print media and electronic media.

Section 1. (1) An advertisement shall state if additional charges may be incurred in an eye examination for related services in individual cases.

(2) An advertisement of price for visual aid glasses, including contact lenses or other optical goods, alone shall clearly state: "does not include eye examination".

(3) Any Doctor of Optometry who has been subjected to any disciplinary measures for advertising violations may be required by the board to secure prepublication approval of all advertisements by the board for any period of time which the board deems appropriate.

Section 2. When advertising an eye examination, such examination shall follow the standards of care and established clinical practice guidelines adopted by the American Optometric Association at the time of the provision of care.

Section 3. (1) The advertisement of eye glass lenses shall include: single vision or specified type of multifocal lenses.

(2) Advertisement of contact lenses shall include:

(a) Description of type of lens; for example, "soft, tinted, extended wear toric";

(b) Whether or not professional fees are included in the advertised price.

(3) If dispensing fees are not included in the advertisement of

visual aid glasses, the advertisement shall so state.

(4) The advertisement of optometric services rendered in Kentucky shall include whether the services will be performed by a licensed Doctor of Optometry:

(a) In-Person;

(b) Via live or real-time audio and video synchronous telehealth technology; or

(c) Via asynchronous store-and-forward telehealth technology.

Section 4. (1) Except as provided in subsection (2) of this section, a person, individually or while employed or connected with a corporation or association, shall not advertise the fitting of contact lenses unless they are a Doctor of Optometry, physician or osteopath.

(2) An ophthalmic dispenser may advertise that they dispense contact lenses, if the patient presents a valid prescription from a Doctor of Optometry, physician or osteopath.

Section 5. (1) Advertising shall be prohibited if it represents a Doctor of Optometry as a specialist in an optometric specialty if they have not:

(a) Been certified by a certifying board which has been approved by the Kentucky Board of Optometric Examiners and recognized by the Federal Government; and

(b) Furnished proof of their certification to the Kentucky Board of Optometric Examiners;

(2) Uses a coded or special name for a visual material or service that has an established trade name, if the coded or special name would deceive consumers.

Section 6. (1) Under Kentucky law only Doctors of Optometry, osteopaths and physicians are authorized to fit contact lenses. Ophthalmic dispensers may fit contact lenses in the presence of and under the supervision of a Doctor of Optometry, osteopath or physician.

(2) The signed spectacle prescription, or contact lens prescription shall be given to the patient at the completion of the examination and payment of fees.

Section 7. A Doctor of Optometry shall use the letters "OD" or "O.D." in any advertisement where a Doctor of Optometry uses letters to denote an optometry degree.

WILLIAM REYNOLDS, O.D., President

APPROVED BY AGENCY: October 10, 2022

FILED WITH LRC: October 12, 2022 at 2:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, December, 21st 2022 at 2:00 p.m. at 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify this agency of their intent to attend in writing five workdays prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on December 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: Carson Kerr, Executive Director, Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504, phone (859) 246-2744, fax (859) 246-2746, email Carson.Kerr@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

FISCAL NOTE

Contact person: Carson Kerr

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes standards for the appropriate advertising of Optometry Services in Kentucky as authorized by existing statutory law.

(b) The necessity of this administrative regulation: KRS 320.240 and KRS 320.295 require the Board to promulgate administrative regulations to establish standards for the appropriate advertising of Optometry in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes the standards for the appropriate advertising of Optometry Services in Kentucky in conjunction with statutory authority and standards contained in KRS 320.240 and KRS 320.295, and is narrowly tailored to this purpose.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes standards for the appropriate advertisement of Optometry Services in Kentucky as authorized by existing statutory law.

(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.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed Kentucky Optometrists totaling approximately 1,000 will be affected as will the Agency itself as it enforces these provisions.

(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: Licensed Kentucky Optometrists will be affected by this administrative regulation, as will the agency as it seeks to enforce these provisions.

(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 direct cost associated with these provisions as they simply establish the standards for appropriate advertisement of Optometry Services and not the procedure for adjudication and resolution of violations of such regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agency will have more direct means of monitoring professional practice for advertising violations.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This will not cost the agency nor stakeholders any money to implement.

(b) On a continuing basis: This will not cost the agency nor stakeholders any money to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Restricted Funds from Licensing Fees. The agency receives no unrestricted state or federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, that will not be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, it does not.

(9) TIERING: Is tiering applied? No. This administrative regulation treats all impacted entities the same.

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Optometric Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.240

(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, unless fines are levied as a result of agency adjudication.

(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, unless fines are levied as a result of agency adjudication.

(c) How much will it cost to administer this program for the first year? No costs to administer the first year directly.

(d) How much will it cost to administer this program for subsequent years? No costs to administer directly.

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. There will be no effect on the regulated entities as it will not require a wholesale replacement of existing signage and advertising.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no anticipated cost savings or cost increase for the regulated entities as these rules have generally been effect for years previously because the administrative regulation expired and this filing is substantially similar.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no anticipated cost savings or cost increase for the regulated entities as these rules have generally been effect for years previously because the administrative regulation expired.

(c) How much will it cost the regulated entities for the first year? There are no explicit new costs nor any indirect costs associated with this filing.

(d) How much will it cost the regulated entities for subsequent years? There are no explicit new costs nor any indirect costs associated with this filing.

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: This filing reinitiates the KBOE's Advertising Regulation which had previously been effect largely in this form. As such, there is no anticipated change in costs to regulated entities, who are optometrists and therefore no applicable dollar estimates to provide.

(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, that definition does not apply here for the reasons given above.

**BOARD OF OPTOMETRIC EXAMINERS
(New Administrative Regulation)**

201 KAR 5:045. Unprofessional conduct.

RELATES TO: KRS 320.310(1)(n)

STATUTORY AUTHORITY: KRS 320.240(4), (7), (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.240(4), (7), and (8) that the board shall have the power to promulgate an administrative regulation about what acts constitute unprofessional conduct. KRS 320.310(1)(n) authorizes the board to discipline a licensee who violates an administrative regulation promulgated by the board. This administrative regulation establishes the acts that constitute unprofessional conduct.

Section 1. A Doctor of Optometry shall not practice optometry in an office if the instruments and equipment, including office furniture, fixtures and furnishings, contained therein are not maintained in a working, clean and sanitary manner.

Section 2. (1) A Doctor of Optometry shall not give or receive a fee, salary, commission, or other remuneration or thing of value, in any manner, or under any pretext, to or from any person, firm, or corporation in return for the referral of optometric patients, or in order to secure optometric patients. Payment between health providers or from a health services industry, solely for the referral of a patient, is considered fee splitting and unprofessional conduct.

(2) A Doctor of Optometry shall not enter into a contract, agreement, or arrangement, for the hire or leasing of their professional services, except that upon the:

(a) Death of a Kentucky licensed Doctor of Optometry, the surviving spouse or estate of the deceased Doctor of Optometry may contract optometric services or employ a Kentucky licensed Doctor of Optometry for a period not to exceed eighteen (18) months from the time of death; or

(b) Permanent disability of a Kentucky licensed Doctor of Optometry, the spouse, legal guardian, or disabled Doctor of Optometry may contract optometric services or employ a Kentucky licensed Doctor of Optometry for a period not to exceed eighteen (18) months from the time of disability.

(3) Clinical patient care shall be determined by the Doctor of Optometry and not determined by outside influences or third parties.

Section 3. (1) A Doctor of Optometry shall not practice in premises where others engage in any unlawful, grossly unprofessional, or incompetent practice, if that practice is known to the Doctor of Optometry, or would have been known to a person of reasonable intelligence.

(2) A Doctor of Optometry shall not be associated with or share an office or fees with a person who is engaged in the unauthorized practice of optometry.

Section 4. A Doctor of Optometry shall keep the visual welfare of the patient uppermost at all times and on dismissal of patient must provide adequate opportunity to obtain other eye care regardless of their person's financial status.

Section 5. A Doctor of Optometry shall treat with confidentiality the protected health information obtained from the patient, except as otherwise required by law.

Section 6. (1) A Doctor of Optometry shall provide care that is consistent with established clinical practice guidelines, specifically those adopted by the American Optometric Association at the time of the provision of care, and shall only employ those clinical procedures and treatment regimens for which they are competent to perform and within the scope of practice.

(2) It is unprofessional conduct to fail to maintain in good working order, or to be unable to operate instruments and equipment necessary to provide competent clinical care as established in the clinical optometric guidelines adopted by the American Optometric Association at the time of the provision of

care.

Section 7. The patient care performed in a patient's case shall be left to the professional judgment of the Doctor of Optometry and determined by the established American Optometric Association clinical practice guidelines in effect at that time.

Section 8. An act constituting a violation of KRS Chapter 320, or any applicable state or federal law related to provider-patient care shall be unprofessional conduct.

WILLIAM REYNOLDS, O.D., President

APPROVED BY AGENCY: October 10, 2022

FILED WITH LRC: October 12, 2022 at 2:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, December, 21st 2022 at 2:00 p.m. at 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify this agency of their intent to attend in writing five workdays prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on December 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: Carson Kerr, Executive Director, Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504, phone (859) 246-2744, fax (859) 246-2746, email Carson.Kerr@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carson Kerr

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes standards for the professional practice of Optometry in Kentucky as authorized by existing statutory law.

(b) The necessity of this administrative regulation: KRS 320.240 requires the Board to promulgate administrative regulations to establish standards for the professional practice of Optometry in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes the standards for the professional practice of optometry in Kentucky in conjunction with statutory authority and standards contained in KRS Chapter 320, and is narrowly tailored to this purpose.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes standards for the professional practice of Optometry in Kentucky as authorized by existing statutory law.

(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.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed Kentucky Optometrists totaling approximately 1,000 will be affected as will the Agency itself as it enforces these provisions.

(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: Only those Licensed Kentucky Optometrists against whom a Complaint is filed will be affected by this administrative regulations, as will the agency as it seeks to enforce these provisions.

(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 direct cost associated with these provisions as they simply establish the standards for unprofessional practice and not the procedure for adjudication and resolution of such matters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agency will have more direct means of monitoring professional practice for licensing law violations.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This will not cost the agency nor stakeholders any money to implement.

(b) On a continuing basis: This will not cost the agency nor stakeholders any money to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Restricted Funds from Licensing Fees. The agency receives no unrestricted state or federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, that will not be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No it does not.

(9) TIERING: Is tiering applied? No. This administrative regulation treats all impacted entities the same.

FISCAL NOTE

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Optometric Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.240

(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, unless fines are levied as a result of agency adjudication.

(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, unless fines are levied as a result of agency adjudication.

(c) How much will it cost to administer this program for the first year? No costs to administer the first year directly.

(d) How much will it cost to administer this program for subsequent years? No costs to administer directly.

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. There will be no

effect on the regulated entities as it will not require a wholesale change to optometry practice.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no anticipated cost savings or cost increase for the regulated entities as these rules have generally been effect for years previously because the administrative regulation expired and this filing is substantially similar.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no anticipated cost savings or cost increase for the regulated entities as these rules have generally been effect for years previously because the administrative regulation expired.

(c) How much will it cost the regulated entities for the first year? There are no explicit new costs nor any indirect costs associated with this filing.

(d) How much will it cost the regulated entities for subsequent years? There are no explicit new costs nor any indirect costs associated with this filing.

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: This filing reinitiates the KBOE's Unprofessional Conduct Regulation which had previously been effect largely in this form. As such, there is no anticipated change in costs to regulated entities, who are optometrists, and therefore no applicable dollar estimates to provide.

(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, that definition does not apply here for the reasons given above.

BOARD OF OPTOMETRIC EXAMINERS (New Administrative Regulation)

201 KAR 5:105. Expungement.

RELATES TO: KRS 320.310(3)

STATUTORY AUTHORITY: KRS 320.310(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.310(3) authorizes the board to promulgate an administrative regulation to establish minor violations that are subject to expungement. This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.

Section 1. Definitions.

(1) "Expungement" means that:

(a) The affected records shall be sealed;

(b) The proceedings to which they refer shall be deemed not to have occurred; and

(c) The affected party may properly represent that no record exists regarding the matter expunged.

(2) "Minor Violations" means:

(a) Failure to timely renew a license;

(b) Failure to timely obtain continuing education; and shall not include

(c) Any violations of the laws surrounding the advertisement of optometric services by Doctors of Optometry.

Section 2. Eligibility and Expungement Procedure.

(1) The Licensed Doctor of Optometry shall not have been the subject of a subsequent violation of the same nature for a period of three (3) years after the date of completion of disciplinary sanctions imposed for the violation sought to be expunged; and

(2) They shall submit a written request to the board. The board

shall consider each request and shall, if the requirements established in KRS 320.310(3) and this administrative regulation are satisfied, expunge the record of the subject disciplinary order.

WILLIAM REYNOLDS, O.D., President

APPROVED BY AGENCY: October 10, 2022

FILED WITH LRC: October 12, 2022 at 2:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, December, 21st 2022 at 2:00 p.m. at 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify this agency of their intent to attend in writing five workdays prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on December 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: Carson Kerr, Executive Director, Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504, phone (859) 246-2744, fax (859) 246-2746, email Carson.Kerr@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carson Kerr

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the definitions for expungable licensing violations and the process for expungement.

(b) The necessity of this administrative regulation: KRS 320.310(3) requires the Board to promulgate administrative regulations on the expungement of licensing law violations and the process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes the definitions for expungable licensing violations, those that are not, and the process for expungement, and is narrowly tailored to this purpose.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes the definitions for expungable licensing violations and the process for expungement.

(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:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed Kentucky Optometrists totaling approximately 1,000 will be affected as will the Agency itself.

(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: Only those Licensed Kentucky Optometrists seeking expungement of Licensing Law Violations will be affected, and the Agency itself.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the expungement process because there is no fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Licensed Kentucky Optometrist will have minor violations expunged from their license file.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This will not cost the agency nor stakeholders any money to implement.

(b) On a continuing basis: This will not cost the agency nor stakeholders any money to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Restricted Funds from Licensing Fees. The agency receives no unrestricted state or federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, that will not be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No it does not.

(9) TIERING: Is tiering applied? No. This administrative regulation treats all impacted entities the same.

FISCAL NOTE

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Optometric Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.310.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? No costs to administer the first year.

(d) How much will it cost to administer this program for subsequent years? No costs to administer 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. There will be no effect on the regulated entities as it introduces no new fees and petitioning the Board for expungement is a free process.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no anticipated cost savings or cost increase for the regulated entities as these rules have generally been effect for years previously because the administrative regulation expired and this filing is substantially similar.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no anticipated cost savings or cost increase for the regulated entities as these rules have generally been effect for years

previously because the administrative regulation expired.

(c) How much will it cost the regulated entities for the first year? There are no explicit new costs nor any indirect costs associated with this filing.

(d) How much will it cost the regulated entities for subsequent years? There are no explicit new costs nor any indirect costs associated with this filing.

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: This filing reinitiates the KBOE's Expungement Regulation which had previously been effect largely in this form with a few minor revisions. As such, there is no anticipated change in costs to regulated entities, who are optometrists and therefore no applicable dollar estimates to provide.

(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, that definition does not apply here for the reasons given above.

BOARDS AND COMMISSIONS

Board of Social Work

(New Administrative Regulation)

201 KAR 23:016. Temporary permission to practice.

RELATES TO: KRS 335.080, 335.090, 335.100

STATUTORY AUTHORITY: KRS 335.070(1), (3), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1) requires the board to evaluate and approve the qualifications of the applicants for licensure. KRS 335.070(3) authorizes the board to promulgate administrative regulations. KRS 335.070(9) authorizes the board to establish requirements for temporary permits to practice social work. This administrative regulation establishes the requirements for granting of temporary permission to engage in the practice of social work.

Section 1.

(1) A temporary permit to engage in the practice of social work shall be granted, if requested, to an applicant who has completed all of the requirements for licensure except the examination and has applied for licensure under the provisions of KRS 335.080, 335.090, or 335.100.

(2) A person practicing under a temporary permit as a certified social worker shall not accumulate hours toward the supervision requirements of KRS 335.100(1)(b).

(3) A certified social worker or licensed clinical social worker practicing clinical social work under a temporary permit shall be under the supervision of a licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070, Section 3(1).

(4) The request for a temporary permit shall be accompanied by a letter from the proposed supervisor acknowledging the responsibility for supervision and for the practice of the person holding the temporary permit.

(5) A licensee shall not serve as the supervisor for more than two (2) persons holding a temporary permit at any one (1) time.

(6) Supervision during the period of temporary permission to practice shall be a minimum of one (1) hour of individual, face-to-face supervision per week.

(7) Except as provided in paragraph (b) of this subsection, the temporary permit shall be valid until the applicant for licensure is issued or denied licensure under the provisions of KRS 335.080, 335.090, or 335.100.

(a) A temporary permit shall not extend for more than 240 days

after the temporary permit was approved.

(b) Any changes to the terms of the temporary permit shall be submitted to the board and approved by the board before the temporary permit holder continues social work practice.

ANNE ADCOCK, DSW, MSW, CSW

APPROVED BY AGENCY: September 30, 2022

FILED WITH LRC: October 3, 2022 at 1:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2022, 10:00 a.m. ET at the Justice and Public Safety Building, Third Floor Board Room, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interesting 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 December 31, 2022. Send written notice of intent to be heard or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Marc Kelly, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, phone (502) 564-2350 or (502) 782-2856, or email marc.kelly@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is being promulgated pursuant to replace 201 KAR 23:016E. It is necessary to continue to allow individuals that meet the appropriate educational requirements to practice social work under a temporary permit, under the appropriate supervision of a licensed clinical social worker, until such time as they are able to obtain licensure pursuant to KRS 335.080, KRS 335.090 or KRS 335.100. Access to temporary licensure would create a significant increase in access to services to the citizens of the Commonwealth and provide new social workers access to employment opportunities shortly after graduation.

(b) The necessity of this administrative regulation: This regulation is necessary to address the shortage of social work professionals in the Commonwealth of Kentucky at this time.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out of the provisions of KRS 335.101 to 335.160 and KRS 335.990. KRS 335.070(9) authorizes the board to establish requirements for temporary permits to practice social work.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in lawfully addressing the ability of individuals who meet certain educational requirements to practice social work under a temporary permit until they are able to obtain appropriate licensure pursuant to KRS 335.080, 335.090 or 335.100.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 5,000 licensed clinical social workers and certified social workers in Kentucky, public schools, community mental health centers, public and private agencies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals with certain educational requirements will be able to apply for a temporary permit immediately upon filing of the administrative regulation or will have their prior issued temporary permit reissued.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate that there will be a cost increase to any of the entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board believes that the entities will benefit from the ability to provide services to clients more efficiently and quickly with a temporary permit to practice social work prior to obtain licensure should they meet the requirements to do so.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The board estimates that it will incur no additional costs to implement this administrative regulation.

(b) On a continuing basis: The board estimates that it will incur no additional costs to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are wholly self-funded by fees paid by licensees, applicants, and continuing education providers and sponsors.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This administrative regulation does not directly establish or increase fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this amendment does not.

(9) TIERING: Is tiering applied? No, tiering was not applied. This administrative regulation is applied uniformly to each certified social worker practicing clinical social work under board-approved supervision.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Social Work and entities that employ certified social workers to provide clinical social work services under supervision will be impacted by this administrative regulation. These entities include public school districts, community mental health centers, and other public agencies and private businesses.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 39A.180, 13A.190, 335.070(3) and (9) and 335.158(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. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative

regulation. NA

(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 subsequent years? 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)].

PUBLIC PROTECTION CABINET Department of Professional Licensing Board of Registration of Professional Geologists (Repealer)

201 KAR 31:031. Repeal of 201 KAR 31:030.

RELATES TO: KRS 322A.030(3), (4)

STATUTORY AUTHORITY: KRS 322A.030(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.030(5) authorizes the board to promulgate administrative regulations consistent with its enabling act and necessary to the conduct of its responsibilities and duties. This administrative regulation repeals 201 KAR 31:030 because the administrative regulation is no longer necessary.

Section 1. 201 KAR 31:030, Temporary permission to practice, is hereby repealed.

JEREMY SYLVESTER, Board Counsel

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. on December 21, 2022, at the Public Protection Cabinet, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Zachary M. Zimmerer, Assistant Attorney General, Kentucky Office of the Attorney General, Office of Civil and Environmental Law, 700 Capital Avenue, Suite 118, 502-696-5300, 502-564-2894, email Zachary.Zimmerer@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Zachary M. Zimmerer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 31:030 because the administrative regulation is no longer necessary to the conduct of the Board's responsibilities and duties.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal an outdated and unnecessary administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322A.030(5) authorizes the board to promulgate administrative regulations consistent with its enabling act and necessary to the conduct of its responsibilities and duties. This administrative regulation repeals 201 KAR 31:030 because the administrative regulation is no longer necessary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes within the Board's purview by eliminating an administrative regulation that is no longer necessary to the conduct of its responsibilities and duties.

(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 administrative regulation repealer.

(b) The necessity of the amendment to this administrative regulation: This is an administrative regulation repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is an administrative regulation repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is an administrative regulation repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No individuals, businesses, organizations, or state and local governments will be affected by this administrative regulation. This administrative regulation has not been used since its promulgation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: There are no entities being impacted by this administrative regulation.

(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 entities being impacted by this administrative regulation. Thus, no action will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no entities being impacted by this administrative regulation. Thus, there will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no entities being impacted by this administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost, so there is no source of funding to be used to implement and enforce this administrative regulation repealer.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation repealer.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No parts or divisions of state or local government, beyond the Board itself, 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 322A.030(5) authorizes the board to promulgate administrative regulations consistent with its enabling act and necessary to the conduct of its responsibilities and duties.

(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 will have no effect on the expenditures and revenues of any state or local government agency for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for 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 administrative regulation will not generate any 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 is no cost.

(d) How much will it cost to administer this program for subsequent years? There is no cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation: There will be no fiscal impact.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(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. This administrative regulation will not have a major economic impact.

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)**

701 KAR 8:050. Charter school funding.

RELATES TO: KRS 160.1590, 160.1591, 160.15911, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599

STATUTORY AUTHORITY: KRS 156.070, 160.1596

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1596 requires the Kentucky Board of Education to promulgate administrative regulations governing the calculation and distribution of funds due to public charter schools from school districts, the schedule of distribution of funds, and the imposition of fines for late distribution of funds. This administrative regulation establishes the requirements for the calculation and distribution of funds to a public charter school, the schedule of distribution of funds, and the fines for failure to timely transfer funds.

Section 1. Definitions. (1) "Authorizer" or "public charter school authorizer" is defined by KRS 160.1590(15).

(2) "Charter contract" or "contract" is defined by KRS 160.1590(4).

(3) "District of location" is defined by KRS 160.1590(7).

(4) "Public charter school" is defined by KRS 160.1590(14).

Section 2. Calculation of Charter School Funds. (1) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), for the first school year of operation of a charter school, the district of location shall calculate funds due to the charter school as set forth in KRS 160.1596(9) and (13).

(2) For years subsequent to a charter school's first school year of operation, unless otherwise negotiated under KRS 160.1596(6) or KRS 160.1596(8), the district of location shall calculate funds due to a charter school as set forth in KRS 160.1596(5), (6), and (13).

Section 3. Distribution of Funds for the First School Year of Public Charter School Operation. (1)(a) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), during a public charter school's first school year of operation, the district of location shall transfer to the public charter school the funds required pursuant to KRS 160.1596(6)(a), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt of funds distributed pursuant to KRS 157.410.

(b) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), during a public charter school's first school year of operation, the district of location shall transfer the funds required pursuant to KRS 160.1596(6)(b) and (c), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt.

(c) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), during a public charter school's first school year of operation, the district of location shall transfer to the public charter school the funds required pursuant to KRS 160.1596(13), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt.

(2) As a condition of receiving funding beginning with the 2024-2025 school year, the charter school shall have an approved contract prior to February 1 preceding the charter school's first instructional school year.

(3) The district of location with the assistance of the Kentucky Department of Education shall provide the public charter school with a written estimate of the projected amounts of funding that will be due to the charter school through December of the first instructional school year on or before February 1 preceding the charter school's first instructional year.

Section 4. Distribution of Funds for Subsequent School Years of Public Charter School Operation.

(1) Unless otherwise negotiated under KRS 160.1596(6) or

160.1596(8), the district of location shall transfer to the public charter school the funds required pursuant to KRS 160.1596(6)(a), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt of funds distributed pursuant to KRS 157.410.

(2) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), the district of location shall transfer to the public charter school the funds required pursuant to KRS 160.1596(6)(b) and (c), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt.

(3) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), the district of location shall transfer to the public charter school the funds required pursuant to KRS 160.1596(13), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt.

Section 5. Authorizer's Fees. (1) Any authorizer's fee under KRS 160.1596(10) shall be retained by the district of location if it is the authorizer or remitted to the authorizer at the time of the transfer of funds to the public charter school if the district of location is not the authorizer.

(2) Any authorizer fee due to the Kentucky Board of Education resulting from the appeal of an authorization shall be remitted to the Kentucky Board of Education by the district of location at the time of the transfer of funds to the public charter school.

Section 6. Fines. (1) Failure of the district of location to transfer required funds to the public charter school shall result in the district of location incurring a fine as set forth in KRS 160.1596(11). The fine shall be five (5) percent of the total funds per funding period due to be transferred.

(2) The district of location shall include the fine payment at the time of transfer of outstanding funds to the public charter school.

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., Board Chairperson

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: October 13, 2022 at 3:42 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 21, 2022, at 11 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 December 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 establishes the requirements for the calculation and distribution of funds to a charter school, the

schedule of distribution of funds, and the fines for failure to timely transfer funds.

(b) The necessity of this administrative regulation: This regulation is required pursuant to KRS 160.1596.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements for the calculation and distribution of funds from a district of location to a charter school, the schedule of distribution of funds, and the fines for failure to timely transfer funds as required by KRS 160.1596.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for the calculation and distribution of funds from a district of location to a charter school, the schedule of distribution of funds, and the fines for failure to timely transfer funds as required by KRS 160.1596.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes: N/A. This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts and public charter schools.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts serving as a district of location for a public charter school will have to transfer funds to the charter school pursuant to the requirements of KRS 160.1596 and this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): School districts acting as districts of location for a charter school are required to transfer a proportionate per pupil share of funding due to the charter school pursuant to KRS 160.1596. The amount will vary depending on the district and the number of pupils attending the charter school.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The charter school will receive funding to operate within the district of location.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The implementation will have an unknown minimal cost to the administrative body relating to assisting school districts in calculating the amount of funds for transfer to a public charter school.

(b) On a continuing basis: Those costs will continue dependent on the number of charter applications received.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation establishes a fine for late payments of 5% of the total payment due. However, this fine is only mandatory in the event of a late payment as required by HB 9 (2022).

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation establishes a fine for late payments of 5% of the total payment due. However, this fine is only mandatory in the event of a late payment as required by HB 9 (2022).

(9) TIERING: Is tiering applied? Tiering is not applied. This regulation applies 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 156.070 and KRS 160.1596

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for school districts.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? Unknown.

(d) How much will it cost to administer this program for subsequent years? Unknown.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Pursuant to KRS 160.1596, this regulation provides for the calculation and distribution of funds required to be transferred from a school district to a charter school located in the district. The school district will transfer a per pupil proportionate share for students attending the charter school. The amount of transfer is dependent on the district and the number of students attending the charter school.

(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. Any cost saving will be because the school district is serving less students. The extent is determined by the number of former district students attending the charter school. A loss of attendance will also result in a loss of funding for the district's non-charter schools.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Unknown. Any cost saving will be because the school district is serving less students. The extent is determined by the number of former district students attending the charter school. A loss of attendance will also result in a loss of funding for the district's non-charter schools.

(c) How much will it cost the regulated entities for the first year? Unknown.

(d) How much will it cost the regulated entities for subsequent years? Unknown.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: Pursuant to KRS 160.1596 and this regulation, school districts serving as a district of location for a public charter school are required to transfer funds to a charter school on a proportionate per pupil basis. The amount of funds will depend on the number of students attending the charter school and the amount of state and local funding received by the district. This will vary by district. A district that loses students to a charter school will see a cost savings related to no longer serving those

students. Correspondingly, the district will lose the revenue generated by the lost students. The costs savings to lost revenue may not be equal.

(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 regulation will have a major economic impact on school districts serving as districts of location for charter schools. KRS 160.1593 requires charter school applications to contain a plan for recruiting one hundred (100) students. A 100-student charter school will result in a district of location having to transfer an estimated \$500,000 to \$1,000,000,000 or more in funding to the charter. The exact amount will depend on the specific district and number of students enrolled in the charter school. Districts will realize some savings in no longer having to provide educational services to students that leave the district to attend the charter school. It is unknown whether the loss of revenue equals the reduction in costs when a district's former student attends a charter school.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Prevention and Quality Improvement
(New Administrative Regulation)

902 KAR 20:470. Kentucky heart attack response and treatment recognition process.

RELATES TO: KRS 211.340, 211.341, 211.342

STATUTORY AUTHORITY: KRS 194A.050, 211.343

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.343 requires the Department for Public Health to promulgate administrative regulations in accordance with KRS Chapter 13A to implement a statewide system for heart attack response and treatment by recognizing licensed hospitals according to an assigned level of cardiac care. This administrative regulation establishes the hospital recognition process for Kentucky's cardiac care system.

Section 1. Definition. "Department" is defined by KRS 211.340.

Section 2. Hospital Level of Heart Attack Response and Treatment Recognition. (1) A hospital seeking recognition in the statewide system for heart attack response and treatment shall complete and submit to the department the Step-by-Step Guide for Recognition in the Kentucky Statewide System for Heart Attack Response and Treatment.

(2) The application shall include a copy of the hospital's certificate or certification letter from a nationally recognized guidelines-based organization that provides certification for heart attack response and treatment, and that includes the:

- (a) Name of the certifying organization;
- (b) Name of the certification received;
- (c) Date of certification; and
- (d) Expiration date of certification.

(3) A hospital that holds a current certificate of need (CON) for percutaneous coronary intervention (PCI) or open-heart surgery may submit an application for recognition in the statewide system for heart attack response and treatment. The application shall include:

- (a) A copy of the hospital's accreditation by a nationally recognized organization; and
 - (b) Evidence of the current certificate of need.
- (4) A hospital's application for recognition in the statewide system for heart attack response and treatment by the department is voluntary.

(5) Upon receipt of the information required by subsection (2) or (3) of this section, the department shall list the hospital according to the designated level of cardiac care.

(6) A recognized hospital shall annually verify continuation of:

- (a) Certification by a nationally recognized guidelines-based organization; or
- (b) State issued CON for PCI or open heart surgery.

Section 3. Revocation of Recognition. (1) A recognized hospital that is unable to maintain current designation as a Level I Comprehensive Cardiac Center, Level II Primary Heart Attack Center, or Level III Acute Heart Attack Ready in accordance with KRS 211.341 shall notify the department within twenty (20) business days.

(2) If the department becomes aware of a significant change in the status of the hospital that may potentially affect recognition status, the department may request confirmation of current certification or certificate of need from the hospital.

(3) If the hospital is unable to provide the documentation requested, the department may revoke the hospital's recognition.

(4) If the recognition is revoked, the hospital may reapply for recognition by providing the information required by Section 2 of this administrative regulation.

(5) Following the re-application required by subsection (4) of this section, the department shall reinstate the recognition.

Section 4. Incorporation by Reference. (1) The "Step-by-Step Guide for Recognition in the Kentucky Statewide System for Heart Attack Response and Treatment," 9/2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and is available at <https://chfs.ky.gov/agencies/dph/dpqi/cdpb/Pages/heartdiseasestro ke.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 22, 2022

FILED WITH LRC: October 12, 2022 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 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: Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application process for a hospital to be recognized in the statewide system for heart attack response and treatment.

(b) The necessity of this administrative regulation: KRS 211.341 requires the department to establish and implement a plan for achieving continuous quality improvement in the quality of care provided under a statewide system for heart attack response and treatment. Hospitals may seek recognition by the department based on their level of cardiac care by a nationally recognized guidelines-based organization. KRS 211.343 requires the department to promulgate administrative regulations to implement the requirements of KRS 211.340 to 211.343.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the hospital recognition process, including the recognition revocation process, and incorporates by reference the application form.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure all hospitals who seek recognition by the department are aware of the application requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 118 hospitals in the state.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hospitals who want to be recognized according to their designated level of cardiac care will need to submit an application and required documentation to the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost for a hospital to submit an application for recognition to the department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hospitals will be recognized according to the designated level of cardiac care.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The initial costs of the department to implement this administrative regulation will be approximately \$100,000.

(b) On a continuing basis: The ongoing costs to the department to implement this administrative regulation will be approximately \$100,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in funding is not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not contain fees.

(9) TIERING: Is tiering applied? Tiering is not applied. While hospitals will be recognized based on their level of certification, the application for recognition process will be applied equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Heart Disease and Stroke Prevention Program in the Division of Prevention and Quality Improvement, Department for Public Health.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.343.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? The initial costs of the department to implement this administrative regulation will be approximately \$100,000.

(d) How much will it cost to administer this program for subsequent years? The ongoing costs to the department to implement this administrative regulation will be approximately \$100,000.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? There will be no cost to the regulated entities the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to the regulated entities in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(New Administrative Regulation)

922 KAR 2:165. Employee Child Care Assistance Partnership.

RELATES TO: KRS 199.881-888, 199.8943, 42 U.S.C. 2000d
STATUTORY AUTHORITY: KRS 194A.050(1), 199.884, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.884 requires the cabinet to promulgate administrative regulations to effectuate the provisions of KRS 199.881 to 199.888. KRS 199.8994 requires the cabinet to administer all child care funds in a manner that is in the best interest of the clients to be served. This administrative regulation establishes eligibility requirements and procedures for the implementation of the Employee Child Care Assistance Partnership to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means an employer applying for the Employee Child Care Assistance Partnership (ECCAP) program with the intention of entering into a contract with an employee and a child care provider to support an employee by contributing to his or her child care costs.

(2) "Cabinet" is defined by KRS 199.882(1).

(3) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent or guardian's responsibility for the child's protection, development, and supervision.

(4) "Child care desert" means a census tract with more than fifty (50) children under the age of five (5) that contains either no child care providers or so few that there are more than three (3) times as many children as licensed child care slots.

(5) "Contribution" is defined by KRS 199.882(3).

(6) "Eligible child care costs" is defined by KRS 199.882(4).

(7) "Employee" is defined by KRS 199.882(5).

(8) "Employer" is defined by KRS 199.882(6).

(9) "Family" means a parent, child, or other responsible adult residing in the same home as a child.

(10) "Fund" is defined by KRS 199.882(7).

(11) "Program" means the Employee Child Care Assistance Partnership and is defined by KRS 199.882(8).

(12) "Responsible adult" means an individual who is:

(a) The natural parent, adoptive parent, or stepparent;

(b) The legal guardian of a child; or

(c) The spouse of an individual caring for a child in loco parentis.

(13) "Small business" is defined by KRS 199.882(9).

(14) "State match" is defined by KRS 199.882(10).

(15) "State median household income" is defined by KRS 199.882(11).

Section 2. Application and Contract Requirements and Timeframes. (1) An employer may apply for the Employee Child Care Assistance Partnership (ECCAP).

(2) An application shall have been made on the date a signed and completed form "DCC-600, Employee Child Care Assistance Partnership Application and Contract", is received by the cabinet.

(3) An application shall not be received by the cabinet prior to April 2, 2023, in accordance with KRS 199.883(9)(b).

(4) The cabinet shall review and consider an application received on or after April 2, 2023, pursuant to KRS 199.883(3) through (5).

(5) The cabinet shall not disburse a state match pursuant to this program prior to July 1, 2023, in accordance with KRS 199.883(9)(c).

(6) If necessary, the cabinet shall maintain a waitlist pursuant to KRS 199.883(6).

(7) Pursuant to KRS 199.883(10), if funding is available, beginning in 2024, the cabinet shall accept an application for the next fiscal year on:

(a) April 2 of each year for an employer already participating in the program.

(b) May 17 of each year for an employer not already participating in the program.

(8)(a) In accordance with the procedures established in 920 KAR 1:070, interpreter or speech impaired services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

(b) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

(9) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex or gender, sexual orientation, disability, religion, national origin or ancestry, political beliefs, or reprisal or retaliation for prior civil rights activity.

(10)(a) The employer shall be the primary source of information and shall:

1. Provide verification of:

a. Employment;

b. The employee's income; and

c. Technical eligibility required pursuant to Section 3 of this administrative regulation; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information, failure of an employer to respond within ten (10) business days shall be considered a failure to present adequate proof of eligibility.

(11) The cabinet shall verify that the employer, employee, and child care provider are eligible to participate in the program pursuant to the requirements established in this administrative regulation.

(12) The cabinet shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with KRS 199.884(4), send notice of approval or denial to all parties on the "DCC-605, Employee Child Care Assistance Partnership Notice of Action".

Section 3. Technical Eligibility. (1) An employee shall not be eligible to participate in the program if child care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A person living in the same residence as the child in need of care; or

(d) A provider not:

1.a. Licensed pursuant to 922 KAR 2:090; or

b. Certified pursuant to 922 KAR 2:100; and

2. Rated pursuant to the quality-based graduated early care and education program established in KRS 199.8943 and 922 KAR 2:270.

(2) An employee whose family meets the eligibility requirements for the Child Care Assistance Program pursuant to 922 KAR 2:160 shall be referred to that program by the cabinet.

(3) An employee shall not be eligible to participate in the Employee Child Care Assistance Partnership program if a member of his or her family is eligible for the Child Care Assistance Program pursuant to 922 KAR 2:160.

(4) An employee shall be a member of the family of the child for whom child care is being provided and paid for;

(5) A licensed or certified child care provider shall be eligible to apply for this program as an employer.

(6) The owner of a child care facility shall not be eligible to participate as an employee.

(7) An individual shall not be eligible to apply as more than one (1) party to a contract.

Section 4. Priority Determinations. (1) The cabinet shall review and consider applications in the order in which they are received.

(2) In each fiscal year, twenty-five (25) percent of the total fund shall be set aside to fund applications in which the employer is a small business.

(3) The cabinet shall prioritize approving applications in which:

- (a) The employer is located in a child care desert; or
- (b) The employer shall contribute at least thirty-three (33) percent of the eligible child care costs.

Section 5. Continuing Participation. (1) Each approved contract shall remain in place for the approved fiscal year unless the contract is terminated pursuant to Section 7 of this administrative regulation.

(2) An employer with an approved contract in place shall reapply to continue participation each year pursuant to KRS 199.883(10)(a).

Section 6. Payments Rates. (1) To the extent funds are available, the cabinet shall make payments to the child care provider based on the enrollment of each child identified in the DCC-600.

(2) Except as provided in subsection (3) of this section, the state match to the contribution provided by the employer shall be in accordance with the following tiered table of an employee's household income pursuant to KRS 199.885(7):

Employee Household Income Compared to State Median Household Income	State Match Percentage
Equal to or less than 100%	100%
Above 100% through 120%	90%
Above 120% through 140%	80%
Above 140% through 160%	70%
Above 160% through 180%	60%
Above 180%	50%

(3) The state match provided shall not exceed the balance necessary to pay for child care in full.

(4) The state match provided shall remain unchanged for the approved fiscal year unless the contract is terminated pursuant to Section 7 of this administrative regulation.

(5) A child care provider shall not charge a rate for a program participant that is different from that charged to the general public.

Section 7. Termination of Contract. (1) The contract shall be terminated if:

- (a) Employment is terminated pursuant KRS 199.887(1)(a);
- (b) An employer fails to make the agreed upon contribution towards child care pursuant KRS 199.887(1)(b);
- (c) An employee fails to pay remaining child care costs and the child care provider requests the cabinet terminate the contract;
- (d) A child care provider ceases participating in the program;
- (e) A child care provider no longer participates in the quality rating system established in KRS 199.8943 and 922 KAR 2:270; or
- (f) An employer or employee requests the contract be terminated by the cabinet at any time for any reason pursuant KRS 199.887(2)(c).

(2) If employment is terminated, the employer shall notify the child care provider and cabinet within three (3) business days.

(3) If an employer fails to make the agreed upon contribution, the child care provider shall notify the cabinet within five (5) business days.

(4) If a child care provider ceases participation in the program or no longer participates in the quality rating system, the provider shall notify all parties to the agreement immediately.

(5) If an employer or employee requests a contract be terminated by the cabinet, he or she shall notify all parties to the contract and specify the desired termination date that shall occur no less than two (2) weeks from the date of notice.

(6) If a party to the contract fails to meet the notice requirements of this section, reimbursement shall be made in accordance with KRS 199.887.

(7) All parties to a contract shall be financially obligated up to the date of termination of the contract.

(8) The cabinet shall notify all parties of a termination of

contract on the DCC-605.

Section 8. Appeals. An employer, employee, or child care provider may request an administrative hearing regarding an eligibility or payment determination in accordance with 921 KAR 2:055 or 922 KAR 2:260.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-600, Employee Child Care Assistance Partnership Application and Contract", 09/22; and

(b) "DCC-605, Employee Child Care Assistance Partnership Notice of Action", 09/22.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbcs/Pages/default.aspx>.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 19, 2022

FILED WITH LRC: September 21, 2022 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 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 the Employee Child Care Assistance Partnership (ECCAP) program. This administrative regulation establishes the processes, requirements, and eligibility relating to the program to the extent that funding is available, pursuant to KRS 199.881 to 199.888.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the required actions of a program applicant and participant.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 199.884 requires the cabinet to promulgate administrative regulations to effectuate the provisions of KRS 199.881 to 199.888, the Employee Child Care Assistance Partnership.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the

statutes by establishing the required processes, eligibility, and assistance amounts consistent with KRS 199.881 to 199.888.

(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: As of August 2022, there were 1,782 licensed child care providers and 205 certified child care providers. Of these, 1,765 participated in the All STARS rating system required for participation in this program. Employees and businesses that meet the eligibility requirements of this program may also be affected if approved 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: It is the intent of the General Assembly that this program will support Kentucky families by incentivizing employers to contribute towards the child care costs of their employees. Through this program, an employer shall apply to participate in this program and provide part of an employee's child care cost. The incorporated DCC-600 form contains information to be provided by a representative of the business, the employee, and the child care provider, respectively.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The employer will include the amount they will contribute towards their employee's child care costs in the DCC-600 form, and based upon the household income of the employee, the cabinet will match those funds up to 100%. If the cost of service is not covered by the employer's contribution and the state match, the employee will be responsible for paying the remaining balance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Families will benefit from having their child care costs partially covered by their employer and the cabinet match. This will ease the burden placed on families in affording the high cost of child care. Employers will benefit by creating a stable workforce and removing a barrier that is keeping parents from working. Child care providers will benefit from a partnership that will provide stable enrollment and tuition payments.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation will be implemented with funds appropriated by the General Assembly. The Executive Branch budget bill, House Bill 1, appropriated \$15,000,000 for the operation of this program in fiscal year 2023-2024. KRS 199.885(9) includes that five percent (5%) of the total fund shall be distributed to the cabinet to administer the program in fiscal year 2022-2023 and three percent (3%) of the total fund shall be distributed to the cabinet to administer the program in every fiscal year thereafter. House Bill 1 G.8.(30) included a seven percent (7%) cap on administrative costs for the oversight of this program.

(b) On a continuing basis: KRS 199.885(9) includes that three percent (3%) of the total fund shall be distributed to the cabinet to administer the program in every fiscal year thereafter. Unless this fund receives regular appropriations, the fund amount is expected to dwindle over time resulting in a very small amount being available to administer the program. For example, in future years if the fund has a balance of \$5,000,000, that would only allow \$150,000 to be spent on the administration of the program for that

fiscal year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A general fund appropriation of \$15,000,000.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees associated with this program. If the appropriated funds are exhausted, per KRS 199.883(6), a waitlist will be maintained. The General Assembly may increase funding for this program. In the absence of funding, this program will not continue.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? The amount of state match contributed towards an employee's child care cost is based upon the employee's household income and is tiered.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by administering this program. Government entities are not an allowed employer pursuant to KRS 199.882.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.884, 199.8994.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will be implemented with funds appropriated by the General Assembly. The Executive Branch budget bill, House Bill 1, appropriated \$15,000,000 to this program for fiscal year 2023-2024. KRS 199.885(9) includes that five percent (5%) of the total fund shall be distributed to the cabinet to administer the program in fiscal year 2022-2023 and three percent (3%) of the total fund shall be distributed to the cabinet to administer the program in every fiscal year thereafter. House Bill 1 G.8.(30) included a seven percent (7%) cap on administrative costs for the oversight of this program.

(d) How much will it cost to administer this program for subsequent years? This program will be administered within appropriated funding. In the absence of funding, this program will not continue.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation does not generate cost savings for regulated entities, but will result in financial assistance available to eligible families towards their child care costs.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cost savings experience by families participating in this program depends on the contribution made by employers and the state

match provided through this program.

(c) How much will it cost the regulated entities for the first year? There are no costs associated for regulated entities. Employers will determine how much funds to contribute towards their employee's child care costs.

(d) How much will it cost the regulated entities for subsequent years? There are no required costs associated. If employers choose to continue to participate in the ECCAP, they will determine how much to contribute towards their employee's child care cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact in an overall negative or adverse manner.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 11, 2022

Call to Order and Roll Call

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 11, 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: Stacy Auterson, Emily Caudill, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Cassie Trueblood, Education Professional Standards Board; Taylor Brown, State Board of Elections; Charles Jones, Charla Sands, Jeremy Slinker, Department of Military Affairs; Leanne Diakov, Board of Medical Licensure; Christopher Hunt, Board of Cosmetology; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Eddie Sloan, John Wood, Board of Emergency Medical Services; Craig Potts, Sarah Cronin, Heritage Council; Rich Storm, Brian Clark, Dave Dreves, Department of Fish and Wildlife Resources; Bethany Fields, Clint Quarles, Department of Agriculture; Captain Bradley Arterburn, Brenn Combs, Department of Kentucky State Police; Amy Barker, Kentucky Law Enforcement Council; Abigail Gall, Shaun Orme, Department of Insurance; Doug Hardin, Ambrose Wilson, Department of Charitable Gaming; Kara Daniel, Adam Mather, Office of Inspector General; Julie Brooks, Wes Duke, Department for Public Health; Jonathan Scott, Department of Medicaid Services; Jennifer Wiseman, April Hester, Kentucky Association of Nurse Anesthetists; Jiapeng Huang, Katelyn Williams, Kentucky Society of Anesthesiologists; Joe Barnett, Maria Lewis, Child Support Enforcement; Laura Begin, Andrea Day, Department for Community Based Services.

Administrative Regulations Reviewed by this Subcommittee:

EDUCATION AND LABOR CABINET: Education Professional Standards Board: Alternative Routes to Certification

016 KAR 009:100. Alternative route to certification institute. Cassie Trueblood, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 9 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 5 to clarify that this is a reconsideration process, not a formal appeal; and (3) to amend Section 7 to clarify that an applicant with a terminal degree shall be exempt from the requirement of a passing score on the admission assessments. Without objection, and with agreement of the agency, the amendments were approved.

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. Taylor Brown, general counsel, represented the board.

In response to questions by Co-Chair West, Mr. Brown stated that this package of administrative regulations was in response to House Bill 564 from the 2022 Regular Session of the General Assembly and House Bill 574 from the 2021 Regular Session of the General Assembly, and included other necessary technical corrections.

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.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Forms and Procedures

031 KAR 004:071E. Recanvas procedures.

031 KAR 004:071. Recanvas procedures.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and 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.

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.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and 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.

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. (Filed with Emergency) (Deferred from August)

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

031 KAR 004:170. Exceptions to prohibition on electioneering.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

031 KAR 004:196E. Consolidation of precincts and precinct election officers.

031 KAR 004:196. Consolidation of precincts and precinct election officers.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify when the board may request resubmission of the petition; and (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following

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amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

031 KAR 004:210E. Establishment of risk-limiting audit pilot program.

031 KAR 004:210. Establishment of risk-limiting audit pilot program.

A motion was made and seconded to approve the following amendment: to amend the STATUTORY AUTHORITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

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.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

031 KAR 005:026E. Ballot standards and election security.

031 KAR 005:026. Ballot standards and election security.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to use statutory terminology; (2) to amend Sections 6 through 11 to cross-reference relevant statutes and align with statutory requirements; and (3) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 3 through 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.

GENERAL GOVERNMENT CABINET: Department of Military Affairs: Disaster and Emergency Services

106 KAR 001:141. Emergency management funding. Charles Jones, executive director; Jeremy Slinker, division director; and Charla Sands, attorney, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:171. Local emergency management agency program quarterly report.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:181. Project application.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:191. Project application reimbursement.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:201. Local plan.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 3 to clarify that the plan draft and adopted local plan are due annually; and (3) to add Section 4 to incorporate material. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:211. Local emergency management training.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:221. Local exercise.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:231. Local emergency management agency ordinance requirement.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:241. Local emergency management director appointment process.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 2, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:251. Workers' Compensation Enrollment Form.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:261. Supplementary state fund expense reimbursement eligibility list.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:291. Specialized rescue squad alternative affiliation agreement process.

A motion was made and seconded to approve the following

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amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:341. Rescue aid fund allocation.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:371. Rescue aid fund expenditure documentation.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to delete Section 3 because the form is incorporated in another administrative regulation, which this administrative regulation cross references. Without objection, and with agreement of the agency, the amendments were approved.

Military Assistance Trust Funds

106 KAR 002:021. Military Family Assistance Trust Fund.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 002:031. National Guard Adoption Benefits Program.

A motion was made and seconded to approve the following amendment: to amend Section 2 to correct the form title. Without objection, and with agreement of the agency, the amendment was approved.

BOARDS AND COMMISSIONS: Board of Medical Licensure

201 KAR 009:305. Continued licensure of athletic trainers. Leanne Diakov, general counsel, represented the board.

In response to a question by Co-Chair Hale, Ms. Diakov stated that this administrative regulation did not establish additional requirements. Previously, specific hours were required for HIV/AIDS training; however, the specificity was being deleted. Overall continuing education-hour requirements remained the same.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

Board of Cosmetology

201 KAR 012:030. Licensing and examinations. Christopher Hunt, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the TITLE and Sections 3 through 5, 7, 9, 11 through 16, and 21 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 012:060. Inspections.

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.

201 KAR 012:082. Education requirements and school administration.

A motion was made and seconded to approve the following

amendments: to amend Sections 9, 19, 23, 33, and 34 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 012:190E. Complaint and disciplinary process.

201 KAR 012:190. Complaint and disciplinary process.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 3 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 012:230. Code of ethics.

201 KAR 012:260. Fees.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 012:290. Permits.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 5, 7, 8, and 10 through 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 020:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board.

In response to questions by Co-Chair West, Ms. Jenkins stated that the board was working toward addressing Kentucky's nursing shortage. 400 new nursing program spots were created, establishing opportunities for approximately 15,000 new potential nurses in total.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to comply with Senate Bill 10 from the 2022 Regular Session of the General Assembly, KRS 314.111(5); and (2) to amend the RELATES TO paragraph and Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:310. Faculty for prelicensure registered nurse and practical nurse programs.

201 KAR 020:490. Licensed practical nurse infusion therapy scope of practice.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:620. Licensing requirements for licensed certified professional midwives.

A motion was made and seconded to approve the following amendment: to amend Section 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 020:650. Licensed certified professional midwives permitted medical tests and formulary.

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.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services

202 KAR 007:701. Scope of practice matters. Sam Lowe, deputy director, and John Wood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend supplemental procedures an EMT may perform to: (a) delete the reference to the use of end tidal CO2 monitoring; and (b) add a reference to quantitative and qualitative capnography and capnometry; and (2) to amend Section 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Heritage Council

300 KAR 006:011. Historic rehabilitation tax credit certifications. Sarah Cronin, general counsel, and Craig Potts, director, represented the council.

A motion was made and seconded to approve the following amendment: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

Department of Fish and Wildlife Resources: Fish

301 KAR 001:410. Taking of fish by nontraditional fishing methods. Brian Clark, deputy commissioner; Dave Dreves, fisheries director; and Rich Storm, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 002:142. Spring turkey hunting.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Agricultural Pest Control

302 KAR 027:011. Repeal of 302 KAR 027:010, 302 KAR 027:020, 302 KAR 027:040, 302 KAR 027:050, and 302 KAR 027:060. Bethany Fields, intern, and Clint Quarles, counsel, represented the department.

Mr. Quarles introduced Ms. Fields, who was running for national office with Future Farmers of America.

Ornamental Turf Lawn and Interior Plantscape Pest Control

302 KAR 028:011. Repeal of 302 KAR 028:010, 302 KAR 028:020, 302 KAR 028:030, 302 KAR 028:040, 302 KAR 028:050, and 302 KAR 028:060.

Structural Pest Control

302 KAR 029:011. Repeal of 302 KAR 029:010, 302 KAR 029:020, 302 KAR 029:040, 302 KAR 029:050, 302 KAR 029:060 and 302 KAR 029:070.

JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: 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. Captain Bradley Arterburn, records branch, and Brenn Combs, staff attorney, represented the department.

In response to questions by Co-Chair West, Mr. Combs stated that these administrative regulations only pertained to peace officers and retired peace officers. A qualifying option was added.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8 and the forms incorporated by reference to include additional statutory requirements; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 and the form incorporated by reference to include an additional statutory requirement; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 and 5 and the form incorporated by reference to include additional statutory requirements; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 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.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 and 2; and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Law Enforcement Council

503 KAR 001:140. Peace officer, telecommunicator, and court security officer professional standards. Amy Barker, assistant general counsel, represented the council.

A motion was made and seconded to approve the following amendments: to amend Sections 8 and 15 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Insurance Holding Company Systems

806 KAR 037:010. Insurance holding company systems. Abigail Gall, executive advisor, and Shawn Orme, executive advisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1, 2, 5, 6, 11, and 13 through 18 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 11 to remove references to the fifteen (15) day amendment deadline; and (3) to amend Section 19 to revise incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

Department of Charitable Gaming: Charitable Gaming

820 KAR 001:001. Definitions. Doug Hardin, staff attorney, and Ambrose Wilson, commissioner, represented the department.

In response to questions by Senator Yates, Mr. Hardin stated that the department was establishing a definition for “primary office location.” This definition did not prohibit an organization from having gaming devices at those types of locations, but those locations would have to be licensed charitable gaming facilities, rather than the charity’s primary office location. The department intended that the primary office location be where the charity did its charity business, not, for example, the back room of a bar. A charity would be allowed to collect money from a charitable gaming machine in a bar if the facility were somewhere else.

In response to questions by Co-Chair West, Mr. Hardin stated that the definition for “primary office location” was established to be used in conjunction with 820 KAR 1:032, Section 33, which listed the locations where a licensed charitable organization may install electronic pulltab devices. One of those locations was the primary office location. Pulltab machines may be installed at a bar, gas station, and similar, if that would not constitute the primary office location. That charitable establishment would have to have a charitable gaming facility license. Grey machines were not licensed or regulated by the department; therefore, this administrative regulation would not impact grey machines.

In response to questions by Senator Raque Adams, Mr. Hardin stated that the typical time for a complete, non-deficient application to be processed was sixty (60) days or less. Senator Raque Adams stated that there were entities in Louisville that had been waiting for six (6) months for a charitable gaming license.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 001:032. Pulltabs.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 5, 12, 16, 20, 21, 25, 27, 30, and 32 through 34 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: Office of Inspector General: Telehealth

900 KAR 012:005E. Telehealth terminology and requirements. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the office.

Department for Public Health: Vital Statistics

901 KAR 005:120E. Abortion reporting. Julie Brooks, regulation coordinator, and Wes Duke, general counsel, represented the department.

In response to questions by Co-Chair Hale, Ms. Brooks stated that this administrative regulation implemented House Bill 3 from the 2022 Regular Session of the General Assembly and did not establish additional provisions.

Communicable Diseases

902 KAR 002:020. Reportable disease surveillance.

Programs for the Underserved

902 KAR 021:040. Community health worker certification.

A motion was made and seconded to approve the following

amendments: to amend Sections 1, 3, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services

907 KAR 001:104. Reimbursement for advanced practice registered nurse services. Jonathan Scott, regulatory and legislative advisor, represented the department. April Hester, CRNA, and Dr. Jennifer Wiseman, president, represented the Kentucky Association of Nurse Anesthetists and appeared in support of this administrative regulation. Drs. Jiapeng Huang and Katelyn Williams, represented the Kentucky Society of Anesthesiologists, and appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Scott stated that KRS 205.520(3) provided the statutory authority for this administrative regulation. The department also worked with the federal government in developing these reimbursement rates. This change amended a billing code modifier for anesthesia services in order to align Medicaid rates with Medicare rates. Previously, Certified Registered Nurse Anesthetists (CRNAs) received seventy-five (75) percent of the rate that a physician anesthesiologist would receive for anesthesia services. Removing the billing code modifier allowed CRNAs to be reimbursed at the same rate as physician anesthesiologists. Senator Alvarado stated that this change removed the billing code modifier so that CRNAs and physician anesthesiologists would receive equal reimbursement. Mr. Scott agreed with that statement.

In response to a question by Co-Chair Hale, Mr. Scott stated that removing the billing code modifier would allow CRNAs to be reimbursed at the same rate as physician anesthesiologists.

Representative Marzian stated that this administrative regulation was equalizing reimbursement rates for anesthesiologist services, rather than for providers. Kentucky was experiencing a shortage of physician anesthesiologists. Quality care was essential, and this was a good policy.

Senator Alvarado stated that he was in opposition to this policy. In response to questions by Senator Alvarado, Mr. Scott stated that Kentucky was experiencing a shortage of physician anesthesiologists, and there were healthcare deserts in both rural and urban areas. This administrative regulation did not differentiate provisions separately for rural and urban areas. This policy was not intended to attract or detract new physician anesthetists. Senator Alvarado stated that this would detract people from becoming physician anesthesiologist because the training was more costly and rigorous than to become CRNAs. Physician anesthesiologists were better suited to treat patients with complex cases. This modified reimbursement billing code should be targeted to only underserved areas.

In response to a question by Senator Yates, Mr. Scott stated that a physician anesthesiologist was authorized to supervise up to four (4) CRNAs. Senator Yates stated that Kentucky was experiencing a shortage of anesthesia providers. This subcommittee had made changes to other administrative regulations in order to compensate for shortages of other types of providers. It was important to ensure patient safety.

In response to a question by Senator Raque Adams, Mr. Scott stated that this matter pertained to a change to a reimbursement billing code modifier.

In response to a question by Co-Chair West, Dr. Wiseman stated that this administrative regulation had been in development for over eighteen (18) months. It became necessary for Kentucky to broaden reimbursement billing codes for anesthesia due to complications regarding patients who used services in neighboring states with a different coding system. All anesthesia stakeholders met to discuss the issue and determined that it would be advisable to align Medicaid reimbursement billing codes for anesthesiology to Medicare billing codes for the same services. This was not a pay equity issue. Additionally, this change was intended to prevent fraudulent billing. This reimbursement billing code was for anesthesia services that did not meet the seven (7) required medical direction criteria.

In response to questions by Senator Yates, Dr. Wiseman

stated that, previous to this version of this administrative regulation, the reimbursement billing rate for services performed by a physician anesthesiologist was established at 100 percent of the physician fee schedule. A service provided by a CRNA was established at seventy-five (75) percent of the physician fee schedule. Ms. Hester stated that this administrative regulation allowed a facility to use whatever billing model was appropriate. Dr. Wiseman stated that there was no scenario in which a CRNA could not perform the services. There were certain situations in which it was necessary to work as a team to perform services.

In response to a question by Senator Alvarado, Dr. Wiseman stated that this administrative regulation did not pertain to issues of medical training. The purpose was to align the reimbursement schedule with that of Medicare and private insurers. This would not disincentivize potential physicians from choosing anesthesiology. Senator Alvarado stated that he did not support this administrative regulation. Medicaid represented thirty-six (36) percent of billing; therefore, this would have a major impact and might result in fewer physician anesthesiologists in the long term.

In response to a question by Representative Marzian, Dr. Wiseman stated that, if anesthesia services did not meet the seven (7) required medical direction criteria and a CRNA was involved, the 100 percent reimbursement billing code could not previously be used. This complexity might have incentivized billing code fraud.

In response to a question by Co-Chair West, Dr. Williams stated that a physician anesthesiologist may supervise up to four (4) CRNAs and two (2) trainee physicians. There was a difference between a CRNA and a physician anesthesiologist. Many patients in Kentucky had comorbidities and needed a physician anesthesiologist. Reimbursing these professionals at the same compensation level implied that both were valued at the same rate. Ten (10) years after making changes, there was still a shortage of anesthesia providers, both CRNAs and physician anesthesiologists. Applicants for physician anesthesiologists were down. This policy change could further erode students choosing the field of physician anesthesiology.

In response to questions by Co-Chair West, Dr. Huang stated that the solution for improving healthcare in Kentucky was not increasing pay for CRNAs; the solution was increasing pay for all anesthesia care. There was a severe shortage of CRNAs and physician anesthesiologists in Kentucky. This change would discourage careers in Kentucky for physician anesthesiologists. Physician anesthesiologists provided some services that were not performed by CRNAs, such as diagnosis and treatment in certain situations. There could be serious negative anesthesia outcomes, even for simple surgeries on young, healthy patients. This policy would put Kentucky patients in danger. Dr. Williams stated that the reimbursement rates were federally established. Rates should be increased based on training and expertise.

In response to questions by Senator Yates, Dr. Williams stated that there were additional reimbursements for some diagnosis and treatment work provided by physician anesthesiologists. Some anesthesia-related diagnosis and treatment were not billed separately. Complex situations could arise suddenly; therefore, it sent the wrong message to compensate CRNAs and physician anesthesiologists equally. Dr. Huang stated that, because complications could arise, it was necessary to reimburse physician anesthesiologists at a higher rate than CRNAs.

In response to a question by Senator Raque Adams, Dr. Huang stated that the Kentucky Society of Anesthesiologists was opposed to this administrative regulation. Dr. Williams stated that CRNAs and physician anesthesiologists provided two (2) different levels of service, and it was incorrect to bill at the same level. Senator Raque Adams stated that this was a reimbursement billing code issue, not a scope of practice issue.

Representative Marzian stated that this was a reimbursement billing code issue. Senator Alvarado stated that this markedly expanded reimbursement and disincentivized physician anesthesiologists. This was not the proper policy approach, and Kentucky would regret this decision in the future if this policy continues.

Co-Chair West stated that this matter would be discussed

further once this administrative regulation was referred to the Interim Joint Committee on Health, Welfare, and Family Services.

Kentucky Children's Health Insurance Program

907 KAR 004:020E. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act.

907 KAR 004:030E. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

Medicaid Eligibility

907 KAR 020:020E. Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals.

907 KAR 020:100E. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

Department for Community Based Services: Child Support

921 KAR 001:400. Establishment, review, and modification of child support and medical support orders. Joe Barnett, branch manager, and Maria Lewis, assistant director, represented the department.

Daycare

922 KAR 002:160E. Child Care Assistance Program. Laura Begin, regulation coordinator, and Andrea Day, director, represented the department.

In response to questions by Co-Chair West, Ms. Begin stated that some increases had already gone into effect, and the department was continuously monitoring expenditures. The approximate cost for the increase in eligibility was \$1.7 million for a six (6) month period, which would extrapolate to approximately \$6 million to \$7 million per biennium. Federal funding would remain available until September 30, 2024, and advocates were asking Congress to invest more in child care. If Congress did not opt to invest more in child care and if the Kentucky General Assembly did not choose to continue this funding in the next biennium, the department would consider scaling back eligibility. These American Rescue Plan Act of 2021 (ARPA) funds were specifically earmarked for childcare purposes.

Senator Alvarado stated that Kentucky needed a long-term plan if these federal funds were exhausted. If federal funds were exhausted, cuts to this program might be seen as the responsibility of the General Assembly. The department should consider using some of its Medicaid advertising funds for this program instead. Kentucky was experiencing an all-time high in Medicaid sign-ups. Co-Chair West stated that he agreed with Senator Alvarado's comments.

In response to questions by Co-Chair West, Ms. Day stated that ARPA stabilization funds were based on a three (3) tier system. Tier I was base level, which indicated that health and safety requirements were being met. Tier II indicated that health and safety requirements were being met and employees were compensated at at least ten (10) dollars per hour. Tier III indicated that health and safety requirements were being met and employees were compensated at at least thirteen (13) dollars per hour. There was no distinction between nonprofit and for profit if guidelines were met and if the entities were regulated. The department was required to report how ARPA stabilization funds were used. This was accomplished through a monthly report by the provider. If the report was missed or late, funds could be reinstated upon future compliance. The report was easy to complete, and an email reminder and telephone reminder was sent by the third-party vendor.

A motion was made and seconded to approve the following amendments: (1) to update the DCC-300, "Kentucky Child Care Maximum Payment Rate Chart," to correct a typographical error relating to the value for Boyd County, certified providers for school-age, part day care to be "13" rather than "12"; and (2) to amend Section 20 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 002:160. Child Care Assistance Program.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the definition for “child care”; (2) to amend Sections 1 and 3 to change the defined term from “qualified alien” to “qualified immigrant” for consistency with 921 KAR 2:006 and 2:016; (3) to amend Section 8 to: (a) clarify that a reference is to the Kentucky Works Program; (b) revise references to “Indian” to “Native American”; and (c) include the abbreviation for the Low Income Home Energy Assistance Program; (4) to amend Section 10 for clarity on the rates; (5) to update the DCC-300, “Kentucky Child Care Maximum Payment Rate Chart” to correct a typographical error, relating to the value for Boyd County, certified providers for school-age, part day care to be “13” instead of “12”; and (6) to amend Section 20 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the October 11, 2022, subcommittee agenda:

EDUCATION AND LABOR CABINET: Education Professional Standards Board: Alternative Routes to Certification

016 KAR 009:110. Expedited route to certification. Cassie Trueblood, general counsel, represented the board.

In response to questions by Co-Chair West, Ms. Trueblood stated that this administrative regulation established the Option 9 alternative route to teacher certification. The board had received two (2) applications under Option 9 and had approved those in accordance with the emergency version of this administrative regulation. This program was authorized by House Bill 277 from the 2022 Regular Session of the General Assembly.

In response to questions by Co-Chair Hale, Ms. Trueblood stated that the board’s intention was to allow any district to partner with a college or university. Co-Chair Hale stated that the criteria might be difficult to meet for some regions, especially rural areas.

In response to questions by Representative Bridges, Ms. Trueblood stated that the field requirements in Section 3 of this administrative regulation were mandatory and were also established for teacher candidates in 16 KAR 5:040. The board had the statutory authority pursuant to KRS 161.028(1)(n) to waive regulatory requirements for extenuating circumstances, but had not received a waiver request for these type of field requirements. Representative Bridges stated that the criteria seemed difficult for rural districts to comply with.

In response to a question by Senator Yates, Ms. Trueblood stated that most regulatory requirement waiver requests pertained to incomplete clock hours or student-teaching days. The board had not received concerns regarding these field requirements.

In response to a question by Representative Frazier Gordon, Ms. Trueblood stated that compliance with field hours was tracked by the education preparation provider and the district.

Co-Chair West stated that the ultimate goal of this subcommittee was to consider if an administrative regulation implemented the authorizing statute as intended. If this administrative regulation were to be deferred, ideally the board would meet with stakeholders, consider feedback, and endeavor to reach an agreement. Deferral should not hamper efforts to hire new teachers because the emergency version of this administrative regulation was currently effective.

In response to a question by Representative Marzian, Ms. Trueblood stated that this administrative regulation was intended to help ameliorate Kentucky’s teacher shortage.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 10 to clarify various provisions and comply with the drafting and formatting 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. Trueblood stated that the board’s intent was to establish an administrative

regulation in accordance with the authorizing statute. Ms. Trueblood agreed to defer consideration of this administrative regulation to the November meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

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.

105 KAR 001:415. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer.

Kentucky Infrastructure Authority

200 KAR 017:111E. Guidelines for Kentucky Infrastructure Authority drinking water and wastewater grant program.

200 KAR 017:111. Guidelines for Kentucky Infrastructure Authority drinking water and wastewater grant program.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:380E. Board authorized protocols.

Board of Licensure for Long-Term Care Administrators

201 KAR 006:060. Fees.

Board of Dentistry

201 KAR 008:520. Fees and fines.

Real Estate Commission

201 KAR 011:121. Standards of professional conduct.

TRANSPORTATION CABINET: Department of Highways: Traffic

603 KAR 005:350. Off-highway vehicles, safety, and routes.

EDUCATION AND LABOR CABINET: Department of Education: Office of Instruction

704 KAR 003:305. Minimum requirements for high school graduation.

Department of Workplace Standards: Labor Standards; Wages and Hours

803 KAR 001:090. Workers with disabilities and work activity centers’ employee’s wages.

Department of Workers’ Claims

803 KAR 025:089. Workers’ Compensation medical fee schedule for physicians.

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.

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 005:120. Abortion reporting.

901 KAR 005:130. Certificate of abortion.

901 KAR 005:140. Permit to transport fetal remains.

Office of Inspector General: Health Services and Facilities

902 KAR 020:365. Kentucky abortion-inducing drug certification program and registration of qualified physicians.

Department for Medicaid Services: Medicaid Services

907 KAR 001:008. Ambulatory surgical center services and reimbursement.

907 KAR 001:065. Payments for price-based nursing facility services.

907 KAR 001:082. Coverage provisions and requirements regarding rural health clinic services.

Department for Aging and Independent Living: Aging Services

910 KAR 001:090. Personal care attendant program and assistance services.

Department for Community Based Services: Child Welfare

922 KAR 001:290. Background checks for private child-caring or child-placing staff members.

922 KAR 001:300. Standards for child-caring facilities.

922 KAR 001:350. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.

Other Business: Co-Chair West clarified that the subcommittee's general rule mandating in-person attendance was not intended to be so prohibitive as to require someone who was out of state to travel to Kentucky. Virtual attendance would be allowed for unique situations, if approved by the subcommittee chair.

The subcommittee adjourned at 3:10 p.m. The next meeting of this subcommittee was tentatively scheduled for November 9, 2022, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of October 18, 2022

The Interim Joint Committee on Transportation met on October 18, 2022 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on October 5, 2022, pursuant to KRS 13A.290(6):

603: KAR 005:155

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 October 18, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND
FAMILY SERVICES**
Meeting of October 26, 2022

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of October 26, 2022, having been referred to the Interim Joint Committee on Health, Welfare, and Family Services on October 5, 2022, pursuant to KRS 13A.290(6):

October 5, 2022

201 KAR 008:550 Proposed
202 KAR 007:701 Emergency
902 KAR 008:120 Proposed
907 KAR 001:065 Emergency
907 KAR 023:020 Proposed
921 KAR 001:380 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the October 26, 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

E - 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

E - 12

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

E - 20

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this Register year.

Technical Amendment Index

E - 21

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

E - 22

A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of <i>Register</i> year 49. The " <i>Register</i> number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another <i>Register</i> year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior <i>Registers</i> , please visit our online Administrative Registers of Kentucky .					
SYMBOL KEY:					
* Statement of Consideration not filed by deadline			201 KAR 015:040E	48 Ky.R. 2692	4-7-2022
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			201 KAR 015:050E	48 Ky.R. 2693	4-7-2022
*** Withdrawn before being printed in Register			201 KAR 015:110E	48 Ky.R. 2697	4-7-2022
IJC Interim Joint Committee			201 KAR 015:125E	48 Ky.R. 2700	4-7-2022
(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.			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
EMERGENCY ADMINISTRATIVE REGULATIONS			201 KAR 023:016E	49 Ky.R. 976	10-3-2022
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.			201 KAR 023:175E	49 Ky.R. 977	9-30-2022
			201 KAR 026:225E	49 Ky.R. 981	9-30-2022
			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
			Replaced	3036	9-28-2022
			202 KAR 007:701E	49 Ky.R. 272	7-12-2022
			As Amended	751	
			300 KAR 001:020E	49 Ky.R. 525	7-25-2022
			Withdrawn		8-25-2022
			300 KAR 001:021E	49 Ky.R. 727	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
			503 KAR 003:130E	49 Ky.R. 732	8-18-2022
			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
			701 KAR 008:010E	49 Ky.R. 984	10-13-2022
			701 KAR 008:020E	49 Ky.R. 989	10-13-2022
			701 KAR 008:030E	49 Ky.R. 998	10-13-2022
			701 KAR 008:040E	49 Ky.R. 1001	10-13-2022
			701 KAR 008:050E	49 Ky.R. 1005	10-13-2022
			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
			As Amended	754	
			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
			807 KAR 005:001E	49 Ky.R. 734	9-14-2022
			900 KAR 005:020E	48 Ky.R. 2368	1-27-2022
			Am Comments	2715	4-15-2022
			As Amended	49 Ky.R. 306	
			Replaced	347	8-25-2022
			900 KAR 006:075E	48 Ky.R. 2370	1-27-2022
			Am Comments	2716	4-15-2022
			As Amended	49 Ky.R. 306	
			Replaced	347	8-25-2022
			900 KAR 012:005E	49 Ky.R. 530	8-8-2022
			900 KAR 014:010E	48 Ky.R. 2548	2-21-2022
016 KAR 009:011E	49 Ky.R. 240	7-13-2022			
031 KAR 002:030E	49 Ky.R. 718	9-1-2022			
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			
Replaced	2795	9-27-2022			
101 KAR 002:210E	49 Ky.R. 719	9-15-2022			
101 KAR 006:020E	48 Ky.R. 2687	4-15-2022			
Replaced	2878	9-27-2022			
102 KAR 001:360E	48 Ky.R. 2167	12-28-2021			
103 KAR 001:361E	49 Ky.R. 974	9-22-2022			
103 KAR 043:340E	49 Ky.R. 6	6-2-2022			
105 KAR 001:415E	49 Ky.R. 243	6-28-2022			
Am Comments	748				
105 KAR 001:450E	48 Ky.R. 2921	5-5-2022			
Withdrawn	#	8-15-2022			
105 KAR 001:451E	49 Ky.R. 722	8-19-2022			
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			
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201 KAR 015:030E	48 Ky.R. 2689	4-7-2022			

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Replaced		8-25-2022	Amended	48 Ky.R. 3026	
901 KAR 005:120E	49 Ky.R. 286	6-30-2022	As Amended	49 Ky.R. 1029	
Am Comments	755		031 KAR 004:196	48 Ky.R. 3116	
902 KAR 002:020E	48 Ky.R. 2939	4-26-2022	As Amended	49 Ky.R. 1029	
902 KAR 002:230E	48 Ky.R. 1474	10-1-2021	031 KAR 004:201	48 Ky.R. 3118	
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902 KAR 002:240E	48 Ky.R. 1476	10-1-2021	031 KAR 004:210	48 Ky.R. 3119	
As Amended	2014	12-9-2021	As Amended	49 Ky.R. 1030	
Expired		6-28-2022	031 KAR 005:011	48 Ky.R. 3121	
902 KAR 002:250E	48 Ky.R. 1477	10-1-2021	As Amended	49 Ky.R. 1030	
Expired		6-28-2022	031 KAR 005:026		
907 KAR 001:065E	49 Ky.R. 288	7-1-2022	As Amended	49 Ky.R. 1031	
907 KAR 003:160E	49 Ky.R. 1008	9-30-2022	040 KAR 002:150		
907 KAR 004:020E	49 Ky.R. 532	7-19-2022	Amended	49 Ky.R. 1129	
907 KAR 004:030E	49 Ky.R. 535	7-19-2022	045 KAR 001:050		
907 KAR 020:020E	49 Ky.R. 538	7-19-2022	Amended	49 Ky.R. 1135	
907 KAR 020:100E	49 Ky.R. 542	7-19-2022	101 KAR 002:046		
907 KAR 023:020E	49 Ky.R. 9	6-1-2022	Amended	48 Ky.R. 2790	9-27-2022
908 KAR 003:010E	48 Ky.R. 2550	2-21-2022	101 KAR 002:066		
Replaced	49 Ky.R. 370	8-25-2022	Amended	48 Ky.R. 2792	9-27-2022
921 KAR 004:122E	48 Ky.R. 2005	12-1-2021	101 KAR 002:095		
Replaced	2146	6-2-2022	Amended	48 Ky.R. 2795	9-27-2022
922 KAR 001:360E	48 Ky.R. 2176	12-28-2021	101 KAR 002:102	48 Ky.R. 2797	
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922 KAR 002:160E			101 KAR 002:190		
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922 KAR 002:260E	49 Ky.R. 296	7-1-2022	101 KAR 002:210		
<hr/>			Amended	49 Ky.R. 857	
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011 KAR 016:020			105 KAR 001:450	48 Ky.R. 3125	
Amended	48 Ky.R. 2788		Withdrawn	*	8-15-2022
As Amended	49 Ky.R. 314		105 KAR 001:451	49 Ky.R. 938	
011 KAR 022:010	48 Ky.R. 2875		106 KAR 001:141	49 Ky.R. 161	
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013 KAR 003:050			106 KAR 001:181	49 Ky.R. 165	
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031 KAR 003:031	48 Ky.R. 3108		As Amended	1038	
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106 KAR 001:371	49 Ky.R. 185		Amended	49 Ky.R. 401	
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106 KAR 002:021	49 Ky.R. 186		201 KAR 012:082		
As Amended	1041		Amended	49 Ky.R. 403	
106 KAR 002:031	49 Ky.R. 188		As Amended	1046	
As Amended	1041		201 KAR 012:190		
200 KAR 001:016	49 Ky.R. 190		Amended	49 Ky.R. 408	
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200 KAR 017:111	49 Ky.R. 488		201 KAR 012:230		
200 KAR 041:010	49 Ky.R. 943		Amended	49 Ky.R. 410	
201 KAR 001:100			201 KAR 012:260		
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Amended	48 Ky.R. 2815		Amended	48 Ky.R. 1830	7-5-2022
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201 KAR 002:020			Amended	48 Ky.R. 1831	7-5-2022
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As Amended	49 Ky.R. 320	8-25-2022	Amended	48 Ky.R. 1833	
201 KAR 002:030			As Amended	2561	7-5-2022
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201 KAR 002:050			Amended	48 Ky.R. 1834	
Amended	48 Ky.R. 2819	8-25-2022	As Amended	2561	7-5-2022
201 KAR 002:106			201 KAR 014:065		
Amended	48 Ky.R. 2116	6-2-2022	Amended	48 Ky.R. 1835	7-5-2022
201 KAR 002:225			201 KAR 014:085		
Amended	48 Ky.R. 2820		Amended	48 Ky.R. 1837	
As Amended	49 Ky.R. 321	8-25-2022	As Amended	2562	7-5-2022
201 KAR 002:360			201 KAR 014:105		
Amended	49 Ky.R. 862		Amended	48 Ky.R. 1839	
201 KAR 002:380			As Amended	2564	7-5-2022
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201 KAR 002:430	48 Ky.R. 1063		Amended	48 Ky.R. 1841	
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201 KAR 002:440	48 Ky.R. 2131		Amended	48 Ky.R. 1843	
Am Comments	2758		As Amended	2565	7-5-2022
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201 KAR 002:450	49 Ky.R. 693		Amended	48 Ky.R. 1844	
201 KAR 002:460	49 Ky.R. 946		As Amended	2566	7-5-2022
201 KAR 005:038	49 Ky.R. 1209		201 KAR 014:150		
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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199.899	922 KAR 002:160	210.370-210.485	907 KAR 003:010
202A.011	907 KAR 001:044	211.090	902 KAR 021:040
205	921 KAR 002:040	211.1751	902 KAR 008:160
205.010	921 KAR 002:006	211.180	902 KAR 021:040
205.170	921 KAR 002:060	211.332	900 KAR 012:005
205.175	921 KAR 002:035	211.340	902 KAR 020:470
205.177	921 KAR 002:035	244.341	902 KAR 020:470
205.193	921 KAR 002:050	211.342	902 KAR 020:470
205.200	921 KAR 002:016	211.350-211.380	922 KAR 001:300
	921 KAR 002:017	211.461-211.466	907 KAR 004:030
	921 KAR 002:035	212.230	902 KAR 008:160
	921 KAR 002:050	212.240	902 KAR 008:160
	921 KAR 002:370	212.245	902 KAR 008:160
	921 KAR 002:500	212.890	902 KAR 008:160
	921 KAR 002:520	213.011	901 KAR 005:130
205.2001	921 KAR 002:016	213.046	921 KAR 001:380
205.2003	921 KAR 002:017		921 KAR 001:400
	921 KAR 002:500	213.081	040 KAR 002:150
205.2005	921 KAR 002:006		901 KAR 005:140
205.210	921 KAR 002:016	213.096	901 KAR 005:130
205.211	921 KAR 002:016	213.098	040 KAR 002:150
	921 KAR 002:017	213.101	901 KAR 005:120
	921 KAR 002:500	213.106	901 KAR 005:120
	921 KAR 002:510	213.991	901 KAR 005:140
	921 KAR 002:520	214.034	922 KAR 001:300
205.232	921 KAR 002:050	214.036	922 KAR 002:160
205.240	921 KAR 002:035	216.380	907 KAR 001:065
205.245	921 KAR 002:035	216.718-216.728	906 KAR 001:210
	921 KAR 002:050	216.785-216.793	906 KAR 001:210
205.455	910 KAR 001:090	216B.015	902 KAR 020:365
205.510	900 KAR 012:005	216B.105	902 KAR 020:365
205.510-205.647	907 KAR 004:020	216B.200-216B.210	902 KAR 020:365
205.520	907 KAR 001:008	217.015	907 KAR 023:020
	907 KAR 001:680	217.186	201 KAR 002:360
	907 KAR 020:020	217.211	806 KAR 017:280
	907 KAR 020:050	217B	302 KAR 026:010
	907 KAR 020:100		302 KAR 026:020
205.5375	907 KAR 020:050		302 KAR 026:030
205.5510-205.5520	907 KAR 023:020		302 KAR 026:040
205.557	907 KAR 003:160E		302 KAR 026:050
	907 KAR 003:160		302 KAR 026:060
205.559	900 KAR 012:005		302 KAR 026:070
205.5591	900 KAR 012:005		302 KAR 026:080
205.560	907 KAR 001:008		302 KAR 026:090
	907 KAR 003:010		302 KAR 026:100
	907 KAR 003:160E		302 KAR 027:011
	907 KAR 003:160		302 KAR 028:011
	907 KAR 023:020		302 KAR 029:011
205.561	907 KAR 023:020	217B.120	302 KAR 026:150
205.5631	907 KAR 023:020		302 KAR 027:011
205.5632	907 KAR 023:020		302 KAR 028:011
205.5634	907 KAR 023:020	217B.190	302 KAR 029:011
205.5636	907 KAR 023:020	217B.515	302 KAR 029:011
205.5638	907 KAR 023:020	217B.520	302 KAR 029:011
205.5639	907 KAR 023:020	217B.525	302 KAR 029:011
205.565	907 KAR 003:010	217B.545	302 KAR 029:011
205.592	907 KAR 020:050	217B.550	302 KAR 026:150
205.622	907 KAR 001:044		302 KAR 029:011
	907 KAR 023:020	217B.585	302 KAR 029:011
205.6316	907 KAR 023:020	218A.180	908 KAR 001:374
205.6481-205.6497	907 KAR 004:020	218A.202	908 KAR 001:374
	907 KAR 004:030	222.231	908 KAR 001:374
205.703	921 KAR 002:006	222.462	908 KAR 001:374
205.705	921 KAR 001:380	224.10-100	401 KAR 063:060

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224.20-110	401 KAR 063:060	304.17A-243	900 KAR 010:120
224A.011	200 KAR 017:111	304.17A-245	900 KAR 010:120
224A.020	200 KAR 017:111	304.17A-505	806 KAR 017:290
224A.035	200 KAR 017:111	304.17A-535	806 KAR 017:280
224A.040	200 KAR 017:111		806 KAR 017:290
224A.050-224A.314	200 KAR 017:111	304.17A-600	806 KAR 017:280
238.500	820 KAR 001:001		806 KAR 017:290
238.505	820 KAR 001:032	304.17A-607	806 KAR 017:280
238.545	820 KAR 001:032		806 KAR 017:290
258.005	902 KAR 008:160	304.17A-617	806 KAR 017:290
258.015	922 KAR 001:350	304.17A-619	806 KAR 017:280
258.035	922 KAR 001:350	304.17A-621-304.17A.-631	806 KAR 017:290
258.065	301 KAR 002:081	304.17A-623	806 KAR 017:280
	301 KAR 002:082	304.17B-021	806 KAR 017:351
258.085	301 KAR 002:081	304.17B-023	806 KAR 017:351
	301 KAR 002:082	304.17C-010	806 KAR 017:280
260.020	302 KAR 040:010	304.17C-030	806 KAR 017:280
260.030	302 KAR 040:010	304.18-045	806 KAR 017:280
260.038	302 KAR 040:010	304.24-390	806 KAR 037:010
271B	922 KAR 001:300	304.24-400	806 KAR 037:010
273.161	922 KAR 001:300	304.24-415	806 KAR 037:010
278.010	807 KAR 005:001E	304.32-147	806 KAR 017:280
278.020	807 KAR 005:001E	304.32-330	806 KAR 017:280
278.100	807 KAR 005:001E	304.33	806 KAR 037:010
278.180	807 KAR 005:001E	304.37-010	806 KAR 037:010
278.300	807 KAR 005:001E	304.37-020	806 KAR 037:010
278.410	807 KAR 005:001E	304.37-030	806 KAR 037:010
281.010	907 KAR 004:030	304.37-110	806 KAR 037:010
286.4	808 KAR 001:170	304.37-120	806 KAR 037:010
286.8-010	808 KAR 001:170	304.37-130	806 KAR 037:010
286.8-020	808 KAR 001:170	304.38-225	806 KAR 017:280
286.8-030	808 KAR 001:170	304.39-060	806 KAR 039:030
286.8-032	808 KAR 001:170	304.4-010	806 KAR 009:025
286.8-034	808 KAR 001:170	304.40-320	900 KAR 012:005
286.8-036	808 KAR 001:170	304.5-040	907 KAR 004:020
286.8-060	808 KAR 001:170		907 KAR 004:030
286.8-070	808 KAR 001:170	304.6	806 KAR 037:010
286.8-080	808 KAR 001:170	304.9-030	806 KAR 009:025
286.8-090	808 KAR 001:170	304.9-105	806 KAR 009:025
286.8-140	808 KAR 001:170	304.9-130	806 KAR 009:025
286.8-255	808 KAR 001:170	304.9-150	806 KAR 009:025
286.8-260	808 KAR 001:170	304.9-160	806 KAR 009:025
286.8-290	808 KAR 001:170	304.9-230	806 KAR 009:025
286.9-010	808 KAR 001:170	304.9-260	806 KAR 009:025
289.9-020	808 KAR 001:170	304.9-270	806 KAR 009:025
286.9-030	808 KAR 001:170	304.9-295	806 KAR 009:025
286.9-040	808 KAR 001:170	304.9-320	806 KAR 009:025
286.9-050	808 KAR 001:170	304.9-430	806 KAR 009:025
286.9-060	808 KAR 001:170	304.9-642	806 KAR 009:025
286.9-071	808 KAR 001:170	304.39-110	603 KAR 005:350
286.9-073	808 KAR 001:170	304.47-050	806 KAR 017:280
286.9-080	808 KAR 001:170	311.595	901 KAR 005:120
304	900 KAR 010:120	311.5975	900 KAR 012:005
304.1-050	806 KAR 017:290	311.720	901 KAR 005:120
	806 KAR 037:010		902 KAR 020:365
304.2-100	806 KAR 017:290		922 KAR 001:350
304.2-140	806 KAR 017:280	311.732	901 KAR 005:140
304.2-230	806 KAR 017:290	311.7731	902 KAR 020:365
304.2-310	806 KAR 017:280	311.7733	902 KAR 020:365
	806 KAR 017:290	311.7734	902 KAR 020:365
304.14-110	900 KAR 010:120	311.774	901 KAR 005:120
304.17-412	806 KAR 017:280	311.781	901 KAR 005:120
304.17A-005	806 KAR 017:280	311.782	901 KAR 005:120
	806 KAR 017:290	311.783	901 KAR 005:120
	900 KAR 012:005	311.840	907 KAR 003:010
	907 KAR 004:020		922 KAR 001:350
	907 KAR 004:030	311.901	201 KAR 009:305
304.17A-138	900 KAR 012:005	311.905	201 KAR 009:305
304.17A.163	806 KAR 017:280	311.909	201 KAR 009:305
304.17A.1631	806 KAR 017:280	311A.135	202 KAR 007:701
	806 KAR 017:290	311A.140	202 KAR 007:701
304.17A.167	806 KAR 017:280	311A.160	202 KAR 007:701
304.17A-168	806 KAR 017:280	311A.165	202 KAR 007:701
	806 KAR 017:290	311A.170	202 KAR 007:701

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311A.175	202 KAR 007:701	335.090	201 KAR 023:016E
313.021	201 KAR 008:601		201 KAR 023:016
313.022	201 KAR 008:601	335.100	201 KAR 023:016E
314.011	201 KAR 020:490		201 KAR 023:016
	907 KAR 003:160E	337.275	922 KAR 002:160
	907 KAR 003:160	337.355	201 KAR 002:450
	922 KAR 001:350	337.365	201 KAR 002:450
	922 KAR 002:160	342.0011	803 KAR 025:089
314.041	201 KAR 020:260	342.019	803 KAR 025:089
314.111	201 KAR 020:260	342.020	803 KAR 025:089
	201 KAR 020:310	342.035	803 KAR 025:089
314.131	201 KAR 020:260	363.900-363.908	302 KAR 079:009
314.400-314.414	201 KAR 020:620	365.015	807 KAR 005:001E
314.404-314.416	201 KAR 020:650	367.93103	040 KAR 002:150
314.475	201 KAR 020:310	367.93105	040 KAR 002:150
315.010	201 KAR 002:380	367.93115	040 KAR 002:150
	201 KAR 002:413E	367.93117	040 KAR 002:150
315.020	201 KAR 002:413E	367.97501	040 KAR 002:150
315.025	201 KAR 002:450	367.97504	040 KAR 002:150
315.030	201 KAR 002:450	367.97507	040 KAR 002:150
315.0351	201 KAR 002:450	367.97511	040 KAR 002:150
	201 KAR 002:460	367.97514	040 KAR 002:150
315.050	201 KAR 002:030	367.97517	040 KAR 002:150
	201 KAR 002:413E	367.97521	040 KAR 002:150
315.065	201 KAR 002:413E	367.97524	040 KAR 002:150
315.121	201 KAR 002:450	367.97527	040 KAR 002:150
315.131	201 KAR 002:450	369.101-369.120	907 KAR 001:044
315.135	201 KAR 002:413E	369.102	807 KAR 005:001E
315.191	201 KAR 002:030	387.010	701 KAR 008:010E
	201 KAR 002:380		701 KAR 008:010
	201 KAR 002:460	391.010	040 KAR 002:150
315.205	201 KAR 002:413E	400.203	907 KAR 001:044
315.210	201 KAR 002:030		907 KAR 003:010
317A.020	201 KAR 012:030	403.160	921 KAR 001:400
	201 KAR 012:082	403.210-403.240	921 KAR 001:400
	201 KAR 012:290	403.211	921 KAR 001:380
317A.050	201 KAR 012:030	403.720	921 KAR 002:006
	201 KAR 012:082		921 KAR 002:370
	201 KAR 012:260	405.430	921 KAR 001:380
317A.060	201 KAR 012:290		921 KAR 001:400
	201 KAR 012:030	405.440	921 KAR 001:400
	201 KAR 012:060	405.450	921 KAR 001:400
	201 KAR 012:230	405.467	921 KAR 001:380
317A.062	201 KAR 012:290	405.520	921 KAR 001:380
317A.070	201 KAR 012:260	405.991	921 KAR 001:400
317A.090	201 KAR 012:190	406.021	921 KAR 001:380
317A.140	201 KAR 012:082		921 KAR 001:400
	201 KAR 012:060	406.025	921 KAR 001:380
	201 KAR 012:190		921 KAR 001:400
317A.145	201 KAR 012:030	407.5101-407.5903	921 KAR 001:380
	201 KAR 012:190	414	907 KAR 003:010
319.032	201 KAR 026:175E	415.110	907 KAR 003:010
319.050	201 KAR 026:175E	415.208	907 KAR 001:044
319.053	201 KAR 026:175E	416.164	907 KAR 001:008
319.064	201 KAR 026:175E	416.166	907 KAR 001:008
319.071	201 KAR 026:175E	422.317	907 KAR 001:044
	201 KAR 026:225E	424	922 KAR 001:300
320.295	201 KAR 005:038	424.300	807 KAR 005:001E
320.310	201 KAR 005:045	431.17	907 KAR 001:044
	201 KAR 005:105	431.52	907 KAR 001:044
321.185	301 KAR 002:075	434.840-434.860	907 KAR 001:044
322.340	807 KAR 005:001E	438.2	907 KAR 003:010
322A.030	201 KAR 031:031	439	501 KAR 006:050
	201 KAR 031:040		501 KAR 006:080
322A.040	201 KAR 031:040		501 KAR 006:050
322A.045	201 KAR 031:040	440.50	907 KAR 003:010
322A.050	201 KAR 031:010	440.120	907 KAR 023:020
322A.060	201 KAR 031:010	447.10	907 KAR 003:010
	201 KAR 031:050	447.200-447.205	907 KAR 003:010
322A.070	201 KAR 031:010	447.271	907 KAR 001:008
	201 KAR 031:050	447.325	907 KAR 003:010
326.060	201 KAR 005:038	447.45	907 KAR 023:020
335.080	201 KAR 023:016E	447.500-447.520	907 KAR 023:020
	201 KAR 023:016	454.220	921 KAR 001:400

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527.100	922 KAR 001:350		922 KAR 001:350
527.110	922 KAR 001:350		922 KAR 002:160
600.020	921 KAR 002:500	47 C.F.R.	807 KAR 005:001E
	922 KAR 001:300	50 C.F.R.	301 KAR 002:075
	922 KAR 001:350	7 U.S.C.	302 KAR 026:010
	922 KAR 002:160		302 KAR 026:020
605.080	922 KAR 001:300		302 KAR 026:150
605.090	922 KAR 001:300		302 KAR 027:011
	922 KAR 001:350		302 KAR 028:011
605.120	922 KAR 002:160		302 KAR 029:011
610.110	922 KAR 001:300		921 KAR 002:006
	922 KAR 001:350		922 KAR 002:160
610.170	921 KAR 001:380	8 U.S.C.	921 KAR 002:006
615.010	922 KAR 001:300		921 KAR 002:016
615.030	922 KAR 001:300		922 KAR 001:350
615.040	922 KAR 001:300	15 U.S.C.	908 KAR 001:374
620.020	201 KAR 020:620	20 U.S.C.	701 KAR 008:010E
	907 KAR 003:160E		701 KAR 008:010
	907 KAR 003:160		807 KAR 005:001E
	922 KAR 001:300		921 KAR 002:016
	922 KAR 002:160		922 KAR 001:300
620.030	922 KAR 001:300	21 U.S.C.	921 KAR 002:006
	922 KAR 001:350	22 U.S.C.	921 KAR 002:006
620.050	907 KAR 003:160E	25 U.S.C.	921 KAR 002:016
	907 KAR 003:160		922 KAR 002:160
	922 KAR 001:350	26 U.S.C.	105 KAR 001:411
620.090	922 KAR 001:300		900 KAR 010:120
620.140	922 KAR 001:300		921 KAR 002:016
	922 KAR 001:350	29 U.S.C.	701 KAR 008:010E
620.230	922 KAR 001:300		701 KAR 008:010
620.360	922 KAR 001:350		921 KAR 002:016
620.363	922 KAR 001:350		922 KAR 002:160
625	922 KAR 001:350		900 KAR 012:005
7 C.F.R.	302 KAR 040:010		921 KAR 002:370
	902 KAR 008:160		922 KAR 002:160
	922 KAR 002:160	31 U.S.C.	045 KAR 001:050
16 C.F.R.	302 KAR 079:009	38 U.S.C.	921 KAR 002:006
	603 KAR 005:350		921 KAR 002:016
	922 KAR 001:350		922 KAR 002:160
20 C.F.R.	922 KAR 002:160		105 KAR 001:415
21 C.F.R.	908 KAR 001:374		106 KAR 001:141
26 C.F.R.	900 KAR 010:120		106 KAR 001:171
29 C.F.R.	900 KAR 010:120		106 KAR 001:181
34 C.F.R.	922 KAR 002:160		106 KAR 001:191
40 C.F.R.	302 KAR 026:020		106 KAR 001:201
	302 KAR 026:150		106 KAR 001:221
	302 KAR 027:011		201 KAR 002:413E
	302 KAR 028:011		900 KAR 010:120
	302 KAR 079:009		900 KAR 012:005
	401 KAR 063:060		907 KAR 001:044
42 C.F.R.	900 KAR 010:120		907 KAR 001:065
	907 KAR 001:008		907 KAR 004:020
	907 KAR 001:044		907 KAR 004:030
	907 KAR 001:065		907 KAR 020:020
	907 KAR 003:010		907 KAR 023:020
	907 KAR 004:020		921 KAR 001:380
	907 KAR 004:030		921 KAR 001:400
	907 KAR 020:020		921 KAR 002:006
	907 KAR 023:020		921 KAR 002:500
	908 KAR 001:374		921 KAR 002:016
	922 KAR 001:350		921 KAR 002:510
45 C.F.R.	807 KAR 005:001E		921 KAR 002:520
	900 KAR 010:120		922 KAR 001:300
	907 KAR 001:044		922 KAR 001:350
	921 KAR 001:380		922 KAR 002:160
	921 KAR 001:400	42 U.S.C.	105 KAR 001:411
	921 KAR 002:006		401 KAR 063:060
	921 KAR 002:016		701 KAR 008:010E
	921 KAR 002:017		701 KAR 008:010
	921 KAR 002:035		907 KAR 001:680
	921 KAR 002:370		907 KAR 003:010
	921 KAR 002:500		907 KAR 020:050
	921 KAR 002:510		921 KAR 002:035
	921 KAR 002:520		921 KAR 002:040

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	921 KAR 002:050		
	921 KAR 002:060		
	921 KAR 002:370		
	922 KAR 002:165		
49 U.S.C.	302 KAR 029:011		
50 U.S.C.	106 KAR 001:141		
	106 KAR 001:171		
52 U.S.C.	921 KAR 002:035		

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
016 KAR 004:030	09-08-2022	To be amended, filing deadline 03-08-2024
031 KAR 003:040	09-02-2022	To be amended, filing deadline 03-02-2024
031 KAR 004:120	09-02-2022	Remain in Effect without Amendment
031 KAR 004:180	09-02-2022	To be amended, filing deadline 03-02-2024
201 KAR 002:220	09-09-2022	To be amended, filing deadline 03-09-2024
201 KAR 009:305	09-08-2022	To be amended, filed on 07-13-2022
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
500 KAR 013:020	08-25-2022	To be amended, filing deadline 02-24-2024
501 KAR 006:050	09-14-2022	To be amended, filing deadline 3-14-2024
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
803 KAR 002:402	08-26-2022	To be amended, filing deadline 2-26-2024
803 KAR 002:445	08-26-2022	To be amended, filing deadline 02-26-2024
804 KAR 004:015	09-13-2022	Remain in Effect without Amendment
804 KAR 010:031	09-13-2022	Remain in Effect without Amendment
808 KAR 012:020	09-16-2022	Remain in Effect without Amendment
907 KAR 001:044	06-09-2022	Remain in Effect without Amendment

Regulation Number	Letter Filed Date	Action
907 KAR 001:055	10-18-2022	Remain in Effect without Amendment
907 KAR 001:350	06-09-2022	Remain in Effect without Amendment
907 KAR 009:005	10-18-2022	Remain in Effect without Amendment
907 KAR 009:010	10-18-2022	Remain in Effect without Amendment
907 KAR 009:015	10-18-2022	Remain in Effect without Amendment
907 KAR 009:020	10-18-2022	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
921 KAR 002:006	10-03-2022	To be amended, filed 8-4-2022
921 KAR 002:016	10-03-2022	To be amended, filed 8-4-2022
921 KAR 002:017	10-03-2022	To be amended, filed 9-12-2022
921 KAR 002:046	10-03-2022	Remain in Effect without Amendment
921 KAR 002:050	10-03-2022	To be amended, filed 9-12-2022
921 KAR 002:060	10-03-2022	To be amended, filed 9-12-2022
921 KAR 002:370	10-03-2022	To be amended, filed 9-12-2022
921 KAR 002:500	10-03-2022	To be amended, filed 8-4-2022
921 KAR 002:510	10-03-2022	To be amended, filed 8-4-2022
921 KAR 002:520	10-03-2022	To be amended, filed 8-4-2023

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The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 49th year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
NONE			

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