



# ADMINISTRATIVE REGISTER OF KENTUCKY

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

## MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on December 13, at 1:00 p.m. in room 149 Capitol Annex.  
ARRS Tentative Agenda - [1235](#) [Online agenda updated as needed](#)

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| Title                                    |     | Chapter                                       | Regulation             |
|--|-----|---|------------------------|
| 806                                      | KAR | 50:   | 155                    |
| Cabinet, Department,<br>Board, or Agency |     | Office, Division, Board,<br>or Major Function | Specific<br>Regulation |

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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



**Administrative Regulation Review Subcommittee  
TENTATIVE Meeting Agenda  
Tuesday, December 13, 2022 at 1 p.m.  
Annex Room 149**



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

**EDUCATION AND LABOR CABINET**

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031 KAR 002:030E. E-Poll book product certification. (Filed with Ordinary) ("E" expires 05-09-2023) (Deferred from November)

031 KAR 002:030. E-poll book product certification. (Filed with Emergency)

**PERSONNEL CABINET**

**Office of the Secretary**

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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) (Deferred from November)

101 KAR 002:210. 2023 plan year handbook for the public employee health insurance program. (Filed with Ordinary)

**FINANCE AND ADMINISTRATION CABINET**

**Teachers' Retirement System**

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102 KAR 001:361E. Disability retirement for TRS 4 members with less than five years of service. (Filed with Ordinary) ("E" expires 06-19-2023)

**Kentucky Retirement Systems**

**General Rules**

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

105 KAR 001:451. Quasi-governmental employer reports on independent contractors and leased employees. (Filed with Emergency)

**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)

**Commonwealth Office of Technology**

200 KAR 041:010. The Kentucky state plane coordinate system.

**BOARDS AND COMMISSIONS**

**Board of Pharmacy**

201 KAR 002:030. License transfer and non-resident pharmacist license.

201 KAR 002:360. Naloxone dispensing.

201 KAR 002:380E. Board authorized protocols. ("E" expires 07-04-2023) (Filed with Ordinary) (Deferred from October)

201 KAR 002:460. Out of state pharmacy permits.

**Board of Licensure for Long-Term Care Administrators**

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

**Board of Dentistry**

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

**Board of Social Work**

201 KAR 023:016E. Temporary permission to practice. (Filed with Ordinary) ("E" expires 06-30-2023)

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## VOLUME 49, NUMBER 6 – NOVEMBER 1, 2022

### Department of Fish and Wildlife Resources

#### Game

- 301 KAR 002:075. Wildlife rehabilitation permit.
- 301 KAR 002:081. Transportation and holding of live native wildlife.
- 301 KAR 002:082. Transportation and holding of live exotic wildlife.
- 301 KAR 002:185. Hunter education.
- 301 KAR 002:225. Dove, wood duck, teal, and other migratory game bird hunting.
- 301 KAR 002:251. Hunting and trapping seasons and limits for furbearers.

### JUSTICE AND PUBLIC SAFETY CABINET

#### Kentucky State Corrections Commission

##### Kentucky Community Corrections Grant Program

- 500 KAR 010:001. Definitions for 500 KAR Chapter 010.
- 500 KAR 010:020. Administration and application procedure for community corrections grant program.
- 500 KAR 010:030. Community Corrections Board and grant recipient requirements.
- 500 KAR 010:040. Program review.

#### Department of Corrections

##### Office of the Secretary

- 501 KAR 006:050. Luther Luckett Correctional Complex.
- 501 KAR 006:080. Department of Corrections manuals.
- 501 KAR 006:130. Western Kentucky Correctional Complex.

#### Department of Criminal Justice Training

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- 503 KAR 003:130. Online basic and in-service training. (Filed with Emergency)

#### Office of State School Security Marshall

- 503 KAR 007:010. On-site review of school security risk assessments and written approval of local board of education's noncompliance with KRS 158.4414(2).

### EDUCATION AND LABOR CABINET

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- 701 KAR 008:010E. Charter school student application, lottery, and enrollment. (Filed with Ordinary) ("E" expires 07-10-2023)
- 701 KAR 008:020E. Evaluation of charter school authorizers. (Filed with Ordinary) ("E" expires 07-10-2023)
- 701 KAR 008:030E. Charter school appeal process. (Filed with Ordinary) ("E" expires 07-10-2023)
- 701 KAR 008:040E. Conversion charter school petition, conversation, and operation. (Filed with Ordinary) ("E" expires 07-10-2023)
- 701 KAR 008:050E. Charter school funding. (Filed with Ordinary) ("E" expires 07-10-2023)

##### Office of Learning Programs Development

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

### PUBLIC PROTECTION CABINET

#### Department of Insurance

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### CABINET FOR HEALTH AND FAMILY SERVICES

#### Office of Human Resource Management

##### Administration

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

#### Department for Public Health

##### Vital Statistics

- 901 KAR 005:120. Abortion reporting. (Filed with Emergency) (Amended After Comments)
- 901 KAR 005:130. Certificate of abortion. (Amended After Comments)
- 901 KAR 005:140. Permit to transport fetal remains. (Amended After Comments)

#### Department for Public Health

##### Local Health Departments

- 902 KAR 008:160. Local health department operations requirements.

#### Office of Inspector General

##### Health Services and Facilities

- 902 KAR 020:365. Kentucky abortion-inducing drug certification program and registration of qualified physicians. (Amended After Comments)

#### Office of Inspector General

- 906 KAR 001:210. Health care services agencies. (Not Amended After Comments)

## VOLUME 49, NUMBER 6 – NOVEMBER 1, 2022

### Department for Medicaid Services

#### Medicaid Services

- 907 KAR 001:065. Payments for price-based nursing facility services. (Filed with Emergency) (Amended After Comments)  
907 KAR 001:082. Coverage provisions and requirements regarding rural health clinic services. (Amended After Comments) (Deferred from October)  
907 KAR 001:680. Vaccines for children program.

#### Payments and Services

- 907 KAR 003:010. Reimbursement for physicians' services.  
907 KAR 003:160E. Specialized children's' services clinics. (Filed with Ordinary) ("E" expires 07-10-2023)

### Department for Community Based Services

#### K-TAP, Kentucky Works, Welfare to Work, State Supplementation

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921 KAR 002:016. Standards of need and amount for the Kentucky Transitional Assistance Program (KTAP). (Deferred from November)  
921 KAR 002:017. Kentucky Works Program (KWP) supportive services.  
921 KAR 002:035. Right to apply and reapply.  
921 KAR 002:040. Procedures for determining initial and continuing eligibility.  
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921 KAR 002:060. Delegation of power for oaths and affirmations.  
921 KAR 002:370. Technical requirements for Kentucky Works Program (KWP).  
921 KAR 002:500. Family Assistance Short Term (FAST). (Deferred from November)  
921 KAR 002:510. Relocation Assistance Program (RAP). (Deferred from November)  
921 KAR 002:520. Work Incentive (WIN). (Deferred from November)

#### 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 001:350. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers. (Amended After Comments)

## 3. REGULATIONS REMOVED FROM DECEMBER'S AGENDA

### BOARDS AND COMMISSIONS

#### Board of Pharmacy

- 201 KAR 002:380. Board authorized protocols. (Filed with Emergency) (Comments Received; SOC ext. due 12-15-2022)  
201 KAR 002:450. Unprofessional conduct of a pharmacy permit holder. (Comments Received; SOC ext. due 12-15-2022)

#### Board of Dentistry

- 201 KAR 008:601. Mobile dental facilities and portable dental units. (Comments Received; SOC due 12-15-2022)

#### Real Estate Commission

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

#### Board of Examiners of Psychology

- 201 KAR 026:175E. Continued education. ("E" expires 06-27-2023) (Withdrawn by agency; 11-07-2022)  
201 KAR 026:225E. Renewal and reinstatement. ("E" expires 06-27-2023) (Withdrawn by agency; 11-07-2022)

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Department for Developmental Health, Developmental and Intellectual Disabilities

##### Substance Abuse

- 908 KAR 001:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities. (Comments Received; SOC ext. due 12-15-2022)

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

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

**(See KRS Chapter 13A for specific provisions)**

**Filing and Publication**

Administrative bodies shall file all proposed administrative regulations with the Regulations Compiler. Filed regulations shall include public hearing and comment period information; a regulatory impact analysis and tiering statement; a fiscal note on state and local government; and, if applicable, a federal mandate comparison and any required incorporated material. Administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register. Emergency administrative regulations become effective upon filing.

**Public Hearing and Public Comment Period**

The administrative body shall schedule a public hearing on a proposed administrative regulation. The public hearing is held between the 21st and the last workday of the month in which the public comment period ends. Information about the public comment period shall include: the place, time, and date of the hearing; the manner in which a person may submit written comments or a notification to attend the hearing; a statement specifying that unless a notification to attend the hearing is received no later than 5 workdays prior to the hearing date, the hearing may be cancelled; the deadline for submitting written comments; and the name, position, and contact information of the person to whom notifications and written comments shall be sent.

Public comment periods for ordinary regulations end on the last day of the month following publication; whereas, public comment periods for emergency regulations run through the last day of the month in which the regulation was published. For other ordinary regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

The administrative body shall notify the Compiler whether the hearing was held or cancelled and whether or not written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the close of the public comment period.

**Review Procedure**

After the public hearing and public comment period processes are completed, the administrative regulation will be tentatively scheduled for review at the next meeting of the Administrative Regulation Review Subcommittee. After review by the subcommittee, the regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. If a quorum is present, unless the regulation is deferred or found deficient, an ordinary regulation shall be considered in effect upon adjournment of the appropriate jurisdictional committee or 90 days after being referred by LRC, whichever occurs first.



EMERGENCY ADMINISTRATIVE REGULATIONS

NOTE: Pursuant to KRS 13A.190, emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. This index reflects the KRS Chapter 13A-established expiration dates. Other statutes or legislation may affect a regulation's actual end date.

**STATEMENT OF EMERGENCY**  
**201 KAR 23:051E**

This emergency administrative regulation is being promulgated pursuant to KRS 335.070(3) and KRS (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 license as a licensed social worker, a certified social worker, or a licensed clinical social worker pursuant to KRS 335.080, KRS 335.090 or KRS 335.100. Renewals and reinstatements to licensure maintain the increase in access to services to the citizens of the Commonwealth and provide social workers access to employment opportunities that exist in the Commonwealth. This regulation will be replaced with an ordinary regulation in due course. The ordinary administrative regulation is identical to this emergency administrative regulation.

WHITNEY CASSITY-CAYWOOD, Board Chair  
ANDY BESHEAR, Governor

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

**201 KAR 23:051E. Renewal, termination, reinstatement of license.**

EFFECTIVE: November 15, 2022 at 11:59 a.m.

RELATES TO: KRS 39A.180, 39A.190, 335.010-335.160, 335.990

STATUTORY AUTHORITY: KRS 39A.180, 335.070(1), (3), (6), (7), 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(6) authorizes the board to renew licenses and set requirements for continued education. This administrative regulation establishes the requirements for renewals, reinstatements, and terminations of licenses to engage in the practice of social work.

Section 1. Definition. "Licensee" means a person licensed under KRS 335.010 through 335.160 as:

- (1) A certified social worker;
- (2) A licensed social worker; or
- (3) A licensed clinical social worker.

Section 2. (1)(a) Pursuant to KRS 335.130(1), a licensee shall renew the licensee's license on a three (3) year basis in order to continue to practice social work in Kentucky.

(b) The three (3) year renewal cycle shall be calculated based on the date of the issuance of the initial license.

(2) A Renewal Form shall be submitted with the appropriate fee and continuing education requirements as established in 201 KAR 23:020 and 201 KAR 23:075.

(3) A licensee shall file the licensee's current mailing address with the board and shall immediately notify the board in writing if the address changes.

Section 3. If a licensee reapplies after the date of expiration and

before three (3) month the licensee shall:

- (1) Pay a penalty of 100 dollars;
- (2) Cease and desist the practice of social work immediately;
- (3) Submit a renewal form along with documentation of completed continuing education requirements per 201 KAR 23:075, Section 2; and
- (4) Submit official documentation of employment beginning with the date of expiration of the license.

Section 4. If a licensee has not renewed the licensee's license at the end of three (3) months, the licensee shall submit a new application in accordance with existing requirements for initial applicants under KRS Chapter 335 and 201 KAR Chapter 23.

Section 5. Upon payment of the renewal fee and the late renewal penalty, the date of the license shall be retroactive to the date of expiration.

Section 6. All renewals, reinstatements, and terminations completed prior to these emergency regulations are effective on the date as given by the board and with no change in license status, effective dates, or fees.

Section 7. Incorporation by Reference.

(1) "Application For Renewal", 05/2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes St Suite 310, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at bsw.ky.gov.

WHITNEY CASSITY-CAYWOOD, Board Chair

APPROVED BY AGENCY: November 9, 2022

FILED WITH LRC: November 15, 2022 at 11:59 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 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 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 license. Access to licensure would maintain the current access to services to the citizens of the Commonwealth and provide social workers access to current employment opportunities. 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 335.10 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(7) authorizes the board to establish requirements for a license 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 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 6,000 licensed social workers, licensed clinical social workers, and certified social workers in Kentucky, public schools, hospitals, 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 and testing requirements will be able to apply for a renewal or reinstatement immediately upon the filing of the emergency administrative regulation or will have their prior license validated.

(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 and will waive any fees incurred.

(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 without any disruptions.

(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 licensed social workers to provide social work services will be impacted by this administrative regulation. These entities include public school districts, hospitals, 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 (7) 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 office 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 134.010(13)].

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.

**FINANCE AND ADMINISTRATION CABINET**  
**Kentucky Retirement Systems**  
**(Emergency As Amended at ARRS, November 9, 2022)**

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

EFFECTIVE: November 9, 2022

Prior versions:

New Emergency Administrative Regulation: [49 Ky.R. 243](#)

Emergency Amended After Comments: [49 Ky.R. 748](#)

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 spouse's [premium required to provide the spouse with] hospital and medical insurance plan coverage is provided by [fully or partially paid based on] the [Medicare eligible retired member's benefits pursuant to/as provided in] KRS 61.702(2)[(4)] and 78.5536(2)[(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 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[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](http://kyret.ky.gov).

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](mailto:Legal.NonAdvocacy@kyret.ky.gov).

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(Emergency Amended After Comments)**

**105 KAR 1:451E. Quasi-governmental employer reports on independent contractors and leased employees.**

EFFECTIVE: November 15, 2022

Prior versions: [49 Ky.R. 722](#)

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

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

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

**Section 1. Definitions.**

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

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

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

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

services independent contractor.

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

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

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

(8) "Other employment arrangement" means any written agreement between a quasi-governmental employer and a third party (including, but not limited to, a person, company, or other legal entity) for one (1) or more persons to provide services for the quasi-governmental employer in exchange for the third party receiving monetary compensation, remuneration, or profit. "Other employment arrangement" does not include direct employment, any written agreement for one (1) or more persons to provide services for a quasi-governmental employer as a non-core services independent contractor, or any written agreement for one (1) or more persons to provide services to a quasi-governmental employer if the persons would not be in a regular full-time position as defined in KRS 61.510(21) if the persons were directly employed by the quasi-governmental employer.

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

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

**(11) "Noncompliant" means the quasi-governmental employer falsifies, fails to provide, or withholds all, or a portion of, the required documentation or information within the time periods prescribed by this administrative regulation.**

**Section 2. Required Form for Annual Reporting.**

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

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

(c) If a quasi-governmental employer contracts for any additional persons to provide services as core services independent contractors, core services leased employees, or through any other employment arrangement after the submission of a completed Form 6756, Annual Employer Certification of Non-Contributing Service

Providers, in accordance with paragraph (a) or paragraph (b) of this subsection, but prior to the end of the fiscal year, the quasi-governmental employer shall file at the retirement office a completed supplemental Form 6756 reflecting only those persons not previously reported on the initial Form 6756. The supplemental Form 6756 shall be filed at the retirement office on or before June 30 of the fiscal year in which the Form 6756 is required.

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

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

(c) Persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement who would be in a position reported to another state-administered retirement system if directly employed by the quasi-governmental employer shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

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

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

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

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

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

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

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

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

days.

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

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

(6) During an audit of the quasi-governmental employer conducted in accordance with KRS 61.675, 61.685, and 61.5991(2)(a)2.:

(a) If the KPPA discovers that a quasi-governmental employer has failed to list all persons on a Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as required by this administrative regulation, then the quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

**(b) If the KPPA discovers persons performing services as an independent contractor or leased employee for quasi-governmental employer in multiple part-time positions that, when combined, constitute a "regular full-time position" as defined in KRS 61.510(21), then KPPA shall make a determination of employee or independent contractor status in accordance with Section 3 of this administrative regulation.**

Section 3. Determination of Employee or Independent Contractor.

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

(2) The KPPA shall apply common law factors used by the Internal Revenue Service (IRS), in accordance with IRS Publication 1779, to determine whether a person listed on the initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer pursuant to KRS 61.510(5) or an independent contractor of the quasi-governmental employer.

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

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

2. If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental



employer also shall be required to submit all relevant contracts and other documentation demonstrating the relationship between the quasi-governmental employer and the person for all periods during which the person was providing services to the quasi-governmental employer.

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

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

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

(1) Effective with the fiscal year beginning July 1, 2021, and for each fiscal year thereafter, quasi-governmental employers shall be notified by the KPPA of the determination of which persons should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) no later than **September 30 of the subsequent fiscal year.**~~[the submission of the report to the state budget director's office and the Legislative Research Commission required by KRS 61.5991(3).]~~

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

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

(c) The notification shall include:

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

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

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

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

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

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

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

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

#### Section 6. Original contracts entered prior to January 1, 2021.

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

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

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

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

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

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

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

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

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

Contributing Service Providers, for the prior fiscal year.

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

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

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

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

Section 8. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) Form 6756, "Annual Employer Certification of Non-Contributing Service Providers", September 2021.

(b) Internal Revenue Service Publication 1779, "Independent Contractor or Employee", March 2012.

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

JOHN CHILTON, Chief Executive Officer

APPROVED BY AGENCY: November 15, 2022

FILED WITH LRC: November 15, 2022 at 10:05 a.m.

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

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

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

(a) How the amendment will change this existing administrative

regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for the Kentucky Employees Retirement System: the KPPA. One (1) public pension system: the Kentucky Employees Retirement System. Approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). The number of individuals affected by this administrative regulation is unknown.

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

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

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

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

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

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

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

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

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



regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required to implement this administrative regulation.

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

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

#### FISCAL NOTE

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

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

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this administrative regulation on the expenditures and revenues of state government agencies in the first full year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The effect of this administrative regulation on revenues of state government agencies in the first year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The effect of this administrative regulation on revenues of state government agencies in subsequent years the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

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

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

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As a result of this administrative regulation, all persons determined to be employees in regular full-time positions as defined by KRS 61.510(5) and 61.510(21) shall be treated prospectively from the determination as "employees" in accordance

with KRS Chapter 61, including the required payment of employee and employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Additionally, in the event of such a determination, affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675.

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

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

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

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

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

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

Cost Savings (+/-): Unknown

Expenditures (+/-): Unknown

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

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

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  
(As Amended at ARRS, November 9, 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; ~~f.~~

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

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

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

(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.~~

(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 off ~~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 multiple student ~~diverse~~ populations; ~~f. of students that~~ ~~which~~ ~~include:~~

1. Multiple student populations may include:

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

b. [2.] Students from different socioeconomic groups;

c. [3.] English language learners;

d. [4.] Students with disabilities; and

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

2. A candidate shall engage with all student populations listed in subparagraph 1. of this paragraph that are represented in the student enrollment for the district where the candidate is completing the residency; and

3. An Option 9 provider may offer opportunities to engage with multiple student populations outside of the district where the candidate is completing the residency;

(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.

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(As Amended at ARRS, November 9, 2022)**

**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, 26 U.S.C. 105, 106, 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 16.505 to 16.652, 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;

(a) Prior to April 1, 2021, the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System; and [.]

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

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

(3) [(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.

(4) [(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.

(5) "Employee" is defined by KRS 61.510(5) and 78.510(6).

(6) "Employer" is defined by KRS 16.505(3), 61.510(6), and 78.510(7).

(7) [(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).

(8) [(7)] "KEHP" means the Kentucky Employees' Health Plan as established in 101 KAR 2:210.

(9) "MEM" means:

(a) A Medicare eligible member who is retired and reemployed in a [regular full-time] position:

1. With a participating employer that~~[which]~~ offers or offered the member a hospital and medical insurance benefit; or

2. 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 that~~[which]~~ offers the spouse a hospital and medical insurance benefit, or by a participating employer that~~[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 spouse's ~~premium required to provide the spouse with~~ hospital and medical insurance plan coverage is provided by~~fully or partially paid based on~~ the [Medicare eligible retired member's benefits pursuant to]~~as provided in~~ KRS 61.702(2) [(4)] and 78.5536(2) [(4)].

(10) [(8)] "Member" is defined by KRS 16.505(21), 61.510(8), and 78.510(8).

(11) "Month" is defined by KRS 16.505(34), 61.510(35), and 78.510(32).

(12) "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).

(13) [(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.

(14) [(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).

(15) "Recipient" is defined by KRS 16.505(26), 61.510(27), and 78.510(26).

(16) "Retired member" is defined by KRS 16.505(11), 61.510(24), and 78.510(23).

(17) "Retirement allowance" is defined by KRS 16.505(12), 61.510(16), and 78.510(16).

(18) "Retirement office" is defined by KRS 16.505(28), 61.510(31), and 78.510(29).

(19) "Participating" is defined by KRS 16.505(33), 61.510(34), and 78.510(31).

(20) "Service" is defined by KRS 16.505(6), 61.510(9), and 78.510(9).

(21) [(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 shall be~~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 ~~dependents~~**[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 ~~of this administrative regulation~~.

(a) MEMs ~~shall~~**[are]** not ~~be~~ 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 ~~of this administrative regulation~~ 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, ~~and any~~ eligible spouse ~~and dependents~~**[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 ~~shall~~**[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, ~~shall~~**[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 ~~shall~~**[are]** not ~~be~~ 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 ~~shall~~**[are]** not ~~be~~ 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 of this administrative regulation; and

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

(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 of this administrative regulation; and

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

(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. Incorporation~~[Incorporated]~~ by Reference.

(1) Form 6260, "Medicare Secondary Payer Application for Medical Insurance Reimbursement", November~~[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](http://kyret.ky.gov).

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](mailto:Legal.NonAdvocacy@kyret.ky.gov).

## BOARDS AND COMMISSIONS

### Board of Physical Therapy

(As Amended at ARRS, November 9, 2022)

**201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.**

RELATES TO: KRS 216B.015, 327.040, 327.070

STATUTORY AUTHORITY: KRS 327.040(11), (12), (13), 367.4082

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(12) requires the Board of Physical Therapy to promulgate~~[establish]~~[promulgate] by administrative regulation a code of ethical standards and standards of practice for physical therapists and physical therapist assistants. This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070.

#### Section 1. Code of Ethical Standards.

(1) A physical therapist and a physical therapist assistant shall:

(a) Respect the rights and dignity of all patients;

(b) Practice within the scope of the credential holder's training, expertise, and experience;

(c) Ensure that all personnel involved in the delivery of physical therapy services are identified to the patient by name and title;

(d) Report to the board any reasonably suspected violation of KRS Chapter 327, KRS 367.4082, or 201 KAR Chapter 22 by a credential holder or applicant within thirty (30) days;

(e) Report to the board any civil judgment, settlement, or civil claim involving the credential holder's practice of physical therapy made against the credential holder relating to the credential holder's own physical therapy practice within thirty (30) days;~~and~~

(f) Comply with the provisions of KRS 367.4082; and~~;~~

g) Cooperate with any board investigations.

(2) A~~[A]~~ Physical therapist and a~~[a]~~ physical therapist assistant shall not:

(a) Verbally or physically abuse a client; ~~or~~

(b) Continue physical therapy services beyond the point of reasonable benefit to the patient, unless the patient consents in writing; ~~or~~

(c) Engage in sexual misconduct or sexual harassment with a patient:

1. While that person is a patient or client of the physical therapist or physical therapist assistant; or

2. While that person is a patient of a health ~~[care]~~[care] facility defined by KRS 216B.015 where the physical therapist or physical therapist assistant provides physical therapy services; or~~and~~~~;~~

d) Lie, deceive, or mislead the board, its staff, investigators, or agents.

(3) A physical therapist or physical therapist assistant shall be solely responsible in regard to a relationship with a patient. A patient's initiation of a personal or sexual relationship shall not justify, excuse, or provide a defense for a violation of this section.~~;~~;

(4) Consensual sexual relationships established prior to the initial evaluation will not be subject to portions of this administrative regulation.

Section 2. Standards of Practice for the Physical Therapist. While engaged in the practice of physical therapy, a physical therapist shall:

(1) Perform screenings in order to:

(a) Provide information on a person's health status relating to physical therapy;

(b) Determine the need for physical therapy evaluation and treatment;

(c) Make a recommendation regarding a person's ability to return to work or physical activity; and

(d) Provide physical therapy services;

(2) Evaluate each patient prior to initiation of treatment;

(3) Upon receipt of a patient under an active plan of care from another physical therapist:

(a) Complete an evaluation in compliance with subsection (2) of this section and Section 5(2)(a)-(d) of this administrative regulation;

(b) Ensure the evaluation and plan of care from the other physical therapist is current and appropriate;

(c) Retain the evaluation and plan of care from the other physical therapist in the medical record; and

(d) Comply with reassessment requirements based on the date of the most recent evaluation;

(4) Reassess each patient in accordance with the following:

(a) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;

(b) Reassessing every ninety (90) days, with the physical therapist assistant present, patients in:

1. A facility defined in 902 KAR 20:086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or

2. A school system.

a. A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year; and

b. During this grace period treatment may continue based upon the previous reassessment or evaluation;

(c) Reassessing each patient not otherwise noted every thirty (30) days following the last evaluation or subsequent reassessment; and ~~and~~

(d) Reassessing a patient whose medical condition has changed;

(5) Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;

(6) Be responsible for the physical therapy record of each patient;

(7) Be responsible for the plan of care until the patient is received by another physical therapist pursuant to subsection (3) of this section;

(8) Provide services that meet or exceed the generally accepted practice of the profession;

(9) Explain the plan of care to the patient and to others designated by the patient;

(10) Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supplier if the physical therapist makes recommendations for those; and

(11) Disclose in writing to each patient any financial interest, compensation, or other value to be received by the referral source:

(a) For services provided by the physical therapist;

(b) For equipment rental or purchase; or

(c) For other services the physical therapist may recommend for the patient.

Section 3. Standards of Practice for the Physical Therapist Assistant. While engaged in the practice of physical therapy, the physical therapist assistant shall:

(1) Provide services only under the supervision and direction of a physical therapist;

(2) Refuse to carry out procedures that the assistant believes are not in the best interest of the patient or that the assistant is not competent to provide by training or skill level;

(3) Initiate treatment only after evaluation by the physical therapist;

(4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not to determine the significance of the data as it pertains to the development of the plan of care;

(5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;

(6) Comply with the plan of care established by the physical therapist;

(7) Communicate with the physical therapist any change or lack of change that occurs in the patient's condition that may indicate the need for reassessment; and

(8) Discontinue physical therapy services if reassessments are not done in compliance with Section 2(4) of this administrative regulation, and inform the supervising physical therapist.

Section 4. Standards for Supervision. While supervising the physical therapist assistant and supportive personnel, the physical therapist shall:

(1)(a) At all times, including all work locations in all jurisdictions, be limited to supervising not more than four (4) physical therapist assistants or supportive personnel; and

(b) Abide by the maximum staffing ratio of physical therapists to physical therapist assistants or supportive personnel required in this section except that a maximum of seven (7) work days in a sixty (60) consecutive day period shall not constitute a violation of this standard;

(2) Provide direct supervision when supervising supportive personnel as defined by 201 KAR 22:001, Section 1 ~~(25)~~ (23), effective September 1, 2013;

(3) Not delegate procedures or techniques to the physical therapist assistant that are outside his or her scope of training, education, or expertise;

(4) Not delegate procedures or techniques to supportive personnel that are outside his or her scope of training, education, or expertise; ~~and~~

(a) Scope of training and competency for supportive personnel shall be documented and verified at least annually; and ~~and~~

(b) Documentation of training and competency shall be immediately available for review; and

(5) Be responsible for:

(a) Interpreting any referral;

(b) Conducting the physical therapy evaluation;

(c) Establishing reporting procedures to be followed by the physical therapist assistant and supportive personnel;

(d) Evaluating the competency of the physical therapist assistant and supportive personnel;

(e) Supervising the physical therapist assistant by being available and accessible by telecommunications during the working hours of the physical therapist assistant;

(f) Ensuring that if supportive personnel provide direct patient care that there is direct supervision as defined by 201 KAR 22:001, Section 1(6), effective September 1, 2013 by a physical therapist or physical therapist assistant;

(g) Ensuring that a physical therapy student fulfilling clinical education requirements shall receive on-site supervision by a physical therapist;

(h) Ensuring that a physical therapist assistant student fulfilling clinical education requirements shall receive on-site supervision of which eighty (80) percent may be by a credentialed physical therapist assistant;

(i) Establishing discharge planning for patients who require continued physical therapy; and

(j) Directing and being accountable for services rendered by physical therapist students or physical therapist assistant students, including documentation requirements in Section 5 of this administrative regulation.

Section 5. Standards for Documentation.

(1) The physical therapist shall be responsible for the physical therapy record of a patient. The physical therapy record shall include an evaluation and, as required, ongoing documentation and reassessment.

(2) An evaluation in the physical therapy record consists of a written or typed report signed and dated by the physical therapist who is performing the evaluation or who is supervising the physical therapist student performing the evaluation. The evaluation shall include:

(a) Pertinent medical and social history;

(b) Appropriate subjective and objective information;

(c) An assessment, which may indicate problems, interpretations, and a diagnosis identifying the nature and extent of the patient's impairment; and

(d) The plan of care, which includes the:

1. Treatment; and

2. Measurable goals, including anticipated time frame of achievement.

(3) Ongoing documentation in the physical therapy record shall:

(a) Be completed at least weekly or, if treatment is less than weekly, at each patient visit;

(b) Be written or typed, signed, and dated:

1. By the physical therapist or physical therapist assistant rendering treatment;

2. By the supervising physical therapist or physical therapist assistant if treatment was rendered by a physical therapist student or physical therapist assistant student; or

3. By the physical therapist student or physical therapist assistant student rendering treatment if countersigned and dated by the supervising physical therapist; **and**

(c) Include:

1. The treatment rendered since the last evaluation, ongoing documentation, or reassessment;

2. The patient's response to treatment; and

3. Appropriate subjective and objective information.

(4) The reassessment included in the physical therapy record for the revision or reaffirmation of the existing plan of care, or the establishment of a new plan of care shall be written or typed, signed, and dated by a physical therapist.

(a) The reassessment shall:

(a) be in compliance with Section 2(4) of this administrative regulation; ~~and~~

(b) A reassessment shall include:

1. Subjective, objective, and medical information acquired by the physical therapist, physical therapist student, physical therapist assistant, or physical therapist assistant student;

2. An assessment in compliance with subsection (2)(c) of this section completed by the physical therapist or physical therapist student; and

3. A plan of care in compliance with subsection (2)(d) of this section completed by the physical therapist or physical therapist student.

(5) The correct designation following the signature of the person who has entered a statement into the patient record shall be as follows:

(a) If written by a physical therapist: "PT". Appropriate designations for advanced physical therapy degrees may follow "PT";

(b) If written by a physical therapist assistant: "PTA";

(c) If written by supportive personnel:

1.a. "PT Aide"; ~~or~~

b. "Physical Therapy Aide"; ~~or~~

2. "PT Tech"; and

(d) If written by a student:

1.a. "Physical Therapist Student"; ~~or~~

b. "PT Student"; ~~or~~

2.a. "Physical Therapist Assistant Student"; ~~or~~

b. "PTA Student".

Section 6. Appointment of Fees. Unless prohibited by law, all members of a business entity shall be allowed to pool or apportion fees received in accordance with a business agreement.

CONTACT PERSON: Stephen Curley, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, (502) 429-7140 and Fax (502) 429-7142, Stephen.Curley@ky.gov.

#### TRANSPORTATION CABINET

Office for Civil Rights and Small Business Development  
(As Amended at ARRS, November 9, 2022)

**600 KAR 4:010. Certification of disadvantaged business enterprises.**

RELATES TO: 49 C.F.R. Parts 23, 26, 15 U.S.C. 637 (a), (d), (m), Titles 23 U.S.C., 49 U.S.C., Pub. L. 114-94

STATUTORY AUTHORITY: KRS 174.080, 49 C.F.R. 26.3, 26.21

NECESSITY, FUNCTION, AND CONFORMITY: 49 C.F.R. 26.3 and 26.21 require that recipients of federal-aid highway funds

authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Titles 23 and 49 U.S.C., or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), and Fix America's Surface Transportation Act of 2015 (FAST), Pub. L. 114-94, from the United States Department of Transportation (USDOT) implement a program to ensure nondiscrimination in the award and administration of USDOT-assisted contracts in its highway financial assistance programs. The Kentucky Transportation Cabinet, as a recipient of these funds, is required by 49 C.F.R. 26.21 to have a program that requires the participation of disadvantaged, minority, and women-owned business enterprises in contracts financed in whole or in part with these funds. This administrative regulation establishes the requirements for certification of DBE firms pursuant to federal law.

#### Section 1. Definitions.

(1) "ACDBE" means an Airport **Concession/Concessionaire** Disadvantaged Business Enterprise as defined by 49 C.F.R. 23.3(2).

(2) "Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification or continuation as a disadvantaged business enterprise.

(3) "Approval" means that the applicant has been determined by the DBE Certification Committee to comply with the disadvantaged business enterprise eligibility criteria as established in 49 C.F.R. Part 26, Subpart D and 49 C.F.R. Part 23.

(4) "Cabinet" means the Transportation Cabinet.

(5) "Certification" means the process used by the Transportation Cabinet to determine if an applicant complies with the disadvantaged business enterprise criteria established in 49 C.F.R. Part 26, Subpart D and 49 C.F.R. Part 23.

(6) "Denial" means the cabinet has determined that the applicant does not comply with the disadvantaged business enterprise eligibility criteria established in 49 C.F.R. Part 26, Subpart D and as required by this administrative regulation.

(7) "Department" or "DOT" means the United States Department of Transportation.

(8) "Disadvantaged business enterprise" or "DBE" is defined by 49 C.F.R. 26.5, Subpart D.

(9) "Ineligibility complaint" means an action of a third party alleging verbally or in writing that a firm is ineligible to participate in the DBE program.

(10) "Notice" means a written notice from the Transportation Cabinet or Office for Civil Rights and Small Business Development delivered via certified mail to the business address listed on the application form.

(11) "On-site visit" means an interview conducted by the Office of Civil Rights and Small Business Development with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities or equipment pursuant to 49 C.F.R. 26.83(c).

(12) "Program" is defined by 49 C.F.R. 26.5.

(13) "Removal" or "removed" means that a firm or business enterprise that has been certified by the cabinet as a disadvantaged business enterprise has been determined to be ineligible, and is no longer entitled to the rights and privileges of a firm or business that has been certified by the cabinet as a disadvantaged business enterprise.

(14) "Small Business Administration" or "SBA" is defined by 49 C.F.R. 26.5.

(15) "Small business concern" is defined by 49 C.F.R. 26.5.

(16) "Socially and economically disadvantaged individual" is defined by 49 C.F.R. 26.5.

(17) "Unified Certification Program" or "UCP" is defined by **49[40]** C.F.R. 26.81.

(18) "USDOT" means the United States Department of Transportation.

#### Section 2. Certification Committee.

(1) The cabinet shall establish and maintain a Certification Committee for the purpose of determining the eligibility of an applicant for certification as a DBE as established in 49 C.F.R.



26.83.

(2) The Certification Committee shall include:

(a) The following voting members:

1. Executive Director, Office of Project Development~~[for Civil Rights and Small Business Development]~~, or a proxy;
2. ~~[Executive-]~~Director of the Division of Construction~~[Office of Legal Services]~~, or a proxy; and
3. Director of the Division of Construction Procurement~~[Internal Audits]~~, or a proxy; and

(b) The non-voting member, Manager of the Small Business Development Branch, or a proxy who shall chair the Certification Committee.

(3) The Kentucky administrator of the Federal Highway Administration or FHWA, or a proxy may attend Certification Committee meetings ex officio.

#### Section 3. Advisory Panel.

(1) The cabinet shall establish a DBE Certification Advisory Panel whose members may be called upon as needed by the Certification Committee to provide technical counsel regarding a firm's eligibility.

(2) The DBE Certification Advisory Panel shall be comprised of representatives of the following cabinet divisions:

- (a) Division of Contract Procurement;
- (b) Division of Professional Services;
- (c) Division of Highway Design;
- (d) Division of Audits;
- (e) Division of Highway Safety;~~[-and]~~
- (f) Division of Licensing;~~and[-]~~
- (g) Office of Legal Services.

#### Section 4. Certification Committee Procedures.

(1) Upon voting, a simple majority shall constitute a quorum. If only two (2) voting members are in attendance, they can still vote and be a quorum provided they vote in agreement. If only two (2) certification members vote and if they disagree rendering the vote a tie, the Executive Director of the Office for Civil Rights and Small Business Development or the executive director's proxy, [and a voting member of the DBE Certification Committee shall constitute a quorum and shall each have one (1) vote. In the event of a tie, the deciding vote shall be rendered by the executive director or his or her proxy.] shall cast the tie breaking vote.

(2) A summary record of each DBE Certification Committee meeting shall be retained by the Office for Civil Rights and Small Business Development for at least three (3) years from the date of initial notice of certification.

(3) The completed applications, staff summaries, and recommendations shall be provided to the DBE Certification Committee members no less than five (5) business days in advance of the scheduled meeting in which the application is to be considered.

(4) The Certification Committee shall have the authority to remove a firm's eligibility for DBE certification as established in 49 C.F.R. 26.87.

#### Section 5. Applications for Certification.

(1) The UCP application review process for approval of certification, and continuation of certification as a DBE, or ACDBE shall be conducted pursuant to 49 C.F.R. 26.83, 26.85, and 26.86.

(2) A UCP application shall be approved by the Federal Highway Administration pursuant to Appendix F to 49 C.F.R. Part 26. A link to the electronic version of the application form shall be available on the Kentucky Transportation Cabinet Web site.

(3) The completed UCP application shall be submitted electronically to the cabinet's Office for Civil Rights and Small Business.

(4) An incomplete UCP application missing the required information or documentation shall not be processed until the documentation and information requirements are received by the Office for Civil Rights and Small Business Development.

(5) A UCP application submitted by a firm having a principal business office registered in the Commonwealth of Kentucky shall be reviewed in accordance with 49 C.F.R. Parts 23 and 26, Subpart

D.

(6) A UCP application submitted by a firm whose primary office is registered in a state other than Kentucky shall be submitted for approval of DBE certification in Kentucky to the Office for Civil Rights and Small Business Development for review in accordance with 49 C.F.R. 23 and 49 C.F.R. 26.85.

(7) The Office for Civil Rights and Small Business Development shall conduct an on-site visit at the firm's primary place of business pursuant to 49 C.F.R. 26.83(c).

(8) An applicant for DBE, or ACDBE certification, or a certified DBE or ACDBE may withdraw without penalty from the DBE program prior to the Certification Committee making a decision regarding the application.

#### Section 6. Appeals.

(1) The appeal of a decision by the Certification Committee shall be emailed[submitted] to S33AppealsManagementRecords@dot.gov[the United States Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE, Washington D.C. 20590] within ninety (90) days of the date of the decision of the committee. The appeal shall include the denied certification notice and other pertinent information and provide a full and specific statement as to why the decision is erroneous, what significant fact was not considered, or what provisions of 49 C.F.R. Part 26 were not properly applied. USDOT shall not accept notices of intent or partial or otherwise non-compliant submissions.

(2) An applicant who is denied certification, or whose certification is removed by the committee, shall not reapply for DBE certification for six (6) months from the date of notice of the denial or removal.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager / Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 782-8180, fax (502) 564-5238, email Jon.Johnson@ky.gov.

#### TRANSPORTATION CABINET Department of Highways Division of Planning

(As Amended at ARRS, November 9, 2022)

#### 603 KAR 5:350. Off-highway vehicles, safety, and routes.

RELATES TO: KRS 12.020, 148.0222, 174.020, 189.281, 189.390, 189.515, 189.520, 304.39-110, 16 C.F.R. sec. 1420.3

STATUTORY AUTHORITY: KRS 189.281

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.281 requires the cabinet to promulgate administrative regulations relating to the local government pilot program for off-highway vehicles (OHV). This administrative regulation establishes the criteria for OHV ordinances, petitions, and the rescinding thereof, OHV enforcement requirements, and OHV safety plan requirements and establishes the OHV safety requirements and the safety equipment verification protocol. This administrative regulation shall expire on July 1, 2024, pursuant to KRS 189.281.

#### Section 1. Definitions.

(1) "Agreement" means the written document executed by the designees of the local government and the cabinet, detailing the terms and conditions of OHV use on designated state owned or maintained highways.

~~(2) ["Business district" is defined by KRS 189.390(1)(a).]~~

~~(3) ["Cabinet" means the Transportation Cabinet.]~~

~~(4) ["Local government" is defined by KRS 189.281(1)(a).]~~

~~(5) ["Off-highway vehicle" or "OHV" is defined by KRS 189.281(1)(b).]~~

~~(6) ["Regional authority" is defined by KRS 189.281(1)(c).]~~

~~(7) ["State highway" is defined by KRS 189.390(1)(c).]~~

Section 2. Local Government Pilot Program Ordinance Related to OHVs.

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(1) As established in KRS 189.281(2)(a), a local government may petition the Transportation Cabinet to authorize and regulate the use and operation of OHVs on state highways or sections of state highways located within the local government's jurisdictional boundaries. Before the local government may file a petition, the local government shall first adopt an OHV ordinance. Procedures for adopting an OHV ordinance are stated in KRS 189.281(2)(b)(1)(2)(3). All statutory requirements regarding proposed OHV ordinance shall be met.

(2) Pursuant to KRS 189.281(3), a fully controlled access highway shall not be designated or otherwise adopted in any OHV ordinance.

### Section 3. Local Government Petition for OHV use on State Highways.

(1) A local government seeking to include state highways as part of the local government's proposed OHV ordinance pursuant to KRS 189.281(2)(c) and Section 2 of this administrative regulation shall submit a petition as required by KRS 189.281(2)(c)(1-6).

(2) A completed petition shall be submitted to the Transportation Cabinet District Office where the local government is geographically located.

(3) The District Office, Chief District Engineer shall review the petition along with supporting documentation required by KRS 189.281(2)(c). If the petition is found deficient, the local Chief District Engineer shall return the petition to the local government with a written explanation of the petition defects. The local government shall correct the petition defects and re-submit the petition to the district office. If the petition defects are not corrected, the petition shall not be deemed as being filed. If the petition is completed properly with required documentation, the Chief District Engineer, shall verify and forward the completed petition to the State Highway Engineer for review.

(4) Within ninety (90) days of a properly filed and completed petition from a local government, the Transportation Cabinet, through the State Highway Engineer's Office shall notify the local government as to whether the petition has been approved or if the petition is deficient. The ninety (90) day period shall not begin to run, until the properly completed petition is filed. Deficient petitions shall not be deemed as being filed until corrected and re-submitted.

(5) If petition is approved, the local government, through its designee shall enter into an agreement with representatives of the Transportation Cabinet detailing the terms and conditions of the proposed route use. The agreement effective date is the date fully executed.

(6) Once the agreement is executed the proposed locations shall be forwarded to the Central Office, Division of Planning for placement on the OHV Route Network.

(7) Agreements shall be eligible to be renewed at the request of the local government on an annual basis.

(8) If the petition is denied, the Transportation Cabinet shall provide the Petitioner with the cause of the denial.

(9) In addition to the fully executed agreement, the local government shall establish an enforcement plan to ensure that all OHVs operating on roadways under this section meet all requirements outlined in KRS 189.281, which shall:

- (a) List the local enforcement agencies involved;
- (b) Detail the inspection process;
- (c) Adopt a safety plan for OHV use;
- (d) Be responsible for monthly inspection of state and local OHV signage; and
- (e) Develop a recording and reporting mechanism to report ongoing crashes, collisions, injuries, and other events that relate to safety or failures regarding the operation of OHV vehicles on routes designated.

### Section 4. Agreements or Approved Petitions may be Rescinded.

(1) Approved petitions and agreements may be rescinded for the following reasons:

- (a) The petition contains fraudulent or misleading information that would have resulted in the petition being denied;
- (b) Noncompliance with any requirements set forth in KRS

189.281, this administrative regulation, or the agreement itself; or

(c) Crash history, unforeseen circumstances, public safety, or any other reason deemed necessary to protect the public or the interests of the cabinet.

(2) If the approved petition is rescinded prior to entry of the agreement, or if an executed agreement is in place, the cabinet shall provide written explanation as to why the approved petition or existing agreement is now rescinded.

### Section 5. Minimum Vehicle Requirements.

(1) All petitions submitted to the cabinet for approval shall adopt and enforce the definition of an OHV.

(2) All petitions to the cabinet for approval shall include an enforcement plan to ensure that OHVs operating on proposed roadways and trails conform with the vehicle standards established in KRS 189.281(1)(b), and this administrative regulation, and that required insurance coverage is verified.

Section 6. Route Requirements and Standards. As established in KRS 189.281(3), a fully controlled access highway shall not be designated for OHV use. Any petition to the cabinet naming a fully controlled access highway shall be denied.

### Section 7. Incorporation by Reference.

(1) "TC 59-112, OHV Safety Plan", July 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Department of Highways, 6th Floor, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. EST.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager / Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 782-8180, fax (502) 564-5238, email Jon.Johnson@ky.gov.

## EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (As Amended at ARRS, November 9, 2022)

### 702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, ~~[457.360,]~~158.030, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 157.360, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations~~[regulation]~~ establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 defines~~[and 459.035 define]~~ attendance credit for moral instruction, and KRS 159.035 defines attendance for 4-H activities, military basic training, page programs of the General Assembly, attendance at the Kentucky State Fair, educational enhancement opportunities, and when a parent or custodian is called to active military duty. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. Daily Attendance. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a pupil entry and exit log at each school.

(2) Daily attendance of pupils in middle and high schools shall be determined by taking attendance by class period and maintaining a pupil entry and exit log at each school.

(3) The pupil entry and exit log shall include the date, pupil name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed), and other information required by the local board of education. For elementary pupils who are signed out, the pupil entry and exit log shall also include a signature of:

- (a) A parent;
- (b) A legal guardian; or

(c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A pupil may be counted in attendance for a virtual high school class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7;

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive, at a minimum, the instruction required pursuant to KRS 158.033[KRS 157.270];

(e) The pupil has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive at a minimum, the instruction required pursuant to paragraph (d) of this subsection;

(f) The pupil has an individual education program (IEP) that requires less than full-time instructional services;

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 7 and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305. A pupil may be counted in attendance for performance-based credit for a class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7;

(h) The pupil participates in a school that is authorized by the commissioner to design and deliver an educational program so that all graduation requirements are based on pupil proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 7; or

(i) The pupil is enrolled and participating in a full-time, online, virtual and remote learning program pursuant to the requirements of 704 KAR 3:535. A pupil shall be counted in attendance pursuant to the requirements of 704 KAR 3:535.~~[For school year 2021-2022, the pupil is in quarantine due to documented possible exposure to COVID-19 or isolation due to COVID-19 infection, in accordance with Centers for Disease Control and Kentucky Department for Public Health guidelines, and is receiving at least the minimum amount of daily instruction required pursuant to KRS 158.060].~~

(5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy. However, a pupil being transported to school on a district school bus or district vehicle shall not be considered tardy if the cause of the lateness is due to the bus or vehicle arriving after the beginning of the school day.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 2. Calculation of Attendance. The guidelines in this section shall be used to calculate pupil attendance for state funding purposes.

(1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent thirty-five (35) percent or less of the regularly-scheduled school day for the pupil's grade level.

(3) A half day absence shall be recorded for a pupil who is absent thirty-six (36) percent to eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent more than eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

Section 3. Shortened School Day. A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. The time a pupil is in attendance shall be included in calculating the district's average daily attendance.

Section 4. Dual Enrollment. A local board of education may permit an arrangement in which a pupil pursues part of the pupil's education under the direction and control of one (1) public school and part of the pupil's education under the direction and control of another public or nonpublic school. The time a pupil is served by each public school shall be included when calculating the district's average daily attendance.

Section 5. Private School Placement. If a local school district, under the provisions of KRS 157.360(7), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 6. Age of Pupil. (1) If a local school district enrolls in the entry level program a pupil who will not be five (5) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in subsection (3) of this section.

(2) If a local school district enrolls in the second level of the primary program a pupil who will not be six (6) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in subsection (3) of this section.

(3) (a) The local board of education shall have determined that the pupil is eligible for enrollment in the appropriate level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:

- 1. Anecdotal records;
- 2. A variety of pupil work samples, including evidence of pupil self-reflection; and
- 3. Standardized test results.

(b) The team shall be comprised of three (3) members who have knowledge of the pupil's developmental skills and abilities. Team members shall be chosen from these categories:

- 1. Teachers;
- 2. Parents;
- 3. Psychologists;
- 4. Principals; or
- 5. District specialists.

(c) At least one (1) team member shall represent the district office and have an understanding of early childhood development and knowledge of developmentally-appropriate practices.

(d) If a pupil is recommended by the local board of education for accelerated placement into the entry or second level of the primary program, the district shall forward that recommendation to the

department for approval with:

1. A list of data sources used in making the decision;
  2. A list of all individuals who submitted the data sources;
  3. A list of team members; and
  4. The data needed to create a pupil attendance record.
- (4) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years who wishes to enroll. The days attended after the pupil's 21st birthday shall not be included in the calculation of the district's average daily attendance.

Section 7. Due Dates for Certain Reports. (1) The Growth Factor Report for the first two (2) school months of the school year created pursuant to KRS 157.360(9) shall be submitted to the department through the statewide student information system within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

(2) Pursuant to KRS 157.360(2), the Superintendents Annual Attendance Report (SAAR) for the school year shall be submitted to the department through the statewide student information system by June 30 of each year.

#### Section 8. Nonresident Pupils.

~~(1)(a)] The district of attendance shall provide a list of all enrolled nonresident students to the district of residence not later than November 1 of each school year.[A written agreement executed by local boards of education for enrollment of nonresident pupils as provided by KRS 157.350(4)(a) shall be filed in both the attending district and the resident district no later than October 1 of the school year prior to the school year to which it will apply.~~

~~(b) The written agreement shall include the specific terms to which the districts have agreed.~~

~~c) A list of the names of all nonresident pupils enrolled in the attending district covered by the agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year covered by the agreement.~~

~~(d) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be filed in both the attending district and the resident district no later than June 30 of each year.]~~

~~(2) The district of attendance shall provide to the district of residence a list of the names of all nonresident pupils whose parent is an employee of the district as provided by KRS 157.350(4)(c)[and who are not covered by the nonresident agreement shall be filed in both the attending district and the resident district] not later than November 1 of each[the] school year.~~

~~[(3)(a) If an agreement cannot be reached for the enrollment of nonresident pupils as provided in KRS 157.350(4)(a), a local board of education may file an appeal to the commissioner no later than October 15 of the school year prior to the school year to which an agreement would apply.~~

~~(b) A local board of education shall file its appeal to the commissioner in person or by mail at the following address: Commissioner of Education; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601. A local board of education filing an appeal to the commissioner shall include written arguments and documents in support of its position.~~

~~(c) Upon receipt of an appeal pursuant to KRS 157.350(4)(a), the commissioner shall notify the local boards of education involved in the dispute and provide a deadline not to exceed twenty (20) calendar days for the responding local board of education to file written arguments and documents supporting its position. The commissioner shall issue a written decision settling the dispute within thirty (30) calendar days following the deadline for the responding local board of education to file written arguments and documents supporting its position.~~

~~(4) (a) A local board of education may appeal the commissioner's written decision to the state board of education by filing a notice of appeal and request for hearing no later than fifteen (15) calendar days following issuance of the commissioner's written decision.~~

~~(b) A notice of appeal and request for hearing from a local board~~

~~of education shall include:~~

- ~~1. The name of the school district filing the notice of appeal and request for hearing;~~
- ~~2. The case number, if any, assigned to the commissioner's written decision;~~
- ~~3. The date of the commissioner's written decision;~~
- ~~4. A statement of the issues which form a basis for the notice of appeal and request for hearing; and~~
- ~~5. The signature of the local board of education chair or counsel authorized to act on behalf of the local board of education.~~

~~(c) A local board of education shall file its notice of appeal and request for hearing in person or by mail at the following address: Kentucky Board of Education; General Counsel; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601.~~

~~(5)(a) Upon receipt of a notice of appeal and request for hearing, a notice of hearing pursuant to KRS 13B.050 shall be issued and a hearing officer shall be assigned pursuant to KRS 13B.030.~~

~~(b) Following issuance of a notice of hearing and assignment of a hearing officer as set forth in subsection (5)(a) of this section, the hearing officer shall preside over the matter and schedule an administrative hearing pursuant to KRS Chapter 13B to conclude no later than sixty (60) calendar days following the notice of hearing described in subsection (5)(a) of this section.~~

~~(c) Following conclusion of administrative hearings not conducted before a quorum of the state board, the hearing officer shall issue a recommended order to the state board of education pursuant to KRS 13B.110.~~

~~(d) Parties may file exceptions to the hearing officer's recommended order pursuant to KRS 13B.110.~~

~~(e) Following receipt of the hearing officer's recommended order and any exceptions filed by the parties, or following conclusion of the administrative hearing if conducted before a quorum of the state board of education, the state board of education shall issue a final order pursuant to KRS 13B.120.]~~

Section 9. Weather-related Low Attendance Days. (1) The SAAR may:

- (a) Substitute the prior year's average daily attendance for up to ten (10) designated weather-related low attendance days; and
- (b) Shall constitute certification that the low attendance was due to inclement weather, in accordance with KRS 157.320(17).

(2) Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 10. Nontraditional Instruction Program Health and Safety Closings. (1) The SAAR may:

- (a) Substitute the prior year's average daily attendance for up to ten (10) designated instructional days, in accordance with KRS 158.070(8)(10); and
- (b) Shall constitute certification that the low attendance was due to health and safety reasons.

(2) Documentation that the low attendance was due to health and safety reasons shall be retained at the central office.

(3) Days granted in this section shall be in addition to any days granted under Section 9 of this administrative regulation.

Section 11. Original Source of Attendance Data. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, pupil entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and pupil entry and exit logs shall be retained at least two (2) full school

years after the current school year.

Section 12. Enrollment Codes. The following entry, reentry, and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew as a W07, W24 or W25 for previous school years;

(4) R01 - A pupil received from another grade or grade level in the same school year, or having a change in schedule structure or enrollment service type;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R06 - A pupil reentering the school after dropping out, discharge, or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(7) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;

(8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools and charter schools) in Kentucky during the current school year;

(9) R22 – A pupil previously enrolled in a charter school in Kentucky during the current school year;

(10) W01 - A pupil transferred to another grade in the same school or with grade level changes in the same school mid-year, or with a change in schedule structure or enrollment service type. The reentry code to use with W01 shall be R01;

(11)(10) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(12)(11) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 2(1), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the pupil is too ill to participate in regular school attendance, local homebound instructional services or hospital setting instructional services, or if the pupil has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(13)(12) W08 - A pupil withdrawn due to death;

(14)(13) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(15)(14) W17 - An entry level pupil in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian, or other custodian and the school in accordance with 704 KAR 5:060;

(16)(15) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;

(17)(16) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;

(18)(17) W22 - A pupil who has transferred to another Kentucky public school district and for whom a request for pupil records has been received or enrollment has been substantiated;

(19)(18) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;

(20)(19) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated or failed to attend on the first day of school in a district but thereafter enrolled in the district;

(21)(20) W25 – A pupil who is at least eighteen (18) years of

age and has withdrawn from public school;

(22)(21) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate;

(23)(22) W27 – A pupil who has withdrawn from school and subsequently received a GED;

(24)(23) W28 - A pupil who has reached the maximum age for education services without receiving a diploma or an alternative high school diploma;

(25)(24) W29 - A pupil who has moved out of state or out of the United States;

(26)(25) W30 - A pupil with an IEP enrolled in Grade 14 who has previously received an alternative high school diploma, re-enrolled, and withdrew in the middle of the reporting school year;

(27)(26) W31 - A pupil in the preschool program, withdrawn due to immaturity or mutual agreement by the parent, guardian, or other custodian and the school;

(28) W32 - A pupil transferred to a charter school. The reentry code to use with W32 shall be R22;

(29) C01 - A pupil who completes the school year in the school of the most current enrollment;

(30)(27) G01 - A pupil who graduates in less than four (4) years;

(31)(28) G02 - A pupil who graduates in four (4) years;

(32)(29) G03 - A pupil who graduates in five (5) or more years;

(33)(30) G04 - A pupil who graduates in six (6) or more years; and

(34)(31) NS - A pupil who completed the prior year with a C01 and was expected to enroll in the district but did not enroll by October 1 of the current year whose enrollment elsewhere cannot be substantiated.

Section 13. Suspension. (1) For a pupil who has been suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence.

Section 14. Ethnicity. The ethnicity of each pupil shall be designated as either Hispanic/Latino or not Hispanic/Latino. The designation shall be "Hispanic/Latino" if the person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture of origin regardless of race. The term "Spanish origin" may be used in addition to "Hispanic/Latino".

Section 15. Racial Category Codes. One (1) or more of the following racial codes shall be used to indicate the racial category of pupils:

(1) White - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East;

(2) Black or African American - A person having origins in any of the black racial groups of Africa;

(3) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam;

(4) American Indian or Alaskan Native - A person, having origins in any of the original peoples of North America and South America (including Central America), who maintains cultural identification through tribal affiliation or community attachment; and

(5) Native Hawaiian or other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Section 16. Withdrawal and Transfer Records. (1) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his or her designee pursuant to KRS 159.170, and shall be maintained in the pupil's permanent file.

Section 17. Incorporation by Reference. (1) "Home/Hospital Program Form", October 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300

Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed at <https://education.ky.gov/districts/enroll/Documents/HomeHospitalProgramForm.pdf>.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

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](mailto:regcomments@education.ky.gov).

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(As Amended at ARRS, November 9, 2022)**

**704 KAR 3:535. Full-time enrolled online, virtual[,] and remote learning programs.**

RELATES TO: KRS 156.070, 156.160, 158.4416, 158.6451, 160.345, 160.380[, 160.345, 158.6451, 158.4416]

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board of Education to have management and control of programs operated in the common schools. KRS 156.160 requires[authorizes] the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of online, virtual and remote learning programs in school districts for grades Kindergarten through grade 12.

Section 1. Definitions. (1) "Asynchronous learning" means forms of education, instruction, and learning that do not require interaction with others to occur at the same time through a variety of strategies and tools.["Full-Time Enrolled Online, Virtual and Remote Learning Program" is defined as a public school district program that enrolls K-12 students on a full-time basis, where teachers and students are not in the same physical location and all or most of the instruction is provided online through a combination of synchronous and asynchronous learning strategies. A full-time enrolled online, virtual and remote learning program shall not be classified as an alternative education program as set forth in 704 KAR 19:002.]

(2) "Child with a disability" is defined by 707 KAR 1:002, Section 1(9).

(3) "Full-Time Enrolled Online, Virtual and Remote Learning Program" means [is defined as] a public school district program that enrolls K-12 students on a full-time basis, where teachers and students are not in the same physical location and all or most of the instruction is provided online through a combination of synchronous and asynchronous learning strategies. A full-time enrolled online, virtual and remote learning program shall not be classified as an alternative education program as set forth in 704 KAR 19:002.

(4) "Individual education program" or "IEP" is defined by 707 KAR 1:002, Section 1(34).

(5)(4) "Individual learning plan" or "ILP" is defined by 704 KAR 19.002, Section 1(6).

(6) "Synchronous learning" means forms of education, instruction, and learning that occur at the same time through a variety of strategies and tools.

(7) "Virtual and Performance-Based" means course setup and attendance verification pursuant to [per] 702 KAR 7:125, (1)(4)(g) and[;] 704 KAR 3:305(7). Performance-Based virtual students included in the exception set forth at 702 KAR 7:125(1)(4)(g) shall not be covered by this administrative

regulation.

(8)(5) "Voluntary placement" means the placement of a student in an online, virtual and remote learning program at the request of the parent or emancipated student and with the approval of the school district to:

(a) Ensure the health and safety of the individual student including the social, emotional, and mental health needs of the learner; and

(b) Meet the educational needs of the student.

~~[(6) "Virtual Performance-Based" means course setup and attendance verification per 702 KAR 7:125, (1)(4)(g); 704 KAR 3:305(7). Performance-Based virtual students included in the exception set forth at 702 KAR 7:125(1)(4)(g) shall not be covered by this administrative regulation.]~~

~~[(7) "Synchronous learning" means forms of education, instruction, and learning that occur at the same time through a variety of strategies and tools.~~

~~[(8) "Asynchronous learning" means forms of education, instruction, and learning that do not require interaction with others to occur at the same time through a variety of strategies and tools.]~~

Section 2. Program Requirements. (1) For any full-time enrolled online, virtual and remote program it operates, school districts shall ensure that:

(a) All of the education services and requirements as a physical school to fully support the academic, social, emotional, and mental health needs of the learner are provided[;];

(b) The online, virtual and remote learning program meets the requirements set forth in 704 KAR 3:305;

(c) The online, virtual and remote learning program is aligned to the academic and curricular requirements of the district; and[;]

(d) A student enrolled in a full-time enrolled online, virtual and remote learning program shall be eligible to participate in one (1) or more types of programs to address student learning needs, which shall include credit acceleration, credit accumulation, and an innovative path to graduation.

(2) Each local board of education shall adopt and annually review policies and procedures for the operation of each full-time enrolled online, virtual and remote learning program within the district. Locally-adopted policies and procedures shall include ~~the~~:

(a) The purpose of the program, including the ways the program supports the district's postsecondary readiness goals for students;

(b) Locally defined eligibility criteria, as appropriate;

(c) Procedures for enrolling students in the program, including procedures to ensure voluntary placement;

(d) Procedures for transitioning students out of the program;

(e) Procedures for the development and implementation of student ILPs as required by 704 KAR 3:305; and

(f) Implementation of an application and on-boarding process to ensure students and families understand the expectations for students in a full-time enrolled online, virtual[,] and remote learning program and a determination of candidacy.

(3)(g) Only students with determined appropriate digital access and support beyond the school campus shall be candidates for enrollment in the virtual school, program, or academy. The district shall ensure all students enrolled in a virtual school, program, or academy have appropriate digital access to fully participate in and access the online, virtual[,] and remote learning program.

(4)(3) Full-time enrolled online, virtual and remote learning program curriculum shall be aligned with the Kentucky Academic Standards established in 704 KAR 3:303, 704 KAR Chapter 8, and the student learning goals in the ILP.

(5)(4) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall be subject to the minimum graduation requirements established in 704 KAR 3:305 and any additional local district graduation requirements.

(6)(5) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall participate in the state-required assessment program and be included in the state accountability system as set forth in 703 KAR Chapter 5.

(7)(6) A full-time enrolled online, virtual and remote learning

program shall be subject to all applicable requirements of 703 KAR 5:225 and Kentucky's Consolidated State Plan implementing the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act of 2015, or its successor.

~~(8)~~~~(7)~~ Each student participating in a full-time enrolled online, virtual and remote learning program shall be eligible to access extracurricular activities and programs as allowed by local district and school council policies and by 702 KAR 7:065.

~~(9)~~~~(8)~~ Each student enrolled in a full-time enrolled online, virtual and remote learning program shall have access to instructional and support resources and services available to other students in the district, which shall include instructional materials, tutoring, intervention, and counseling services, in furtherance of each student's educational program as determined through the development of the ILP.

~~(10)~~~~(9)~~ The school district shall document each student enrolled in a full-time enrolled online, virtual~~(s)~~ and remote learning program as non-transported in the state student information system for transportation funding purposes.

Section 3. Placement of Students. (1) Enrollment of any student in a full-time enrolled online, virtual and remote learning program shall be a voluntary placement.

(2) A student entering an online, virtual and remote learning program shall meet the eligibility requirements for the program established by the local board pursuant to Section 2 of this administrative regulation.

(3) Voluntary placement of a child with a disability in a full-time enrolled online, virtual~~(s)~~ and remote learning program shall be made through the Admissions and Release Committee (ARC) pursuant to 707 KAR 1:320. The ARC shall document the student's voluntary placement in the full-time enrolled online, virtual, and remote learning program in the ARC Conference Summary.

(a) The voluntary placement decisions for a student who has been identified under 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended, shall be made through a team process consistent with the applicable requirements outlined in 34 C.F.R. Part 104.

(b) ~~The~~ district shall fully implement any accommodation required by 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended and any IEP for a child with a disability in a full-time enrolled online, virtual and remote learning program. The district shall ensure the Section 504 Team and Admissions and Release Committee (ARC) was involved in determining how all special education, related services, and accommodations shall be implemented for a child with a disability in the full-time enrolled online, virtual and remote learning program.

Section 4. Costs and Expenditures. ~~(1)~~ Each district shall use the statewide financial management system and chart of accounts to track costs and expenditures associated with each full-time enrolled online, virtual and remote learning program operating in the district.

Section 5. Data. (1) Each district shall utilize the student information system to enter data regarding each student in a full-time enrolled online, virtual and remote learning program.

(2) Data collected shall include demographic, programmatic, or other data fields contained in the student information system or required by the department to track and report student enrollment, educational programming, achievement, and transition to and from enrollment in the full-time enrolled online, virtual and remote learning programs.

Section 6. Personnel. (1) Full-time enrolled online, virtual and remote learning program teachers and administrators shall be subject to the teacher certification requirements established in KRS 161.020, and shall comply with the classified and certified assignment restrictions established in KRS 160.380(3).

(2) The district shall ensure a system of high-quality professional learning on the high-quality instructional resources and on evidence-based instructional practices for virtual learning.

Section 7. Class Size. ~~(4)~~ Full-time enrolled online, virtual and remote learning programs shall meet the requirements set forth in KRS 157.360 and 702 KAR 3:190 for maximum class sizes and exemptions thereto.

Section 8. Student Attendance. (1) Students in a full-time enrolled online, virtual~~(s)~~ and remote learning program authorized by this regulation shall be counted in attendance.

(2) Attendance for students in a full-time enrolled online, virtual~~(s)~~ and remote learning program authorized by this regulation shall be collected as follows:

(a) Attendance shall be recorded at the course level for virtual middle and high school students by certified teachers;

(b) Attendance shall be recorded at least two ~~(2)~~ times each school day for virtual elementary school students with checks three ~~(3)~~ hours apart by certified teachers;

(c) Attendance for each course shall be recorded in the student information system attendance tables;

(d) Courses shall not be set up as virtual ~~and~~ performance-based;

(e) Attendance clerks or other assigned district personnel shall reconcile attendance for each course ~~or~~ period to ensure proper codes are entered for absent students. Attendance event absence codes shall be entered at the office level ~~(for example, doctor's~~ ~~Dr.]~~ excuses ~~or~~ parent excuses); and

(f) District online, virtual~~(s)~~ and remote learning program attendance records shall be subject to audit by the Kentucky Department of Education.

(3) Students in a full-time enrolled online, virtual and remote learning program shall be subject to the compulsory attendance laws set forth in KRS 159.150 and 159.180. School districts operating a full-time enrolled online, virtual and remote learning program shall develop and implement policies to address attendance absences, which shall include:

(a) The attendance status of students with an internet outage;

(b) The process to return students to in-person instruction for truancy violations; and

(c) The district process for actions it shall take pursuant to KRS Chapter 159 for truant students.

Section 9. Curriculum, Content, and Instruction. (1) The full-time enrolled online, virtual and remote learning program shall provide instruction aligned to the grade-level expectations established in the Kentucky Academic Standards at 704 KAR 3:303 and 704 KAR Chapter 8, including the selection, vetting, and implementation of high-quality instructional resources aligned to the Kentucky Academic Standards and grade-level appropriate assignments. Districts shall maintain evidence of having systemic formative assessment processes in place to:

(a) Accurately measure student progress on grade-level standards for students enrolled in a full-time enrolled online, virtual and remote learning program; and

(b) Support students enrolled in the full-time enrolled online, virtual and remote learning program needing accelerated learning on grade-level standards within universal instruction as well as those students who need more targeted interventions and supports.

(2) The full-time enrolled online, virtual and remote learning program shall implement synchronous learning strategies and digital platforms for two-way visual and verbal interactions. Additionally, the full-time enrolled online, virtual and remote learning program shall utilize a learning management system (LMS) or other digital platforms that allows teachers to monitor student's progress, interactions and engagement with the teacher, and other students online for the review of student work and completion of assignments through both synchronous and asynchronous interactions.

(3) Students in a full-time enrolled online, virtual and remote learning program shall be assigned a schedule that aligns with the standard day of in-person students. Virtual student schedules shall adhere to the standard day and hour requirements set forth at KRS 158.070.

(4) The full-time enrolled online, virtual and remote learning program shall ensure attainment of the declarations and goals set forth by KRS 158.6451.

(5) Students in the full-time enrolled online, virtual and remote learning program shall receive access to the essential workplace ethics programs, including characteristics critical to success in the workplace, as established in KRS 158.1413.

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.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(As Amended at ARRS, November 9, 2022)**

**705 KAR 4:041. Work-based learning program standards.**

RELATES TO: KRS [456.029(7),]156.802, 158.810(4)

STATUTORY AUTHORITY: KRS [456.029(7),]156.070(1), 156.802(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) provides that the Kentucky Board of Education shall have the management and control of the common schools and 156.029(7) require the Kentucky Board of Education to promulgate administrative regulations managing schools and programs and governing the Department of Education. KRS 156.802(5) requires the board to establish program standards for secondary area career and technical education and technology centers. This administrative regulation establishes program standards for work-based learning in state-operated area technology centers and local school districts.

Section 1. Definitions. (1) "Apprentice" means a worker at least sixteen (16) years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn an apprenticeable occupation.

(2) "Career and technical education" is defined by KRS 158.810(4).

(3) "Career pathway completer" means a student who has completed a minimum of four (4) credits within a Kentucky Department of Education approved career pathway.

(4) [(2)] "Cooperative education" means a form of work-based learning [means an educational program] consisting of in-school instruction combined with program related on-the-job paid work experience in a business or industrial establishment.

(5) "Entrepreneurship" means education that allows individual students to develop a deeper understanding of economic principles and to apply classroom learning by organizing and operating a business enterprise.

(6) "Internship" means a type of work-based learning that provides work experience in a particular occupation, often leading to course credit and compensation.

(7) "Journeyman certificate" means the culmination of an apprenticeship that leads to a nationally recognized and portable credential.

(8) "Mentoring" means a form of work-based learning that involves business and community volunteers developing one-to-one relationships with students to build an understanding of careers and work ethics that goes beyond the formal obligations of a teaching and supervisory role.

(9) "Registered apprenticeship program" means a program validated by the United States Department of Labor and combines paid on-the-job training and classroom instruction under the supervision of an experienced industry professional.

(10) "Registered youth apprenticeship" means a program that combines academic and technical classroom instruction with work experience through a United States Department of Labor registered apprenticeship program.

(11) "Registered youth pre-apprenticeship" means a program or set of strategies designed to prepare students for entry into United States Department of Labor registered apprenticeship programs.

(12) "Related technical instruction" means the classroom

component of a registered apprenticeship, which requires 144 hours for every 2,000 hours of the apprenticeship.

(13) "School-based enterprise" means a simulated or actual business conducted within the school setting.

(14) "Service learning" means a teaching and learning strategy that integrates meaningful community service with instruction and reflection to enrich the learning experience, teach civic responsibility, and strengthen communities.

(15) "Shadowing" means a form of work-based learning that allows students to learn through observation by spending time with an individual from a chosen occupation.

(16) "State apprenticeship agency" means the state agency and staff responsible for registered apprenticeship activity, which acts on behalf of the United States Department of Labor.

(17) [(3)] "Work-based learning" means an effective teaching approach used to engage students in real-life occupational experiences that incorporates structured, work-based learning activities into the curriculum and allows a student to apply knowledge and skills learned in class and connect these learning experiences in the workplace.

Section 2. Cooperative education shall meet the minimum requirements established in this section.

(1) To participate in cooperative education, a student shall be at least sixteen (16) years of age.

(a) A student who is under eighteen (18) shall secure a verification of age issued by the local superintendent of schools.

(b) A student who is between age eighteen (18) to twenty-one (21) shall have a certificate of age on file with the employer.

(2) A student shall have:

(a) Successfully completed the basic career and technical skill prerequisites required by the preparatory program the student is pursuing; and

(b) Gained sufficient knowledge and skills necessary for success in a cooperative education program.

(3) A student shall be:

(a) Enrolled in a course included within the student's chosen career pathway within the same academic year; or

(b) A career pathway completer [completed] by the conclusion of the student's junior year; or

(c) Enrolled in an approved registered youth or pre-apprenticeship program.

[(4)] The cooperative education program shall be an integral part of the school's program of studies and be described in the school catalog.

[(5)] A student may receive academic credit on an hour-for-hour basis equivalent to a Carnegie Unit only for work experience directly related to the student's individual learning plan (ILP) and approvable under the minimum requirements for high school graduation, 704 KAR 3:305.

[(6)] A student shall receive a salary for the work experience phase of instruction in accordance with local, state, and federal minimum wage requirements.

[(7)] The school shall arrange and coordinate with the employer for on-the-job training. A training agreement by the school, student, parent (if the student is a minor), and employer shall be placed on file with the school. This agreement shall be monitored and evaluated by the certified program area teacher.

[(8)] A student shall be excused from school attendance only for the purpose of participating in an approved cooperative education program activity.

[(9)] The program shall include an evaluation component to assess the effectiveness of the program in assisting students in the achievement of their educational and career goals.

[(10)] The student shall spend a minimum of ten (10) clock hours per week in a salaried position which provides work experience directly related to the student's career goals as identified in their [his] individual learning plan (ILP).

[(11)] The school shall provide work site supervision of the student by a certified or classified staff member [teacher-coordinator] on a regular basis throughout the period of time a student is participating in the cooperative education program.



Section 3. Other types of work-based learning opportunities for secondary students may include service learning, mentoring, shadowing, entrepreneurship, school-based enterprises, internships, and registered youth or pre-apprenticeships. [Definitions of each type of work-based learning shall be located in the Kentucky Work-Based Learning Manual. Local districts and state-operated area technology centers shall have the responsibility of coordinating work-based learning programs and shall comply with the Kentucky Work-Based Learning Manual.]

Section 4. Local districts and state-operated area technology centers shall have the responsibility of coordinating work-based learning programs and shall comply with the Kentucky Work-Based Learning Manual.

(1) Work-based learning programs shall be an integral part of the school's program of studies and be described in the school's scheduling resources.

(2) A student participating in an approved work-based learning activity shall be counted in attendance as provided in 702 KAR 7:125, Section 1(4)(a).

Section 5. Incorporation by Reference. (1) "Kentucky Work-Based Learning Manual", August 2022[~~March 2015~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Career and Technical Education, 5th[~~20th~~] Floor,[~~Capital Plaza Tower,~~] 300 Sower Boulevard[~~500 Mero Street~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed at: <http://education.ky.gov/CTE/cter/Pages/WBL.aspx>.

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.

**EDUCATION AND LABOR CABINET  
Department of Workers' Claims  
(As Amended at ARRS, November 9, 2022)**

**803 KAR 25:089. Workers' compensation medical fee schedule for physicians.**

RELATES TO: KRS 342.0011(32), 342.019, 342.020, 342.035  
STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges, and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. KRS 342.035(4) requires the commissioner to promulgate an administrative regulation establishing the workers' compensation medical fee schedule for physicians. [Pursuant to KRS 342.035 requires] a schedule of fees [is] to be reviewed and updated, if appropriate, every two (2) years on July 1. This administrative regulation establishes the medical fee schedule for physicians.

**Section 1. Definitions.**

(1) "Medical fee schedule" means the 2022 Kentucky Workers' Compensation Schedule of Fees for Physicians[~~2020 Kentucky Workers' Compensation Schedule of Fees for Physicians~~].

(2) "Physician" is defined by KRS 342.0011(32).

**Section 2. Services Covered.**

(1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342.

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) Another fee schedule of the Department of Workers' Claims applies;

(b) A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110; or

(c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

**Section 3. Fee Computation.**

(1) The appropriate fee for a procedure or item covered by the medical fee schedule shall be the Maximum Allowable Reimbursement (MAR) listed in the 2022[~~2020~~] Kentucky Workers' Compensation Schedule of Fees for Physicians for those procedures or items for which a specific monetary amount is listed.

(2) Procedures Listed Without Specified Maximum Allowable Reimbursement Monetary Amount. [f:] The appropriate fee for a procedure or item for which a[~~no~~] specific monetary amount is not listed shall be determined and calculated in accordance with numerical paragraph six (6) of the General Instructions of the medical fee schedule unless more specific Ground Rules are applicable to that service or item, in which case the fee shall be calculated in accordance with the applicable Ground Rules.

(3) The resulting fee shall not be more than[~~be~~] the maximum fee allowed for the service provided.

**Section 4.**

(1) A physician or healthcare or medical services provider located outside the boundaries of Kentucky shall be deemed to have agreed to comply with[~~be subject to~~] this administrative regulation if it treats a patient who is covered under KRS Chapter 342.

(2) Pursuant to KRS 342.035, medical fees due to an out-of-state physician or healthcare or medical services provider shall be calculated under the fee schedule in the same manner as for an in-state physician.

**Section 5. Incorporation by Reference.**

(1) "2022 Kentucky Workers' Compensation Schedule of Fees for Physicians", July 1, 2022 Edition[~~2020 Kentucky Workers' Compensation Schedule of Fees for Physicians, July 1, 2020 Edition~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from or through [https://labor.ky.gov/comp/Pages/Medical-Services.aspx#Physician\\_Fee\\_Schedule](https://labor.ky.gov/comp/Pages/Medical-Services.aspx#Physician_Fee_Schedule).

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0682, email dale.hamblin@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Health Data and Analytics  
Division of Health Benefit Exchange  
(As Amended at ARRS, November 9, 2022)**

**900 KAR 10:120. KHBE eligibility and enrollment in a qualified health plan, SHOP, and SHOP Formal Resolution Process.**

RELATES TO: KRS Chapter 304, 304.14-110, 304.17A-243, 304.17A-245, 25 U.S.C. 1603(13), 26 U.S.C. 36B(b)(3)(A), 26 U.S.C. 5000A, 6011, 6012, 9831, 42 U.S.C. 18031, 26 C.F.R. 1.36B-2, 1.36B-3, 54.9801-6, 54.9802-4, 29 C.F.R. 2590.702-2, 42 C.F.R. 435.320, 435.603(e), 45 C.F.R. 146.123, 147.104, 147.128, Parts

155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Benefit Exchange has responsibility to administer the Kentucky Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market, the operation of a Small Business Health Options Program, and the formal review process related to SHOP on the Kentucky Health Benefit Exchange pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

#### Section 1. Eligibility and Enrollment.

(1) An applicant shall be eligible to enroll in a Qualified Health Plan or QHP through the Kentucky Health Benefit Exchange or KHBE if the applicant:

(a)

1. Is a citizen or national of the United States;
2. Is a non-citizen who is lawfully present in the United States and is reasonably expected to become a citizen or national; or
3. Is a non-citizen who is lawfully present for the entire period for which enrollment is sought;

(b) Except for an incarceration pending a disposition of a charge, is not incarcerated; and

(c) Meets a residency requirement in 45 C.F.R. 155.305(a)(3).

(2) An applicant;

(a) May apply for a determination of eligibility at any time during a year; and

(b) [however, the applicant] Shall only enroll during open enrollment or Special Enrollment Periods or SEPs.

(3) An applicant determined eligible for enrollment in a QHP as set forth in subsection (1) of this section shall be eligible to enroll in a QHP during:

(a) An open enrollment period as established in Section 5(2) of this administrative regulation; or

(b) A SEP as established in Sections 5(4) and 6 of this administrative regulation.

(4) An applicant shall attest to whether or not information affecting the applicant's eligibility has changed since the most recent eligibility determination if the applicant:

(a) Was determined eligible to enroll in a QHP, but:

1. Did not select a QHP within the applicable enrollment period as set forth in Section 5 or 6 of this administrative regulation; or
2. Was not eligible for an enrollment period; and

(b) Seeks a new enrollment period prior to the date on which the applicant's eligibility is redetermined as established in Section 8 of this administrative regulation.

(5) An applicant shall submit an application for enrollment in a QHP:

(a) Via the Web site at [www.kynect.ky.gov](http://www.kynect.ky.gov);

(b) By telephone;

(c) By mail; or

(d) In person.

(6)

(a) An applicant who has a Social Security number shall provide the number to the KHBE.

(b) An individual who is not seeking coverage for himself or herself shall not provide a Social Security number, except as established by Section 2(8) of this administrative regulation.

(7) In accordance with 45 C.F.R. 155.310(a)(2), an individual shall not provide information regarding citizenship, status as a national, or immigration status for an individual who is not seeking coverage for himself or herself.

(8)

(a) Except as established by paragraph (b) of this subsection, an applicant who requests an eligibility determination for an

insurance affordability program shall have an eligibility determination for all insurance affordability programs.

(b) An applicant who requests an eligibility determination for a QHP only shall not have an eligibility determination for an insurance affordability program.

(9) An applicant shall not provide information beyond the minimum amount necessary to determine eligibility and enrollment through the KHBE.

#### Section 2. Eligibility Standards for Advanced Payments of the Premium Tax Credit.

(1) A tax filer shall be eligible for Advanced Payments of the Premium Tax Credit or APTC if:

(a) The tax filer is expected to have a household income as prescribed in 45 C.F.R. 155.305(f)(1)(i) for the benefit year for which coverage is requested; and

(b) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year:

1. Meets the requirements for eligibility for enrollment in a QHP through the KHBE as established by Section 1 of this administrative regulation; and

2. Is not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. 1.36B-2(a)(2) and (c).

(2) A tax filer who is a non-citizen and lawfully present and ineligible for Medicaid for reason of immigration status shall be eligible for APTC if:

(a) The tax filer meets the requirement in subsection (1)(b) of this section;

(b) The tax filer is expected to have a household income of less than 100 percent of the Federal Poverty Level or FPL for the benefit year for which coverage is requested; and

(c) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year is:

1. A non-citizen who is lawfully present; and

2. Not eligible for Medicaid for reason of immigration status.

(3) A tax filer shall attest that one (1) or more applicants for whom the tax filer attests that a personal exemption deduction for the benefit year shall be claimed is enrolled in a QHP that is not a catastrophic plan.

(4) A tax filer shall not be eligible for APTC if the U.S. Department of Health and Human Services or HHS notifies the KHBE that APTCs were made on behalf of the tax filer or tax filer's spouse for a year in accordance with 45 C.F.R. 155.305(f)(4).

(5) An APTC amount shall be:

(a) Calculated in accordance with 26 C.F.R. 1.36B-3; and

(b) Allocated between QHPs and stand-alone dental policies in accordance with 45 C.F.R. 155.340(e).

(6) An applicant for APTC may accept less than the full amount of APTC for which the applicant is determined eligible.

(7) An APTC shall be authorized by the KHBE on behalf of a tax filer only if the KHBE obtains necessary attestations from the tax filer that:

(a) The tax filer shall file an income tax return for the benefit year in accordance with 26 U.S.C. 6011 and 6012;

(b) If the tax filer is married, a joint tax return shall be filed for the benefit year;

(c) Another taxpayer shall not be able to claim the tax filer as a dependent for the benefit year; and

(d) The tax filer shall claim a personal exemption deduction on the tax filer's return for the applicants identified as members of the tax filer's family, including the tax filer and the spouse of the tax filer, in accordance with 45 C.F.R. 155.305(f)(4).

(8) An application filer who is not an applicant shall provide the Social Security number of a tax filer only if the applicant attests that the tax filer:

(a) Has a Social Security number; and

(b) Filed a tax return for the year for which tax data would be utilized for verification of household income and family size.

(9) The effective date for APTC shall be:

(a) For an initial eligibility determination, in accordance with the

dates established by Section 5(1), (2), (3), and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates established by 45 C.F.R. 155.330(f) and 155.335(i), as applicable.

(10) An employer may be notified of an employee's eligibility for APTC in accordance with 45 C.F.R. 155.310 (h).

### Section 3. Eligibility Standards for Cost Sharing Reductions.

(1) An applicant shall be eligible for **Cost Sharing Reductions** or CSRs if the applicant:

(a) Meets the eligibility requirements for enrollment in a QHP as set forth in Section 1 of this administrative regulation;

(b) Meets the requirements for APTC as set forth in Section 2 of this administrative regulation;

(c) Is expected to have a household income that does not exceed the amount established by 45 C.F.R. 155.305(g)(1)(i)(C) for the benefit year for which coverage is requested; and

(d) Except for an enrollee who is an Indian, enrolls in a silver level QHP through the KHBE.

(2) An eligibility determination for CSRs shall be based on the categories as described in 45 C.F.R. 155.305(g)(2).

(3) If two (2) or more individuals enrolled in the individual market under a single policy would be eligible for different cost sharing amounts if enrolled in separate policies, the individuals under the single policy shall be found by the KHBE to be collectively eligible only for the last category listed in 45 C.F.R. 155.305(g)(3) for which all the individuals covered by the policy would be eligible.

(4) The effective date for CSRs shall be:

(a) For an initial eligibility determination, in accordance with the dates established by Section 5(1), (2), (3), and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates established by 45 C.F.R. 155.330(f) and 45 C.F.R. 155.335(i), as applicable.

(5) An employer shall be notified of an employee's eligibility for CSRs in accordance with 45 C.F.R. 155.310(h).

**(6) A qualified individual may enroll in a Stand-Alone Dental Plan (SADP) outside the QHP Enrollment without an SEP. If the SADP is selected:**

**(a) On or before the 15th of the month, the effective date will be the first day of the following month.**

**(b) After the 15th of the month, the effective date will be the first day of the second following month.**

### Section 4. Verification Processes.

(1) Verification of eligibility for an applicant seeking enrollment in a QHP shall be performed in accordance with:

(a) 45 C.F.R. 155.315; and

(b) The Kentucky QHP/APTC Eligibility Verification Plan.

(2) Verification of eligibility for an applicant or tax filer who requests an eligibility determination for an insurance affordability program shall be in accordance with:

(a) 45 C.F.R. 155.320; and

(b) The Kentucky QHP/APTC Eligibility Verification Plan.

### Section 5. QHP Enrollment Periods and Effective Dates of Coverage.

(1) A qualified individual shall enroll in a QHP or an enrollee may change from one (1) QHP to another QHP during an open enrollment period.

(2) The timeframe for an open enrollment period shall be established by the secretary of the Cabinet for Health and Family Services.

(3) A qualified individual or enrollee who selects a QHP during an open enrollment period shall have an effective date of coverage of:

(a) January 1, if a QHP selection is made on or before December 15 of the previous year;

(b) If after December 15, the first day of the following month, if a QHP selection is made between the first and the fifteenth of a month; or

(c) If after December 15, the first day of the second following month, if a QHP selection is made between the sixteenth and last

day of a month.

(4)

(a) A qualified individual shall enroll in a QHP or an enrollee may change from one (1) QHP to another QHP during a SEP as established by Section 6 of this administrative regulation.

(b) A qualified individual or an enrollee who selects a QHP during a SEP shall have an effective date of coverage as set forth in Section 6 of this administrative regulation.

(5) An initial enrollment in a QHP shall not be effective until the first month's premium is received by the QHP issuer.

### Section 6. Special Enrollment Periods.

(1) Except as established by subsection (3) of this section, a qualified individual or enrollee shall have sixty (60) days from the date of a qualifying event as set forth in subsection (2) of this section to select a QHP.

(2) A qualified individual may enroll in a QHP or an enrollee or a dependent of an enrollee may change QHPs during a SEP if:

(a) The qualified individual or a dependent of the qualified individual:

1. Loses minimum essential coverage;

2. Is enrolled in any non-calendar year group health plan, individual health insurance coverage, or qualified small employer reimbursement arrangement even if the qualified individual or his or her dependent has the option to renew or reenroll in the coverage;

3. Loses pregnancy-related coverage described in 45 C.F.R. 155.420(d)(1)(iii);

4. Loses medically needy coverage as described under 42 C.F.R. 435.320 only once per calendar year; or

5. Is enrolled in coverage under 26 C.F.R. 54.9801-6(a)(3)(i) through (iii) for which an employer is paying all or part of the premiums and the employer ceases its contributions;

(b) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, placement in foster care, a child support order, or other court order;

(c) The qualified individual, or a dependent of the qualified individual, who was not previously a citizen, national, or lawfully present gains status as a citizen, national, or lawfully present;

(d) The enrollee is determined newly eligible or newly ineligible for APTC;

(e) The enrollee or a dependent of the enrollee becomes newly eligible for CSRs and is not enrolled in a silver-level QHP;

(f) The enrollee or a dependent of the enrollee becomes newly ineligible for CSRs and is enrolled in a silver-level QHP;

(g) The qualified individual or a dependent of the qualified individual who is enrolled in qualifying coverage in an employer-sponsored plan is determined newly eligible for APTC in part on a finding that the individual shall no longer be eligible for qualifying coverage in the employer-sponsored plan in the next sixty (60) days and is allowed to terminate existing coverage;

(h) The qualified individual or enrollee or a dependent of the qualified individual or the enrollee:

1. Gains access to new QHPs as a result of a permanent move; and

2. Had **minimum essential coverage** or MEC for one (1) ~~or~~ more days during the sixty (60) days preceding the date of the permanent move;

(i) The qualified individual is an Indian who may enroll in a QHP or change from one (1) QHP to another QHP one (1) time per month;

(j) The qualified individual is or becomes a dependent of an Indian and is enrolled or is enrolling in a QHP on the same application as the Indian, and may change from one (1) QHP to another QHP one (1) time per month, at the same time as the Indian;

(k) The qualified individual or enrollee or a dependent of the qualified individual or enrollee is no longer incarcerated;

(l) The qualified individual or enrollee, or a dependent of the qualified individual or enrollee:

1. Gains access to an individual **Health Reimbursement Arrangement** or HRA; or

2. Is newly provided a **Qualified Small Employer Health Reimbursement Arrangement** or QSEHRA[~~arrangement~~];

(m) The plan in which the enrollee or a dependent of the enrollee

is enrolled is decertified by the division;

(n) The enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation;

(o) The enrollee or a dependent of the enrollee dies;

(p) The qualified individual or enrollee:

1. Is a victim of domestic abuse or spousal abandonment as defined by 26 C.F.R. 1.36B-2, or a dependent of the qualified individual or enrollee, or an unmarried victim of domestic abuse or spousal abandonment residing within the same household as the qualified individual or enrollee;

2. Is enrolled in MEC; and

3. Sought to enroll in coverage separate from the perpetrator of abuse or abandonment;

(q) The qualified individual or enrollee:

1. Is a dependent of an individual described in paragraph (i) of this subsection;

2. Is on the same application as the individual described in paragraph (i) of this subsection; and

3. Enrolls at the same time as the individual described in paragraph (i) of this subsection;

(r) The qualified individual or enrollee:

1. Applies for coverage during:

a. An annual open enrollment period; or

b. If there is a qualifying event, a SEP; and

2. Is determined ineligible for Medicaid or the Kentucky Children's Health Insurance Program or KCHIP:

a. After open enrollment has ended; or

b. More than sixty (60) days after the qualifying event;

(s) The qualified individual or dependent of the qualified individual enrolls or fails to enroll in a QHP due to an error, misrepresentation, or inaction of an officer, employee, or representative of the KHBE;

(t) The enrollee or dependent of the enrollee demonstrates to the KHBE that the QHP in which the enrollee or the dependent of the enrollee is enrolled substantially violated a provision of its contract in relation to the enrollee or dependent;

(u) The qualified individual or enrollee, or a dependent of the qualified individual or enrollee, demonstrates to the KHBE that a material error related to a plan benefit, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a QHP through KHBE. Material errors may include any incorrect premium, copay, co-insurance, or deductible amount, as well as services covered or providers included in network;

(v) The qualified individual:

1.

a. Was previously ineligible for APTC because of a household income below 100 percent of the FPL; and

b. Was ineligible for Medicaid due to living in a non-Medicaid expansion state during the same timeframe; and ~~either~~

2. Either:

a. Experiences a change in household income; or

b. Makes a permanent move to the Commonwealth of Kentucky resulting in the individual becoming newly eligible for APTC;

(w) The qualified individual or a dependent of the qualified individual:

1. Experiences a decrease in household income;

2. Is newly determined eligible by the KHBE for APTC; and

3. Had MEC for one (1) or more days during the sixty (60) days preceding the date of the change in household income; or

(x) The qualified individual or a dependent of the qualified individual meets other exceptional circumstances as defined by 45 C.F.R. 155.420(d)(9).

(3) The date of the triggering event for the loss of MEC[minimum-essential-coverage] shall be:

(a) For a decertification of a QHP as set forth in 900 KAR 10:115, the date of the notice of decertification;

(b) For an event described in subsection (2)(a)2. of this section, the last day of the plan year;

(c) For an event described in subsection (2)(a)5. of this section, the last day of the period for which COBRA continuation coverage is paid for, in part or in full, by an employer; or

(d) For all other cases, the date the qualified individual or dependent of the qualified individual loses eligibility for minimum

essential coverage.

(4) Loss of MEC[minimum-essential-coverage] shall include those circumstances described in 26 C.F.R. 54.9801-6(a)(3)(i) through (iii).

(5) Loss of MEC[minimum-essential-coverage] shall not include termination or loss due to:

(a) Failure to pay premiums on a timely basis; or

(b) A situation allowing for a rescission as established by 45 C.F.R. 147.128.

(6) Except as established by subsection (7), (8), or (9) of this section, a qualified individual or enrollee who selects a QHP during a SEP shall have an effective date of coverage of:

(a) The first day of the following month for a selection made between the first and the fifteenth day of any month; or

(b) The first day of the second following month for a selection made between the sixteenth and last day of any month.

(7) A qualified individual or enrollee who selects a QHP:

(a) For a birth, adoption, placement for an adoption, placement in foster care, or child support or other court order, shall have an effective date of coverage of either:

1. The date of the birth, adoption, placement for adoption, placement in foster care, or effective date of court order; or

2. If the qualified individual or enrollee elects:

a. The first of the month following plan selection; or

b. In accordance with subsection (6) of this section;

(b) For a marriage, shall have an effective date of coverage of the first day of the month following plan selection;

(c) For a loss of coverage as described in subsection (2)(a) of this section, for a gain of access to a new QHP as a result of a permanent move as described in subsection (2)(h) of this section, or for being newly eligible for enrollment in a QHP as described in subsection (2)(c) or (2)(k) of this section, if:

1. The plan selection is made on or before the day of the triggering event, shall have a coverage effective date of the first day of the month following the triggering event; or

2. The plan selection is made after the date of the triggering event, shall have a coverage effective date in accordance with this subsection; or

(d) For a death as described in subsection (2)(o) of this section, shall have a coverage effective date:

1. Of the first day of the month following a plan selection; or

2. In accordance with paragraph (c) of this subsection.

(8) A qualified individual, enrollee, or dependent of the qualified individual or enrollee who selects a QHP as described in subsection (2)(g) of this section shall have a coverage effective date:

(a) If the plan selection is made before the day of the triggering event:

1. On the first day of the month following the triggering event; or

2. If the triggering event is on the first day of a month, on the date of the triggering event; or

(b) If the plan selection is made on or after the day of the triggering event, on the first day of the month following plan selection.

(9) A qualified individual or enrollee who selects a QHP in accordance with subsection (2)(a)4., (r), (s), (t), (u), or (v) of this section shall have a coverage effective date based on the circumstances of the SEP.

(10)

(a) An individual described in subsection (2)(g) of this section may access a SEP sixty (60) days prior to the end of the individual's qualifying coverage in the employer-sponsored plan.

(b) An individual who accesses a SEP as set forth in paragraph (a) of this subsection shall not be eligible for APTCs until the end of the individual's qualifying coverage through the eligible employer-sponsored plan.

(11) If an existing enrollee becomes newly eligible for CSRs and is not enrolled in a silver plan, the enrollee may choose a silver plan.

(12) If an enrollee and a dependent of an enrollee become newly ineligible for CSRs and are enrolled in a silver-level QHP, the enrollee may change to a QHP one (1) metal level higher or lower.

(13) If an enrollee gains a dependent due to marriage, birth, adoption, foster care, or court order, the enrollee shall:

(a) Not change plans; and

(b) Either:  
1. Add the new dependent to the enrollee's current enrollment;  
or

2. Enroll the new dependent in a plan of any plan category.

(14) Except for the qualifying events established by subsection (2)(i), (l), (p), (u), and (v) of this section and the events described in subsections (11), (12), and (13) of this section:

(a) If an enrollee qualifies for a SEP, the enrollee may change to a QHP within the same level of coverage;

(b) If a dependent of an enrollee qualifies for a SEP and the enrollee does not also qualify for a SEP, the enrollee shall add the dependent to the enrollee's current QHP; or

(c) If a qualified individual who is not an enrollee qualifies for a SEP and has a dependent who is an enrollee who does not qualify for a SEP, the qualified individual shall be added to the dependent's current QHP.

(15) For a qualified individual, enrollee, or dependent described in subsection (2)(l) of this section, the triggering event shall be:

(a) The first day on which coverage for the qualified individual, enrollee, or dependent under the individual coverage HRA can take effect; or

(b) The first day on which coverage under the QSEHRA takes effect.

(16) A qualified individual, enrollee, or dependent described in subsection (2)(l) of this section shall:

(a) Qualify for a SEP regardless of whether they were previously offered or enrolled in an individual HRA or previously provided a QSEHRA, if:

1. The qualified individual, enrollee, or dependent is not enrolled in the individual coverage HRA; or

2. The qualified individual, enrollee, or dependent is not covered by the QSEHRA on the day immediately prior to the triggering event; and

(b)

1. Have sixty (60) days before the triggering event to select a QHP; or

2. Have sixty (60) days before or after the triggering event if the HRA or QSEHRA was not required to provide the notice described in 45 C.F.R. 146.123(c)(6), 26 C.F.R. 54.9802-4(c)(6), and 29 C.F.R. 2590.702-2(c)(6) or 26 U.S.C. 9831(d)(4).

(17) A qualified individual or enrollee, who is eligible for advance payments of the premium tax credit, and whose household income, as defined in 26 C.F.R. 1.36B-1(e), is expected to be no greater than 150 percent of the Federal poverty level, may enroll in a QHP or change from one QHP to another one (1) time per month during periods of time when the applicable taxpayer's applicable percentage for purposes of calculating the premium assistance amount, as defined in 26 U.S.C. 36B(b)(3)(A), is set at zero.

(18) If a qualified individual, enrollee, or dependent of a qualified individual or an enrollee did not receive timely notice of an event that triggers eligibility for a SEP under this section, and otherwise was reasonably unaware that a triggering event described in this section occurred, the qualified individual, enrollee, or his or her dependent shall have sixty (60) days from the date that he or she knew, or reasonably should have known, of the occurrence of the triggering event.

(19) A qualified individual, enrollee, or dependent of a qualified individual or enrollee, described in 45 C.F.R. 155.420 as being eligible for a SEP not specified in this section of this administrative regulation shall be eligible for a SEP.

(20) For purposes of this section, a qualified individual, enrollee, or dependent of a qualified individual or enrollee shall be:

(a) Eligible for APTC if eligibility is for an amount greater than zero dollars per month; or

(b) Ineligible for APTC if eligible for a maximum of zero dollars per month.

#### Section 7. Verifications for Special Enrollment Periods.

(1) KHBE shall conduct pre-enrollment verification of newly enrolling individuals as established by this section.

(2) A QHP enrollment for an individual subject to verification shall not be submitted to the issuer pending verification for a SEP.

(3) For an enrollment subject to verification as described in this section, a new enrollee shall have thirty (30) days from the date of plan selection to provide requested documentation.

(4) A qualifying individual described in Section 6(2)(h) of this administrative regulation shall provide proof of:

(a) A permanent move during the past sixty (60) days; and

(b) Either:

1. Having had MEC[minimum-essential coverage] for one (1) or more days during the sixty (60) days preceding the date of the qualifying event; or

2. Having:

a. Lived in a foreign country or in a US territory for one (1) or more days during the sixty (60) days preceding the qualifying event;

b. Lived in a service area where no qualified health plan was available through KHBE for one (1) or more days during the sixty (60) days preceding the qualifying event or their most recent open enrollment or SEP; or

c. Status as an Indian.

(5) For a marriage, as described in Section 6(2)(b) of this administrative regulation, a qualified individual shall provide proof of marriage during the past sixty (60) days.

(6) Other than as described in subsections (4) and (5) of this section, a qualified individual described in Section 6(2)(b) of this administrative regulation shall provide proof of:

(a) The qualifying event during the past sixty (60) days; and

(b) Either:

1. Having MEC[minimum-essential coverage] as described in Section 6(2)(a) of this administrative regulation for one (1) or more days during the sixty (60) days preceding the date of the qualifying event; or

2. Meeting the requirements in subsection (4)(b) of this section.

(7) For a loss of MEC[minimum-essential coverage] as described in Section 6(2)(a) of this administrative regulation, a qualified individual shall provide proof of coverage for one (1) or more days during the past sixty (60) days.

(8) SEP verification shall not impact an enrollee's effective date of coverage except as provided in 45 C.F.R. 155.400(e)(1)(iii).

#### Section 8. Eligibility Redetermination During a Benefit Year.

(1) Eligibility shall be redetermined for an enrollee during a benefit year if the KHBE receives and verifies:

(a) New information reported by an enrollee; or

(b) Updated information obtained in accordance with 45 C.F.R. 155.330(d).

(2) Except as established by subsection (3) of this section, an enrollee or an application filer, on behalf of an enrollee, shall report within thirty (30) days:

(a) A change related to an eligibility standard in Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Via a method described in Section 1(5) of this administrative regulation.

(3) An enrollee who did not request an eligibility determination for an insurance affordability program shall not report a change related to income.

(4) If new information provided by an enrollee in accordance with subsection (1)(a) of this section is verified:

(a) Eligibility shall be redetermined in accordance with the standards in Section 1, 2, 3, 9, or 10 of this administrative regulation;

(b) The enrollee shall be notified of the redetermination in accordance with the requirements in 45 C.F.R. 155.310(g); and

(c) If applicable, the enrollee's employer shall be notified in accordance with the requirement established by 45 C.F.R. 155.310(h).

(5) If updated information obtained in accordance with subsection (1)(b) of this section regarding death or related to eligibility not regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information; and

2. The projected enrollees' eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice in paragraph (a) of this subsection to notify the KHBE if the information is

inaccurate.

(6) If an enrollee responds to the notice in subsection (5)(a) of this section, contesting the updated information in the notice, the KHBE shall proceed in accordance with 45 C.F.R. 155.315(f).

(7) If an enrollee does not respond to the notice in subsection (5)(a) of this section within the thirty (30) day timeframe specified in subsection (5)(b) of this section, the KHBE shall:

(a) Redetermine eligibility in accordance with the standard in Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements established by 45 C.F.R. 155.310(g).

(8) With the exception of information regarding death, if updated information regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information regarding income, family size, and family composition obtained in accordance with subsection (1)(b) of this section; and

2. The projected eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice to:

1. Confirm the updated information; or

2. Provide additional information.

(9) If the enrollee responds to the notice in subsection (8)(a) of this section by confirming the updated information, the KHBE shall:

(a) Redetermine the enrollee's eligibility in accordance with Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements established by 45 C.F.R. 155.310(g).

(10) If the enrollee does not respond to the notice in subsection (8)(a) of this section within the thirty (30) day timeframe established by subsection (8)(b) of this section, the KHBE shall maintain the enrollee's existing eligibility determination without considering the updated information in subsection (8)(a) of this section.

(11) If the enrollee responds with more updated information, the KHBE shall verify the updated information in accordance with 45 C.F.R. 155.315 and 155.320.

(12) The effective date of a change resulting from a redetermination pursuant to this section shall be in accordance with 45 C.F.R. 155.330(f).

(13) The amount of an APTC or eligibility for a CSR as a result of an eligibility redetermination in accordance with this section shall be recalculated in accordance with 45 C.F.R. 155.330(g).

#### Section 9. Annual Eligibility Redetermination.

(1) A qualified individual shall:

(a) Have an annual redetermination of eligibility; and

(b) Be sent a notice of the annual redetermination that includes:

1. The data obtained under subsection (2) of this section;

2. The data used in the qualified individual's most recent eligibility determination; and

3. The projected eligibility determination for the following year, after considering the information in subparagraph 1. of this paragraph.

(2)

(a) A qualified individual requesting an eligibility determination for an insurance affordability program shall authorize the release of updated tax return information, data regarding Social Security benefits, and data regarding MAGI-based income, as defined by 42 C.F.R. 435.603(e) and as described in 45 C.F.R. 155.320(c)(1), for use in the qualified individual's eligibility redetermination.

(b) Eligibility shall not be redetermined for a qualified individual requesting an eligibility determination for an insurance affordability program who does not authorize the release of updated tax return information.

(3) A qualified individual may authorize the release of tax return information for a period of no more than five (5) years based on a single authorization, if the authorization permits the qualified individual to:

(a)

1. Decline to authorize the release of updated tax return

information; or

2. Authorize the release of updated tax return information for fewer than five (5) years; and

(b) Discontinue, change, or renew the authorization at any time.

(4) A qualified individual, an application filer, or an authorized representative, on behalf of the enrollee, shall report any changes with respect to the information listed in the notice described in subsection (1)(b) of this section:

(a) Within thirty (30) days from the date of the notice; and

(b) Via a method listed in Section 1(5) of this administrative regulation.

(5) Any information reported by a qualified individual under subsection (4) of this section shall be verified as set forth in Section 4 of this administrative regulation.

(6) For a qualified individual who fails to act on the notice described in subsection (1)(b) of this section within the thirty (30) day period established by subsection (4) of this section, eligibility shall be redetermined as set forth in subsection (7)(a) of this section.

(7)

(a) After the thirty (30) day period established by subsection (4) of this section:

1. Eligibility of a qualified individual shall be redetermined in accordance with the standards in Section 1, 2, 3, 9, or 10 of this administrative regulation using the information provided in the notice, as supplemented with any information reported by the qualified individual verified in accordance with Section 4 of this administrative regulation;

2. The qualified individual shall be notified in accordance with the requirements in 45 C.F.R. 155.310(g); and

3. If applicable, the qualified individual's employer shall be notified in accordance with 45 C.F.R. 155.310(h).

(b) If a qualified individual reports a change with respect to the information provided in the notice established by subsection (1)(b) of this section that has not been verified by the KHBE as of the end of the thirty (30) day period established by subsection (4) of this section, eligibility shall be redetermined after verification in accordance with Section 4 of this administrative regulation.

(8) The effective date of a redetermination in accordance with this section shall be the later of:

(a) The first day of the coverage year following the year in which the notice in subsection (1)(b) of this section is issued to the qualified individual; or

(b) The date determined in accordance with 45 C.F.R. 155.330(f)(1).

(9) If an enrollee remains eligible for coverage in a QHP upon annual redetermination and has not terminated coverage from the QHP in accordance with Section 10 of this administrative regulation, the enrollee shall:

(a) Remain in the QHP selected the previous year that may include modifications that shall be approved by the Department of Insurance; or

(b) Be enrolled by KHBE in a QHP that is substantially similar that shall be approved by the Department of Insurance.

(10) Eligibility shall not be redetermined if a qualified individual was redetermined eligible in accordance with this section during the prior year, and the qualified individual was not enrolled in a QHP when the redetermination was made and has not enrolled in a QHP since the redetermination.

#### Section 10. Eligibility to Enroll in a QHP that is a Catastrophic Plan.

(1) In addition to the requirements in Section 1 of this administrative regulation, to enroll in a QHP that is a catastrophic plan, an applicant shall:

(a) Not have attained the age of thirty (30) before the beginning of the plan year; or

(b) Have a certificate of exemption from the shared responsibility payment issued by the KHBE or HHS for a plan year in accordance with:

1. 26 U.S.C. 5000A(e)(1); or

2. 26 U.S.C. 5000A(e)(5).

(2) Verification related to eligibility for enrollment in a QHP that is a catastrophic plan shall be in accordance with 45 C.F.R.

155.315(j).

Section 11. Special Eligibility Standards and Processes for Indians.

(1) An applicant who is an Indian, as defined by 25 U.S.C. 1603(13), shall be eligible for the special cost sharing described in 45 C.F.R. 155.350(b) if the applicant:

- (a) Meets the requirements established by 45 C.F.R. 155.305(a) and (f);
- (b) Is expected to have a household income that does not exceed the amount established by 45 C.F.R. 305(g)(3)(vi) for the benefit year for which coverage is requested; and
- (c) Enrolls in a QHP through the KHBE.

(2) An applicant who is an Indian shall have an eligibility determination for the special cost sharing described in 45 C.F.R. 155.350(b) without requesting an eligibility determination for an insurance affordability program.

Section 12. Eligibility Determination and Notification Standards.

(1) Eligibility shall be determined in accordance with 45 C.F.R. 155.310(e).

(2) Notifications regarding eligibility determinations shall be made in accordance with 45 C.F.R. 155.310(g).

Section 13. Termination of Coverage.

(1) An enrollee, including an enrollee who has obtained other MEC[minimum essential coverage], may terminate coverage in a QHP by submitting a request:

- (a) Via the Web site at [www.kynect.ky.gov](http://www.kynect.ky.gov);
- (b) By telephone;
- (c) To the QHP issuer;
- (d) By mail; or
- (e) In person.

(2) An enrollee in a QHP may choose to remain in a QHP without financial assistance if the enrollee:

- (a)
  - 1. Has been identified as eligible for other MEC[minimum essential coverage] through the data matching described in 45 C.F.R. 155.330(d); or
  - 2. Has been identified as eligible for Medicaid, KCHIP, or Medicare and has granted prior permission to KHBE; and

(b) Does not request termination in accordance with subsection (1) of this section.

(3) The last day of coverage of an enrollee who terminates coverage in accordance with subsection (1) of this section shall be:

(a) The termination date requested by the enrollee if the enrollee provides reasonable notice in accordance with subsection (7) of this section;

(b) Fourteen (14) days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice in accordance with subsection (7) of this section;

(c) A date determined by the issuer of an enrollee's QHP if the issuer is able to terminate coverage in fewer than fourteen (14) days and the enrollee requests an earlier termination effective date; and

(d) If the enrollee is newly eligible for Medicaid or KCHIP, the day before coverage in Medicaid or KCHIP begins.

(4) An enrollee's health coverage shall be terminated by an issuer if:

(a) The enrollee is no longer eligible for coverage in a QHP through the KHBE;

(b) The enrollee has failed to pay a premium and; ~~and~~

1. A three (3) month grace period required for an individual receiving an APTC has been exhausted as described in 45 C.F.R. 156.270(g); or

2. A thirty (30) day grace period required by KRS 304.17A-243 for an individual not receiving an APTC has been exhausted;

(c) The enrollee's coverage is rescinded in accordance with 45 C.F.R. 147.128 or KRS 304.14-110;

(d) The enrollee is enrolled in a QHP that:

- 1. Has been decertified pursuant to 900 KAR 10:115; or
- 2. Has withdrawn from participation in the KHBE; or

(e) The enrollee changes from one (1) QHP to another during an open enrollment period or SEP in accordance with Section 5 or 6

of this administrative regulation.

(5) The last day of coverage of an enrollee shall be:

(a) If terminated in accordance with subsection (4)(a) of this section, the last day of the month following the month in which the notice described in subsection (7) of this section is sent by KHBE, unless the enrollee requests an earlier termination date in accordance with subsection (3) of this section;

(b) If terminated in accordance with subsection (4)(b)1. of this section, the last day of the first month of the three (3) month grace period; or

(c) If terminated in accordance with subsection (4)(b)2. of this section, in accordance with KRS 304.17A-245.

(6) For an enrollee who is terminated in accordance with subsection (4)(e) of this section, the last day of coverage in an enrollee's prior QHP shall be the day before the effective date of coverage in the enrollee's new QHP.

(7) Reasonable notice shall be fourteen (14) calendar days from the requested date of termination of coverage.

Section 14. Authorized Representative.

(1) An individual may designate an authorized representative in accordance with 45 C.F.R. 155.227.

(2) An authorized representative shall comply with state and federal laws regarding:

- (a) Conflict of interest; and
- (b) Confidentiality of information.

(3) An applicant may authorize a representative to:

- (a) Sign an application on behalf of the applicant;
- (b) Submit an update or respond to a redetermination of eligibility for the applicant in accordance with Section 7 or 8 of this administrative regulation;
- (c) Receive a copy of a notice or communication from the KHBE;
- (d) Make an appeal request on behalf of an appellant; and
- (e) Act on behalf of the individual in a matter with the KHBE.

(4) An authorization for an authorized representative shall be valid until:

(a) An applicant:

- 1. Changes the authorization; or
- 2. Notifies the KHBE and the authorized representative, through a method described in 45 C.F.R. 155.405(c), that the authorized representative is no longer authorized to act on behalf of the individual; or

(b) The authorized representative informs the KHBE and the individual that the authorized representative is no longer acting as the authorized representative.

Section 15. SHOP Employer Eligibility.

(1) An employer shall be a qualified employer and eligible to purchase coverage through SHOP if the employer meets the eligibility requirements established in 45 C.F.R. 155.710(b).

(2) An employer shall apply for an eligibility determination online to participate in SHOP at [www.kynect.ky.gov](http://www.kynect.ky.gov).

(3) Upon application, an employer shall provide:

- (a) Employer name;
- (b) Address of employer location;
- (c) A valid federal employer identification number; and
- (d) A statement from the employer attesting that the employer is:

1. A small employer; and

2. Offering at a minimum, all full-time employees coverage in a QHP through SHOP.

(4) Except as provided in 45 C.F.R. 147.104(b)(1)(i)(B), a qualified employer shall meet a minimum group participation rate of fifty (50) percent, calculated as described in 45 C.F.R. 155.706(b)(10)(i).

(5) A qualified employer may purchase coverage for its qualified employees at any time during the year.

(6) An employer's plan year shall be the twelve (12) month period beginning with the effective date of coverage.

(7) An employer shall enroll in a QHP or SADP certified by the division by contacting an issuer or a participating agent.

(8) A qualified employer who ceases to be a small employer by reason of an increase in the number of employees shall be eligible

to participate in SHOP until the employer:

- (a) Fails to otherwise meet the eligibility criteria of this section; or
  - (b) Chooses to no longer purchase health coverage.
- (9) An employer that fails to meet the requirements in subsection (1) of this section, shall be denied eligibility to participate in SHOP.

Section 16. SHOP Right to Formal Review.

(1) An employer applicant may request a formal review of a:

- (a) Denial of eligibility as set forth in Section 15(9) of this administrative regulation; or
- (b) Failure of the KHBE to make an eligibility determination to participate in SHOP within fifteen (15) calendars days of receiving an application from an employer.

(2) Within ninety (90) days of receipt of a notice of denial of eligibility, an employer may submit a formal review request to the division by:

- (a) [By-]Telephone;
- (b) [By-]Mail; or
- (c) [By-]Email.

(3) A formal review request shall clearly state a reason for the formal review in accordance with subsection (1) of this section.

(4) If an employer is notified that a formal review request does not meet the requirements of this section, the employer may amend the request to satisfy the requirements.

Section 17. SHOP Dismissal of a Formal Review.

(1) A formal review by an employer shall be dismissed if the employer:

- (a) Withdraws the formal review request in writing; or
- (b) Fails to submit a formal review request that meets the requirements in Section 16 of this administrative regulation.

(2) If a formal review is dismissed in accordance with subsection (1) of this section, the division shall provide written notice to the employer:

- (a) Within three (3) business days of the dismissal; and
- (b) That includes the reason for dismissal.

(3) The division may reverse a dismissal under subsection (2) of this section if an employer makes a written request within thirty (30) days of the date of the notice of dismissal in subsection (2) of this section and provides new information supporting a reversal of the previous decision.

Section 18. SHOP Desk Review.

(1) An employer shall have the opportunity to submit evidence to the division for review of an eligibility determination.

(2) The division shall consider:

- (a) The information used to determine the employer's eligibility; and
- (b) Any additional evidence provided by the employer under subsection (1) of this section.

(3) An applicant's formal review request shall be desk reviewed by one (1) or more impartial division officials who have not been directly involved in the eligibility determination implicated in the formal review.

Section 19. SHOP Formal Review Decision.

(1) A desk review by an official of the division shall result in a final formal review decision.

(2) A final formal review decision shall:

- (a) Be in writing;
- (b) Be based on the eligibility requirements in Section 15 of this administrative regulation;
- (c) State the decision and the effect of the decision on the eligibility of the employer;
- (d) Summarize the facts relevant to the formal review;
- (e) Identify the legal and regulatory basis for the decision;
- (f) State the effective date of the decision; and
- (g) Be rendered within ninety (90) days of receipt by the division of an employer formal review request.

(3) The division shall issue written notice of the formal review decision to the employer within ninety (90) days of the date of receipt of a formal review request.

(4) If the formal review decision affects the employer's eligibility, the division shall implement the formal review decision.

Section 20. SHOP Formal Review Record. The formal review record shall be available and accessible to an employer:

- (1) In a convenient format; and
- (2) During regular business hours, which shall:
  - (a) Be Monday through Friday from 8:00 a.m. to 4:30 p.m.; and
  - (b) Exclude holidays.

Section 21. Incorporation by Reference.

(1) "Kentucky QHP/APTC Eligibility Verification Plan", Revised May 2022[March, 2024], is incorporated by reference.

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

JILNAR E. MASRI, Acting Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 28, 2022

FILED WITH LRC: June 7, 2022 at 8:03 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 15, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Advisor, 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](mailto:CHFSregs@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Rivera and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market, the operation of a Small Business Health Options Program, and the formal review process related to SHOP on the Kentucky Health Benefit Exchange pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform issuers of the requirements for certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange. This administrative regulation is necessary:

1. So the Kentucky Health Benefit Exchange may timely determine eligibility and facilitate enrollment in qualified health plans. Eligibility determination and enrollment in qualified health plans is necessary for the provision of health care services provided in the commonwealth through the KHBE. Additionally, individuals must enroll through the KHBE for the purchase of health insurance to receive advanced payments of the premium tax credit and cost sharing deductions;

2. To establish the policies and procedures relating to the



operation of a Small Business Health Options Program; and

3. To establish policies and procedures for a formal review process related to SHOP employers in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides detailed requirements for individual enrollment and eligibility on the Kentucky Health Benefit Exchange, requirements for the small business health options program and how small businesses may enroll employees in qualified plans to comply with the statute and qualify for small employer health insurance tax credits, and establishes a formal review process related to SHOP employers in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for individual enrollment and eligibility on the Kentucky Health Benefit Exchange; requirements for the small business health options program and how small businesses may enroll employees in qualified plans to comply with the statute and qualify for small employer health insurance tax credits pursuant to 26 U.S.C. 45R; and provides detailed requirements for a formal review process related to SHOP employers in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes new special enrollment options and updates the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This is to clarify that these options are available to Kentuckians.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.99 requires the Division of health benefit exchange to carry out the functions and responsibilities required pursuant to 42 U.S.C. sec. 18031 to implement and comply with federal regulations. This amendment adds additional Special Enrollment Periods as provided by federal regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will give Kentuckians access to additional special enrollment period as provided by state and federal law.

(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 approximately 75,000 enrollees that may apply for health insurance in a qualified health plan to be offered on the Kentucky Health Benefit Exchange, approximately 2,500 small business employees that may purchase health insurance for their employees and potentially qualify for small employer health insurance tax credits, and approximately 250 SHOP employers seeking health insurance coverage on the Kentucky Health Benefit Exchange that may request a formal review.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual will make an application for a qualified health plan in the individual market offered on the KHBE. An application may be submitted via the KHBE website, by telephone, by mail, or in person; each small employer will be able to submit an application online to participate in SHOP and purchase insurance for their employees through an agent or issuer; and each employer seeking to participate on SHOP may make request a formal review related to eligibility on the Kentucky Health Benefit Exchange.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to an individual or small employer that wishes to make an application.

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

entities identified in question (3): This administrative regulation will benefit each individual as individuals that enroll in a qualified health plan through the KHBE may be able to receive advanced payments of the premium tax credit and cost sharing deductions for the purchase of health insurance; each small business as it may ease the administrative burden of administering their health insurance program and may benefit certain employers through health insurance tax credits; and each employer that may request to participate on the Kentucky Health Benefit Exchange by providing a formal review process.

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

(a) Initially: The estimated cost to implement these changes will be approximately \$150,000 to the state but will result in significant help to Kentuckians who are seeking insurance outside of open enrollment.

(b) On a continuing basis: There are no additional cost expected to implement these changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Division of Health Benefit Exchange existing budget. Approximately \$100,000 of Federal Grant funds will be used to implement these changes. No new funding will be needed to implement the provisions of this regulation.

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

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

(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.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. KRS 304.14-110, 304.17A-125, 304.17A-243, 304.17A-245, Chapter 304, 26 U.S.C. 5000A, 6011, 6012, 9831, 42 U.S.C. 18031, 26 C.F.R. 1.36B-2, 1.36B-3, 54.9801-6, 54.9802-4, 29 C.F.R. 2590.702-2, 42 C.F.R. 435.320, 45 C.F.R. 146.123, 147.104, 147.128, Parts 155, 156.

(2) State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market to be offered on the Kentucky Health Benefit Exchange, pursuant to, and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156, it establishes the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. parts 155 and 156, and it establishes the policies and procedures for a formal review process related to SHOP employers in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(3) Minimum or uniform standards contained in the federal mandate The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a QHP in Kentucky. KHBE must establish eligibility and enrollment criteria for individuals wishing to enroll in qualified health plans offered on the KHBE. KHBE must establish a Small Business Health Options

Program (SHOP). A SHOP is designed to assist qualified small employers in the state in enrolling their employees in qualified health plans in the state's small group market. KHBE must make a formal review process available to SHOP employers.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements than those required by the federal mandate.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Data and Analytics, Division of Health Benefit Exchange within the Cabinet for Health and Family Services and the Department of Insurance within the Public Protection and Regulation Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 304.14-110, 304.17A-125, 304.17A-243, 304.17A-245, Chapter 304, 26 U.S.C. 5000A, 6011, 6012, 9831, 42 U.S.C. 18031, 26 C.F.R. 1.36B-2, 1.36B-3, 54.9801-6, 54.9802-4, 29 C.F.R. 2590.702-2, 42 C.F.R. 435.320, 45 C.F.R. 146.123, 147.104, 147.128, Parts 155, 156.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amendment to this program will cost approximately \$150,000 to implement.

(d) How much will it cost to administer this program for subsequent years? No additional cost should be incurred to administer the amendment to 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 (+/-): \$150,000

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 a regulated entity.

(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 a regulated entity.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not generate any cost for a regulated entity.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not generate any cost for a regulated entity.

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

Cost Savings (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This regulation provides eligibility requirements for an available program.

(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 major impact.

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Fiscal Management

(As Amended at ARRS, November 9, 2022)

#### 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, **416.172, 416.173[447.271]**, Part 441 Subpart E, ~~for~~ **JF, 447.271**

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 **pursuant to KRS 194A.030(2)**. 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 effective date of this administrative regulation,~~ the Department for Medicaid Services shall **determine the ASC rates by:**

**(a) Utilizing[utilize] the most recent January 1[, 2022,] ASC Fee Schedule as published by the Centers for Medicare and Medicaid Services (CMS) at [https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/11\\_Addenda\\_Updates.html](https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/11_Addenda_Updates.html) in accordance with 42 C.F.R. 416.173; and**

**(b) Adjusting them as follows[to determine the ASC rates, subject to the following adjustments and updating procedures]:**

**1.[(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, in accordance with 42 C.F.R. 416.172(c).**

**2.[(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.**

**3.[(c)] Medicaid covered procedures not included on the Medicare fee schedule shall be reimbursed at forty-five (45) percent of billed charges.**

**4.[(d)] Bilateral procedures shall be reimbursed at one hundred and fifty (150) percent of the rate established in subparagraphs 1 and 2 of this paragraph[billed charges].**

**5.a.[(e)] Reimbursement shall follow applicable Medicare rules for multiple endoscopy discounting and multiple procedure discounting as established in: [i]**

**(i) 42 C.F.R. Part 416; and**

(ii) The Medicare Claims Processing Manual, Chapter 14, as published by the Centers for Medicare and Medicaid Services (CMS) at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs> in accordance with 42 C.F.R. 416.173.

b. If [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. Part 416, Subpart F, including 42 C.F.R. 416.164 and 416.166.

(3) Reimbursements shall be limited to the lesser of billed charges or the amount established pursuant to subsection (1) of this section. [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]                          | [\$471.90]           |
| [Group 4]                          | [\$582.25]           |
| [Group 5]                          | [\$664.02]           |
| [Group 6]                          | [\$775.59]           |
| [Group 7]                          | [\$921.15]           |
| [Group 8]                          | [\$911.55]           |

[(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 if/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, MAP-235, MAP-250, or MAP-251. 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 requirements[regulations] governing payment for the sterilization in 42 C.F.R. Part 441, Subpart F 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.

### Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Certification Form for Induced Abortion or Induced Miscarriage", MAP-235, February 2000;

(b) "Consent for Sterilization", MAP-250, April 2022; and

(c) "Hysterectomy Consent Form", MAP-251, October 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/ascs.aspx>.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, November 9, 2022)**

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(2) requires the Cabinet for Health and Family Services, Department for Medicaid Services, to administer Title XIX of the Federal Social Security Act, 42 U.S.C. 1396 through[to] 1396v. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 205.6485 requires[authorizes] the cabinet to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other

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coordinated health care services to children of the commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the KCHIP eligibility criteria, covered services, application requirements, grievance and appeal rights for recipients, and the requirements for providers who wish to participate with the commonwealth to provide health care coverage to KCHIP members through an expansion of the Title XIX Medicaid Program.

### Section 1. Definitions.

- (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services or its designee.
- (2) "Child" means an individual under the age of nineteen (19) years.
- (3) "Creditable coverage" is defined by KRS 304.17A-005(8)(a)1 ~~through~~ 3 and 5 ~~through~~ 10.
- (4) "Department" means the Department for Medicaid Services or its designee.
- (5) "Excepted benefits" is defined by KRS 304.17A-005(14).
- (6) "Health insurance" is defined by KRS 304.5-040.
- (7) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa ~~through~~ ~~to~~ jj.

### Section 2. Eligibility Criteria.

- (1) A child shall be eligible for KCHIP if the child:
    - (a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;
    - (b) Is a noncitizen~~[an alien]~~ who meets the requirement established in 907 KAR 20:005;
    - (c) Meets the technical requirements of 907 KAR 20:005;
    - (d) Provides to the department the information required in Section 4 of this administrative regulation;
    - (e) Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2;
    - (f) Meets the relative responsibility requirements established in 907 KAR 20:040;
    - (g) Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100; and
    - (h) Is an optional targeted low-income child as defined by~~[in]~~ 42 U.S.C. 1397jj(b) who:
      1. Has family income that does not exceed 213~~[159]~~ percent of the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2);~~and~~
      2. Does not have creditable coverage and may be covered by excepted benefits;~~and~~
      3.
        - a. If an eligibility determination indicates that an individual's income exceeds 213 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall apply an additional cushion of five (5) percent of the federal poverty level toward the eligibility determination for the individual as established~~[described]~~ pursuant to 42 U.S.C. 1396a(e)(14)(I)(i).
        - b. If after the five (5) percent adjustment, the individual's income is under the adjusted income threshold, the individual shall meet the modified adjusted gross income standard.
- (2) Eligibility for KCHIP shall be determined by the department. Upon receipt of eligibility information established~~[defined]~~ in subsection (1) of this section, the department shall determine if a child is eligible for benefits pursuant to 42 U.S.C. 1396 or 1397aa ~~through~~ ~~to~~ jj.

### Section 3. Covered Services.

- (1) Health services shall be considered medically necessary in accordance with:
  - (a) 907 KAR 3:130; and
  - (b) 42 C.F.R. 440.230.
- (2) Amount and duration of benefits covered by KCHIP shall be as established in Title 907 KAR.

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

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

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

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

- (1) A child's demographics that shall include:
  - (a) Name;
  - (b) Address;
  - (c) Sex;
  - (d) Date of birth;
  - (e) Race; and
  - (f) Social Security number;
- (2) Monthly gross earned income, if any, of a parent and a recipient~~[child]~~ for whom information is being submitted;
- (3) An employer type and address, if any;
- (4) Frequency of income;
- (5) Name and address of a health insurance provider who currently provides creditable coverage;
- (6) Creditable coverage policy number, policy holder's name, Social Security number, and individuals covered by the plan;
- (7) Unearned income, if any, received weekly, biweekly, bimonthly, quarterly, or annually;
- (8) Name and age of a child or disabled adult for whom care is purchased in order for a parent or responsible person to work; and
- (9) Signature, date, and telephone number of a person submitting the information for a child.

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

- (1) 907 KAR 1:671; and
- (2) 907 KAR 1:672.

### Section 6. Grievance, Hearing, and Appeal Rights.

- (1) If dissatisfied with an action taken by the department as to the application of Sections 1 through 5 of this administrative regulation, a child, the child's parent, or the child's guardian shall be entitled to a grievance, hearing, or appeal with the department, to be conducted in accordance with:
  - (a) 907 KAR 1:560, if pertaining to initial eligibility; or
  - (b) 907 KAR 1:563, if pertaining to a covered service.
- (2) If a service is provided by a managed care organization, a dispute resolution between a provider and a child, the child's parent, or the child's guardian shall be in accordance with:
  - ~~[(a)]~~ [KRS 211.461 through 211.466; and]
  - ~~[(b)]~~ 907 KAR 17:010.
- (3) A KCHIP Phase II eligible child or a responsible party shall be informed in writing of the right to and procedures for due process by the cabinet:
  - (a) At the time information to obtain KCHIP Phase II approval is submitted;
  - (b) If there is a change in eligibility status; or
  - (c) As required by federal and state laws.

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

- (1) Access to services;
- (2) Continuity of care;
- (3) Health outcomes; and
- (4) Services arranged or provided as established in 907 KAR Chapter 17.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, November 9, 2022)**

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

RELATES TO: KRS 205.6481 – 205.6497, 211.461 – 211.466, 281.010(25), 304.5-040, 304.17A-005(8), (14), 42 C.F.R. 435.403, 440.230, Part 457, 42 U.S.C. 1396, 1397aa, 9902(2)

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

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

Section 1. Definitions.

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

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

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

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

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

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

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

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

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

(b) Is an immigrant who is lawfully present;

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

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

(e)1. Has family income that does not exceed 213 percent of the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).~~7~~ A five (5) percent income disregard **shall be/is** available consistent with the following:

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

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

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

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

4. Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2.~~7~~; **and**

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

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

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

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

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

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

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

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

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

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

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

~~**(3)(2)**(a) Eligibility for KCHIP Phase III shall be determined by the department.~~

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

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

(a) 907 KAR 3:130; and

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

~~(2)[Covered services shall exclude:]~~

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

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

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

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

~~[(3)][(4)] A medical service shall be covered through KCHIP Phase III if the individual is determined eligible for KCHIP benefits in accordance with Section 2 of this administrative regulation.~~

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

~~[(5)][(6)] KCHIP Phase III shall be the payor of last resort.~~

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

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

(a) Name;

(b) Address;

(c) Sex;

(d) Date of birth;

(e) Race; and

(f) Social Security number;

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

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

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

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

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

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

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

(1) 907 KAR 1:671; and

(2) 907 KAR 1:672.

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

(a) 907 KAR 1:560; or

(b) 907 KAR 1:563.

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

(a) KRS 211.461 through 211.466; and

(b) 907 KAR 17:010.

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

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

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

(c) As required by federal and state laws.

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

(1) Access to services;

(2) Continuity of care;

(3) Health outcomes; and

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

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.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Aging and Independent Living**  
**Division of Aging and Disability Services**  
**(As Amended at ARRS, November 9, 2022)**

**910 KAR 1:090. Personal care attendant program and assistance services.**

RELATES TO: KRS 12.290, Chapter 13B, 171.530, 205.455(4), 205.8451(3), 205.900 - 205.925

STATUTORY AUTHORITY: KRS 194A.050(1), 205.910, 205.920

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.910 requires the Cabinet for Health and Family Services to establish by administrative regulation, an eligibility standard for personal care assistance services that[which] takes into consideration the unique economic and social needs of severely physically disabled adults. KRS 205.920 authorizes the cabinet to promulgate administrative regulations to implement provisions concerning personal care

assistance services. This administrative regulation establishes the personal care attendant program.

Section 1. Definitions. (1) "Administrative support personnel" means staff designated within a contract agency who offer technical assistance to, and monitor the activities of, the qualified agency.

(2) "Approved plan" means an agreement between the department and a contract agency to administer the personal care attendant program.

(3) "Assessment" means the collection and evaluation of information:

(a) About a person's situation and functioning;

(b) To determine the applicant's or participant's service level; and

(c) To develop a plan of care utilizing a holistic, person-centered[person-centered] approach by the evaluation team.

(4) "Attendant" means a person who provides personal care assistance services.

(5) "Contract agency" means the agency with which the cabinet has contracted to administer the personal care attendant program.

(6) "Department" means the Department for Aging and Independent Living or its designee.

(7) "Evaluation team" is defined by KRS 205.900(2).

(8) "Evaluation team's findings and recommendations" means the official response of the evaluation team signed by all three (3) team members.

(9) "Immediate family member" is defined by KRS 205.8451(3)[means a legal guardian, parent, step parent, foster parent, adoptive parent, sibling, grandparent, child, or spouse].

(10) "Income eligibility standard" means a formula to determine an applicant's income eligibility for the personal care attendant program pursuant to KRS 205.910(1).

(11) "Natural supports" means a non-paid person or persons or community resource, that can provide, or has historically provided, assistance to the participant or due to the familial relationship, and would be expected to provide assistance.

(12) "Participant" means a person accepted into the personal care attendant program and who has met the eligibility requirements of a severely physically disabled adult.

(13) "PCAP" means personal care attendant program.

(14) "Personal care assistance services" is defined by KRS 205.900(3).

(15)[(44)] "Prescreening" means a process that assesses whether or not an applicant appears to meet the basic requirements for eligibility.

(16)[(45)] "Qualified agency or organization" is defined by KRS 205.900(4).

(17)[(46)] "Reassessment" means reevaluation of the situation and functioning of a client.

(18)[(47)] "Service area" means those counties listed in an approved plan of the qualified agency or organization.

(19)[(48)] "Severely physically disabled adult" is defined by KRS 205.900(6).

(20)[(49)] "Subsidy" means a financial reimbursement paid by the cabinet to an adult who qualifies to receive personal care assistance services in accordance with KRS 205.905(1).

(21)[(20)] "Work agreement" means an agreement of time and tasks developed by the participant as the employer for the attendant as the employee.

Section 2. Eligibility. (1) To be eligible for participation in the personal care attendant program, an applicant shall:

(a) Be a severely physically disabled adult who:

1. Meets the qualifications required by KRS 205.905(1); and

2. Has the ability to be responsible for performing the functions required by KRS 205.905(2) to receive a subsidy;

(b) Agree to obtain an initial assessment for eligibility and a reassessment[re-assessment] at least biennially[annually] by an evaluation team in accordance with KRS 205.905(2)(b)1 and 2;

(c) Be able to reside or reside in a non-institutional setting;

(d) Work with a program coordinator in establishing a work agreement between the participant and attendant;

(e) Be responsible for attendant payroll reports and computing required employer tax statements;

(f) Have an immediate family member or natural supports to meet the individual's needs if a paid attendant is not available; and

(g) Not be receiving the same services obtainable from any federal, state, or combination of federal and state funded programs. If the individual's needs cannot be met with the funding received from any of those programs, the individual may be eligible to receive personal care attendant program services above and beyond what the other programs provide.

(2) An applicant shall be accepted for service if:

(a) The evaluation team determines that the applicant is eligible to participate in the program in accordance with this section;

(b) The department agrees that the determination is in accordance with this section; and

(c) Funds are available.

(3) An applicant shall be income eligible if they are eligible for:

(a) Supplemental Security Income; or

(b) Medicaid.

(4) If an applicant's gross annual income is less than 200 percent of the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services, the applicant shall be income eligible.

(5) If an applicant is not eligible pursuant to subsections (3) or (4) of this section, the income eligibility standard shall be determined by a program coordinator using the PCAP-05 Income Eligibility form as follows:

(a) The program coordinator shall determine the adjusted gross income by deducting:

1. The cost of unreimbursed extraordinary medical expenses, and impairment-related expenses as recorded on the PCAP-05;

2. An amount adjusted for family size based on 200 percent of the official poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services; and

3. Dependent care expenses.

(b) If the adjusted gross income is less than 200 percent of the annual federal poverty guidelines, the applicant shall be income eligible.

(c) If the adjusted gross income is more than 200 percent of the annual federal poverty guidelines, the following shall be used to determine the applicant's contribution to cost of care:

1. From the adjusted gross income subtract a current annual standard deduction for one (1) as determined by the Internal Revenue Service;

2. Divide the remaining income by two (2) to allow for the unique economic and social needs of the severely disabled adult;

3. Divide the final income by fifty-two (52) weeks; and

4. Calculate the estimated cost of personal care services by multiplying the estimated number of hours of personal care assistance services per week times the cost per hour of service.

(d) 1. If the resulting monetary amount in paragraph (c)[subparagraph] paragraph (e) 3. of this subsection is less than the estimated cost of services calculated in paragraph (c)[subparagraph] paragraph (e) 4. of this subsection, the qualified agency shall provide the full subsidy.

2. If the resulting monetary amount in paragraph (c)[subparagraph] paragraph (e) 3. of this subsection is more than the estimated cost of services calculated in paragraph (c)[subparagraph] paragraph (e) 4. of this subsection, the participant shall pay the difference between the cost of services and the qualified agency's maximum hourly rate.

(6) The income eligibility criteria established[set-out] in subsections (3) through (5) of this section shall be applied to a current participant at the time of the participant's next reassessment.

Section 3. Application and Evaluation. (1) A referral to the personal care attendant program may be made by:

(a) The applicant;

(b) Family, with applicant knowledge;

(c) Another person, with applicant knowledge; or

(d) Agency, with applicant knowledge.

(2) If an opening for services is available, a program coordinator shall:

(a) Visit and assist an applicant in the completion of a PCAP-01 Application for Services; and

(b) Complete and have all evaluation team members sign a PCAP-04 Evaluation Team Findings and Recommendations.

(3) A qualified agency shall:

(a) Report an evaluation team's findings and recommendations to the contract agency for final review of the applicant or participant; and

(b) Notify the applicant or participant if the evaluation team's findings and recommendations are accepted by the contract agency.

(4) A contract agency shall:

(a) Review [recommendations-of-]the evaluation team's findings and recommendations[team] and notify the qualified agency in writing of the final determination within ten (10) business days of receipt of the recommendations; and

(b) Notify the applicant or participant in writing within twenty (20) business days of receipt of the evaluation team's findings and recommendations in accordance with KRS 205.905(3):

1. Whether the evaluation team's findings and recommendations [of-the-evaluation-team-] are accepted or not accepted; and

2. The reasons for the contract agency's decision.

Section 4. Waiting List. (1) If the personal care attendant program is at capacity, an eligible applicant shall be placed on a [department][an]-[approved] waiting list entered into the state data system and, as a vacancy occurs, be accepted for services in priority order based on the following categories:

(a) Emergency situation because of an imminent danger to self or at risk of institutionalization;

(b) Urgent situation because there are no community supports; or

(c) Stable because there is a currently reasonable support system.

(2) Every effort shall be used to provide referrals to other services if personal care assistance services are not available.

Section 5. Relocation. (1) If an eligible participant receiving personal care assistance services relocates to another service area to complete a training or educational course, the participant shall remain a client of the service area of origin, if the:

(a) Participant considers the personal care attendant program service area of origin to be his or her place of residence; and

(b) Participant's purpose for relocation is to complete a course of education or training to increase employment skills.

(2) The receiving service area shall provide courtesy monitoring to coordinate the aspects of program requirements.

(3) The service area of origin shall retain responsibility for:

(a) Payment of a subsidy, if the participant meets eligibility for the duration of the educational or training course; and

(b) Monthly programmatic and financial reports.

(4) The receiving service area shall forward a copy of reports to the service area of origin by the fifth [(5th)] of the following month.

(5) If a participant moves from one service area of origin to another for any reason other than relocation for a training or educational course, the participant's program funding shall be transferred to the receiving service area.

(6) If a participant's personal care assistance services terminate, the program funding shall return to the service area of origin.

Section 6. Suspension of Services. (1) Suspension of services shall occur for the following reasons:

(a) Condition improved – on reassessment a participant is determined to need less than fourteen (14) hours of care per week;

(b) Condition worsened - on reassessment a participant is determined to need more hours of care than the program can provide and to be in danger if left alone due to lack of other caregivers;

(c) Participant's behavior clearly presents a danger to the program coordinator or attendant;

(d) Participant does not submit required employer taxes to the qualified agency;

(e) Participant moves from Kentucky;

~~[(f)] [Participant moves into an area of Kentucky where no services are contracted, unless the closest qualified agency determines that it remains feasible to provide services to the relocation area;]~~

~~[(g)]~~ Participant fails to hire an attendant;

~~[(h)]~~ Participant dies;

~~[(i)]~~ Participant chooses to:

1. Give up personal care assistance services; and

2. Be admitted to a long-term care facility; or

~~[(j)]~~ Participant requests suspension of services.

(2) Services may be suspended if there is~~neither of the following occurs~~:

(a) A non-return of an overpayment of services; or

(b) An intentional deception to obtain services.

(3) Suspension of services shall occur if there are any substantiated deceptive practices of paying for services that are:

(a) Not actually provided; or

(b) Duplicative services obtained through another program or agency at the same time.

Section 7. Participant Responsibilities. A participant shall:

(1) Meet the eligibility requirements to receive a subsidy established~~[set out]~~ in Section 2(1) of this administrative regulation;

(2) Select an attendant for personal care assistance services including screening and interviewing the attendant for employment;

(3) Instruct the attendant on specific personal care assistance services;

(4) Evaluate the attendant's personal care assistance services;

(5) Discuss and come to a written agreement with each attendant about:

(a) Services that shall be provided; and

(b) The terms of employment, including:

1. Time;

2. Hours;

3. Duties; and

4. Responsibilities;

(6) Keep records and report to the qualified agency attendant hours worked for payment to the attendant;

(7) Be responsible for all requirements of being an employer, including:

(a) Employee payroll;

(b) Withholdings;

(c) Actual payment of required withholdings;

(d) Taxes appropriate to being an employer; and

(e) Issuing the employee a W-2 as required by the Internal Revenue Service;

(8) Negotiate for room and board for an attendant as established~~[specified]~~ in Section 9(4)(a) of this administrative regulation; and

(9) Coordinate with a program coordinator the aspects of program requirements.

Section 8. Attendant Responsibilities. (1) An attendant shall:

(a) Enter into and comply with the written agreement for terms of work required by Section 7(5) of this administrative regulation;

(b) Perform personal care assistance services and other tasks that may include:

1. Turning;

2. Repositioning;

3. Transferring;

4. Assistance with oxygen;

5. Hygiene;

6. Grooming;

7. Washing hair;

8. Skin care;

9. Shopping;

10. Transportation;

11. Chores;

12. Light correspondence;

13. Equipment cleaning; and

14. Emergency procedures, if necessary;

(c) Perform tasks consistent with the work agreement as instructed by the participant;

(d) Report to work as scheduled;

(e) Maintain the privacy and confidentiality of the participant;

(f) If unable to report for work as scheduled, notify the participant at least six (6) hours in advance unless an emergency arises;

(g) Maintain a list of emergency numbers;

(h) Participate in~~Attend~~ attendant training provided by the participant related to his or her specific care needs and, if applicable, training related to dementia care, established~~[specified]~~ by 910 KAR 4:010;

(i) Keep a daily record of hours worked and services rendered;

(j) Submit to the participant documents and material necessary to comply with the formal payment process;

(k) Meet with the participant and program coordinator for monitoring and coordinating the aspects of the program;

(l) Disclose misdemeanor or felony convictions to the applicant or participant through a law enforcement agency;

(m) Authorize a qualified agency to obtain a criminal background check from the Kentucky National Background Check Program as defined in 906 KAR 1:190~~[Kentucky nurse aide registry, central registry, Adult Protective Services caregiver misconduct registry, and criminal background checks as specified in Section 11(6) of this administrative regulation]~~; and

(n) Notify the program coordinator of conditions that~~[which]~~ seriously threaten the health, [or] safety, or welfare of the participant or attendant.

(2) An individual shall not be hired as an attendant if the individual:

(a) Has not submitted to the background checks established~~[specified]~~ in subsection (1)(m) of this section;

~~[(b)] [Is on any of the following registries:]~~

~~[1.] [Kentucky nurse aide registry;]~~

~~[2.] [Adult Protective Services caregiver misconduct registry; or]~~

~~[3.] [Central registry;]~~

~~[(c)]~~ Has pled guilty or been convicted of committing:

1. A felony crime related to theft or drugs; or

2. A misdemeanor or felony crime related to sexual or violent offenses, including assault; or

~~[(d)]~~ Is not able to understand and carry out a participant's instructions.

Section 9. Attendant Payment. (1) The amount of attendant payment shall be in compliance with paragraphs (a) through (d) of this subsection~~[the following:]~~

(a) The maximum hourly subsidized rate for direct personal care assistance services shall be eleven (11) dollars per hour~~[no more than ten (10) percent over the current minimum wage rate established by KRS 337.275]~~.

(b) If the hourly subsidized rate established in paragraph (a) of this subsection is insufficient to obtain direct personal care assistance services in a specific Kentucky service area, a provider may request a higher rate by mailing a written request and justification of the need for a higher rate to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Minimum hours for direct personal care assistance services per week shall be fourteen (14).

(d) Maximum hours for direct personal care assistance services per week shall be forty (40).

(2) In an extreme situation that results in a temporary increased need for services, such as the illness of the participant, or illness or death of a caregiver, a temporary waiver of maximum hours and the resulting cost may be granted by the contract agency.

(3) A special night rate may be negotiated:

(a) If a participant does not:

1. Require an attendant during the day; or

2. Need direct personal care assistance services from this attendant; or

(b) To provide for caregiver respite service.



(4)(a) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate, if necessary, with a potential attendant on room and board for personal care assistance services.

(b) A live-in attendant shall not be excluded from employment as a part-time attendant.

(c) Maximum payment under this arrangement shall be for forty (40) hours of personal care assistance services per week, and overtime shall not be provided or paid.

Section 10. Program Coordinator Qualifications and Responsibilities. (1) A program coordinator shall meet at least one (1) of the following minimum qualifying requirements:

(a) A bachelor's degree with two (2) years' experience working in the disability community; or

(b) Completion of fifty-four (54) semester hours of college with four (4) years working in the disability community.

(2) The department may waive the education requirements required by subsection (1) of this section based on consideration of work experience involving:

(a) Interviewing to select an employment candidate;

(b) More than five (5) years of experience working with the disability community;

(c) Administrative work involving:

1. The review of assessment criteria;

2. Monitoring program compliance;

3. Training program participants, employees, and staff regarding program requirements; or

(d) Determination of eligibility for human services programs.

(3) If employed, a program coordinator shall complete the following hours of training:

(a) Within thirty (30) working days of hire:

1. Complete a minimum of sixteen (16) hours of orientation program training; and

2. Shadow an experienced program coordinator for one (1) to two (2) days;

(b) Within the first six (6) months of employment, complete a minimum of fourteen (14) hours of initial program coordination training; and

(c) Complete follow-up quarterly trainings with the department and contract agency.

(4) A program coordinator shall:

(a) Collaborate with the evaluation team to determine if an applicant is eligible to participate in the personal care attendant program in accordance with Section 2 of this administrative regulation;

(b) Complete the application process required by Section 3(2)(a) of this administrative regulation;

(c) Maintain a waiting list of eligible applicants who are unable to be funded for program participation until an opening occurs; and

(d) Perform the assessments required in Section 12(2) of this administrative ~~regulation~~**regulations**.

(5) A program coordinator or program coordinator's designee shall:

(a) Identify severely physically disabled adults who may be eligible for participation in the personal care attendant program;

(b) Prescreen an applicant for eligibility to participate in the personal care attendant program;

(c) Assist a participant in learning how to conduct an interview and screen a prospective attendant;

(d) Assist in or arrange for the training of the attendant, if necessary;

(e) Review with the participant the results of an assessment or reassessment signed by an evaluation team;

(f) Assist the participant in completing and updating a PCAP-06 Plan of Care;

(g) Assist the participant in developing a work agreement between the participant and attendant;

(h) Obtain a PCAP-02 Authorization for Release of Confidential Information from the participant;

(i) Monitor the program with each participant on a quarterly basis, including:

1. A face-to-face visit with the participant during at least two (2) of the quarters; and

2. Making verbal contact with the participant in the quarters that a face-to-face visit is not made;

(j) Assist the participant in finding a back-up attendant for:

1. An emergency; or

2. The regular attendant's time off;

(k) Assist in the recruitment and referral of an attendant, if requested;

(l) Submit monthly activity reports to a qualified agency as ~~established~~**established/specified** in Section 15(2) of this administrative regulation ~~by the fifth (5th) of the following month~~; and

(m) Assure that the participant:

1. Enters into agreement to pay employee taxes with a PCAP-03 Employer Tax Agreement; and

2. Receives training in recordkeeping and tax responsibilities related to services.

Section 11. Qualified Agency Responsibilities. A qualified agency shall:

(1) Employ or contract with an evaluation team pursuant to KRS 205.905(2);

(2) Provide monthly programmatic and financial reports on an attendant per participant to the contract agency ~~by the fifth (5th) of the following month~~;

(3) Develop a procedure for:

(a) Payment of a subsidy; and

(b) Establishment of appropriate fiscal control within the qualified agency;

(4) Employ or contract for the services of a program coordinator;

(5) ~~Supervise~~**Oversee** the training requirements for a program coordinator as ~~established~~**established/specified** in Section 10(3) of this administrative regulation;

(6) Obtain a criminal background check from the Kentucky National Background Check Program as defined in 906 KAR 1:190~~[the following]~~ on a potential attendant;[:]

~~[(a)] [The results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency, if the potential attendant resided or worked outside of Kentucky during the year prior to employment;]~~

~~[(b)] [Within thirty (30) days of the date of hire, the results of a central registry check as described in 922 KAR 1:470; and]~~

~~[(c)] [Prior to employment, the results of a nurse aide registry check as described in 906 KAR 1:100;]~~

(7) Report ~~the~~ **team's/team** findings and recommendations to a contract agency as ~~established~~**established/specified** in Section 3(3) of this administrative regulation;

(8) Maintain participant records as required by Section 15(1) of this administrative regulation; and

(9) Provide accessibility to services through proper evaluation of applicants who are deaf or hard-of-hearing by utilizing an interpreter service in accordance with KRS 12.290.

Section 12. Evaluation Team Members and Responsibilities. (1) An evaluation team:

(a) Shall consist of a program coordinator; and

(b) May consist of:

1. An occupational or physical therapist;

2. A registered nurse;

3. A director or executive director of the qualified agency;

4. A fiscal officer of the qualified agency;

5. A mental health provider;

6. An in-home services coordinator; or

7. Another entity involved in the participant's care.

(2) The program coordinator of the evaluation team shall complete:

(a) An applicant's initial assessment to establish eligibility pursuant to KRS 205.905(2)(b)1; and

(b) A participant's reassessment, at least ~~biennially~~**annually** for continuing services pursuant to KRS 205.905(2)(b)2~~, or more frequently if changes occur in the participant's situation~~.

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Section 13. Contract Agency Responsibilities. The contract agency shall:

(1) ~~Have a process in place to conduct prescreening of referrals to ensure they meet the program and financial requirements;~~

(2) Implement a personal care attendant program according to an approved plan;

(3)~~[(2)]~~ Assume fiscal accountability for state funds designated for the program;

(4)~~[(3)]~~ Provide necessary administrative support personnel within a contract agency office;

(5)~~[(4)]~~ Provide an appeals procedure and hearing process in compliance with:

(a) KRS Chapter 13B; and

(b) KRS 205.915;

(6)~~[(5)]~~ Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with cabinet financial audit requirements;

(7)~~[(6)]~~ Provide, in conjunction with a qualified agency, a procedure for attendant payment;

(8)~~[(7)]~~ Review the evaluation team's findings and recommendations ~~[of an evaluation team]~~ and notify a participant and qualified agency as established[specified] in Section 3(4) of this administrative regulation;

(9)~~[(8)]~~ Submit monthly program reports along with the submission of financial invoices to the department as established[specified] in Section 15(3) of this administrative regulation; and

(10)~~[(9)]~~ Maintain files and records for cabinet audit, including participant records and statistical reports in accordance with 725 KAR 1:061[Kentucky Department for Libraries and Archives Records Retention Schedule].

Section 14. Department Responsibilities. The department shall:

(1) Provide a format for the approved plan for the personal care attendant program;

(2) Review proposed plans submitted by a contract agency to administer the personal care attendant program;

(3) Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program that shall include one (1) of the following outcomes:

(a) Approve the plan as submitted;

(b) Require the contract agency to revise the plan; or

(c) Reject the plan;

(4) Monitor the contract agency at least annually;

(5) Develop and revise program and fiscal requirements;

(6) Allocate available funding;

(7) Advocate for program expansion; and

(8) Provide technical assistance.

Section 15. Reporting and Recording. (1) An individual record for each participant shall be maintained by the qualified agency and shall include:

(a) The forms incorporated by reference[specified] in Section 17 of this administrative regulation;

(b) A chronological record of contacts with:

1. The participant;

2. The family;

3. The physician; and

4. Others involved in care with quarterly monitoring reports; and

(c) An assessment record of eligibility.

(2) A program coordinator shall:

(a) Submit completed reports for monthly activities to a qualified agency by a designated date in the contract; and

(b) Forward a copy to the contract agency.

[(3) A contract agency shall make a copy of reports on monthly activities available to the department.]

Section 16. Appeals. An applicant or participant may request an informal dispute resolution or an appeal. [:]

(1) A recipient may request an informal dispute resolution.

(2) A dispute resolution shall be limited to:

(a) The denial, reduction, or termination of a:

1. Personal care attendant program plan; or

2. Personal care attendant program plan amendment;

(b) The reduction of personal care attendant program funding as requested in the plan; or

(c) The reduction or termination of personal care attendant program grant program funding, unless due to state budget cuts.

(3) A request for an informal dispute resolution shall:

(a) Be submitted to the department's PCAP program coordinator within thirty (30) days following the notification by the personal care attendant program grant program coordinator of a decision in subsection (2) of this section; and

(b) Contain the following information:

1. Name, address, and telephone number of the recipient;

2. Decision being disputed;

3. Justification for the dispute;

4. Documentation supporting the dispute; and

5. Signature of person requesting the dispute resolution.

(4) The dispute resolution shall be heard by:

(a) Three (3) members of the council, one (1) of whom shall be the chairman or the chairman's designee;

(b) One (1) member of the review team; and

(c) The personal care attendant program grant program coordinator.

(5) The recipient shall be provided an opportunity to appear before the dispute resolution team to present facts or concerns about the denial, reduction, or termination of the grant.

(6) The dispute resolution team shall inform a recipient, in writing, of the decision resulting from the dispute resolution within ten (10) business days of the review.

(7) A recipient dissatisfied with the result of the dispute resolution may request an appeal. An appeal shall be made[:]

(a) [(4)] In accordance with:

1. [(a)] KRS Chapter 13B; and

2. [(b)] KRS 205.915; and

(b) [(2)] Within thirty (30) days of any decision by the:

1. [(a)] Cabinet;

2. [(b)] Contract agency; or

3. [(c)] Qualified agency.

Section 17. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "PCAP-01 Application for Services", edition 4/2018;

(b) "PCAP-02 Authorization for Release of Confidential Information", edition 4/2018;

(c) "PCAP-03 Employer Tax Agreement", edition 4/2018;

(d) "PCAP-04 Evaluation Team Findings and Recommendations", edition 4/2018;

(e) "PCAP-05 Income Eligibility", edition 4/2018; and

(f) "PCAP-06 Plan of Care", edition 4/2018.

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**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Community Based Services**

**Division of Family Support**

**(As Amended at ARRS, November 9, 2022)**

**921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (KTAP) [(K-TAP)].**

RELATES TO: KRS 205.010, 205.2005, 205.703, 205.720(1), 403.720(2)~~[(4)]~~, 45 C.F.R. [Parts]260-265, Part 1626.2(b), 7 U.S.C.

2011-2036, 8 U.S.C. 1101-1524, [.] 21 U.S.C. 802(6), 22 U.S.C. 7102[(11)](8), 7105, 38 U.S.C. 101, 107, 1101, 1301, 1304, 5303A(d), 42 U.S.C. 416, 601-619, 1381-1384, 1396, Pub. L. 111-118

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), (3), 205.200(3)(1), 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.200(3)(1) requires the secretary to promulgate administrative regulations to develop a work program for recipients of public assistance under Title IV-A of the Federal Social Security Act, 42 U.S.C. 601 to 619. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance in conformity with 42 U.S.C. 602 and federal regulations. KRS 205.200(3) authorizes the secretary to promulgate administrative regulations prescribing as a condition of eligibility that a needy child regularly attend school, and the degree of relationship of the person or persons in whose home the needy child must reside. This administrative regulation establishes the technical requirements of [school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for.] eligibility for [benefits from] the Kentucky Transitional Assistance Program (KTAP)[(K-TAP)].

Section 1. Definitions. (1) "Assistance" is defined by 45 C.F.R. 260.31.

(2) "Barriers" means a limitation in an individual's ability to become employed and self-sufficient[self-sufficient] or to comply with KTAP[K-TAP] requirements.

(3) "Battered or subjected to extreme cruelty" is defined by 45 C.F.R. 1626.2(b)[means an individual who has been subjected to:

(a) A physical act that resulted in, or threatened to result in, physical injury to the individual;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative of a dependent child to engage in a nonconsensual sexual act or activity;

(e) Threat of, or an attempt at, physical or sexual abuse;

(f) Mental abuse; or

(g) Neglect or deprivation of medical care].

(4) "Benefit group" means a group composed of one (1) or more children and may include as a specified relative a person pursuant to Section 6[14] of this administrative regulation.

(5) "Child" means "minor child" as defined by 45 C.F.R. 260.30[an individual:

(a) Age fifteen (15) or under;

(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school; or

(c) Under age eighteen (18) and a high school graduate].

(6) "Domestic violence and abuse" is defined by KRS 403.720(2)[(4)] means the same as the definition for "battered or subjected to extreme cruelty" pursuant to subsection (3) of this section].

(7) ["Employed" means a person who performs a physical or mental activity in exchange for direct monetary compensation.

(8) "Family member" means an individual:

(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or

(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 261.2(n).

(8)[(9)] "Kentucky Transitional Assistance Program" or "KTAP"[K-TAP] means Kentucky's Temporary Assistance for Needy Families (TANF) cash assistance[money payment] program

for eligible families with a child living in the home[a child who is deprived of parental support or care due to:

(a) Death of one (1) parent;

(b) Continued voluntary or involuntary absence of one (1) parent; or

(c) If both parents are in the home:

1. Physical or mental incapacity of one (1) parent; or

2. Unemployment of at least one (1) parent].

(9)[(10)] "Kentucky Works Program" or "KWP" means the program established in 921 KAR 2:370[a program that assists in obtaining education, training, experience and employment necessary to leave public assistance].

(10)[(11)] "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married, or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(11)[(12)] "Penalized individual" means a person who is required to be included in the benefit group, but fails to fulfill an eligibility requirement that causes a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(12)[(13)] "Prior labor market attachment" or "PLMA" means the parent has earned not less than \$1,000 during the twenty-four (24) months prior to the application for K-TAP benefits based on the deprivation of unemployment pursuant to Section 10 of this administrative regulation.

(14)] "Qualified immigrant[alien]" means an immigrant [lawfully] alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully] admitted for permanent residence pursuant to 8 U.S.C. 1101 to 1524[;

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

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

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

(e) An alien whose deportation is being withheld pursuant to:

1. 8 U.S.C. 1253, as in effect prior to April 1, 1997; or

2. 8 U.S.C. 1231(b)(3);

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

(g) An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

(h) Battered or subjected to extreme cruelty in the United States:

1. By a:

a. Spouse or parent; or

b. Member of the spouse or parent's family residing in the same household as the alien, and the spouse or parent consented to, or acquiesced in, the battery or cruelty; and

2. If:

a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

b. There is a substantial connection between the battery or cruelty and the need for the benefit; and

c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to 8 U.S.C. 1154(a)(1)(A)(ii), (iii), or (iv);

(ii) Classification pursuant to 8 U.S.C. 1154(a)(1)(B)(ii) or (iii); or

(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);

(i) A child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States:

1. By a:

a. Spouse or parent of the alien without the active participation of the alien in the battery or cruelty; or

b. Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty; and

2. If:

a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

b. There is a substantial connection between the battery or

cruelty and the need for the benefit; and

c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to 8 U.S.C. 1154(a)(1)(A)(ii), (iii), or (iv);

(ii) Classification pursuant to 8 U.S.C. 1154(a)(1)(B)(ii) or (iii); or

(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);

(j) An alien who is lawfully residing in Kentucky and is:

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

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

3. The spouse or surviving spouse who is not remarried if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual pursuant to subparagraph 1 or 2 of this paragraph;

4. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105; or

5. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;

(k) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101; or

(l) An alien admitted to the United States as an Afghan or Iraqi special immigrant on or after December 19, 2009, in accordance with Pub. L. 111-118, Section 8120].

[(15)] "Qualifying parent" means the parent who meets PLMA.

[(16)] "Recipient" means an individual receiving K-TAP including a specified relative or a specified relative receiving on behalf of a child.]

[(13)] [(17)] "Sanctioned individual" means a person who is required to be included in the benefit group, but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

[(14)] [(18)] "Second chance home" means an entity that:

(a) Provides a minor teenage parent a supportive and supervised living arrangement; and

(b) Requires a minor teenage parent to learn:

1. Parenting skills, including child development;

2. Family budgeting;

3. Health and nutrition; and

4. Other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

[(15)] [(19)] "Severe form of trafficking in persons" is defined by 22 U.S.C. 7102 [(11)] [(8)].

[(16)] [(20)] "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his or her place of employment.

[(17)] [(24)] "Supplemental Security Income" or "SSI" means a monthly cash payment made pursuant to:

(a) 42 U.S.C. 1381 to 1384 to the aged, blind, or [and] persons with a disability;

(b) 42 U.S.C. 1382e; or

(c) 42 U.S.C. 1382.

[(18)] [(22)] "Two parent case" ["Unemployed parent case" or "UP case"] means K-TAP[K-TAP] benefits paid to a family if both parents live[are] in the home and are both required to participate in the KWP[at least one (1) parent is unemployed].

[(19)] [(23)] "Work" means participation in a KWP activity pursuant to 921 KAR 2:370, Section 2(1)(c).

Section 2. Eligible Parent. (1) An eligible parent shall include the natural, adopted, or adjudicated parent of the child.

(2) An adjudicated parent shall include an administrative establishment of the relationship.

(3) A stepparent shall not be an eligible parent.

Section 3. Age and School Attendance. (1) The definition of [a] "child" [~~pursuant to Section 1(5) of this administrative regulation,~~] shall be met for at least one (1) person living in the home.

(2) Verification of school attendance shall be required for a:

(a) Child who is [sixteen (16), seventeen (17), or] eighteen (18) years of age, in order to determine his or her continuing eligibility; or

(b) Minor teenage parent pursuant to Section 15(1)[20(4)] of this administrative regulation.

(3) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in a month he or she is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

(4) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 4. Enumeration. (1) A person included in the KTAP[K-TAP] case shall furnish his or her Social Security number or apply for a number if one (1) has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The cabinet shall assist an individual in making application for a Social Security number, if needed.

Section 5. Residence and Citizenship. (1) Residence. A resident shall be an individual who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b)1. Entered the state with a job commitment or seeking employment; and

2. Is not receiving assistance funded by a block grant program pursuant to 42 U.S.C. 601 to 619 from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, KTAP[K-TAP] shall be provided only to a United States citizen.

(b) A qualified immigrant[alien] [~~pursuant to Section 1(12)[1(14)] of this administrative regulation,~~] who entered the United States before August 22, 1996, who is otherwise eligible for KTAP[K-TAP], shall be eligible for assistance.

(c) A qualified immigrant[alien] pursuant to Section 1(14) of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for KTAP [K-TAP] for a period of five (5) years beginning on the date of the immigrant's[alien's] entry into the United States with the following exceptions: [The following exceptions shall apply to this provision]:

1. An immigrant[alien] who is admitted to the United States as a refugee pursuant to 8 U.S.C. 1157;

2. An immigrant [alien] who is granted asylum pursuant to 8 U.S.C. 1158;

3. An immigrant[alien] whose deportation is being withheld pursuant to:

a. 8 U.S.C. 1253, as in effect prior to April 1, 1997; or

b. 8 U.S.C. 1231(b);

4. An immigrant[alien] who is lawfully residing in Kentucky and is:

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

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

c. The spouse or un-remarried[unremarried] surviving spouse if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;

d. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking in persons who is admitted to the United States pursuant to 22 U.S.C. 7105; or

e. A parent or a sibling of a victim of a severe form of trafficking in persons who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;

5. An immigrant[alien] who is a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

6. An immigrant[alien] who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101; or

7. An immigrant[alien] admitted to the United States as an Afghan or Iraqi special immigrant on or after December 19, 2009, in accordance with Pub. L. 111-118, Section 8120.

(d) Failure of the parent or other adult applying for or receiving benefits to verify citizenship or immigrant[alien] status shall cause the needs of the parent or other adult to be removed from the case.

[Section 6. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care pursuant to Section 1(9) of this administrative regulation.

(2) A specific deprivation factor under Section 7, 8, 9, or 10 of this administrative regulation shall be verified for a child for whom assistance is approved.

Section 7. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 8. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence shall include:

1. Divorce;
2. Legal separation;
3. Marriage annulment;
4. Desertion of:

a. Thirty (30) days or more if the parent:

- (i) Voluntarily leaves; or
- (ii) Refuses to accept the child into his or her home; or
- b. Less than thirty (30) days if:

(i) The child leaves the parent because the parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;

(iii) The child is voluntarily placed with a relative following a finding by the cabinet that the home is unsuitable;

(iv) The child is placed by the court with a specified relative other than the parent;

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation; or

6. Birth out-of-wedlock.

(b) Involuntary absence shall include:

1. Commitment to a penal institution for thirty (30) days or more;
2. Long-term hospitalization;
3. Deportation; or
4. Single parent adoption.

(3) A parent who is a convicted offender, but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be considered absent from the home.

Section 9. Deprivation Due to Incapacity. (1) A determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

- (a) Medical;
- (b) Social; and
- (c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) Incapacity shall exist in a case if the following criteria are met:

(a) A medical determination is made that one (1) parent has a physical or mental disability, illness, or impairment that:

1. Was present at the time of application; and
2. Has continued or is expected to last for a period of at least thirty (30) calendar days. The thirty (30) day period may include a period the claimant is undergoing:

- a. Planned diagnostic study; or
- b. Evaluation of rehabilitation potential; and
- (b) A nonmedical evaluation determines that the disability, illness, or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

- (a) Field staff if the following criteria are met:
  1. The parent declares physical inability to work;
  2. The worker observes some physical or mental limitation; and
  3. The parent:
    - a. Is receiving SSI;
    - b. Is age sixty-five (65) or over;
  - c. Has been determined to meet the definition of blindness pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by the Social Security Administration;
  - d. Has been determined to meet the definition of permanent and total disability pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by either the:
    - (i) Social Security Administration; or
    - (ii) Medical review team of the cabinet;

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested, and there is no visible improvement in condition;

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;

g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter;

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, a statement from the physician shall be requested to indicate if incapacity existed as of the application date;

i. Is recovering from surgery, illness, or injury that requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. A period longer than six (6) weeks shall be determined through the medical review team;

j. Is on approved sick leave recovering from surgery, illness, or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or

k. Is a woman in a high-risk pregnancy, during the duration of the pregnancy, as verified by physician statement; or

(b) The medical review team, consisting of a licensed physician and a social worker employed by the cabinet, if a determination by field staff is precluded.

(5) The factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaint regarding an alleged physical or mental disability, illness, or impairment; and

(b) Competent medical testimony relevant to whether:

1. A physical or mental disability, illness, or impairment exists; and

2. The disability, illness, or impairment is:

- a. Sufficient to reduce the parent's ability to support or care for a child; and
- b. Likely to last thirty (30) days.

(6) The factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

1. Age;

2. Employment history;
3. Vocational training;
4. Educational background; and
5. Subjective complaint regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunity available in the claimant's area of residence.

(7) A written report shall be made of the determination under this section.

(8) A claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing pursuant to 921 KAR 2:055.

~~Section 10. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent if both parents are in the home shall be based on the determination that the qualifying parent meets the criteria of unemployment pursuant to subsection (3) of this section and has a PLMA, pursuant to Section 1(13) of this administrative regulation.~~

~~(2) The qualifying parent designation shall remain with the same parent as long as assistance is received on the basis of the same application.~~

~~(3) A parent shall be considered to be unemployed if employed:~~

~~(a) Less than 100 hours in a calendar month; or~~

~~(b) In excess of 100 hours in a particular month if the employment is intermittent and the excess is of a temporary nature, if the parent:~~

~~1. Was under the 100-hour standard in the prior two (2) months, from the month of application for K-TAP; and~~

~~2. Is expected to be under the 100-hour standard in the following month of application for K-TAP.~~

~~(4) The 100-hour requirement for unemployment in subsection (3) of this section shall apply to a K-TAP applicant.~~

~~(5) PLMA shall be established if the parent:~~

~~(a) Attests to the amount of earnings pursuant to Section 1(13) of this administrative regulation with the following requirements:~~

~~1. Gross income from self-employment and farming shall qualify as earned income in determining PLMA; and~~

~~2. The self-employed individual shall not have to realize a profit to meet this requirement;~~

~~(b) Within twelve (12) months prior to application, received unemployment compensation; or~~

~~(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.~~

~~(6) In determining whether or not criteria in subsection (5) of this section are met, two (2) semesters of full-time school attendance, as defined by the school or institution, may be substituted for \$500 of the \$1,000 earnings.~~

~~(7) Unemployment shall not exist if the qualifying parent:~~

~~(a) Is on strike;~~

~~(b) Is temporarily unemployed:~~

~~1. Due to weather condition or lack of work;~~

~~2. If there is a job to return to; and~~

~~3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;~~

~~(c) Is unavailable for full-time employment;~~

~~(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;~~

~~(e) Has not met the criteria of unemployment for at least thirty (30) days;~~

~~(f) Is not:~~

~~1. Registered for work pursuant to 921 KAR 2:370, Section 4(3);~~

or

~~2. Subject to KWP, pursuant to 921 KAR 2:370;~~

~~(g) Has refused a bona fide offer of employment or training for employment without good cause, pursuant to 921 KAR 2:370, Section 6(1), in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits; or~~

~~(h) Has been discontinued in accordance with 921 KAR 2:370, Section 7(2)(a)2, for less than thirty (30) days.]~~

Section 6.[Section 11.] Living with a Specified Relative. (1) To be eligible for KTAP[K-TAP], a [needy]-child shall be living in the home of a relative as follows:

(a) A blood relative, including a relative of a[the] half-blood sibling;

(b) A person listed in paragraph (a) of this subsection if the alleged father has had relationship established through the administrative determination process pursuant to Section 7[12] of this administrative regulation;

(c) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent; or

(d) A relative by marriage, even if the marriage may have terminated, if termination occurred after the birth of the child, as follows:]

1. A couple that has been considered married by a state with a common-law marriage provision shall be considered married in Kentucky for KTAP[K-TAP] eligibility purposes; and

2. The statement of the applicant or recipient that the couple's marriage is recognized from another state as a common-law marriage shall be accepted as verification by the cabinet.

(2) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more shall exist if the parent or relative caregiver continues to exercise care and control of the child and the child is absent due to:

(a) Medical care;

(b) Attendance at school, including boarding school;

(c) College or vocational school;

(d) Foster care, as verified by the cabinet; or

(e) A short visit with a friend or relative if it is intended that the child will return to the home and the parent or specified relative caregiver maintains parental control of the child.

(3)(a) A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in foster care.

(b) If the only eligible child in the benefit group is absent due to foster care, the otherwise eligible parent or parents in the benefit group shall:

1. Remain eligible for sixty (60) days from the date the child is placed in foster care; and

2. Be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in foster care if no other eligible child is in the benefit group.

(4)(a) If a parent or specified relative caregiver fails to notify the cabinet of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (2) of this section, the parent or specified relative caregiver shall not be eligible for his or her share of KTAP[K-TAP] benefits during the period of the child's unreported absence of thirty (30) consecutive days or more.

(b) Ineligible benefits received by the parent or specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to 921 KAR 2:016, Section 11.

Section 7.[Section 12.] Administrative Establishment of Relationship. (1) An administrative determination of relationship as established in this administrative regulation shall be used only to establish relationship for KTAP[K-TAP] eligibility if the following type of evidence is present:

(a) A birth certificate listing the alleged parent;

(b) Legal document which shall include:

1. Hospital record;

2. Juvenile court record;

3. Will; or

4. Other court record that clearly indicates the relationship of the alleged parent or specified relative caregiver;

(c) Receipt of statutory benefits as a result of the alleged parent's circumstance;

(d) Documents declaring voluntary paternity as specified in 901

KAR 5:070, Section 1; or

(e) A sworn statement or affidavit of either parent acknowledging relationship plus one (1) of the following:

1. School record;
2. Bible record;
3. Immigration record;
4. Naturalization record;
5. Church document, such as baptismal certificate;
6. Passport;
7. Military record;
8. U.S. Census record; or

9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative relationship shall occur if the parent or, in the absence of the parent, the caretaker relative:

(a) Alleges the evidence pursuant to subsection (1)(a) or (b) of this section is erroneous;

(b) Provides substantiation of the erroneous information; and

(c) Provides a notarized statement or affidavit:

1. Acknowledging the erroneous information; and

2. Containing the correct information on the actual alleged parent.

(3) Presence of the notarized statement or affidavit pursuant to subsection (2)(c) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of relationship shall not be acknowledged.

Section 8.~~[Section 13.]~~ One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for KTAP~~[K-TAP]~~ if receiving SSI.

(2) If a child who receives SSI meets the KTAP eligibility~~[K-TAP] requirements [of age, deprivation,] and is living in the home of a specified relative, the specified relative caregiver shall be approved for KTAP~~~~[K-TAP]~~ if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the KTAP eligibility~~[K-TAP] requirements [of age, deprivation,] and is living in the home of a specified relative, the specified relative caregiver shall be approved for KTAP~~~~[K-TAP]~~ if all other eligibility factors are met.

Section 9.~~[Section 14.]~~ Strikers. (1) A family shall be ineligible for benefits for a month the parent, with whom the child is living on the last day of the month, is participating in a strike.

(2) A specified relative other than the parent shall be ineligible for benefits for a month if, on the last day of the month, the relative is participating in a strike.

Section 10.~~[Section 15.]~~ Work Registration. An adult applicant or recipient of the KTAP~~[K-TAP]~~ benefit group shall register for work pursuant to 921 KAR 2:370, Section 4(3).

Section 11.~~[Section 16.]~~ Assessment. A work-eligible individual, as defined by 45 C.F.R. 261.2(n), shall complete an assessment pursuant to 921 KAR 2:370.

Section 12.~~[Section 17.]~~ Kentucky Works Program. The technical requirements for participation in the Kentucky Works Program (KWP) shall be pursuant to 921 KAR 2:370.

Section 13.~~[Section 18.]~~ Cooperation in Child Support Activities.

(1) In cooperation with the Department for Income Support, the Department for Community Based Services shall attempt to secure parental support, and if necessary establish paternity, for a child receiving assistance ~~[pursuant to Section 1(1) of this administrative regulation,]~~ who has a parent absent from the home due to:

- (a) Divorce;
- (b) Desertion;
- (c) Birth out-of-wedlock;
- (d) Legal separation;
- (e) Forced separation; or
- (f) Marriage annulment.

(2) With the exception of a good cause reason, pursuant to

subsections (4) and (5) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in KTAP~~[K-TAP]~~ benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child support activities that shall include:

(a) Identifying the noncustodial parent or obligor;

(b) Providing information to assist in the:

1. Location of the noncustodial parent or obligor;

2. Enforcement of a child support order; or

3. Review or modification of a child support order;

(c) Establishing paternity, if required;

(d) Establishing, modifying or enforcing a child support order; and

(e) Forwarding a child support payment received to the state's centralized collection agency.

(3) The cabinet shall inform the applicant or recipient of the individual's right to file a good cause claim for refusing to cooperate in a child support activity.

(4) The applicant or recipient shall be excused from penalty for failure to cooperate with a child support activity, pursuant to subsection (2) of this section, if one (1) of the following criteria is met:

(a) Cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the:

1. Child; or

2. Caretaker relative to an extent that it would reduce the capacity to care for the child adequately;

(b) The child was conceived as a result of incest or forcible rape and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation;

(c) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) The applicant or recipient is being assisted by a public or licensed private social service agency to resolve whether to keep the child or release the child for adoption if:

1. Discussion has not gone on for more than three (3) months; and

2. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have thirty (30) days from the date the good cause claim is made to provide evidence to substantiate the claim.

(a) Evidence used to determine good cause shall include:

1. Birth certificate, medical information, or law enforcement record indicating that the child was conceived as a result of incest or forcible rape;

2. Court document or other record indicating legal proceedings for adoption of the child by a specific family is pending before a court of competent jurisdiction;

3. Record or other evidence indicating the noncustodial parent, or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption, and the issue has not been pending more than three (3) months; or

5. Notarized statement from an individual, other than the applicant or recipient, with knowledge of the circumstance that provides the basis for the good cause claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing a support obligation.

(c) If the good cause claim is based on the anticipation of

physical harm to the child or caretaker relative, and corroborative evidence is not submitted, the cabinet shall conduct an investigation if it is believed that:

1. Corroborative evidence is not available; and
2. The claim is credible without corroborative evidence.
- (d) If the cabinet conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support, unless the contact is necessary to establish the good cause claim.
- (e) If it is necessary for the cabinet to contact the noncustodial parent, or obligor, or the alleged parent during the investigation of a good cause claim, the worker shall notify the applicant or recipient of the proposed contact to either:
  1. Obtain permission for the contact; or
  2. Enable the applicant or recipient to:
    - a. Present additional evidence or information so that the contact shall be unnecessary;
    - b. Withdraw the application for assistance or request discontinuance of KTAP[K-TAP]; or
    - c. Have the good cause claim denied.
- (6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the cabinet shall:
  - (a) Document the case;
  - (b) Determine that good cause:
    1. Exists and a support activity cannot be initiated without endangering the:
      - a. Best interests of the child; or
      - b. Physical or emotional health of the child or the relative; or
    2. Does not exist;
  - (c) Advise the applicant or recipient of the result of the good cause claim determination; and
  - (d) Identify each case that good cause is established, but may be subject to change, for subsequent review.
- (7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not considered to be met by the cabinet, KTAP[K-TAP] benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 9 of 921 KAR 2:016.
- (8) If, after the reduction of the KTAP[K-TAP] payment for failure to cooperate, the specified relative states he or she will cooperate, the cabinet shall:
  - (a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he or she will cooperate and verification of cooperation is provided timely; and
  - (b) Not authorize a back payment for the period the individual did not cooperate.
- (9) As a condition of eligibility for assistance, each applicant for, or recipient of, KTAP[K-TAP] shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1). The assignment shall:
  - (a) Include all members of the case for whom support rights apply; and
  - (b) Be completed at the time of application for KTAP[K-TAP] benefits.

Section 14.~~[Section 19.]~~ Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive another benefit if potential entitlement exists.

(2) Failure to apply for another benefit or comply with its requirements shall result in ineligibility for KTAP[K-TAP].

(3) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 15.~~[Section 20.]~~ Minor Teenage Parents. (1) A minor teenage parent shall participate in an educational activity directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the individual has:

- (a) A minor child at least twelve (12) weeks of age in his or her care; and
  - (b) Not completed a high school education (or its equivalent).
  - (2) Except pursuant to subsection (4) of this section, a minor teenage parent and his or her minor child shall reside in:
    - (a) A place of residence maintained by:
      1. A parent;
      2. A legal guardian; or
      3. An adult relative pursuant to Section 6~~[14]~~ of this administrative regulation; or
    - (b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and barriers of the minor teenage parent.
  - (3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if the:
    - (a) Minor teenage parent does not have a:
      1. Parent, legal guardian, or appropriate adult relative pursuant to Section 6~~[14]~~ of this administrative regulation who is living or whose whereabouts is known; or
      2. Living parent, legal guardian, or other appropriate adult relative pursuant to Section 6~~[14]~~ of this administrative regulation who:
        - a. Otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent; and
        - b. Would allow the minor teenage parent to live in the home of the parent, guardian, or relative pursuant to Section 6 ~~[14]~~ of this administrative regulation; or
    - (b) Cabinet determines:
      1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or
      2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.
  - (4) The requirement in subsection (2) of this section shall be waived if the cabinet determines:
    - (a) Living in the place of residence maintained by the parent, legal guardian, or adult relative pursuant to Section 6 ~~[14]~~ of this administrative regulation is not in the best interest of the minor child taking into consideration the needs of the minor child; or
    - (b) The minor teenage parent's current living arrangement is appropriate.
  - (5) If a circumstance changes and the current arrangement ceases to be appropriate based on the needs and barriers of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.
  - (6) If the minor teenage parent is determined to be ineligible for KTAP[K-TAP] as a result of not complying with a provision found in this section, payment shall continue for the eligible child of the minor teenage parent.
  - (7) Even if exemption criteria are met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and the child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative pursuant to Section 6~~[14]~~ of this administrative regulation, second chance home, or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 16~~[21]~~ of this administrative regulation.
- Section 16.~~[Section 21.]~~ Benefit Time Limits. (1) KTAP[K-TAP], or any other assistance from a federally-funded program pursuant to 42 U.S.C. 601 to 619, shall not be provided for more than sixty (60) cumulative months to a benefit group that includes:
- (a) An adult; or
  - (b) A minor teenage parent who is head of household; or
  - (c) ~~A fugitive or drug felon not eligible pursuant to Section 23 or 24 of this administrative regulation.~~
- (2) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following



individuals shall be allowed an extension of the sixty (60) month time limit, during the period the individual:

(a) Is battered or subjected to extreme cruelty. During the extension period the individual shall have an individual service plan pursuant to Section ~~19(18)(1)(b)~~[25(4)(b)] of this administrative regulation;

(b) Is a work-eligible individual in the benefit group, who the cabinet determines has a physical or mental disability~~—as established in Section 9(3) of this administrative regulation~~. During the extension period, the individual shall comply with:

1. Treatment or other activity recommended by the referral source and approved by the cabinet, as required by the Kentucky Works Program pursuant to 921 KAR 2:370, Sections 2(1)(c)12 and 4(2); and

2. Child support cooperation requirements pursuant to Section ~~13(18)~~ of this administrative regulation;

(c) In accordance with 45 C.F.R. 261.2(n)(2)(i), is a parent providing care for a disabled family member living in the home as verified pursuant to 921 KAR 2:370, Section 3(5). During the extension period, the individual shall comply with child support cooperation requirements pursuant to Section ~~13(18)~~ of this administrative regulation;

(d) Is a grandparent or other relative, except for a parent, caring for an eligible child who would otherwise be placed in foster care. The caretaker relative shall continue to comply with:

1. Child support cooperation requirements pursuant to Section ~~13(18)~~ of this administrative regulation; and

2. Except for a caretaker relative age sixty (60) or over, KWP requirements pursuant to 921 KAR 2:370 if the caretaker relative is included in the benefit group;

(e) Is an adult with insufficient employment opportunities, who:

1. Has complied with:

a. KWP requirements pursuant to 921 KAR 2:370; and

b. Child support cooperation requirements pursuant to Section ~~13(18)~~ of this administrative regulation;

2. During the extension period, shall:

a. Comply with:

(i) KWP requirements pursuant to 921 KAR 2:370;

(ii) Child support cooperation requirements pursuant to Section ~~13(18)~~ of this administrative regulation;

(iii) Employment opportunities and activities listed on the KW-202, KTAP Transitional Assistance Agreement, incorporated by reference in and pursuant to 921 KAR 2:370, Section 4(2); and

(iv) Work registration requirements pursuant to 921 KAR 2:370, Section 4(3); and

b. Not quit or refuse a job without good cause pursuant to 921 KAR 2:370, Section 6; and

3. Shall be limited to an extension period of six (6) consecutive months; or

(f) 1. Received a domestic violence and abuse exemption pursuant to Section ~~19(2)~~[25(2)] of this administrative regulation, up to the number of months the individual received KTAP[K-TAP] during the domestic violence and abuse exemption.

2. During the extension period, the individual shall comply with:

a. Child support cooperation requirements pursuant to Section ~~13(18)~~ of this administrative regulation; and

b. KWP requirements pursuant to 921 KAR 2:370.

(3) If otherwise eligible, a benefit group containing a member who has lost a job, through no fault of the recipient, within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) consecutive month extension of the time limitation.

(4) A benefit group that receives an extension to the sixty (60) months' time limit shall be reviewed:

(a) Every six (6) months for an extension pursuant to subsection (2)(a), (c), or (f) of this section;

(b) Every three (3) months for an extension pursuant to subsection (2)(e) of this section;

(c) Every three (3) months or the medical review team review period for an extension pursuant to subsection (2)(b) of this section; or

(d) Annually for an extension pursuant to subsection (2)(d) of this section.

(5) The cabinet shall send a notice containing a list of the

hardship extensions, pursuant to subsection (2) of this section, to a benefit group nearing the sixty (60) month time limit.

(6) A benefit group discontinued from KTAP[K-TAP] due to reaching the sixty (60) month time limitation shall receive a notice pursuant to 921 KAR 2:046, Section 4.

(7) The cabinet shall conduct a review at least two (2) months prior to the expiration of the sixty (60) month time limit to:

(a) Determine if the benefit group meets criteria established for a hardship extension pursuant to subsection (2) of this section; and

(b) Inform the benefit group of safety net services[~~Safety-Net Services~~], pursuant to 922 KAR 1:400, Section 5.

(8)(a) KTAP[K-TAP] shall not be provided to a benefit group, pursuant to Section 2(1) of 921 KAR 2:016, that includes an adult, or minor teenage parent pursuant to Section ~~15(7)~~[20(7)] of this administrative regulation, who has:

1. Received six (6) cumulative months of assistance from a federally funded program pursuant to 42 U.S.C. 601 to 619; and

2. Been penalized for failure to cooperate in KWP, pursuant to 921 KAR 2:370, for a period of three (3) cumulative months.

(b) An adult or minor teenage parent in paragraph (a) of this subsection shall receive assistance if the individual:

1. Demonstrates cooperation in KWP pursuant to 921 KAR 2:370;

2. Meets the technical requirements established in this administrative regulation; and

3. Meets the standard of need in accordance with 921 KAR 2:016.

(9) Time limitations shall apply to a:

(a) Sanctioned individual; or

(b) Penalized individual.

Section 17.[~~Section 22.~~] Receiving Assistance in Two (2) or More States. (1) KTAP[K-TAP] assistance shall be denied for ten (10) years to a person who has been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states for:

(a) A program pursuant to:

1. 42 U.S.C. 601 to 619;

2. 42 U.S.C. 1396; or

3. 7 U.S.C. 2011 to 2036; or

(b) Benefits received under SSI.

(2) The requirement in subsection (1) of this section shall not apply to a conviction for a month beginning after the granting of a pardon by the President of the United States with respect to the conduct that was the subject of the conviction.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in KWP in accordance with 921 KAR 2:370.

Section 18.[~~Section 23.~~] Fugitive Felons. (1) KTAP[K-TAP] assistance shall not be provided to an individual:

(a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, that is a felony; or

(b) Violating a condition of probation or parole imposed under federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for a month beginning after the President of the United States grants a pardon with respect to the conduct.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in KWP in accordance with 921 KAR 2:370.

Section 19.[~~Section 24.~~] Denial of Assistance for a Drug Felon.

(1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and that has as an element the possession, use or distribution of a controlled substance pursuant to 21 U.S.C. 802(6), shall not be eligible for K-TAP benefits, except pursuant to KRS 205.2005.

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(2) An individual applying for K-TAP benefits shall be required to state in writing whether the individual or a member of the household has been convicted of a crime pursuant to subsection (1) of this section.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in KWP in accordance with 921 KAR 2:370.

Section 25.] Domestic Violence and Abuse. (1)(a) A KTAP[K-TAP] applicant or recipient shall be screened for a history of domestic violence and abuse.

(b) If the applicant or recipient is identified as a survivor[victim] of domestic violence and abuse[or with a history of domestic violence], an appropriate services plan shall be required for the individual. The plan shall:

1. Be developed by a provider off[person trained in] domestic violence and abuse services;

2. Reflect the individualized assessment and a revision made by a redetermination;

3. Include appropriate referral to counseling and supportive services based on the needs and barriers identified in the individualized assessment, as determined by the cabinet;

4. Be designed to lead safely to employment; and

5. Be completed at least[no less often than] every six (6) months.

(2) If compliance with the following KTAP[K-TAP] requirements would make it more difficult for an individual receiving KTAP[K-TAP] to escape domestic violence and abuse or unfairly penalize the individual who is a survivor off[or has been victimized by] domestic violence and abuse, the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 5 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section 13[48] of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 16[24] of this administrative regulation; or

(d) Participation in KWP requirements pursuant to 921 KAR 2:370.

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(As Amended at ARRS, November 9, 2022)**

**921 KAR 2:016. Standards off[for] need and amount for the Kentucky Transitional Assistance Program (KTAP)[(K-TAP)].**

RELATES TO: KRS 205.200, 205.210, 205.2001, 205.211, 45 C.F.R. [233.20(a)(13)], ~~Parts~~ 260-265, 400.66(d), 8 U.S.C. 1183a, 10 U.S.C. 1059, 20 U.S.C. 1088(b)(1), 2302(3), (13), 25 U.S.C. [459, 1261, ]1401, 5501, 26 U.S.C. 6409, 29 U.S.C. 723(a)(5), 3241(a)(2)[2801, 2931(a)(2)], 34 U.S.C. 20102(c), 38 U.S.C. 1833, 42 U.S.C. 415(i), 1395w-141[7(xviii), (D)(4)], 1381-1384, 1771, 1775, 3001, 4950-5084, 8621, Pub. L. 92-254[10602(c)]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.210(1), 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of

need and amount of assistance for the Kentucky Transitional Assistance Program (KTAP)[(K-TAP)], the block grant program funded by 42 U.S.C. 601 to 619. This administrative regulation establishes[sets forth] the standards of need for and the amount of a Kentucky Transitional Assistance Program payment.

Section 1. Definitions.

(1) "Assistance" is defined by 45 C.F.R. 260.31.

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative a person pursuant to 921 KAR 2:006, Section 6[14].

(3) "Change in a circumstance" means a change in income or dependent care expense affecting the ongoing KTAP[K-TAP] payment that includes:

(a) Beginning or ending employment;

(b) Change in an employer or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in the dependent care expense due to a change in:

1. Provider;

2. Number of hours of care;

3. Number of individuals for whom care is given; or

4. Amount charged; or

(f) Change in farm cropping arrangement or type of self-employment activity.

(4) "Claimant" means the individual responsible for the repayment of an overpayment.

(5) "Countable income" means income that remains after excluded income and appropriate deductions are removed from gross income.

(6) "Deduction" means an amount subtracted from gross income to determine countable income.

(7) "Electronic benefit transfer" or "EBT" means a computer-based electronic benefit transfer system in which an eligible household's benefit authorization is received from a central computer through a point of sale terminal or automated transfer machine.

(8) ~~["Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.]~~

~~[(9)]~~ "Excluded income" means income that is received but not counted in the gross income test.

~~[(9)]~~[(40)] "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

~~[(10)]~~[(41)] "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;

2. A general educational development program; or

3. A literacy program;

(b) The number of hours required by the individual program for participation in a college or university; or

(c) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

~~[(11)]~~[(42)] "Gross income limitation standard" means 185 percent of the assistance standard, as established[set forth] in Section 9 of this administrative regulation.

~~[(12)]~~[(43)] "Kentucky Transitional Assistance Program" or "KTAP"[K-TAP] means the program established in 921 KAR 2:006[a money payment program for a child who is deprived of parental support or care pursuant to 921 KAR 2:006, Section 1].

~~[(13)]~~[(44)] "Kentucky Works Program" or ~~["KWP"]~~ means the program established in 921 KAR 2:370[a program] that assists a:

(a) Recipient of KTAP[K-TAP] in obtaining education, training, experience, and employment[necessary to leave public assistance]; or

(b) Former KTAP[K-TAP] recipient with job retention services[service].

~~[(14)]~~[(45)] "Lump sum income" means income that does not:

(a) Occur on a regular basis; or

(b) Represent accumulated monthly income received in a single sum.

~~(15)(16)~~ ["Minor" means a person who is under the age of eighteen (18).]

~~(17)~~ "Minor parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

~~(16)(18)~~ "Part-time employment" means employment of:

(a) Less than thirty (30) hours per week; or

(b) Less than 130 hours per month.

~~(17)(19)~~ "Part-time school attendance" means a workload that is less than full-time school attendance as determined by the educational institution.

~~(18)(20)~~ "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement, causing a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

~~(19)(21)~~ "Recoupment" means recovery of an overpayment of an assistance payment.

~~(20)(22)~~ "Sanctioned individual" means a person who is required to be included in the benefit group, but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

~~(21)(23)~~ "Self-employment income" means income from a business enterprise if taxes are not withheld prior to receipt of the income by the individual.

~~(22)(24)~~ "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1384 to the aged, blind, or persons with a disability[and disabled].

~~(23)(25)~~ "Unavailable" means that the income is not accessible to the KTAP[K-TAP] benefit group for use toward basic food, clothing, shelter, or[and] utilities.

~~(24)(26)~~ "Workforce Innovation and Opportunity[Investment] Act" or "WIOA"[WIA"] means a program to assist adults, dislocated workers, and youth with entering, retraining, and advancing within employment[as established by 29 U.S.C. 2804].

~~(25)(27)~~ "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, and tools.

## Section 2. Technical Eligibility.

(1) A benefit group shall include:

(a) A dependent child;

(b) A child's parent living in the home with the dependent child who is:

1. Eligible for KTAP[K-TAP]; or

2. Ineligible for KTAP[K-TAP] due to benefit time limitations pursuant to 921 KAR 2:006, Section 16[24];

(c) An eligible sibling living in the home with a dependent child, except for a sibling who is an applicant or recipient of the Kinship Care Program pursuant to 922 KAR 1:130; or

(d) An eligible child who is:

1. In full-time school attendance or part-time school attendance;

and

2.

a. Sixteen through eighteen[~~Sixteen (16) through eighteen~~] (18) years of age; or

b. A minor parent.

(2) If the KTAP[K-TAP] benefits to a household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, the child shall not be included in the benefit group.

(3) If a dependent child's parent is a minor living in the home with an eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(4) ~~A[An incapacitated or unemployed]~~ natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors of 921 KAR 2:006 are met.

## Section 3. Resource Limitations.

(1) A liquid asset shall be considered a countable resource if it is:

(a) Available to the benefit group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;

2. A sanctioned or penalized individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The total amount of resources reserved by a benefit group shall not be in excess of \$10,000[\$2,000] in liquid assets, excluding an asset listed in subsection (3) of this section.

(3) Excluded resources.

(a) Resources from the following individuals shall be excluded from consideration:

1. A recipient of SSI or the state supplementation program living in the home;

2. A child excluded from the KTAP[K-TAP] grant; or

3. An individual not receiving assistance but living in the home including:

a. The stepparent;

b. The parent or legal guardian of a minor parent;

c. The spouse of a nonresponsible specified relative; or

d. The spouse of a minor dependent child.

(b) The following resources shall not be included in the [\$2,000] resource limit established in subsection (2) of this section:

1. Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home;

2. Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;

3. An excluded income payment, pursuant to Section 5 of this administrative regulation;

4. Principal and accrued interest of an irrevocable trust during a period of unavailability;

5. Prepaid burial funds;

6. Cash surrender value of all burial insurance policies per family member;

7. Principal of a verified loan;

8. Up to \$12,000 to Aleutians and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

9. A payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to a veteran or veteran's survivor;

10.

a. Any federal tax refund or advance payment of a refundable federal tax credit for a period of twelve (12) months from receipt in accordance with 26 U.S.C. 6409; or

b. ~~An[After December 31, 2012,]~~ earned income tax credit payment in the month of receipt and the following month;

11. A payment received from the Radiation Exposure Compensation Trust Fund;

12. A nonrecurring lump sum SSI retroactive payment that is made to a KTAP[K-TAP] recipient who is not ongoing eligible for SSI, in the month paid and the next following month;

13. Up to a total of \$15,000[\$5,000] in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section;[and]

14. A payment received from the National Tobacco Growers Settlement Trust;

15. Savings in a 529 college savings plan account;

16. Savings in an ABLE account, pursuant to KRS 205.200(13)(1); and

17. A payment received from the Transitional Compensation for Abused Dependents Program, 10 U.S.C. 1059.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise disposed of a liquid asset in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. The transfer was made expressly for the purpose of qualifying for assistance; and

2. The amount of the transfer, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d)

1. If the amount of excess transferred resources does not exceed \$2,500~~[\$500]~~, the period of ineligibility shall be one (1) month.

2. The period of ineligibility shall be increased one (1) month for every \$2,500~~[\$500]~~ increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization that the applicant or recipient surrendered resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a)

1. For a bank account requiring one (1) signature for withdrawal, the total balance of the account shall be considered available to the KTAP~~[K-TAP]~~ applicant or recipient, unless the other owner is a recipient of SSI.

2. If the other owner receives SSI, the:

a. Balance shall be divided evenly by the number of owners; and

b. KTAP~~[K-TAP]~~ applicant or recipient's share shall be considered available.

(b) For a bank account that requires more than one (1) signature for withdrawal, the KTAP~~[K-TAP]~~ applicant or recipient's share shall be determined by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, the applicant or recipient's available share shall be determined by dividing the value of the business enterprise by the number of owners.

(d) If a resource is held jointly, other than a resource pursuant to paragraphs (a) through (c) of this subsection, the applicant or recipient's share shall be determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership shall be accomplished if the applicant or recipient asserts no contribution to or benefits from a jointly held resource and provides:

1. A written statement regarding ownership, who may deposit and withdraw;

2. A written statement from each of the other owners that corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant's or recipient's name has been removed from the resource.

(7)

(a) To be considered an exempt resource, the individual development account shall have been:

1. Established on or after May 1, 1997; and

2. Funded through periodic contributions by a member of the benefit group using funds derived from earned income that was earned after May 1, 1997, for a qualified purpose.

(b) A qualified purpose to establish an individual development account shall be for:

1. Postsecondary educational expense that shall include:

a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution;

b. Fees, books, supplies, and equipment required for a course of instruction at an eligible educational institution; and

c. An eligible educational institution that shall be an:

(i) Institution pursuant to 20 U.S.C. 1088(b)(1); or

(ii) Area vocational education school pursuant to 20 U.S.C. 2302(3) or (13);

2. First home purchase that includes:

a. Costs of acquiring, constructing, or reconstructing a residence; and

b. Usual or reasonable settlement, financing, or other closing costs;

3. A business capitalization expenditure for a business that does not contravene a law or public policy, as determined by the cabinet, pursuant to a qualified plan which shall:

a. Include capital, plant, equipment, working capital, and inventory expenses;

b. Be approved by a financial institution; and

c. Include a description of a service or a good to be sold, a marketing plan, and projected financial statement. An applicant may use the assistance of an experienced entrepreneurial advisor if needed; or

4. Other purpose allowed by a federal regulation or clarification.

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes pursuant to paragraph (b) of this subsection.

(d) To be considered an exempt resource, an individual development account shall be matched by funds from a:

1. Nonprofit organization; or

2. State or local government agency, funding permitted, acting in cooperation with an organization pursuant to subparagraph 1 of this paragraph.

Section 4. Income Limitations. In determining eligibility for KTAP~~[K-TAP]~~, the following shall apply:

(1) Gross income test:

(a) The total gross non-KTAP~~[K-TAP]~~ income shall not exceed the gross income limitation standard and shall include:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI or state supplementation pursuant to 921 KAR 2:015;

3. Income of a sanctioned or penalized individual; and

4. An amount deemed available from:

a. The parent of a minor parent living in the home with the benefit group;

b. A stepparent living in the home; or

c. An immigrant's~~alien's~~ sponsor and sponsor's spouse if living with the sponsor;

(b) Excluded income types pursuant to Section 5(1) of this administrative regulation shall apply; and

(c) If total gross income exceeds the gross income limitation standard, the benefit group shall be ineligible.

(2) Benefit calculation:

(a) If the benefit group meets the criteria pursuant to subsection (1) of this section, benefits shall be determined by subtracting excluded income and applicable deductions pursuant to Section 5(1), (2), and (3) of this administrative regulation;

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size pursuant to Section 9 of this administrative regulation, the benefit group shall be ineligible; and

(c) Amount of assistance shall be determined prospectively.

(3) Ineligibility period:

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during a month the assistance is paid exceeds a limit pursuant to subsection (2) of this section due to receipt of lump sum income;

(b) The ineligibility period shall be:

1. The number of months that equals the quotient of the division of total countable income by the standard of need pursuant to Section 9 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount; and

(c) The ineligibility period shall be recalculated if:

1. The standard of need pursuant to Section 9 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, that caused the calculation of the ineligibility period, has become unavailable for a reason that was beyond the control of the benefit group;

3. The benefit group incurs and pays a necessary medical expense not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the KTAP[K-TAP] household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the cabinet determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 5. Excluded Income and Deductions.

(1) Gross non-KTAP[K-TAP] income received or anticipated to be received shall be considered with the application of excluded income and deduction policy:

(a) By the:

1. Benefit group;
2. Sanctioned or penalized individual;
3. Natural parent;
4. Spouse of a dependent child;
5. Parent of a minor parent living in the home with the benefit group; or

6. Stepparent living in the home; and

(b) Pursuant to subsections (2) to (4) of this section.

(2) Gross income test. An income listed in this subsection shall be excluded:

(a) A deduction applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, pursuant to Section 7 of this administrative regulation;

(b) A deduction applicable to an immigrant[alien] sponsor's income, pursuant to Section 8 of this administrative regulation;

(c) A deduction applicable to self-employment income;

(d) Allowances, earnings, and payments received under WIOA[WIA] programs in accordance with 29 U.S.C. 3241(a)(2)[2931(a)(2)];

(e) Value of United States Department of Agriculture program benefits including:

1. Donated food;
2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;
3. Special food service program for a child pursuant to 42 U.S.C. 1775;
4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly Supplemental Nutrition Assistance Program (SNAP) allotment;

(f) Reimbursement for transportation in performance of an employment duty, if identifiable;

(g) The value of Kentucky Works Program supportive services payment pursuant to 921 KAR 2:017;

(h) Nonemergency medical transportation payment;

(i) Payment from complementary program if no duplication exists between the other assistance and the assistance provided by KTAP[the K-TAP program];

(j) Educational grant, loan, scholarship, [and] work study income, or other type of financial assistance for education pursuant to KRS 205.200(8);

(k) Highway relocation assistance;

(l) Urban renewal assistance;

(m) Federal disaster assistance and state disaster grant;

(n) Home produce utilized for household consumption;

(o) Housing subsidy received from federal, state or local governments;

(p) Funds distributed to a member of certain Native American[Indian] tribes by the federal government pursuant to 25 U.S.C. [459, 1261 and ]1401, 5501, and Pub. L. 92-254;

(q) Funds distributed per capita to or held in trust for a member of a Native American[an Indian] tribe by the federal government pursuant to 25 U.S.C. [459, 1261, and ]1401, 5501, and Pub. L. 92-254;

(r) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as a:

1. Senior health aide; or
2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(s) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater including:

1. Volunteers in Service to America (VISTA);
2. Foster Grandparents;
3. Retired and Senior Volunteer Program; or
4. Senior Companion;

(t) Payment from the cabinet for:

1. Child foster care; or
2. Adult foster care;

(u) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program (LIHEAP) pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(v) The first fifty (50) dollars of child support payment;

(w) Earnings of an individual attending school who is age nineteen (19) or under;

(x) Earnings of a dependent child under eighteen (18) who is a high school graduate;

(y) Nonrecurring monetary gifts totaling 100[~~thirty (30)~~] dollars or less per month per individual;

(z) The principal of a verified loan;

(aa) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(bb) Income of an individual receiving SSI, including monthly SSI benefits and any retrospective SSI benefits;

(cc) The essential person's portion of the SSI check;

(dd) Income of an individual receiving mandatory or optional state supplementary payment pursuant to 921 KAR 2:015;

(ee)

1. Any federal tax refund or advance payment of a refundable federal tax credit; or

2. ~~The~~[After December 31, 2012, the] advance payment or refund of earned income tax credit;

(ff) Payment made directly to a third party on behalf of the applicant or recipient by a non-responsible[nonresponsible] person;

(gg) Interest and dividend income unless derived from a corporate business;

(hh) In-kind income;

(ii) Income of a technically ineligible child;

(jj) Payment made from the Agent Orange Settlement Fund;

(kk) KTAP[K-TAP] payment including back payment;

(ll) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship pursuant to 921 KAR 2:006, Section 6[14];

(mm) Payment made from the Radiation Exposure Compensation Trust Fund;

(nn) Up to \$2,000 per year of income received by individual Native Americans[Indians] denied from a lease or other use of individually-owned trust or restricted lands;

(oo) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(qq) A payment received from the National Tobacco Growers Settlement Trust;

(rr) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 34[42] U.S.C. 20102(c)[10602(c)];

(ss) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(tt) A payment made to children of Vietnam veterans and certain other veterans, pursuant to 38 U.S.C. 1833;

(uu) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141[Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 7(xviii) and (D)(4)];

(vv) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d); ~~and~~

(ww) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5); ~~and~~

(xx) A payment received from the Transitional Compensation for Abused Dependents Program, **10 U.S.C. 1059**.

(3) Benefit calculation. Excluded income pursuant to subsection (2) of this section and an applicable deduction listed in this subsection shall be applied as follows:

(a) Work expense standard deduction of 175[ninety-(90)] dollars for full-time and part-time employment;

(b) If the caregiver is not the parent, legal guardian, or a member of the benefit group, the dependent care disregard shall:

1. Be allowed as a work expense for:

a. An able-~~body~~ child age thirteen (13) or over and not under court supervision;

b. An incapacitated adult living in the home and receiving KTAP[K-TAP];

c. A KTAP[K-TAP] case that is otherwise ineligible for KTAP[K-TAP] without the benefit of the disregard for child care, at the option of the recipient; or

d. The month of application for KTAP[K-TAP] benefits; and

2. Not exceed:

a. \$175 per month per individual for full-time employment;

b. \$150 per month per individual for part-time employment; or

c. \$200 per month per individual for child under age two (2);

(c) Child support payment received and retained until notification of eligibility for KTAP[K-TAP] is received;

(d) Child support payment assigned and actually forwarded or paid to the cabinet;

(e) ~~For six (6) months, the first fifty (50) percent[First thirty-(30) dollars and one-third (1/3) of the remainder] of earned income not already deducted for each member of the benefit group.~~

(f) ~~[calculated as follows:]~~

~~[1.] [The one-third (1/3) portion of this deduction shall be applied to each member's earned income for four (4) months;]~~

~~[2.] [The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period; and]~~

~~[3.] Until an[the] individual has earnings, reported timely, from new employment, the deductions shall not be available to the individual after expiration of the time limits; and~~

~~(g)[(f)] For new employment, or increased wages, acquired after approval and reported timely, a two (2)[one (1)] time only disregard per employed adult member of the benefit group, the amount of six (6)[two (2)] full calendar months earnings calculated as follows:~~

1. The six (6)[two (2)] months earnings disregard shall be consecutive, and at the option of the recipient; and

2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the six (6)[two (2)] months earnings disregard.

(4) Deductions from earnings pursuant to subsection (3)(a), (b) and (e) of this section shall not apply for a month the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 921 KAR 2:370, Section 6(1); or

(b) Fails to report an increase in earnings, that impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case and the member employed, if different, is out of town for the entire ten (10) day report period.

Section 6. Child Care Expense. With the exception of those circumstances pursuant to Section 5(3)(b) of this administrative

regulation, a child care expense incurred as a result of employment shall be paid pursuant to 922 KAR 2:160.

Section 7. Income and Resources of an Individual Not Included in the Benefit Group.

(1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, pursuant to subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent; and

(d) A parent of a minor parent.

(2) The gross income of the individual shall be considered available to the benefit group, subject to the following deductions:

(a) The first 175[ninety-(90)] dollars of the gross earned income; and

(b)

1. An amount equal to the KTAP[K-TAP] standard of need for the appropriate family size, pursuant to Section 9 of this administrative regulation for:

a. The support of the individual; and

b. A person living in the home if:

(i) The needs of the person are not included in the KTAP[K-TAP] eligibility determination; and

(ii) The person is or may be claimed as a dependent for the purpose of determining his federal personal income tax liability by the individual;

2. An amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for the purpose of determining his personal income tax liability by the individual; or

3. Payment for alimony or child support to a person not living in the home by the individual.

(3) A resource shall not be considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group that belongs solely to the:

(a) Stepparent;

(b) Spouse of a minor dependent child;

(c) Spouse of a specified relative other than a parent; or

(d) Parent of a minor parent.

Section 8. Immigrant[Alien] Sponsor Income and Resources.

(1)

(a) For the purpose of this section, the immigrant's[alien's] sponsor and sponsor's spouse, if living with the sponsor, shall be referred to as sponsor.

(b) This subsection and subsections (2) through (6) of this section shall apply to an immigrant who has an agreement executed other than an agreement pursuant to 8 U.S.C. 1183a.

(2) The gross non-KTAP[K-TAP] income and resources of an immigrant's[alien's] sponsor shall be deemed available to the immigrant[alien], subject to a deduction established[set forth] in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more immigrants[aliens], the income and resources shall be prorated among the sponsored immigrants[aliens].

(4) If adequate information on the sponsor or sponsor's spouse is not provided, a sponsored immigrant[alien] shall be ineligible for a month.

(5) If an immigrant[alien] is sponsored by an agency or organization, that has executed an affidavit of support, the immigrant[alien] shall be ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the immigrant's[alien's] needs.

(6) The provisions of this subsection shall not apply to an immigrant[alien] pursuant to subsection (5) or (7) of this section.

(a) The gross income of the sponsor shall be considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the KTAP[K-TAP] standard of need for the appropriate family size pursuant to Section 9 of this administrative regulation of:

- a. The sponsor; and
- b. Other person living in the household:

(i) Who is or may be claimed by the sponsor as a dependent in determining the sponsor's federal personal income tax liability; and  
(ii) Whose needs are not considered in making a determination of eligibility for KTAP[K-TAP];

3. An amount paid by the sponsor to a non-household[nonhousehold] member who is or may be claimed as a dependent in determining the sponsor's federal personal tax liability;

4. Actual payment of alimony or child support paid to a non-household[nonhousehold] member; and

5. Income of a sponsor receiving SSI or KTAP[K-TAP].

(b) Resources deemed available to the immigrant[alien] shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if the sponsor were a KTAP[K-TAP] applicant in this state, less \$9,500[\$1,500].

(7)

(a) For a sponsored immigrant[alien] who enters the United States on or after December 19, 1997, who is required to complete a sponsorship agreement pursuant to 8 U.S.C. 1183a, the total gross income and resources of an immigrant's[alien's] sponsor and sponsor's spouse shall be deemed available to the immigrant[alien].

(b) The sponsor's obligation shall be available until the:

1. Immigrant:
  - a. Becomes a United States citizen;
  - b. Is credited with forty (40) quarters of work; or
  - c. Ceases to hold the status of an immigrant[alien] lawfully admitted for permanent residence; or
2. Sponsor dies.

(c) The immigrant shall provide the sponsorship agreement pursuant to 8 U.S.C. 1183a.

(8)

(a) The actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the date of determination, if an:

1. Amount less than the amount in the sponsorship agreement is made available to the immigrant; and

2. Immigrant[Alien] is determined indigent.

(b) An immigrant[alien] shall be determined indigent if:

1. The amount of the sponsor's income and resources given to the immigrant[alien] is less than the amount in the agreement; and  
2. Without KTAP[K-TAP] assistance and after consideration of the immigrant's[alien's] own income, cash, food, housing or assistance provided by an individual including the sponsor, the immigrant[alien] is unable to obtain food and shelter.

(9) Deeming of the sponsor's income shall not apply for twelve (12) months if the:

(a) Immigrant or immigrant's child[Alien or alien's child] has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse or parent; or
2. Spouse or parent's family living with the immigrant[alien] or immigrant's[alien's] child and the spouse or parent allows the cruelty or battery; or

(b) Immigrant[Alien] is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States, and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse; or
2. Member of the spouse's family living in the same household and the spouse allows the cruelty or battery.

#### Section 9. Payment Maximum.

(1) The KTAP[K-TAP] payment maximum includes an amount for food, clothing, shelter, and utilities.

(2)

(a) Countable income, pursuant to Section 10 of this administrative regulation, shall be subtracted in determining

eligibility for and the amount of the KTAP[K-TAP] assistance payment as follows:

| Number of Eligible Persons | Payment Maximum | Standard of Need |
|----------------------------|-----------------|------------------|
| 1 person                   | \$372[\$186]    | \$481[\$401]     |
| 2 persons                  | \$450[\$225]    | \$552[\$460]     |
| 3 persons                  | \$524[\$262]    | \$631[\$526]     |
| 4 persons                  | \$656[\$328]    | \$710[\$592]     |
| 5 persons                  | \$766[\$383]    | \$790[\$658]     |
| 6 persons                  | \$864[\$432]    | \$869[\$724]     |
| 7 or more persons          | \$964[\$482]    | \$948[\$790]     |

(b) The gross income limit shall be as follows for the appropriate family size:

| Number of Eligible Persons | Maximum Gross Income Limits |
|----------------------------|-----------------------------|
| 1 Person                   | \$890[\$742]                |
| 2 Persons                  | \$1,021[\$854]              |
| 3 Persons                  | \$1,169[\$974]              |
| 4 Persons                  | \$1,315[\$1,096]            |
| 5 Persons                  | \$1,462[\$1,218]            |
| 6 Persons                  | \$1,608[\$1,340]            |
| 7 or more Persons          | \$1,754[\$1,462]            |

(3) Since the payment maximum does not meet full need, [effective July 1, 1989,] a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)

(a) The assistance payment shall be the lesser amount of either:  
1. Fifty-five (55) percent of the deficit pursuant to subsection (3) of this section; or

2. The payment maximum pursuant to subsection (2)(a) of this section.

(b) As a result of applying the forty-five (45) percent ratable reduction pursuant to subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated pursuant to KRS 205.200(2).

(5) If a benefit group's assistance payment equals zero (0), the benefit group shall be ineligible for KTAP[K-TAP].

(6) To the extent funds are available, the payment maximum, gross income limit, and standard of need shall be the amount established in this section in addition to cost of living adjustments determined by the Social Security Administration that have taken place beginning in 2023 pursuant to 42 U.S.C. 415(i) and published at <https://www.ssa.gov/cola/>.

#### Section 10. Best Estimate.

(1) The benefit shall be computed by using a best estimate of income that may exist in the payment month.

(2) The following method shall be used to calculate a best estimate:

(a) For a case with earned income, other than self-employment earned income, a monthly amount shall be determined as follows:

1. Cents shall:

- a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and
- b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months[month] shall be used.

3. A monthly amount shall be determined by:

- a. Adding gross income from each pay period;
- b. Dividing by the total number of pay periods considered;
- c. Converting the pay period figure to a monthly figure by multiplying a:

(i) Weekly amount by four and one-third (4 1/3);

(ii) Biweekly amount by two and one-sixth (2 1/6); or

(iii) Semi-monthly[Semimonthly] amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun, and the applicant or recipient has not received a calendar month of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or

b.

(i) Multiplying the daily rate by the estimated number of days to be worked in the pay period; and

(ii) Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph and rounding to the nearest dollar.

(b) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Rounding cents to the nearest dollar;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

3. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(c) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for a case with earned, unearned, or self-employment income;

(b) If the agency becomes aware of a change in a circumstance; or

(c) To reflect a mass change in the standard of need or payment maximum standard pursuant to Section 9 of this administrative regulation.

Section 11. KTAP[K-TAP] Recoupment. The following provisions shall apply for recoupment of a KTAP[K-TAP] overpayment.

(1) Necessary action will be taken promptly to correct and recoup an overpayment.

(2) An overpayment shall be recovered:

(a) From an adult claimant, whether currently receiving KTAP[K-TAP] benefits:

1. After notice and an opportunity for a fair hearing pursuant to 921 KAR 2:055 is given;

2. After administrative and judicial remedies have been exhausted or abandoned; and

3. Including assistance paid:

a. Pending the hearing decision; or

b. Due to cabinet error; and

(b) Through:

1. Repayment by the claimant to the cabinet;

2. Reduction of future KTAP[K-TAP] benefits, that shall result in the benefit group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income pursuant to Section 9 of this administrative regulation;

3. Civil action in the court of appropriate jurisdiction; or

4. If the cabinet becomes aware of expunged electronic benefits transfer (EBT) payments, reduction of the overpayment balance by an amount equal to the expunged benefits.

(3) In a case that has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment to a current recipient.

Section 12. ~~[Aid to Families with Dependent Children Recoupment.]~~

~~[(1)] [The cabinet shall recoup an Aid to Families with Dependent Children overpayment discovered on or after April 1, 1982, pursuant to 45 C.F.R. 233.20(a)(13).]~~

~~[(2)] [An Aid to Families with Dependent Children overpayment shall be recovered from an adult or child member of the benefit group:]~~

~~[(a)] [Pursuant to 45 C.F.R. 233.20(a)(13); and]~~

~~[(b)] [In accordance with the recoupment process specified in Section 11 of this administrative regulation.]~~

~~[Section 13.]~~ Avoiding an Overpayment.

(1) A KTAP[K-TAP] recipient may voluntarily:

(a) Return a benefit payment; or

(b) Give permission to the cabinet to use EBT benefits by completing and returning a written statement ***[requesting a written statement]*** requesting this option to avoid an overpayment if the case:

1. Is totally ineligible for the month the payment is issued; and

2. Has not been reduced for recoupment of a previous overpayment.

(2) If a payment is voluntarily returned, the cabinet shall determine whether the recipient is due a refund as described in Section 13~~[14]~~ of this administrative regulation.

~~Section 13.~~~~[Section 14.]~~ Refund. A recipient shall be due a refund in the following situations:

(1) An amount in excess of the actual overpayment is recouped;

(2) An overpayment and an underpayment is offset and a balance is owed to the recipient; or

(3) A KTAP[K-TAP] payment that is voluntarily returned to avoid an overpayment is compared to the current month obligation of child support collected by the cabinet during the month the KTAP payment~~[K-TAP check]~~ was intended to cover, leaving a balance owed to the recipient.

~~Section 14.~~~~[Section 15.]~~ Correction of Underpayments. The following provisions shall apply to a KTAP[K-TAP] payment:

(1) An underpayment shall be promptly corrected to:

(a) A current KTAP[K-TAP] recipient; or

(b) One (1) who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in the:

(a) Month the payment is paid; or

(b) Next following month.

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**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Protection and Permanency  
(As Amended at ARRS, November 9, 2022)**

**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) ~~[(8)]~~ "Child-placing agency" is defined by KRS 199.011(6).

~~[(10)]~~ ~~[(9)]~~ "Child-caring program" means the method of delivering a child-caring service.

~~[(11)]~~ ~~[(40)]~~ "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)]~~ ~~[(14)]~~ "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)]~~ ~~[(42)]~~ "Corporal physical discipline" means reasonable physical discipline in accordance with KRS 199.640(6).

~~[(14)]~~ ~~[(43)]~~ "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)]~~ ~~[(44)]~~ "De-escalation plan" means a treatment method used to decrease the intensity of emotional conflict or aggressive behavior.

~~[(16)]~~ ~~[(45)]~~ "Direct child-care staff" means a child-caring facility employee or volunteer providing face-to-face care and supervision of a child.

~~[(17)]~~ ~~[(46)]~~ "Discharge" means a planned release of a child from a child-caring facility program.

~~[(18)]~~ ~~[(47)]~~ "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)]~~ ~~[(48)]~~ "Emergency shelter child-caring facility" means a child-caring facility that meets the requirements of 922 KAR 1:380.

~~[(20)]~~ ~~[(49)]~~ "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)]~~ ~~[(29)]~~ "Group home" is defined ~~by~~ at KRS 199.011(11).

~~[(22)]~~ ~~[(24)]~~ "Independent living services" means services provided to an eligible child, as described in Section ~~11~~ 18 of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently.

~~[(23)]~~ ~~[(22)]~~ "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

~~[(24)]~~ ~~[(23)]~~ "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)]~~ ~~[(24)]~~ "Institution" is defined by KRS 199.011(12).

~~[(26)]~~ ~~[(25)]~~ "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)]~~ ~~[(26)]~~ "Living unit" means a building or part thereof in which a child resides, not exceeding sixteen (16) beds.

~~[(28)]~~ ~~[(27)]~~ "Permanence" is defined by KRS 620.020(9).

~~[(29)]~~ ~~[(28)]~~ "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)]~~ ~~[(29)]~~ "Qualified mental health professional" is defined by KRS 600.020(52).

~~[(31)]~~ ~~[(30)]~~ "Qualified professional in the area of intellectual disabilities" is defined by KRS 202B.010(12).

~~[(31)]~~ ~~[(32)]~~ ~~[(34)]~~ "Reasonable and prudent parenting standards" is defined by 42 U.S.C. 675(10).

~~[(32)]~~ ~~[(33)]~~ ~~[(32)]~~ "Seclusion" means the temporary placement of a child in a room in a residential treatment facility to prevent harm to the child or others.

~~[(33)]~~ ~~[(34)]~~ ~~[(33)]~~ "Sex crime" is defined by KRS 17.500(8).

~~[(34)]~~ ~~[(35)]~~ ~~[(34)]~~ "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his social environment.

~~[(35)]~~ ~~[(36)]~~ ~~[(35)]~~ "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.

~~[(36)]~~ ~~[(37)]~~ ~~[(36)]~~ "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.

~~[(37)]~~ ~~[(38)]~~ ~~[(37)]~~ "Treatment director" means an individual who oversees the day-to-day operation of the treatment program.

~~[(38)]~~ ~~[(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.

~~[(39)]~~ ~~[(40)]~~ ~~[(39)]~~ "Treatment team" means a representative group of people who provide services to the child and the child's family.

~~[(40)]~~ ~~[(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~~[17.165]~~ 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[1:165], 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.;

(q)(i) 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; and
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)(r) 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)(s) 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)(t) 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; and

(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. [i]

- 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
- 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; **[f]**

(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; **and**
- (i) If the child-caring facility ceases to operate, transfer the case record to the cabinet. **[f:]**
- (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. **[f:]**
      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. **[f:]**
      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 (5) 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)~~ ~~Twelve (12)~~ 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)~~ ~~Eighteen (18)~~ ~~Sixteen (16)~~ years of age ~~and older~~; and

(b) Developed in accordance with 922 KAR 1:340, Section 3(1)(e).

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Public Health  
Division of Epidemiology and Health Planning  
(Amended After Comments)

901 KAR 5:120. Abortion reporting.

RELATES TO: KRS 213.101, 213.106, 311.595, 311.720, 311.774, 311.781, 311.782, 311.783

STATUTORY AUTHORITY: KRS 194A.050(1), 213.021, 213.101(1), (7), 213.172[2022 Ky. Acts ch. 210]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 213.101(1) requires each abortion that occurs in the commonwealth to be reported to the Office of Vital Statistics. KRS 213.101(7) requires the Office of Vital Statistics to promulgate administrative regulations to assist in compliance with that statute. KRS 213.172 requires that each prescription dispensed for which the primary indication is the induction of abortion be reported to the Vital Statistics Branch within three (3) days after the end of the month in which the prescription was dispensed[2022 Ky. Act ch. 210 expanded the abortion reporting requirements to include the full name and address of the physician and facility, the age of the father, if known, the Rh negative status of the patient, if the patient was treated for a sexually transmitted disease, the reason for the abortion, any follow-up treatment provided, and additional prescription information]. This administrative regulation establishes the reporting criteria for abortions.

Section 1. Definitions. (1) "Abortion" is defined by KRS 311.720(1).

(2) "Probable post-fertilization age" is defined by KRS 311.781(6).

(3) "Reasonable medical judgment" is defined by KRS 311.781(7).

(4) "Serious risk of the substantial and irreversible impairment of a major bodily function" is defined by KRS 311.781(8).

Section 2. Reporting. (1) A person or institution shall comply with the reporting requirements of KRS 213.101(1) and (2).

(2) The report shall be filed irrelevant of the gestational age or probable post-fertilization age of the fetus at the time of the abortion.

(3) The report shall be made within three (3) days after the end of the month in which the abortion was performed through the cabinet's electronic database or on VS-913, Report of Abortion.

(4) The report shall:

(a) Contain the information required to be certified in writing including the following:

1. The probable post-fertilization age of the unborn child;

2. Whether the abortion was necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;

3. The available methods or techniques considered and the reasons for choosing the method or technique employed;

4. Whether the physician determined in his or her reasonable medical judgment that termination of the pregnancy in the manner selected provides the best opportunity for the unborn child to survive;

5. If the physician did not choose the method of abortion that provides the best chance of survival for the unborn child, whether the pregnancy termination in that manner would have posed a greater risk of death of the pregnant woman or a greater risk of substantial and irreversible impairment of a major bodily function of

the pregnant woman than other available methods of abortion; and

6. Any complications known to the provider as a result of the abortion, as set forth in KRS 311.774(3); and

(b) Not contain information that identifies the [physician, woman[,] or man involved.

(5) Pursuant to KRS 213.106, a report shall be used in accordance with the provisions of KRS 213.101.

Section 3. Prescription Reporting. (1) In accordance with KRS 213.101(2), each prescription for a drug or combination of drugs for which the primary indication is the induction of abortion shall be reported by the physician prescribing or dispensing the medication [and the pharmacy dispensing the medication] within three (3)[fifteen (15)] days after the end of the month in which the prescription was issued.

(2) In accordance with KRS 213.172(1), a pharmacy shall report each drug or combination of drugs for which the primary indication is the induction of an abortion within three (3) days after the end of the month in which the prescription was dispensed.

(3) The report shall be made through the cabinet's electronic database or on VS-913P, Abortion Prescription Reporting Form.

(4)[(3)] The report shall:

(a) Contain the drug or combination or drugs prescribed or dispensed[-and]

(b) The information required by 2022 Ky. Acts ch. 210; and

(c) Not contain information that identifies the [physician,] woman[,] or man involved.

Section 4. Penalties.

(1) Failure to comply with the provisions of KRS 213.101(1) shall subject the reporting person or institution to the penalties provided in KRS 213.101(5) and (6).

(2) Failure to comply with the provisions of KRS 213.172(1) and (2) shall subject the reporting pharmacist or pharmacy to the penalties provided in KRS 213.172(5) and (6).

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form VS-913P, "Abortion Prescription Reporting Form", 10/2022[6/2022][4/2020]; and

(b) Form VS-913, "Report of Abortion", 10/2022[6/2022][4/2020].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may be obtained, subject to applicable copyright law, at <https://chfs.ky.gov/agencies/dph/dehp/vsb/Pages/abreqadr.aspx>.

STEVEN J. STACK, MD, MBA; Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 8, 2022

FILED WITH LRC: November 9, 2022 at 2:10 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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for reporting abortions as described in KRS 213.101 and 2022 Ky. Acts ch. 210.

(b) The necessity of this administrative regulation: KRS 213.101(7) requires the Office of Vital Statistics (OVS) to promulgate administrative regulations for compliance with the reporting

requirements of the statute. This administrative regulation is necessary to ensure that each abortion that occurs in the commonwealth is reported to OVS in a timely manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 213.101 requires the reporting of each abortion that occurs in the commonwealth and requires OVS to issue a public report by September 30 each year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows OVS to compile statistical data regarding the number of abortions that occur yearly and the abortion procedures utilized.

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

(a) How the amendment will change this existing administrative regulation: The amended after comments version of this administrative regulation updates the material incorporated by reference for compliance with KRS 213.172. The abortion prescription reporting form has been amended to include the date the medication was prescribed to the patient, the date the medication was dispensed to the patient, the date of the mail order, and the date of the internet order. The addition of the date will allow the Office of Vital Statistics to better monitor for compliance with the reporting requirements.

(b) The necessity of the amendment to this administrative regulation: The amended after comments version of this administrative regulation is necessary to ensure the most up to date and accurate abortion prescription reporting form is incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: 2022 Ky. Act ch. 210 expanded the abortion reporting requirements to include the full name and address of the physician and facility, the age of the father, if known, the Rh negative status of the patient, if the patient was treated for a sexually transmitted disease, the reason for the abortion, any follow-up treatment provided, and additional prescription information.

(d) How the amendment will assist in the effective administration of the statutes: The amended after comments version of this administrative regulation will ensure all required elements are reported to the cabinet and will ensure the Office of Vital Statistics is able to monitor compliance with the reporting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any woman seeking an abortion and the physician who performs the abortion. On average, there are 2,616 abortions performed each year. The Office of Vital Statistics within the Department for Public Health will also be impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians who perform abortions will need to be aware of the changes in reporting requirements, will need to monitor a woman who has received an abortion for complications, and will need to make reasonable efforts to ensure the woman receives any necessary follow-up treatment. Pharmacies that dispense the medications will need to be aware of the reporting requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Physicians and pharmacists reporting abortions will have no additional costs associated with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the reporting requirements, physicians who perform abortions will be in full compliance with the authorizing statutes and will avoid any penalties that would result from violating the statutes. By complying with the medication reporting requirements, pharmacists will be in compliance with the authorizing statutes and will avoid any penalties

that would result from violating the statutes.

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

(a) Initially: The required changes to the current reporting data system will cost \$48,000 to implement.

(b) On a continuing basis: Ongoing costs for maintenance of the reporting data system and production of the required reports will be \$18,000 yearly. Staff costs for the Office of Vital Statistics to implement this administrative regulation is \$6,000 yearly.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds are used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amended after comment version of this administrative regulation does not require an increase in fees or funding for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no increase in, or establishment of, fees associated with this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. This amended after comments version of this administrative regulation impacts all affected entities equally.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Office of Vital Statistics within the Division of Epidemiology and Health Planning in the Department for Public Health, Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 213.021, 213.101(1), (7), and 213.172.

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

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

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

(c) How much will it cost to administer this program for the first year? The total costs to implement the changes to the reporting data system as a result of the amendment to this administrative regulation will be \$48,000 for the first year.

(d) How much will it cost to administer this program for subsequent years? Ongoing costs for the reporting data system will be \$18,000 for subsequent years. Staff costs for the Office of Vital Statistics to implement this administrative regulation is \$6,000 yearly.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

(b) How much cost savings will this administrative regulation

generate for the regulated entities for subsequent years? This administrative regulation will not generate any costs savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The costs associated with the amendment to this administrative regulation are state costs only. The regulated facilities providing abortions will not have any costs associated with compliance with this administrative regulation. The total state costs in the first year will be \$48,000 for enhancements to the reporting system.

(d) How much will it cost the regulated entities for subsequent years? Ongoing state costs will be approximately \$24,000 a year for reporting system maintenance and staff costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Epidemiology and Health Planning**  
**(Amended After Comments)**

**901 KAR 5:130. Certificate of abortion.**

RELATES TO: KRS 213.011, 213.096

STATUTORY AUTHORITY: KRS 194A.050(1), 213.096(4); **2022 Ky. Acts ch. 210**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 213.096(4) **requires[authorizes]** a person in charge of an institution or that person's designated representative to complete a certificate of an abortion **if[when]** requested by the patient. **[2022 Ky. Acts ch. 210 requires the cabinet to design the form to request a certificate of abortion and to incorporate the form in an administrative regulation.]** This administrative regulation establishes the process for requesting a certificate of an abortion and incorporates by reference the certificate worksheet form.

Section 1. Definitions. (1) "Abortion" is defined by KRS 213.011(1).

(2) "Fetal death" is defined by KRS 213.011(4).

Section 2. Certificate of abortion. (1) In accordance with KRS 213.096(4), a patient may request a certificate of abortion when[**—**

**(a) The abortion occurs at twenty (20) weeks gestation or more; or**

**(b) The fetus weighs three hundred fifty (350) grams or more; and**

**(c)]** the abortion is not reported as a stillbirth or fetal death.

(2) The Abortion Certificate Worksheet, VS-920A, shall be:

(a) Signed by the person in charge of the institution or that person's designated representative; and

(b) Filed with the state registrar within five (5) working days of the date of abortion.

(3) **The VS-920A shall not substitute for the Report of Abortion, VS-913, incorporated by reference in 901 KAR 5:120.**

(4) A registered Certificate of Abortion, **VS-920B**, shall only be released to:

(a) The individual named as mother on the certificate; or

(b) The legal guardian of the individual named as mother on the certificate.

**5[(4)]** A non-refundable fee of fifteen (15) dollars shall be paid for the search and certification of abortion certificate records.

**(6) All personally identifiable information recorded on the VS-920A shall be redacted prior to release in response to an open records request.**

Section 3. Incorporation by Reference. (1) "Abortion Certificate Worksheet", VS-920A, 6/2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may be obtained, subject to applicable copyright law, at <https://chfs.ky.gov/agencies/dph/dehp/vsb/Pages/abreqadr.aspx>.

STEVEN J. STACK, MD, MBA; Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 8, 2022

FILED WITH LRC: November 9, 2022 at 2:10 p.m.

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**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for requesting a certificate of abortion and incorporates by reference the certificate worksheet form. The amended after comments version of this new administrative regulation clarifies that the abortion certificate worksheet does not substitute for the required report of abortion, removes the limitations on when a certificate may be requested, adds a new subsection to protect personally identifiable information from release, and makes other changes for compliance with KRS Chapter 13A.

(b) The necessity of this administrative regulation: KRS 213.096 was amended by 2022 Ky. Acts ch. 210 to allow a patient to request a certificate of abortion provided that the abortion is not reported as a stillbirth or fetal death.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for requesting a certificate of abortion.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure individuals who want a certificate of abortion are aware of the process.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any woman seeking an abortion and the physician who performs the abortion. On average, there are 2,616 abortions performed each year. The Office of Vital Statistics (OVS) within the Department for Public Health will also be impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The person in charge of a facility or that person's designated representative will need to be aware of the process to file a certificate of abortion when requested by the patient. Staff in OVS will need to be aware of the disclosure limitations for providing a certificate of abortion.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no costs to the person in charge of a facility or that person's designated representative to file the abortion certificate worksheet.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Women who request a certificate will have a record of the procedure on file with the state registrar. Staff in OVS will protect the identity of the woman named on the certificate as mother.

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

(a) Initially: The department is unable to determine the initial cost to implement this administrative regulation. There will be costs associated with the staff time to file, search, and print a certificate of abortion.

(b) On a continuing basis: The department is unable to determine the ongoing cost to implement this administrative regulation. There will be costs associated with the staff time to file, search, and print a certificate of abortion.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does establish a nominal fee for the search and certification of the abortion certificate.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a non-refundable fee of fifteen (15) dollars for the search and certification of abortion certificates.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation are applied equally to individuals who request a certificate of abortion.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Office of Vital Statistics within the Division of Epidemiology and Health Planning in the Department for Public Health, Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 213.096.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does include a nominal fee of fifteen (15) dollars to offset the costs of searching for and certifying the abortion certificate. An exact amount of revenue cannot be determined because the number of certificates that would be requested is unknown.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does include a nominal fee of fifteen (15) dollars to offset the costs of searching for and certifying the abortion certificate. An exact amount of revenue cannot be determined

because the number of certificates that would be requested is unknown.

(c) How much will it cost to administer this program for the first year? The department is unable to determine the initial cost to implement this administrative regulation. There will be costs associated with the staff time to file, search, and print a certificate of abortion.

(d) How much will it cost to administer this program for subsequent years? The department is unable to determine the ongoing cost to implement this administrative regulation. There will be costs associated with the staff time to file, search, and print a certificate of abortion.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? Individuals who request a certificate of abortion be printed from the Office of Vital Statistics will be assessed a non-refundable fee of fifteen (15) dollars. The department is unable to determine the initial cost to implement this administrative regulation. There will be costs associated with the staff time to file, search, and print a certificate of abortion.

(d) How much will it cost the regulated entities for subsequent years? Individuals who request a certificate of abortion be printed from the Office of Vital Statistics will be assessed a non-refundable fee of fifteen (15) dollars. The department is unable to determine the ongoing cost to implement this administrative regulation. There will be costs associated with the staff time to file, search, and print a certificate of abortion.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Public Health

##### Division of Epidemiology and Health Planning (Amended After Comments)

#### 901 KAR 5:140. Permit to transport fetal remains.

RELATES TO: KRS ~~213.098~~[213.084], 213.991, 311.732

STATUTORY AUTHORITY: KRS 194A.050(1), [213.084], 213.098(3)

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 213.081(2) requires a permit for the transportation of fetal remains.]~~ KRS 213.098~~(3)~~ requires the cabinet to design the form to ~~[request a certificate of abortion]~~ document the age of the parent or parents of the fetal remains, the status of the fetal remains resulting from an abortion for the purpose of cremation that meet the requirements for a birth-death, provisional death, or death certificate for transport or cremation, the designation of how the fetal remains shall be disposed and who shall be responsible for final disposition, any additional information required by the cabinet, and to incorporate the form in an administrative regulation. This administrative regulation establishes the process to request a permit to transport fetal remains and incorporates by reference the permit request form.

Section 1. Definition~~[Definitions]~~. (1) "Fetal remains" is defined by KRS 213.098(1).

Section 2. Transport of Fetal Remains. (1)~~(a)~~ ~~[In accordance with KRS 213.098,]~~ A healthcare facility or abortion clinic shall notify the parent or parents of their right to determine the final disposition of the fetal remains resulting from an abortion or a miscarriage in accordance with KRS 213.098(2).

(b) The healthcare facility or abortion clinic shall document the parent's or parents' choice in the medical record.

~~(2) If the parent or parents elect to retain guardianship of the fetal remains, [Notification shall be made both orally and in writing and provided to the parent or parents within twenty-four (24) hours before the abortion procedure or twenty-four (24) hours after the miscarriage.~~

~~(3) The parent or parents of the fetal remains may:~~

~~(a) Choose to take responsibility for the final disposition of the fetal remains; or~~

~~(b) Relinquish responsibility for the final disposition of the fetal remains to the healthcare facility or abortion clinic.~~

~~(4) The healthcare facility or abortion clinic shall provide] the parent or parents shall be provided [who take responsibility for final disposition] a Permit to Transport Fetal Remains, VS-922.~~

~~(3) [(5)]~~ The parent or parents who take responsibility for fetal remains may contact the coroner of their county of residence to assist with the final disposition or may transport the fetal remains to a funeral home of their choice.

~~(4) [(6)]~~ The coroner who assists with the disposition of fetal remains shall complete the Permit to Transport Fetal Remains and submit a copy directly to the Office of Vital Statistics.

~~(5) [(7)]~~ A funeral home that receives fetal remains directly from the parent or parents shall request a copy of the Permit to Transport Fetal Remains and submit a copy directly to the Office of Vital Statistics.

~~(6) [(8)]~~ A healthcare facility or abortion clinic responsible for the final disposition of fetal remains shall follow their established protocols for disposition of human remains.

~~(7) [(9)]~~ Failure to obtain a permit to transport fetal remains may result in a penalty under KRS 213.991(3)(b).

(8) The VS-922 shall not substitute for the Report of Abortion, VS-913, incorporated by reference in 901 KAR 5:120.

(9) All personally identifiable information recorded on the VS-922 shall be redacted prior to release in response to an open records request.

Section 3. Incorporation by Reference. (1) "Permit to Transport Fetal Remains", VS-922, ~~10[7]~~/2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may be obtained, subject to applicable copyright law, at <https://chfs.ky.gov/agencies/dph/dehp/vsb/Pages/abreqadr.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 8, 2022

FILED WITH LRC: November 9, 2022 at 2:10 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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes process to request a permit to transport fetal remains and incorporates by reference the permit request form. The amended after comments version of this administrative regulation clarifies when a request to transport fetal remains is required, clarifies that the transport permit does not substitute for the abortion reporting required by 901 KAR 5:120, adds the provision that personally identifiable information on the permit forms will be redacted prior to release in response to an open records request, makes revisions to the material incorporated by reference for clarity, and makes other amendments necessary for KRS Chapter 13A requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process a parent or parents would follow to request a permit to transport fetal remains and to incorporate the form required by 2022 Ky Acts ch. 210.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the process to request a permit to transport fetal remains.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure fetal remains are transported in accordance with 2022 Ky Acts ch. 210 and are properly disposed.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any woman seeking an abortion and the physician who performs the abortion. On average, there are 2,616 abortions performed each year. The Office of Vital Statistics (OVS) within the Department for Public Health will also be impacted by this administrative regulation. Healthcare facilities or abortion clinics that retain guardianship of the fetal remains for final disposition, coroners who may transport the fetal remains, and funeral homes that receive the fetal remains will be impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The healthcare facility or abortion clinic staff will need to document the final disposition of fetal remains in the patient's medical record and will need to provide the permit to transport fetal remains form to the parent or parents who elect to retain the fetal remains for final disposition. Coroners and funeral homes will need to be aware of the permit requirements and ensure the permit is submitted directly to OVS. Staff in OVS will need to be aware of the permit to transport fetal remains.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no costs to the healthcare facility or abortion clinic, or the parent or parents to complete the permit to transport fetal remains. There will be no cost to the coroner or

funeral home. The Office of Vital Statistics will incur the costs associated with development of the forms as well as storage of the completed forms once received.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those transporting fetal remains for final disposition will have the proper documentation to support the transport.

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

(a) Initially: The department is unable to determine the initial cost to implement this administrative regulation. There will be initial costs associated with the staff time to develop the permit to transport form.

(b) On a continuing basis: The department is unable to determine the ongoing cost to implement this administrative regulation. There will be costs associated with the receipt, storage, and maintenance of the form.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation are applied equally to individuals who take responsibility for the disposition of fetal remains.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Office of Vital Statistics within the Division of Epidemiology and Health Planning in the Department for Public Health, Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 213.098.

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

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

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

(c) How much will it cost to administer this program for the first year? The department is unable to determine the initial cost to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department is unable to determine the ongoing cost to implement this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

administrative regulation will not generate any cost savings in the first year.

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

(c) How much will it cost the regulated entities for the first year? The department is unable to determine the initial cost to implement this administrative regulation. There will be costs associated with the receipt, storage, and maintenance of the permit to transport form.

(d) How much will it cost the regulated entities for subsequent years? The department is unable to determine the ongoing cost to implement this administrative regulation. There will be costs associated with the receipt, storage, and maintenance of the form.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Office of Inspector General

##### Division of Health Care

##### (Amended After Comments)

#### 902 KAR 20:365. Kentucky abortion-inducing drug certification program and registration of qualified physicians.

RELATES TO: KRS 216B.015, 216B.105, 216B.200 - 216B.210, 311.720(1), 311.7731, 311.7733, 311.7734

STATUTORY AUTHORITY: KRS 216B.202(1), 216B.206

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.202(1) requires the cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A to establish a certification program to oversee and regulate the distribution and dispensing of abortion-inducing drugs. KRS 216B.206 requires the cabinet to establish requirements for physicians who prescribe abortion-inducing drugs. KRS 311.7733 requires a physician to be registered with the cabinet before providing abortion-inducing drugs. This administrative regulation establishes requirements for physicians, manufacturers, distributors, and abortion facilities that prescribe, transport, supply, dispense, or sell abortion-inducing drugs.

Section 1. Definitions. (1) "Abortion" is defined by KRS 311.720(1).

(2) "Abortion facility" is defined by KRS 216B.015(1).

(3) "Abortion-inducing drug" is defined by KRS 311.7731(2).

(4) "Cabinet" is defined by KRS 311.7731(5).

(5) "Distributor" is defined by KRS 311.7731(9).

(6) "Hospital" is defined by KRS 311.720(7).

(7) "Manufacturer" is defined by KRS 311.7731(9).

(8) "Physician" is defined by KRS 311.720.

(9) "Provide" is defined by KRS 311.7731(13).

(10) "Qualified physician" is defined by KRS 311.7731(14).

Section 2. Physician registration. (1) In accordance with KRS 311.7733, only a qualified physician registered with the cabinet may provide abortion-inducing drugs to a pregnant person.

(2) To be eligible for registration, a qualified physician shall:

(a) Demonstrate compliance with KRS 216B.206(1)(a), (c), (m), and (n); and

(b) Certify compliance with KRS 216B.206(1)(b), (d) - (l), (o), and



(p).

Section 3. Certification of manufacturers, distributors, pharmacies, and abortion facilities. (1) In accordance with KRS 216B.202 and 216B.204, the following entities shall be certified by the cabinet:

(a) A manufacturer or distributor that transports, supplies, or sells abortion-inducing drugs;

(b) A pharmacy that dispenses abortion-inducing drugs; or

(c) A licensed abortion facility.

(2)(a) To be eligible for certification, a manufacturer, distributor, or pharmacy shall:

1. Demonstrate compliance with KRS 216B.204(2)(a) and (d); and

2. Certify compliance with KRS 216B.204(2)(b), (c), (d), (e), and (f).

(b) In addition to complying with paragraph (a) above, a pharmacy shall also comply with KRS 216B.204(3) **if the U.S. Food and Drug Administration (FDA) and drug manufacturers implement certification programs for pharmacies to dispense abortion-inducing drugs and compliance with KRS 216B.204(3) becomes possible. A pharmacy shall submit evidence of certification by the FDA within 180 days after creation and implementation of the FDA certification program and shall submit evidence of certification by the drug manufacturer within 180 days after creation and implementation of the manufacturer's certification program[to be eligible for certification].**

Section 4. Application and fees. (1) A qualified physician applicant for registration to provide abortion-inducing drugs shall submit to the Office of Inspector General:

(a) A completed Application for Registration to Provide Abortion-Inducing Drugs; and

(b) An accompanying fee in the amount of \$155, made payable to the Kentucky State Treasurer and sent to the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care, 275 East Main Street 5E-A, Frankfort, Kentucky 40621.

(2) A manufacturer, distributor, pharmacy, or abortion facility applicant for certification to transport, supply, sell, or dispense abortion-inducing drugs shall submit to the Office of Inspector General:

(a) A completed Application for Participation in the Abortion-Inducing Drug Certification Program; and

(b) An accompanying fee in the amount of \$155, made payable to the Kentucky State Treasurer and sent to the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care, 275 East Main Street 5E-A, Frankfort, Kentucky 40621.

(3) As a condition of annual renewal, the application required by subsections (1) and (2) of this section and a renewal fee in the amount of \$155 shall be submitted to the cabinet at least thirty (30) days prior to the date of expiration of the registration or certification. Renewal fees shall be paid as set out in paragraph (2)(b) of this section.

Section 5. Operations. (1) A manufacturer, distributor, physician, qualified physician, pharmacy, abortion facility, and any other person shall comply with KRS 311.7733(2) prohibiting the use of courier, delivery, or mail services.

(2) In accordance with KRS 216B.204(1)(c), no person or entity shall intentionally, knowingly, or recklessly ship abortion-inducing drugs to a physician unless the physician is registered with the cabinet pursuant to this administrative regulation and as shown on the Office of Inspector General's Web site: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/default.aspx>.

(3) In accordance with KRS 216B.204(1)(g), a pharmacy shall not intentionally, knowingly, or recklessly dispense or distribute abortion-inducing drugs directly to a patient in Kentucky.

(4) In accordance with KRS 216B.204(1)(h), manufacturers and distributors shall intentionally and knowingly distribute only to certified pharmacies and in-person dispensing clinics, medical offices, abortion facilities, and hospitals that are in compliance with the United States Federal Drug Administration's outlined

Mifepristone Risk Evaluation and Mitigation Strategy in effect on July 14, 2022.

(5) A qualified physician registered with the cabinet shall maintain hospital admitting privileges or enter into a written associated physician agreement as required by KRS 311.7734(1)(b) and comply with all other provisions of KRS 216B.206(2) and 311.7734.

Section 6. Complaints. In accordance with KRS 216B.210, a complaint regarding potential violations of the Abortion-Inducing Drug Certification Program may be submitted on the Office of Inspector General's Web site: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/default.aspx>.

Section 7. Denial, Suspension, Revocation, and Fines. (1) The cabinet shall deny an application for registration or certification if:

(a) The applicant or existing agency knowingly misrepresents or submits false information on the application; or

(b) The applicant or existing agency fails to provide the information required by the application.

(2) The cabinet shall revoke or suspend certification and impose fines:

(a) In accordance with KRS 216B.208(1)(a) - (e); or

(b) If the cabinet determines that there has been substantial failure to comply with the provisions of this administrative regulation.

(3) The cabinet shall:

(a) Revoke or suspend registration of a physician and impose fines as set out in KRS 216B.208(1)(e)3.; and

(b) **Immediately** report the violation to the Kentucky Board of Medical Licensure **and local law enforcement** in accordance with KRS 216B.208(1); if the cabinet determines that there has been substantial failure to comply with the provisions of this administrative regulation.

Section 8. Notice of Adverse Action. (1) Except as set out in KRS 216B.208(1)(e)[4-], OIG shall provide written notice of adverse action at least thirty (30) calendar days prior to the effective date of the denial or revocation.

(2) In accordance with KRS 216B.208(1)(e)1., the cabinet shall immediately notify a pharmacy, manufacturer, or distributor that its certification is suspended and will be **permanently** revoked **[in fifteen (15) days]** if OIG determines that a certified entity has intentionally, knowingly, or recklessly violated KRS 216B.200 to 216B.210 **and fails to demonstrate compliance within ninety (90) days.**

(3) A notice of adverse action issued in accordance with subsection (1) or (2) of this section shall:

(a) Explain the reason for the denial or revocation, and monetary penalty if applicable;

(b) Advise the individual or entity that the right to request an appeal prior to the effective date of the denial or revocation, and monetary penalty if applicable; and

(c) Specify that the adverse action shall be stayed if an appeal is requested.

Section 9. Appeals. An individual or entity that submits a written request for appeal within thirty (30) calendar days of the date the agency receives a notice of adverse action, including revocation, shall be afforded a hearing in accordance with KRS 216B.105.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form OIG 20-365A, "Application for Registration to Provide Abortion-Inducing Drugs", **November[July]** 2022 edition;

(b) Form OIG 20-365B, "Application for Participation in the Abortion-Inducing Drug Certification Program", **November[July]** 2022 edition; and

(c) Form OIG 20-365C, "Physician Dispensing Agreement Form", **November[July]** 2022 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the

Office of Inspector General's Web site at:  
<https://chfs.ky.gov/agencies/os/oig/dhc/Pages/lcapplications.aspx>.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 9, 2022

FILED WITH LRC: November 14, 2022 at 2:15 p.m.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kara Daniel; Stephanie Brammer-Barnes, Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes requirements for the Kentucky Abortion-Inducing Drug Certification Program and registration requirements for physicians to provide abortion-inducing drugs.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to comply with KRS 216B.202 – 216B.210, 311.7731, 311.7733, 311.7734 (HB 3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation conforms to the content of KRS 216B.202 – 216B.210, 311.7731, 311.7733, 311.7734 (HB 3) by establishing requirements for the Kentucky Abortion-Inducing Drug Certification Program and registration requirements for physicians to provide abortion-inducing drugs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation assists in the effective administration of the statutes by establishing requirements for the Kentucky Abortion-Inducing Drug Certification Program and registration requirements for physicians to provide abortion-inducing drugs as required by HB 3 enacted by the 2022 General Assembly.

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

(a) How the amendment will change this existing administrative regulation: In response to public comments, this amended after comments regulation added clarifying language to Section 7(3) to align with the requirements of KRS 216B.208(1)(a) for the cabinet to immediately report certain violations to local law enforcement in addition to other applicable agencies, updated the language of Section 8(2) to align with the requirement of KRS 216B.208(1)(e)4. for permanent revocation of certification if the offender fails to demonstrate compliance within ninety (90) calendar days rather than fifteen (15) days, and added clarifying language to Form OIG 20-365C to align with KRS 216B.206. In response to the agency comment, the cabinet modified the language of Section 3(2)(b) to require pharmacies to submit evidence of certification by the U.S. Food and Drug Administration (FDA) within 180 days after implementation of the FDA's anticipated certification program and evidence of certification by the drug manufacturer within 180 days after implementation of the manufacturer's certification program if compliance with KRS 216B.204(3) becomes possible. The cabinet also made conforming changes in Section F of Form OIG 20-365B. In response to public comments, the amended after comments regulation deletes the requirement from the OIG 20-365A for physicians to identify the counties in which services are provided because information regarding the physical address is already captured. In addition, the requirement for evidence of hospital admitting privileges was deleted in favor of requiring an attestation of hospital admitting privileges as well as a list of hospitals that have granted admitting privileges if the physician does not produce a copy of a current associated physician agreement.

(b) The necessity of the amendment to this administrative regulation: In response to public comments, this amended after comments regulation is necessary to add clarifying language to Section 3(1)(b), Section 7(3)(b), Section 8(2), Section 10, and Form OIG 20-365A, Form OIG 20-365B, and Form OIG 20-365C.

(c) How the amendment conforms to the content of the

authorizing statutes: This amended after comments regulation conforms to the content of KRS 216B.202 – 216B.210, 311.7731, 311.7733, 311.7734 (HB 3) by establishing requirements for the Kentucky Abortion-Inducing Drug Certification Program and registration requirements for physicians to provide abortion-inducing drugs.

(d) How the amendment will assist in the effective administration of the statutes: This is amended after comments regulation assists in the effective administration of the statutes by establishing requirements for the Kentucky Abortion-Inducing Drug Certification Program and registration requirements for physicians to provide abortion-inducing drugs as required by HB 3 enacted by the 2022 General Assembly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new administrative regulation affects manufacturers, distributors, pharmacies, and abortion facilities that will transport, supply, sell, or dispense abortion-inducing drugs, and physicians who will provide abortion-inducing drugs. It is not known how many entities and physicians will apply for certification or registration.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with HB 3 and this administrative regulation, entities seeking certification and physicians seeking registration will be required to submit an initial and annual renewal application to the cabinet with accompanying documentation. They will have to comply with the extensive requirements in HB 3.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation establishes application and renewal fees of \$155 per applicant. This amount is consistent with application fees paid by abortion facilities licensed under 902 KAR 20:360.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities seeking certification and physicians seeking registration to provide abortion-inducing drugs must demonstrate compliance with this administrative regulation and HB 3.

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

(a) Initially: The Office of Inspector General (OIG) will seek to hire one (1) additional grade 15 position to implement and oversee HB 3's new registration and certification program and draft an annual report, plus one-half of one position to investigate complaints. The cost of the additional staff will be approximately \$132,000. Additionally, changes to the cabinet's website will be necessary to build an electronic system to store and track information, display certified and qualified providers on the website, and create a way to accept anonymous complaints, at an estimated cost of \$25,000.

(b) On a continuing basis: The continuing costs will be approximately \$132,000 per year for one and one-half employees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes an initial and annual registration fee of \$155 for qualified physicians. This administrative regulation also establishes an initial and annual registration fee of \$155 for manufacturers, distributors, pharmacies, and abortion facilities.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes an initial and annual fee of \$155 for registered or certified entities.

(9) TIERING: Is tiering applied? Tiering is not applicable as

compliance with this administrative regulation applies equally to all entities regulated by it.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts manufacturers, distributors, pharmacies, abortion facilities, and physicians and the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.202 – 216B.210, 311.7731, 311.7733, 311.7734.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation establishes an initial and annual fee of \$155 for registration or certification. KRS 216B.208 authorizes the cabinet to impose fines of \$100,000 - \$5 million for noncompliance. However, it is not known how many entities or physicians will apply for registration or certification, or be subject to a fine after registration or certification.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation establishes an initial and annual fee of \$155 for registration or certification. KRS 216B.208 authorizes the cabinet to impose fines of \$100,000 - \$5 million for noncompliance. However, it is not known how many entities or physicians will apply for registration or certification, or be subject to a fine after registration or certification.

(c) How much will it cost to administer this program for the first year? The Office of Inspector General (OIG) will seek to hire one (1) additional grade 15 position to implement and oversee HB 3's new registration and certification program and draft an annual report, plus one-half of one position to investigate complaints. The cost of the additional staff will be approximately \$132,000. Additionally, changes to the cabinet's website will be necessary to build an electronic system to store and track information, display certified and qualified providers on the website, and create a way to accept anonymous complaints, at an estimated cost of \$25,000.

(d) How much will it cost to administer this program for subsequent years? The continuing costs will be approximately \$132,000 per year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? This administrative regulation will cost regulated entities a fee of \$155 during the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will cost regulated entities a fee of \$155 during subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] It is not known how many entities and physicians will apply for registration or certification, and the costs to the applicants of the additional requirements are difficult to quantify. Therefore, the cabinet is unable to determine whether this administrative regulation will have a major economic impact on the regulated entities.

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Fiscal Management

##### (Amended After Comments)

#### 907 KAR 1:065. Payments for price-based nursing facility services.

RELATES TO: KRS 142.361, 142.363, 216.380, 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 482.58, 483.10, 42 U.S.C. 1395tt, 1396, 1396a, 1396b, 1396c, 1396d, 1396g, 1396i, 1396n, 1396o, 1396p, 1396r, 1396r-2, 1396r-5

STATUTORY AUTHORITY: KRS 142.361(5), 142.363(3), 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid program for services provided by a price-based nursing facility.

#### Section 1. Definitions.

(1) "Ancillary service" means a direct service for which a charge is customarily billed separately from the per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1:023; or

(b) If ordered by a physician:

1. Laboratory procedures; or

2. X-rays.

(2) "Appraisal" means an evaluation of a price-based nursing facility building, excluding equipment and land, conducted by the department in accordance with Section 4 of this administrative regulation for the purpose of calculating the depreciated replacement cost of a price-based nursing facility.

(3) "Appraisal base year" means a year in which the department conducts an appraisal of each price-based NF.

(4) "Auxiliary building" means a roofed and walled structure:

(a) Serviced by electricity, heating, and cooling;

(b) Independent of an NF;

(c) Used for administrative or business purposes related to an NF; and

(d) Constructed on the same tract of ground as an NF.

(5) "Capital rate component" means a calculated per diem amount for an NF based on:

(a) The NF's appraised depreciated replacement cost;

(b) A value for land;

(c) A value for equipment;

(d) A rate of return;

(e) A risk factor;

(f) The number of calendar days in the NF's cost report year;

- (g) The number of licensed NF beds in the NF; and
- (h) The NF's bed occupancy percentage.
- (6) "Case-mix" means the time-weighted average price-based NF acuity for Medicaid-eligible and dual-eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a price-based nursing facility, and is based on Minimum Data Set (MDS) 3.0 data classified through the RUG III, M3 p1, (version 5.20) thirty-four (34) group model resident classification system or equivalent.
- (7) "Core based statistical area" or "CBSA" means the designation of metropolitan and micropolitan population centers based on the national census, as published by the Federal Office of Management and Budget.
- (8) "Department" means the Department for Medicaid Services or its designee.
- (9) "Equipment" means a depreciable tangible asset, other than land or a building, which is used in the provision of care for a resident by an NF staff person.
- (10) "Governmental entity" means a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).
- (11) "Hospital-based NF" means an NF that:
  - (a) Is separately identifiable as a distinct part of the hospital; and
  - (b) If separated into multiple but distinct parts of a single hospital, is combined under one (1) provider number.
- (12) "Land" means a surveyed tract or tracts of ground that share a common boundary:
  - (a) As recorded in a county government office;
  - (b) Upon which a building licensed as an NF is constructed; and
  - (c) Including site preparation and improvements.
- (13) "Local unit of government" means a city, county, special purpose district, or other governmental unit in the state.
- (14) "NF" or "nursing facility" means:
  - (a) A facility:
    - 1. To which the state survey agency has granted an NF license;
    - 2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and
    - 3. To which the department has granted certification for Medicaid participation; or
  - (b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280, and 482.58.
- (15) "NF building" means a roofed and walled structure serviced by electricity, heating, and cooling and that is also an NF.
- (16) "Nursing facility with Medicaid waiver" or "NF-W" means an NF to which the state survey agency has granted a waiver of the nursing staff requirement.
- (17) "Provider assessment" means the assessment imposed by KRS 142.361 and 142.363.
- (18) "Routine services" means the services covered by the Medicaid program pursuant to 42 C.F.R. 483.10(f)(11)(i).
- (19) "Site improvement" means a depreciable asset element, other than an NF building or auxiliary building, on NF land extending beyond an NF's foundation if used for NF-related purposes.
- (20) "Standard price" means a facility-specific reimbursement that includes a case-mix adjusted component, noncase-mix adjusted component including an allowance to offset a provider assessment, noncapital-facility related component, and capital rate component.
- (21) "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care.
- (22) "Time-weighted" means a method of calculating case-mix by determining the number of days that a minimum data set (MDS) record is active over a calendar quarter rather than captured from a single day during the calendar quarter.

#### Section 2. NF Reimbursement Classifications and Criteria.

- (1) An NF or a hospital-based NF shall be reimbursed as a price-based NF pursuant to this administrative regulation if:
  - (a) It provides NF services to an individual who:
    - 1. Is a Medicaid recipient;

- 2. Meets the NF patient status criteria pursuant to 907 KAR 1:022; and
  - 3. Occupies a Medicaid-certified bed; and
  - (b)1. It has more than ten (10) NF beds and the greater of:
    - a. Ten (10) of its Medicaid-certified beds participate in the Medicare program; or
    - b. Twenty (20) percent of its Medicaid certified beds participate in the Medicare program; or
  - 2. It has less than ten (10) NF beds and all of its NF beds participate in the Medicare program.
- (2) An NF-W shall be reimbursed as a price-based NF pursuant to this administrative regulation if it meets the criteria established in subsection (1)(a) of this section.
- (3) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025:
  - (a) An NF with a certified brain injury unit;
  - (b) An NF with a distinct part ventilator unit;
  - (c) An NF designated as an institution for mental disease;
  - (d) A dually-licensed pediatric facility; or
  - (e) An intermediate care facility for individuals with an intellectual disability.

#### Section 3. Reimbursement for Federally-Defined Swing Beds and for Skilled Nursing Facility Services in Critical Access Hospital Swing Beds.

- (1) The reimbursement rate for a federally-defined swing bed shall be:
  - (a) The average rate per patient day paid to freestanding price-based NFs for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 14 of this administrative regulation; and
  - (b) Established effective January 1 of each year.
- (2)(a) The department shall reimburse a critical access hospital for skilled nursing facility services in a swing bed at the same rate as established by the Centers for Medicare and Medicaid Services for Medicare.
- (b) The department shall pay an interim per diem rate as established by CMS for the Medicare program.
- (c) The effective date of a rate shall be the same as used by the Medicare program.
- (d) A critical access hospital's final reimbursement for skilled nursing facility services in a swing bed shall reflect any adjustment made by the Centers for Medicare and Medicaid Services.
- (e) Total payments made to a critical access hospital for skilled nursing facility services provided in a swing bed under this section shall be subject to the payment limitation established in 42 C.F.R. 447.271.
- (f) The provisions established in this subsection shall apply to a critical access hospital that complies with all requirements established in KRS 216.380.

#### Section 4. Price-based NF Appraisal. (1) The department shall appraise a price-based NF to determine the facility specific capital component in 2009, and every fifth year, in order to calculate the NF's depreciated replacement cost.

- (2) The department shall not appraise equipment or land. A provider shall be given the following values for land and equipment:
  - (a) Ten (10) percent of an NF's average licensed bed value for land; and
  - (b) \$2,000 per licensed NF bed for equipment.
- (3) The department shall utilize the following variables and fields of the nursing home or convalescent center #5200 model of the Marshall & Swift Boeckh Building Valuation System (BVS) to appraise an NF identified in Section 2(1) of this administrative regulation:
  - (a) Provider number;
  - (b) Property owner - NF name;
  - (c) Address;
  - (d) Zip code;
  - (e) Section number - the lowest number shall be assigned to the oldest section and a basement, appraised as a separate section, immediately follows the section it is beneath;
  - (f) Occupancy code - nursing home or substructure;

- (g) Average story height;
- (h) Construction type;
- (i) Number of stories;
- (j) Gross floor area (which shall be the determination of the exterior dimensions of all interior areas including stairwells of each floor, specifically excluding outdoor patios, covered walkways, carports, and similar areas). In addition, interior square footage measurements shall be reported for:
  - 1. A non-NF area;
  - 2. A shared service area by type of service; and
  - 3. A revenue-generating area;
- (k) Gross perimeter (common walls between sections shall be excluded from both sections);
- (l) Construction quality;
- (m) Year built;
- (n) Building effective age;
- (o) Building condition;
- (p) Depreciation percent;
- (q) Exterior wall material;
- (r) Roof covering material and roof pitch;
- (s) Heating system;
- (t) Cooling system;
- (u) Floor finish;
- (v) Ceiling finish;
- (w) Partition wall structure and finish;
- (x) Passenger and freight elevators - actual number;
- (y) Fire protection system (sprinklers, manual fire alarms, and automatic fire detection) - percent of gross area served. If both the floor and attic areas are protected by a sprinkler system or automatic detection, the percent of gross area served shall be twice the floor area; and
- (z) Miscellaneous additional features, which shall be limited to:
  - 1. Canopies;
  - 2. Entry foyers (sheltered entry ways):
    - a. The glass and aluminum standard allowance shall be thirty (30) dollars per square foot;
    - b. Bulkhead standard allowance shall be:
      - (i) Seven (7) dollars per square foot for a wood frame;
      - (ii) Eight (8) dollars per square foot for a steel frame; or
      - (iii) Twenty (20) dollars per square foot for brick masonry;
  - 3. Loading docks;
  - 4. Code alerts, Wanderguards, or other special electronically-secured doorways, except for a door with a sound detector or sensing unit (the standard allowance shall be \$1,500 for each fully-functioning door at the time of appraisal);
  - 5. A door with a sound detector or sensing unit shall have a standard allowance of \$500 per door;
  - 6. Automatic sliding doors (the standard allowance shall be \$17,000 per doorway);
  - 7. An automatic door opener shall have a standard allowance of \$6,500 per door;
  - 8. Detached garages or storage sheds (which shall have an attached reinforced concrete floor and a minimum of 200 square feet);
  - 9. Modular buildings or trailers, if the structure has a minimum of 200 square feet, electrical service, and heating or cooling services (the standard allowance shall be fifty-six (56) dollars per square foot);
  - 10. Walk-in coolers or freezers;
  - 11. Laundry chutes (the standard allowance shall be \$2,100 per floor serviced);
  - 12. Dumb waiters (which shall have a minimum speed of fifty (50) feet per minute. The standard allowance shall be \$8,000 for the initial two (2) stops for a manual door or \$21,000 for the initial two (2) stops for an electric door and \$7,000 per additional stop);
  - 13. Skylights (the standard allowance shall be forty (40) dollars per square foot);
  - 14. Operable built-in oxygen delivery systems (valued at \$300 per serviced bed);
  - 15. Carpeted wainscoting (the standard allowance shall be sixty (60) dollars per licensed bed);
  - 16. Balconies;
  - 17. Ceiling fans for which the standard allowance shall be \$250

- for each ceiling fan without a light and \$400 for each ceiling fan with a light;
  - 18. Cupolas for which the standard allowance shall be \$720 each;
  - 19. Fireplaces;
  - 20. Concrete-lined utility tunnels for which the standard allowance shall be twenty-five (25) dollars per cubic foot; and
  - 21. Mechanical penthouses.
  - (4) An item listed in subsection (3)(z) of this section shall be subject to the Marshall & Swift Boeckh BVS model #5200 monetary limit unless a monetary limit is provided for that item in subsection (3)(z) of this section.
  - (5) The department shall use the corresponding Marshall & Swift Boeckh BVS default value for any variable listed in subsection (3) of this section if no other value is stated for that variable in subsection (3) of this section.
  - (6)(a) Values from the most recent Marshall & Swift Boeckh BVS tables shall be used during an appraisal.
  - (b) An adjustment calculation shall be performed if the most recent Marshall & Swift Boeckh BVS tables do not correspond to an appraisal base year.
  - (7) In addition to an appraisal cited in subsection (1) of this section, the department shall appraise an NF identified in Section 2(1) of this administrative regulation if:
    - (a) The NF submits written proof of construction costs to the department; and
    - (b)1. The NF undergoes renovations or additions costing a minimum of \$150,000 and the NF has more than sixty (60) licensed beds; or
    - 2. The NF undergoes renovations or additions costing a minimum of \$75,000 and the NF has sixty (60) or fewer licensed beds.
  - (8) An auxiliary building shall be:
    - (a) Appraised if it rests on land, as defined in Section 1(12) of this administrative regulation; and
    - (b) Appraised separately from an NF building.
  - (9) To appraise an auxiliary building, the department shall utilize a Marshall & Swift Boeckh BVS model other than the nursing home or convalescent center #5200 model, if the model better fits the auxiliary building's use and type.
  - (10) If an NF building has beds licensed for non-NF purposes or a provider conducts business activities not related to the NF, the appraisal shall be adjusted between NF and non-NF activity. The appraiser shall determine if the adjustment shall be made by dividing the number of licensed NF beds by the total number of beds, or through the use of an adjustment factor determined in accordance with appraisal industry standards by the appraiser, regardless of the occupancy factor. For example, an adjustment factor may be used to apportion the appraisal by the percent of NF square footage relative to the square footage on non-NF-related business activities.
  - (11) Cost of an appraisal shall be the responsibility of the NF being appraised.
  - (12) A building held for investment, future expansion, or speculation shall not be considered for appraisal purposes.
  - (13) The department shall not consider the following location factors in rendering an appraisal:
    - (a) Climate;
    - (b) High-wind zone;
    - (c) Degree of slope;
    - (d) Position;
    - (e) Accessibility; or
    - (f) Soil condition.
- Section 5. Standard Price Overview.
- (1) Rates shall reflect the differential in wages, property values, and cost of doing business in rural and urban designated areas.
  - (2)(a) Except as provided by paragraph (b) of this subsection, and beginning in 2018, on July 1 of each year, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas always being classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.

(b)1. On July 7, 2017, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.

2. On July 7, 2017, a change in designation from:

- a. Rural to urban shall take effect on July 1, 2017; and
- b. Urban to rural shall take effect July 1, 2018.

(3) The department shall utilize an analysis of fair-market pricing and historical cost for the following data:

(a) Staffing ratios;

(b) Wage rates;

(c) Cost of administration, food, professional support, consultation, and nonpersonnel operating expenses as a percentage of total cost;

(d) Fringe benefit levels;

(e) Capital rate component; and

(f) Noncapital facility-related component.

(4) The following components shall comprise the case-mix adjustable portion of an NF's standard price:

(a) The personnel cost of:

1. A director of nursing;
2. A registered nurse (RN);

| CBSA Designation | Case-Mix Adjustable Portion of Standard Price | Noncase-Mix Adjustable Portion of Standard Price Without Capital Rate Component | Total Standard Price Excluding Capital Rate Components |
|------------------|---|---|--|
| Urban            | \$88.05                                       | \$62.80   | \$150.85   |
| Rural            | \$74.62                                       | \$55.63   | \$130.25   |

(8) A price-based NF's standard price ~~may~~**[shall]** be:

**(a)** Adjusted for inflation every July 1; and

**(b)** Rebased;

**1. Effective July 1, 2024; and**

**2. At least once every four (4) years thereafter~~[in 2008]~~.**

(9) Effective July 1, 2004, an NF shall not receive a rate less than its standard price.

(10) Effective July 1, 2022:

(a) A nursing home relief reimbursement increase of twenty-nine (29) dollars shall be included in the noncase-mix adjustable portion of the per diem rate.

(b) The nursing home relief reimbursement increase shall be included in the administration line of the calculation and shall not receive annual inflationary adjustments.

(c) The nursing home relief reimbursement increase of twenty-nine (29) dollars shall continue until the standard price is rebased.

(11) The department shall adjust an NF's standard price if:

(a) A governmental entity imposes a mandatory minimum wage or staffing ratio increase and the increase was not included in the inflation adjustment; or

(b) A new licensure requirement or new interpretation of an existing requirement by the state survey agency results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of a licensure requirement or policy interpretation.

Section 6. Standard Price Calculation. (1) Based on the classification of urban or rural, the department shall calculate an individual NF's standard price to be the sum of:

(a) The case-mix adjustable portion of the NF's standard price, adjusted by the NF's current case-mix index pursuant to Section 7 of this administrative regulation;

(b) The noncase-mix adjustable portion of the NF's standard price, which shall include:

1. An allowance to offset a provider assessment; and

2. The nursing home relief reimbursement increase of twenty-nine (29) dollars;

(c) The noncapital facility-related component; and

(d) Pursuant to subsection (2) of this section, the capital rate component.

(2) An NF's capital rate component shall be calculated as follows:

3. A licensed practical nurse (LPN);

4. A nurse aide;

5. An activities staff person; and

6. A medical records staff person; and

(b) Nonpersonnel operating cost including:

1. Medical supplies; and

2. Activity supplies.

(5) The following components shall comprise the noncase-mix adjustable portion of an NF's standard price:

(a) Administration to include an allowance to offset a provider assessment;

(b) Nondirect care personnel;

(c) Food;

(d) Professional support; and

(e) Consultation.

(6) The following components shall comprise the facility and capital component of an NF's standard price:

(a) The noncapital facility-related component, which shall be a fixed, uniform amount for all price-based NFs; and

(b) The NF's capital rate component, which shall be facility specific.

(7) Excluding capital rate components, the following is an example of an urban and a rural price-based NF's standard price based on rebased wages at the 2008 level:

(a) The department shall add the total of:

1. The NF's average licensed bed value, which shall:

a. Be determined by dividing the NF's depreciated replacement cost, as determined from an appraisal conducted in accordance with Section 4 of this administrative regulation, by the NF's total licensed NF beds; and

b. Not exceed \$56,003 effective July 1, 2016, which shall be adjusted every July 1 thereafter by the same factor applied to the NF's depreciated replacement cost;

2. A value for land, which shall be ten (10) percent of the NF's average licensed NF bed value, established in accordance with subparagraph 1. of this paragraph; and

3. A value for equipment, which shall be \$2,000 per licensed NF bed;

(b) The department shall multiply the sum of paragraph (a) of this subsection by a rate of return factor, which shall:

1. Be equal to the sum of:

a. The yield on a twenty (20) year treasury bond as of the first business day on or after May 31 of the most recent year; and

b. A risk factor of two (2) percent; and

2. Not be less than nine (9) percent nor exceed twelve (12) percent;

(c) The department shall determine the NF's capital cost-per-bed day by:

1. Dividing the NF's total patient days by the NF's available bed days to determine the NF's occupancy percentage;

2. If the NF's occupancy percentage is less than ninety (90) percent, multiplying ninety (90) percent by 365 days; and

3. If the NF's occupancy percentage exceeds ninety (90) percent, multiplying the NF's occupancy percentage by 365 days; and

(d) The department shall divide the sum of paragraphs (a) and (b) of this subsection by the NF's capital cost-per-bed day established in paragraph (c) of this subsection to determine an NF's capital rate component.

(3) If a change of ownership occurs pursuant to 42 C.F.R. 447.253(d), the new owner shall:

(a) Receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to Section 4(7) of this administrative regulation; and

(b) File an updated provider application with the Medicaid program pursuant to 907 KAR 1:672, Section 3(4).

(4) A new facility shall be:

(a) Classified as a new facility if the facility does not have a July 1, of the current state fiscal year, Medicaid rate;

(b) Determined to be urban or rural; and

(c) Reimbursed at its standard price, which shall:

1. Be based on a case-mix of 1.0;

2. Be adjusted prospectively based upon no less than one (1)

complete calendar quarter of available MDS 3.0 data following the facility's Medicaid certification;

3. Utilize \$56,003 effective July 1, 2016, as adjusted through the current state fiscal year as the facility's average licensed NF bed value until the facility is appraised in accordance with Section 4 of this administrative regulation; and

4. Be adjusted, if necessary, following the facility's appraisal if the appraisal determines the facility's average licensed NF bed value to be less than \$56,003 effective July 1, 2016, as adjusted through the current state fiscal year.

(5) The amounts calculated pursuant to subsection (4)(c)3. and 4. of this section shall be adjusted annually consistent with the adjustments made to the depreciated replacement cost, as described in subsection (2)(a)1.b. of this section for the capital component calculation.

Section 7. Minimum Data Set (MDS) 3.0, Resource Utilization Group (RUG) III, and Validation.

(1) A price-based NF's Medicaid MDS data shall be utilized to determine its case-mix index each quarter.

(2) A price-based NF's case-mix index shall be applied to its case-mix adjustable portion of its standard price.

(3) To determine a price-based NF's case-mix index, the department shall:

(a) Calculate case-mix on a time-weighted basis using MDS data:

1. Extracted on the last date of each calendar quarter from the NF's MDS item sets:

a. Included in Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening; and

b. Transmitted by the NF to the Centers for Medicare and Medicaid Services; and

2. Which, if revised, shall be revised no later than the last date of the quarter following the date on which MDS data was extracted. For example, MDS data submitted after September 30, 2016, for the purpose of revision to MDS data extracted June 30, 2016, shall not be utilized;

(b) Classify the data cited in paragraph (a) of this subsection through the RUG III, (M3 p1), version five point twenty (5.20) thirty-four (34) group or equivalent model resident classification system; and

(c) Validate the data cited in paragraph (a) of this subsection as follows:

1. The department shall generate a stratified random sample of twenty-five (25) percent of the Medicaid residents in a price-based NF;

2. The department shall review one (1) MDS assessment from each resident in the sample referenced in subparagraph 1. of this paragraph;

3. The department shall review medical records corresponding to the individuals included in the sample identified in subparagraphs 1. and 2. of this paragraph to determine if the medical records accurately support the MDS assessments submitted for the sample residents; and

4. If a review of records cited in subparagraph 3. of this paragraph reveals that the price-based NF fails to meet the minimum accuracy threshold, the department shall determine if the NF fails to meet the minimum accuracy threshold by reviewing 100 percent of the price-based NF's Medicaid MDS assessments:

a. Extracted in accordance with paragraph (a) of this subsection; and

b. Selecting one (1) MDS assessment per resident.

(4) If the department's review, in accordance with subsection (3)(c)3. and 4. of this section, of a price-based NF's MDS assessment data reveals that the NF fails to meet the MDS data minimum accuracy threshold, the department shall conduct another review of the same data utilizing an individual or individuals not involved in the initial validation process if the price-based NF requests a reconsideration within ten (10) business days of being notified of the findings of the review cited in subsection (3)(c)4. of this section.

(5) Only MDS data extracted in accordance with subsection (3)(a)2. of this section shall be allowed during a review or

reconsideration.

(6) If a reconsideration of a price-based NF's MDS assessment data, in accordance with subsection (4) of this section, confirms that the NF fails to meet the minimum accuracy threshold, the department shall:

(a) Conduct a conference with the NF to review preliminary findings of the reconsideration; and

(b) Send the final results of the reconsideration to the NF within ten (10) business days of the conference.

(7) In performing validation reviews on MDS data, the department shall:

(a) Notify the NF at the time of the MDS assessment review of any assessment that is not validated and allow the NF to provide supporting documentation that had been utilized to support the assessment;

(b) Consider all MDS supporting documentation provided by the NF prior to the exit conference; and

(c) Not consider MDS supporting documentation provided by the NF after the exit conference has occurred.

(8)(a) Reconsideration of a price-based NF's MDS assessment data validation shall be provided if the NF:

1. Requests a reconsideration and clearly identifies each specific resident's review and MDS elements that are being disputed;

2. States the basis on which the department's decision on each issue is believed to be erroneous; and

3. Provides a summary supporting the NF's position.

(b) After a reconsideration of a price-based NF's MDS assessment data has been completed, the NF may appeal the department decision regarding the data in accordance with 907 KAR 1:671, Section 9.

(9)(a) The department shall refer any suspected intentional alteration of clinical documentation or creation of documentation after an MDS assessment has been transmitted to the Office of Inspector General (OIG) for investigation of possible fraud.

(b) A fraud investigation may result in a felony or misdemeanor criminal conviction.

(10) An NF's rate shall be effective beginning on the first date of the second quarter following the MDS extraction date.

(11) An MDS validation review, if conducted, shall be initiated in the month containing the corresponding rate effective date.

(12) A rate sanction shall be applied on the rate effective date following the validation review initiation date.

(13) MDS assessment accuracy thresholds and corresponding rate sanctions shall be established in accordance with this subsection.

(a) If a price-based NF's percentage of accurate MDS assessments is between sixty-five (65) and seventy-nine (79) percent, the price-based NF's rate shall be sanctioned by fifty (50) cents per patient day.

(b) If a price-based NF's percentage of accurate MDS assessments is between forty (40) and sixty-four (64) percent, the price-based NF's rate shall be sanctioned by sixty (60) cents per patient day.

(c) If a price-based NF's percentage of accurate MDS assessments is below forty (40) percent, the price-based NF's rate shall be sanctioned by seventy (70) cents per patient day.

Section 8. Limitation on Charges to Residents. (1) Except for applicable deductible and coinsurance amounts, an NF that receives reimbursement for a resident pursuant to Section 6 of this administrative regulation shall not charge a resident or his representative for the cost of routine or ancillary services.

(2) An NF may charge a resident or his representative for an item pursuant to 42 C.F.R. 483.10(f)(11)(ii) if:

(a) The item is requested by the resident;

(b) The NF informs the resident in writing that there will be a charge; and

(c) Medicare, Medicaid, or another third party does not pay for the item.

(3) An NF shall:

(a) Not require a resident, or responsible representative of the resident, to request any item or services as a condition of admission

or continued stay; and

(b) Inform a resident, or responsible representative of the resident, requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

(4) Reserved bed days, per resident, for an NF or an NF-W shall be:

(a) Reimbursed for a maximum of fourteen (14) days per calendar year due to hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to relocation;

(b) Reimbursed for a maximum of ten (10) days during a calendar year for leaves of absence other than hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to the relocation;

(c) Reimbursed at seventy-five (75) percent of a facility's rate if the facility's occupancy percent is ninety-five (95) percent or greater for the calendar quarter preceding the bed reserve day; and

(d) Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percent is less than ninety-five (95) percent for the calendar quarter preceding the bed reserve day.

(5) Except for oxygen therapy, durable medical equipment (DME) and supplies shall:

(a) Be furnished by an NF; and

(b) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:479, Section 6(3).

(6) Dentures, lenses, frames, or hearing aids shall be paid for through the resident's patient liability or spend down amounts and limited to one (1) replacement per item per calendar year.

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

Section 10. Price-Based NF Protection Period and Budget Constraints. (1) A county-owned hospital-based nursing facility shall not receive a rate that is less than the rate that was in effect on June 30, 2002.

(2) For each year of the biennium, a price-based NF shall:

(a) Receive an adjustment pursuant to Section 5(8) and (11)(40) of this administrative regulation; or

(b) Except for a county-owned hospital-based nursing facility pursuant to subsection (1) of this section, not receive an increase if the price-based NF's rate is greater than its standard price.

Section 11. Cost Report. (1) A Medicare cost report and the Supplemental Medicaid Schedules shall be submitted pursuant to time frames established in the CMS Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-2) Sections 102, 102.1, 102.3, and 104, using the Instructions for Completing the Medicaid Supplemental Schedules.

(2) A copy of a price-based NF's Medicare cost report shall be submitted for the most recent fiscal year end.

Section 12. Ancillary Services. (1) Except for oxygen therapy and for ancillary services provided to an individual in a critical access hospital swing bed, the department shall reimburse for an ancillary service that meets the criteria established in 907 KAR 1:023 utilizing the corresponding outpatient procedure code rate listed in the Medicaid Physician Fee Schedule established in 907 KAR 3:010, Section 3.

(2) The department shall reimburse for an oxygen therapy utilizing the Medicaid DME Program fee schedule established in 907 KAR 1:479.

(3) Respiratory therapy and respiratory therapy supplies shall be

a routine service.

(4) Reimbursement for ancillary services provided to an individual in a critical access hospital swing bed shall be included in the critical access hospital swing bed reimbursement established in Section 3(2) of this administrative regulation.

Section 13. Appeal Rights. A price-based NF may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 14. Supplemental Payments to Nonstate Government-Owned or Operated Nursing Facilities. (1) Beginning July 1, 2001, subject to state funding made available for this provision by a transfer of funds from a governmental entity, the department shall make a supplemental payment to a qualified nursing facility.

(2) To qualify for a supplemental payment under this section, a nursing facility shall:

(a) Be owned or operated by a local unit of government pursuant to 42 C.F.R. 447.272(a)(2);

(b) Have at least 140 or more Medicaid-certified beds; and

(c) Have a Medicaid occupancy rate at or above seventy-five (75) percent.

(3) For each state fiscal year, the department shall calculate the maximum supplemental payment that it may make to qualifying nursing facilities in accordance with 42 C.F.R. 447.272.

(4) Using the data reported by a nursing facility on a Schedule NF-7 submitted to the department as of December 31, 2000, the department shall identify each nursing facility that meets the criteria established in subsection (2) of this section.

(5) The department shall determine a supplemental payment factor for a qualifying nursing facility by dividing the qualifying nursing facility's total Medicaid days by the total Medicaid days for all qualifying nursing facilities.

(6) The department shall determine a supplemental payment for a qualifying nursing facility by applying the supplemental payment factor established in subsection (5) of this section to the total amount available for funding under this section.

(7) Total payments made under this section shall not exceed the amount determined in subsection (3) of this section.

(8) Payments made under this section shall:

(a) Apply to services provided on or after April 1, 2001; and

(b) Be made on a quarterly basis.

Section 15. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-2), Sections 102, 102.1, 102.3, and 104", October 2007;

(b) The "Instructions for Completing the Medicaid Supplemental Schedules", April 2015;

(c) The "Supplemental Medicaid Schedules", April 2015; and

(d) "Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening", 10/1/2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the:

(a) Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; and

(b) Following location on the department's Web site:

<https://chfs.ky.gov/agencies/dms/dafm/Pages/default.aspx>.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 14, 2022

FILED WITH LRC: November 15, 2022 at 10:20 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of



Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation revises reimbursement for nursing facilities participating in Kentucky Department for Medicaid Services for all non-managed care recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish price-based nursing facility reimbursement provisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing price-based nursing facility reimbursement provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing updated reimbursement rates for nursing facilities providing care to Kentucky Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates the \$29 pandemic related reimbursement increase into this administrative regulation. The regulation is also amended to ensure that the \$29 reimbursement increase will be included in nursing facility base rates in the future. The Amended After Comments version of this administrative regulation amends the administrative regulation to require a rebasing of rates by July 2024 and a rebasing of rates to occur at least once every four years thereafter.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect the permanent addition of a reimbursement increase that has been made in multiple state budgets and to clarify how this additional funding will be reflected in future nursing facility rates.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying how a recent increase in funding will be incorporated into future nursing home rates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by incorporating needed information about total nursing home facility rates into one administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are 290 nursing facilities participating with Medicaid that may be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Nursing facilities will not have to take any actions to comply with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will receive a higher reimbursement from Medicaid, and the current reimbursement increase is now scheduled to be incorporated into the base rate for nursing facilities in the future.

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

(a) Initially: DMS anticipates that expenditures for nursing

facilities will be consistent with appropriations in HB 1 from the 2022 Regular Session.

(b) On a continuing basis: DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in HB 1 from the 2022 Regular Session.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: DMS anticipates that current funding levels will not need to increase due to the \$29 reimbursement increase as this funding has been appropriated in multiple previous state budgets.

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396r(f)(6) and 42 C.F.R. 483.20.

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 483.20 requires a nursing facility to conduct a resident assessment of each resident.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

#### FISCAL NOTE

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the amendment.

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

(c) How much will it cost to administer this program for the first year? DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in HB 1 from the 2022 Regular Session.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in HB 1 from the 2022

Regular Session.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities. DMS does anticipate that this amendment will result in a clear acknowledgement and continuing substantial additional reimbursement for nursing facilities.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Protection and Permanency  
(Amended After Comments)**

**922 KAR 1:350. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.**

RELATES TO: KRS 2.015, 61.870-61.884, 194A.005(1), [194A.050(1), 194A.060, 199.011, [199.472(1), 202A.011(12), 258.015, 258.035, 311.720(12), 311.840(3), 314.011(5), (7), (9), 527.100, 527.110, 600.020, 605.090, [605.400(1), 610.110, 620.030, 620.050, 620.140(1)(d), 620.360, 620.363, Chapter 625, 16 C.F.R. 1219-1220, 1632-1633, 42 C.F.R. 435.407, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 1181, 42 U.S.C. 671, 672]-677]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472(1), 605.100(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the ~~secretary of~~ [Secretary for] the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 605.100(1) requires the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children

according to their respective problems, needs, and characteristics. KRS 199.472(1) requires the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood. This administrative regulation establishes criteria for public agency foster homes, adoptive homes, and respite care providers caring for foster or adoptive children.

Section 1. Definitions. (1) "Adoptive home" means a home in which a parent is approved by the cabinet to provide services as specified in Section 2(12) of this administrative regulation.

(2) "Applicant" means an individual or family subject to approval by the cabinet as a foster or adoptive home.

(3) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(4) "Care Plus" means a foster care program for a child who is determined to have specialized care needs as specified in Section 5 of this administrative regulation.

(5) "Child" means:

(a) A child as defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(6) "Child specific foster home" means an individual or family subject to approval by the cabinet as a foster family home for a relative or fictive kin placement.

(7) "Child with medical complexity" means a child who has a medical condition in accordance with Section 4(1)(b) of this administrative regulation.

(8) "Commissioner" means commissioner of the Department for Community Based Services.

(9) "Department" means the Department for Community Based Services.

(10) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) and 600.020(30), if referring to a physical structure; or

(b) If referring to an individual, any individual approved as a foster parent by the cabinet to provide services as specified in Section 2(12) of this administrative regulation.

(11) "Health professional" means a person actively licensed as a:

(a) Physician as defined by KRS 311.720(12);

(b) Physician assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(12) "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker.

(13) "Independent living services" means services provided to an eligible child to assist the child in the natural progression from adolescence to adulthood [~~transition from the dependency of childhood to living independently~~].

(14) "Placement" means the physical change in the location and living arrangement of a child in the custody of the cabinet removed from the child's home of origin.

(15) "Respite care" means temporary care provided by a provider, as specified in Section 17 of this administrative regulation, to meet the needs of the child or provide relief to the foster or adoptive parents with the expectation of a child's return to the current foster or adoptive home.

Section 2. General Requirements for a Foster or Adoptive Parent. (1)(a) Unless an exception is approved pursuant to paragraph (b) of this subsection by designated cabinet staff, a foster or adoptive parent applicant shall be at least twenty-one (21) years of age.

(b) A foster or adoptive parent applicant between eighteen (18) and twenty-one (21) years of age may be approved as a foster or adoptive parent if:

1. The foster or adoptive parent applicant is related to the child under the custodial control of the cabinet;

2. The foster or adoptive parent applicant can meet the needs of the child; and

3. Cabinet staff determines the placement is in the best interest of the child.

(2) A foster or adoptive parent applicant shall provide proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151, 8 U.S.C. 1181, and 42 C.F.R. 435.407.

(3) A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet if the commissioner approves the employee to adopt and the adoption is in the best interest of the child.

(4)(a) A department employee who provides protection and permanency services shall be approved as a respite care provider or foster parent for a child in the care and custody of the cabinet if prior approval by the commissioner or designee is granted in writing through the service region administrator in the region of employment.

(b) If approval is granted, the department shall:

1. Ensure the employee completes pre-service training outside the region of employment;

2. Assign a social services worker outside of the applicant employee's region of employment to complete the home study;

3. Maintain the case outside of the applicant employee's region of employment; and

4. Ensure that the employee shall not accept the placement of a child from within the region of employment unless:

a. The employee is related to the child; or

b. The employee is determined to be fictive kin as the result of a relationship developed outside of employment prior to the child being placed in the custody of the cabinet.

(5) A married couple may apply to become foster or adoptive parents.

(6) A single, unmarried person may apply to become a foster or adoptive parent.

(7) The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.

(8)(a) Each foster or adoptive applicant and adult member of the applicant's family shall submit a DPP-107, Health Information Required for Foster or Adoptive Parents, Applicants, or Adult Household Members, completed:

1. By a health professional who is not a member of the applicant's household, based upon health information within the past year, documenting:

a. The individual has no illness or condition that would present a health or safety risk to a child placed in the applicant's home, which may include a communicable disease; and

b. That there are no known health factors that would interfere with the applicant's ability to become a foster or adoptive parent;

2. As part of:

a. The initial application;

b. The reevaluation; or

c. A foster or adoptive home review pursuant to Section 13 of this administrative regulation; and

3. By all household members in which the household member discloses mental health and substance abuse issues, including any history of drug or alcohol abuse or treatment.

(b) The department shall require further documentation or evaluation to determine the suitability of the home if there is an indicator of current or past mental health or substance abuse issues in a household member.

(9) Each foster or adoptive parent applicant shall submit a DPP-108, Health Information Required for Foster or Adoptive Parents or Applicants Regarding Dependent Children, for each child member of the applicant family.

(10) A foster or adoptive parent applicant shall have a source of income:

(a) Sufficient to meet the applicant's household expenses; and

(b) Separate from:

1. Foster care reimbursement; or

2. Adoption assistance.

(11) Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services, a foster or

adoptive parent shall accept a child for foster care only from the cabinet.

(12) An approved foster or adoptive parent shall be willing to:

(a) Provide foster care services for a child placed in out-of-home care by the cabinet;

(b) Adopt a child:

1. Whose parent's parental rights have been terminated; and

2. Who is under the custodial control of the cabinet;

(c) Provide respite care for a child under the custodial control of the cabinet; or

(d) Provide any combination of the services described in paragraphs (a) through (c) of this subsection.

(13) A foster or adoptive applicant shall provide to the cabinet:

(a) 1. The names of three (3) personal references including:

a. One (1) relative reference; and

b. Two (2) non-relative references.

2. The references required by subparagraph 1. of this paragraph shall:

a. Be interviewed by cabinet staff in person or by telephone; or

b. Provide letters of reference for the applicant; and

(b) Two (2) credit references or a credit report.

(14) Unless a documented exception exists and is approved by designated cabinet staff due to inaccessibility, each adult child of the foster or adoptive parent applicant who does not live in the home shall be interviewed by cabinet staff in person or by telephone regarding the applicant's parenting history.

(15) If applicable, verification shall be obtained from the foster or adoptive parent applicant regarding:

(a) Previous divorce;

(b) Death of a spouse; and

(c) Present marriage.

(16) A foster or adoptive parent applicant who does not have custody of his or her own child shall provide:

(a) A copy of the visitation order, if applicable;

(b) A copy of the child support order, if applicable; and

(c) Proof of current payment of child support, if applicable.

(17) A foster or adoptive parent applicant and any member of the applicant's household shall submit to the background checks required by 922 KAR 1:490.

(18) The cabinet shall perform background checks in accordance with criteria established in 922 KAR 1:490.

Section 3. Home Environment. (1) The foster or adoptive parent shall request written approval from designated cabinet staff to provide services as a:

(a) Certified provider of supports for community living in accordance with 907 KAR 12:010;

(b) Certified family child care home in accordance with 922 KAR 2:100; or

(c) Provider of child-care center services in accordance with 922 KAR 2:090.

(2) If the foster or adoptive home adjoins a place of business open to the public, potential negative impact on the family and the child shall be examined including the:

(a) Hours of operation;

(b) Type of business; and

(c) Clientele.

(3) The foster or adoptive parent shall have access to:

(a) Reliable transportation that meets the child's needs, including restraint requirements pursuant to KRS 189.125;

(b) School;

(c) Recreation;

(d) Medical care; and

(e) Community facilities.

(4) A foster or adoptive parent who drives shall:

(a) Possess a valid driver's license;

(b) Possess proof of liability insurance; and

(c) Abide by passenger restraint laws.

(5)(a) More than four (4) children, including the foster or adoptive parent's own children, shall not share a bedroom, with thorough consideration given to each child's age, gender, and background.

(b) Children of different genders over the age of five (5) shall not share a bedroom except as approved by designated department

staff if:

1. Necessary to facilitate the placement of a sibling group or children who are related and share a sibling-like relationship, such as cousins; and

2. There are no high-risk behaviors.

(6) Each child shall have:

(a) A separate bed that is age and size appropriate for the child;

or

(b) If the child is under age one (1), a crib that meets Consumer Products Safety Commission standards pursuant to 16 C.F.R. 1219-1220.

(7) A child's mattress shall:

(a) Meet current Consumer Products Safety Commission Standards in 16 C.F.R. Parts 1632 and 1633;

(b) Be in good repair; and

(c) Have a clean fitted sheet that shall be changed:

1. Weekly; or

2. Immediately if it is soiled or wet.

(8) Except as approved by designated cabinet staff, a foster or adoptive parent shall not share a bedroom with a child under the custodial control of the cabinet unless necessary due to the needs of the child.

(9) A bedroom used by a child under the custodial control of the cabinet shall be comparable to other bedrooms in the house.

(10) The physical condition of the foster or adoptive home shall:

(a) Not present a hazard to the safety and health of a child;

(b) Be well heated and ventilated;

(c) Comply with state and local health requirements regarding water and sanitation;

(d) Provide access to indoor and outdoor recreation space appropriate to the developmental needs of a child placed in the foster or adoptive home;

(e) Provide functioning kitchen facilities; and

(f) Provide a functioning bathroom, including a:

1. Toilet;

2. Sink; and

3. Bathtub or shower.

(11) The following shall be inaccessible to a child:

(a) Medication, unless an exception is granted pursuant to subsection (12) of this section;

(b) Alcoholic beverage;

(c) Poisonous or cleaning material;

(d) Ammunition; and

(e) Firearms in accordance with KRS 527.100 and 527.110.

(12) An exception may be provided by designated cabinet staff to subsection (11)(a) of this section if:

(a) 1. The child is approved by a health care professional to self-administer medicine under the supervision of the foster or adoptive parent; or

2. Emergency access to the medication may be necessary to save the child's life, such as in the case of severe allergic reaction or asthma attack; and

(b) Measures are taken to prevent unauthorized access by another child in the same home.

(13) Any household animal shall be vaccinated in accordance with KRS 258.015 and 258.035.

(14) A dangerous animal shall not be allowed near the child.

(15) First aid supplies shall be available and stored in a place easily accessible to an adult.

(16) A working telephone shall be accessible.

(17) The home shall be equipped with a working smoke alarm within ten (10) feet of each bedroom and on each floor of the home.

(18) A home with gas heating or appliances shall be equipped with a working carbon monoxide detector.

(19) Safety precautions related to an accessible swimming pool or body of water shall be documented, if applicable.

Section 4. Medically Complex Foster or Adoptive Home. (1) An applicant shall be approved by cabinet staff as a medically complex home if the foster or adoptive parent:

(a) Meets the requirements in Sections 2 and 3 of this administrative regulation, except for Section 2(10), which may be considered as an exclusion on a case-by-case basis by designated

cabinet staff based on the best interests or needs of the child;

(b) Cares for a child in the custody of the cabinet who is determined to be medically complex by designated cabinet staff due to:

1. Significant medically oriented care needs related to a serious illness or condition diagnosed by a health professional that may become unstable or change abruptly, resulting in a life-threatening event;

2. A chronic condition that is expected to be life-long and progressive and to require extensive services;

3. An acute, time-limited condition requiring additional oversight;

or

4. A severe disability that requires the routine use of medical devices or assistive technology to compensate for the loss of a vital body function needed to participate in activities of daily living and significant and sustained care to avert death or further disability;

(c) Is a primary caretaker who is not employed outside the home, except as approved by designated cabinet staff and based on the needs of the child;

(d) Completes training in accordance with 922 KAR 1:495, Section 4;

(e) Receives training with documentation of completion from a health professional or a previous caregiver that was trained by a health professional in how to care for the specific child with medical complexity who shall be placed in the foster or adoptive parent's care;

(f) Maintains current certification in:

1. Infant, child, and adult CPR; and

2. First aid; and

(g) Has a home within:

1. One (1) hour of a medical hospital with an emergency room;

and

2. Thirty (30) minutes of a local medical facility.

(2) Except for a sibling group or unless approved by designated cabinet staff in accordance with Section 16 of this administrative regulation, more than four (4) children, including the foster or adoptive parent's own children, shall not reside in a medically complex foster or adoptive home.

(3) Unless an exception is approved pursuant to Section 16(2) of this administrative regulation and a medically complex foster or adoptive home has daily support staff to meet the needs of a child with medical complexity:

(a) A one (1) parent medically complex foster or adoptive home shall:

1. Not care for more than one (1) child with medical complexity; and

2. Demonstrate access to available support services; and

(b) A two (2) parent medically complex foster or adoptive home shall:

1. Not care for more than two (2) children with medical complexity; and

2. Demonstrate access to available support services.

(4) Unless an exception pursuant to Section 16(2) of this administrative regulation is approved, a child with medical complexity shall be placed in an approved medically complex foster or adoptive home.

(5) Unless the home is closed pursuant to Section 14 of this administrative regulation, an approved medically complex foster or adoptive parent shall receive reapproval by the cabinet as a medically complex home if the parent:

(a) Annually completes training specified in 922 KAR 1:495, Section 4; and

(b) Continues to meet the requirements of this section.

(6) An approved medically complex foster or adoptive parent shall cooperate in carrying out the child's health plan.

Section 5. Care Plus Home. (1) An applicant shall be approved by cabinet staff as a care plus parent if the foster or adoptive parent:

(a) Meets the requirements of Sections 2 and 3 of this administrative regulation, except for Section 2(10) which may be considered as an exclusion on a case-by-case basis by designated cabinet staff based on the best interests or needs of the child;

(b) Agrees to care for a child in the custody of the cabinet

approved by cabinet staff as a care plus child because the child:

1. Has a diagnosed emotional or behavioral problem;
2. Is due to be released from a treatment facility;
3. Displays aggressive, destructive, or disruptive behavior;
4. Is at risk of being placed in a more restrictive setting;
5. Is at risk of institutionalization; or
6. Has experienced numerous placement failures;

(c) Is a primary caretaker who is not employed outside the home, unless the cabinet determines that the child's needs continue to be met;

(d) Completes training in accordance with 922 KAR 1:495, Section 6;

(e) Agrees to maintain a weekly record of the care plus child's activities and behaviors; and

(f) Agrees to attend case planning conferences.

(2) Unless an exception is approved pursuant to Section 16(2) of this administrative regulation and the care plus home parent can demonstrate access to available support services:

(a) No more than four (4) children, including the foster or adoptive parent's own children, shall reside in a care plus home;

(b) A one (1) parent care plus home shall not care for more than one (1) care plus child as described in subsection (1)(b) of this section; and

(c) A two (2) parent care plus home shall not care for more than two (2) care plus children as described in subsection (1)(b) of this section.

(3) Unless the home is closed pursuant to Section 14 of this administrative regulation, an approved care plus foster or adoptive parent shall receive reapproval by the cabinet as a care plus home, if the parent:

(a) Annually completes training in accordance with 922 KAR 1:495, Section 6;

(b) Submits to a review of the parent's:

1. Strengths and needs;
2. Records maintained on services provided to the child; and
3. Ability to meet the goals established for the child; and

(c) Continues to meet the requirements of this section.

Section 6. Preparation and Selection of a Foster or Adoptive Home. (1) The cabinet shall recruit a foster or adoptive home and approve the home prior to the placement of a child, except in the case of a child specific placement with a relative or fictive kin caregiver.

(2) Upon recruitment of a foster home, the cabinet shall register the foster home in the foster care registry within fourteen (14) days.

(3) Prior to approval as a foster or adoptive parent, the cabinet shall check the foster care registry for information relating to a previous closure or corrective action.

(4) If an applicant previously approved to foster or adopt by a child-placing agency or the cabinet was:

(a) Closed pursuant to 922 KAR 1:310 or Section 14 of this administrative regulation, the home shall be reviewed by the cabinet, including reviewing agency records relating to the cause for closure, and may be approved[reopened] and operated as a cabinet foster home; or

(b) Under a corrective action plan issued by a child-placing agency or the cabinet prior to closure, the cabinet shall review and approve the home study prior to the home being approved[reopened].

(5) Prior to approval as a foster or adoptive parent, an applicant shall complete training requirements in accordance with 922 KAR 1:495.

(6)[(3)] If a new adult moves into an approved foster or adoptive home where a child is already placed by the cabinet, the child may remain and additional children may be placed if the new adult:

(a) Completes training in accordance with subsection (5)[(2)] of this section within six (6) months of entering the home; and

(b) Meets the requirements specified in Sections 2 and 3 of this administrative regulation.

(7)[(4)] An adult child or incapacitated person who resides in the foster or adoptive home shall not be required to complete training in accordance with 922 KAR 1:495 if that individual shall not be

responsible for routine daily care of a child placed in the home by the cabinet.

(8)[(5)] The cabinet shall not be obligated to grant foster or adoptive home approval or placement of a specific child to an individual or family that completes pre-service training.

(9)[(6)] In addition to completion of training in accordance with 922 KAR 1:495, at least two (2) family consultations shall be conducted by cabinet staff in the home of an applicant, to include:

(a) Documentation that the requirements in Sections 2 and 3 of this administrative regulation have been met;

(b) Documentation that a personal interview with each member of the applicant's household has been completed;

(c) Discussion of the attitude of each member of the applicant's household toward placement of a child;

(d) Observation of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction; and

(e) Assurance that the applicant is willing to accept a child's relationship with the child's family of origin.

(10)[(7)] An applicant approved as a foster or adoptive parent or respite care provider by another state or by a child-placing agency as defined in KRS 199.011(6) shall:

(a) Meet the requirements provided within Sections 2 and 3 of this administrative regulation;

(b) Be assessed by cabinet staff to ascertain the applicant's level of skill as a potential Kentucky foster or adoptive parent;

(c) Provide verification of the closure and a statement to indicate whether the closure was at the request of the foster or adoptive parent, the other state, or the agency; and

(d) Not be required to complete training in accordance with 922 KAR 1:495 for approval as a Kentucky foster or adoptive parent if cabinet staff:

1. Determine that the applicant possesses the necessary skills for fostering; and

2. Obtain records and recommendation from the other state or child-placing agency.

(11)[(8)] Following initial training as specified in 922 KAR 1:495, if cabinet staff determines that an applicant or adult household member lacks the necessary skills to become a foster or adoptive parent, an individualized training curriculum shall be developed to fulfill unmet training needs.

(12)[(9)](a) A foster or adoptive parent shall request the recommendation of cabinet staff prior to enrolling in training specified in 922 KAR 1:495, Section 4(1) or 6(1); and

(b) Cabinet staff may recommend the foster or adoptive parent to receive training specified in 922 KAR 1:495, Section 4(1) or 6(1), if the parent possesses the aptitude to care for a child described in Section 4(1)(b) or 5(1)(b) of this administrative regulation.

Section 7. Completion of the Foster or Adoptive Approval Process. (1) Designated cabinet staff in a supervisory role shall approve a foster or adoptive applicant if:

(a) The applicant provides written and signed information pertaining to family history and background;

(b) The applicant completes training requirements as required by 922 KAR 1:495;

(c) The information required in Section 2(8) through (10) and (13) through (17) of this administrative regulation has been obtained, unless a waiver has been granted for a child specific placement with a relative or fictive kin caregiver;

(d) Background checks have been completed pursuant to 922 KAR 1:490 and did not result in a disqualifying background check result;

(e) Designated cabinet staff recommends approval; and

(f)[(e)] The applicant's ability to provide a foster, adoptive, or respite care service is consistent with the:

1. Cabinet's minimum foster or adoptive home requirements established in this administrative regulation; and

2. Needs of the families and children served by the cabinet.

(2) If the designated cabinet staff determines that an applicant does not meet the minimum requirements for approval as a foster or adoptive parent, the cabinet shall:

(a)1. Recommend [recommened] that the applicant withdraw the application; or

2. Deny the application pursuant to Section 8 of this administrative regulation; and

(b) Document the recommendation or denial in the foster care registry[request].

Section 8. Denial of a Foster or Adoptive Home Application [Request]. (1) Designated cabinet staff shall notify an applicant, in writing, if the application [request] to become a foster or adoptive parent is not recommended or denied for one (1) of the following reasons:

(a) The applicant is unwilling to withdraw the application [request] to become a foster or adoptive parent after receiving a recommendation to withdraw; or

(b) The applicant desires to adopt, but is unwilling to adopt a child under the custodial control of the cabinet.

(2) If the foster or adoptive applicant disagrees with the cabinet's recommendation to not accept the applicant as a foster or adoptive home or denial, designated cabinet staff shall review the application[request] to become a foster or adoptive parent and issue a final written determination regarding the cabinet's recommendation or denial.

(3) Cabinet staff shall enter information regarding the recommendation, denial, and final determination, if written, into the foster care registry.

Section 9. Expectations of a Foster or Adoptive Home. A foster or adoptive home providing services for a child in the custody of the cabinet shall:

(1) Provide a child placed by the cabinet with a family life, including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(c) Affection;

(d) Life skills development;

(e) Recreational opportunities;

(f) Educational opportunities;

(g) Nonmedical transportation;

(h) Independent living services for a child age fourteen ~~(14)~~~~twelve (12)]~~ and older;

(i) Opportunities for development consistent with their religious, ethnic, and cultural heritage;

(j) Adequate supervision; and

(k) Refraining from smoking in the direct presence of a child for whom the child's physician recommends, in writing, a smoke-free environment.

(2) Permit cabinet staff to visit;

(3) Share with cabinet staff pertinent information about a child placed by the cabinet;

(4) Comply with the general supervision and direction of the cabinet concerning the care of a child placed by the cabinet;

(5) Report immediately to the cabinet if there is a:

(a) Change of address;

(b) Hospitalization or life-threatening accident or illness of a child placed by the cabinet;

(c) Change in the number of people living in the home;

(d) Significant change in circumstances in the foster or adoptive home, such as income loss, marital separation, or other household stressor;

(e) Child placed in the home that is absent without official leave;

(f) Suicide attempt of a child placed by the cabinet; or

(g) Criminal activity by the child placed by the cabinet;

(6) Notify the cabinet if:

(a) Leaving the state with a child placed by the cabinet for more than twenty-four (24) hours; or

(b) A child placed by the cabinet is to be absent from the foster or adoptive home for more than twenty-four (24) hours;

(7) Cooperate with the cabinet if a contact is arranged by cabinet staff between a child placed by the cabinet and the child's birth family including:

(a) Visits;

(b) Telephone calls; or

(c) Mail;

(8) Surrender a child to the authorized representative of the cabinet upon request;

(9) Keep confidential all personal or protected health information as shared by the cabinet, in accordance with KRS 194A.060, 620.050, and 45 C.F.R. Parts 160 and 164 concerning a child placed by the cabinet or the child's birth family;

(10) Support an assessment of the service needs of a child placed by the cabinet;

(11) Participate in case-planning conferences concerning a child placed by the cabinet;

(12) Cooperate with the implementation of the permanency goal established for a child placed by the cabinet;

(13) Notify the cabinet at least fourteen (14) calendar days in advance of the home's intent to become certified to provide foster care or adoption services through a private child-placing agency in accordance with 922 KAR 1:310;

(14) Treat a child placed by the cabinet with dignity;

(15) Arrange for respite care services in accordance with Section 10(5) of this administrative regulation;

(16) Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;

(17) Facilitate the delivery of medical care to a child placed by the cabinet as needed, including:

(a) Administration of medication to the child and daily documentation of the medication's administration; and

(b) Physicals and examinations for the child;

(18) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030;

(19) Comply with KRS 620.360(2);

(20) Be informed of and comply with KRS 620.363;

(21) Have appeal rights in accordance with 922 KAR 1:320; and

(22)[(24)] Demonstrate functional literacy.

Section 10. Reimbursements for Foster Homes. (1) Types of per diem reimbursement. The cabinet shall approve a foster home as specified in Sections 2 and 3 of this administrative regulation and authorize a per diem reimbursement as established in this subsection.

(a) A child specific per diem reimbursement shall be made to a foster home that:

1. Has been approved pursuant to Section 7 of this administrative regulation; and

2. Meets initial training requirements for a child specific foster home.

(b) A basic per diem reimbursement shall be:

1. Based on the age of a child placed by the cabinet in the foster home; and

2. Made to the foster home that meets annual training requirements in accordance with 922 KAR 1:495, Section 3.

(c) An advanced per diem reimbursement shall be:

1. Made to a foster home that has:

a. Been approved for two (2) years as a foster or adoptive parent; and

b. Met training requirements in accordance with 922 KAR 1:495, Section 3; and

2. Based on the age of the child placed by the cabinet.

(d) A basic medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 4 of this administrative regulation; and

2. Provides for the care of a child with medical complexity.

(e) An advanced medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 4 of this administrative regulation;

2. Has been approved for one (1) year~~two (2) years]~~ as a medically complex foster or adoptive parent;

3. Has met training requirements in accordance with KRS 922 KAR 1:495, Section 3; and

4. Provides for the care of a child with medical complexity.

(f) A degreed medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 4 of this administrative

regulation;

2. Maintains a current license as a health professional; and
3. Provides for the care of a child with medical complexity.

(g) A basic care plus foster home per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 5 of this administrative regulation; and
2. Provides for the care of a child described in Section 5(1)(b) of this administrative regulation.

(h) An advanced care plus foster home per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 5 of this administrative regulation;
2. Has been approved for one (1) year~~[two (2) years]~~ as a care plus foster or adoptive parent;
3. Has met training requirements in accordance with 922 KAR 1:495, Section 3(1); and
4. Provides for the care of a child described in Section 5(1)(b) of this administrative regulation.

(i) A specialized medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 4 of this administrative regulation; and
2. Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition.

(j) A degreed specialized medically complex per diem reimbursement shall be made to a foster parent who:

1. Maintains a current license as a health professional;
2. Meets criteria specified in Section 4 of this administrative regulation; and
3. Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition.

(k) Upon placement of a child by the cabinet, a per diem reimbursement shall:

1. Be specified in a contract between an approved foster home and the cabinet; and
2. Provide for the care of a child placed by the cabinet, to include:
  - a. Housing expenses;
  - b. Food-related expenses;
  - c. Nonmedical transportation;
  - d. Clothing;
  - e. Allowance;
  - f. Incidentals;
  - g. Babysitting, excluding childcare authorized in subsection (4)(b) of this section;
  - h. Sports, recreation, and school activities;
  - i. One (1) day of respite care per child per month; and
  - j. School expenses.

(2) Medical coverage.

(a) Cabinet staff may authorize payment for medical expenses for a child in the custody of the cabinet after verification is provided that the child is not covered by health insurance, Medicaid, or the Kentucky Children's Health Insurance Program (K-CHIP).

(b) Designated cabinet staff shall approve or deny authorization of payment for a medical treatment greater than \$500.

(3) Child care services.

(a) The cabinet shall review requests for child care services every six (6) months for a working foster parent.

(b) Designated cabinet staff may approve requests for child care services for a nonworking foster parent if:

1. A medical crisis affects the foster parent; or
2. The child care is appropriate to support the foster home or child.

(c) Designated cabinet staff shall review approved requests for child care services for a nonworking foster parent every three (3) months.

(d) Reimbursements shall not be made simultaneously to the same provider for foster care and child care services.

(e) A foster parent shall not simultaneously be used as a licensed or certified health care or social service provider for a child placed in the foster parent's care by the cabinet.

(4) Training. To the extent funds are available, the cabinet shall provide a reimbursement to an approved foster or adoptive home for ongoing training expenses commensurate with the foster or adoptive parent's training needs, including:

- (a) Mileage;
- (b) Babysitting; and
- (c) Tuition or fees up to the amount of:
  1. \$100 per parent per year; or
  2. \$200 per parent per year for a:
    - a. Medically complex foster or adoptive home; or
    - b. Care plus foster or adoptive home.
- (5) Respite care.

(a) Respite care shall be available for a child placed by the cabinet in a foster home.

(b) A foster home shall be eligible for one (1) day of respite care per month per child.

(c) A foster home that cares for a child in the custody of the cabinet and meets criteria established in Sections 4 and 5 of this administrative regulation shall be eligible for three (3) days of respite care per month per child.

(d) Designated cabinet staff may extend a foster parent's respite care use to fourteen (14) days if designated cabinet staff document that the:

1. Foster parent requires the additional respite care:
  - a. To stabilize the child's placement in the foster home; or
  - b. Due to unforeseen circumstances that may occur, such as:
    - (i) Death in the family;
    - (ii) Surgery; or
    - (iii) Illness; or
2. Child placed in the foster home requires additional respite care to allow for a period of adjustment.

(e) The cost of respite care shall not exceed the per diem for the child.

(f) A respite care provider shall be approved in accordance with Section 17 of this administrative regulation.

(6) Appeals. A foster or adoptive parent may appeal the timeliness of reimbursement in accordance with 922 KAR 1:320.

Section 11. Home Study Requests. (1) Upon receipt of a request from another state's Interstate Compact on the Placement of Children Administrator in the interest of a child in the legal custody of that state's public agency, the cabinet shall complete the foster or adoptive home approval process as specified in Section 7 of this administrative regulation.

(2) The cabinet shall share a previously approved home study in accordance with the Kentucky Open Records Act, KRS 61.870-61.884, and 42 U.S.C. 671(a)(23).

(3) An individual may request an administrative hearing in accordance with 922 KAR 1:320 for failure of the cabinet to act in accordance with subsections (1) and (2) of this section.

Section 12. Foster or Adoptive Home Reevaluation. (1) Prior to or during the month of the anniversary date of the initial approval as a foster or adoptive parent, the foster or adoptive parent shall be required to complete annual training requirements as specified in 922 KAR 1:495.

(2)(a) Failure to meet training requirements specified in subsection (1) of this section shall lead to closure unless an exception is granted by the designated cabinet staff for a foster parent caring for a child in the custody of the cabinet and it is determined that it is in the best interest of a child placed in the foster home.

(b) If an exception is approved as specified in paragraph (a) of this subsection, a new or additional child shall not be placed in the home until the foster parent has met the training requirement.

(3) A cabinet staff member shall conduct a personal, in-home interview with a foster or adoptive parent prior to or during the month of the anniversary date of the third year of the initial approval as a

foster or adoptive home. The interviewer shall assess:

- (a) Any change in the foster or adoptive home;
- (b) The ability of the foster or adoptive home parent to meet the needs of a child placed in the home; and
- (c) Continuing compliance with the requirements of Sections 2 and 3 of this administrative regulation.
- (4) The cabinet staff member shall document requirements of subsection (3) of this section to include:
  - (a) A list of persons residing in or frequently in the home since the initial approval or reevaluation;
  - (b) A list of all foster children placed in the home since the initial approval or reevaluation and exit reasons for the children no longer in the home;
  - (c) Use of formal and informal support systems including:
    - 1. Respite;
    - 2. Extended family support; and
    - 3. Friends or community partners;
  - (d) Description of parenting and discipline strategies;
  - (e) Changes in the physical environment including:
    - 1. Address change; and
    - 2. School district change;
  - (f) Discussion of stressors within the home to include:
    - 1. Pregnancy or birth;
    - 2. Physical or mental health conditions;
    - 3. Employment changes;
    - 4. Financial changes;
    - 5. Death, grief, or loss;
    - 6. Childhood trauma; and
    - 7. Divorce or personal relationship changes;
  - (g) Alcohol or drug use and any substance abuse treatment;
  - (h) Functioning of relationships within the household;
  - (i) Assessment of the family's ability to meet the needs of the children placed in the home;
  - (j) List of foster or adoptive home reviews;
  - (k) Areas of concern or actions to be addressed that may exist within the household; and
  - (l) Placement recommendations.

Section 13. Foster or Adoptive Home Reviews. (1) Upon notification of a factor that may place unusual stress on the foster or adoptive home or create a situation that may place a child at risk, cabinet staff shall:

- (a) Immediately assess[-asses] the health and safety risk of the child; and
- (b) Complete a review of the foster or adoptive home within thirty (30) calendar days.
- (2) Factors that shall result in a review of a foster or adoptive home shall include:
  - (a) Death or disability of a family member;
  - (b) Sudden onset of a health condition that would impair a foster or adoptive parent's ability to care for a child placed in the home by the cabinet;
  - (c) Change in marital status or home address;
  - (d) Sudden, substantial decrease in, or loss of, income;
  - (e) Childbirth;
  - (f) Use of a form of punishment that includes:
    - 1. Cruel, severe, or humiliating actions;
    - 2. Corporal punishment inflicted in any manner;
    - 3. Denial of food, clothing, or shelter;
    - 4. Withholding implementation of the child's treatment plan;
    - 5. Denial of visits, telephone, or mail contacts with family members, unless authorized by a court of competent jurisdiction; and
  - 6. Assignment of extremely strenuous exercise or work;
  - (g) A report of abuse, neglect, or dependency that results in a finding that:
    - 1. Is substantiated; or
    - 2. Reveals concern relating to the health, safety, and well-being of the child;

(h) **Termination of parental rights (including a voluntary action);**

- (i) If the foster or adoptive parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense;

~~(j)(i)~~ Other factor identified by cabinet staff that jeopardizes the physical, mental, or emotional well-being of the child; or

~~(k)(j)~~ Failure to meet annual training requirements.

(3) The narrative of the review shall contain:

- (a) Identifying information;
- (b) Current composition of the household;
- (c) Description of the situation that initiated the review;
- (d) An evaluation of the foster or adoptive home's family functioning to determine if the child's needs are met; and
- (e) A plan for corrective action that may include a recommendation for closure of the foster or adoptive home.

Section 14. Closure of an Approved Foster or Adoptive Home.

(1) A foster or adoptive home shall be closed if:

- (a) Cabinet staff determines that the family does not meet the general requirements, as specified in Sections 2 and 3 of this administrative regulation, for a foster or adoptive home;
- (b) A situation exists that is not in the best interest of a child;
- (c) Sexual abuse or exploitation by the foster or adoptive parent or by another resident of the household is substantiated;
- (d) Substantiated child abuse or neglect by a resident of the household occurs that is serious in nature or warrants removal of a child;
- (e) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the foster or adoptive parent; or

(f) The cabinet has not placed a child in the home within the preceding twelve (12) months, unless a written exception is provided by the service region administrator or designee[two (2)-year period].

(2) A foster or adoptive home may be closed according to the terms of the contract between the cabinet and the foster or adoptive home.

(3) If it is necessary to close an approved foster or adoptive home, the reason shall be stated by cabinet staff in a personal interview with the family, unless the family refuses or declines the personal interview.

(4) The cabinet shall:

(a) Confirm, in a written notice to the foster or adoptive parent, the decision to close a home;~~[-and]~~

(b) Deliver the notice to the foster or adoptive home within fourteen (14) calendar days of the interview with a foster or adoptive parent; and

(c) Submit closure information, including the cause for closure pursuant to subsection (1) of this section, in the foster care registry.

(5) The written notice for closure of a foster or adoptive home shall include:

- (a) Notice that the cabinet shall not place a child in the home; and
- (b) The reason why the foster or adoptive home is being closed.

Section 15. Reapplication. (1) A former foster or adoptive home parent whose home was closed pursuant to Section 14(1)(a) through (f) of this administrative regulation may be considered for reapproval if the cause of closure has been resolved.

(2) To reapply, a former foster or adoptive parent shall:

- (a) Attend an informational meeting; and
- (b) Submit the:
  - 1. Names of references specified in Section 2(13) of this administrative regulation; and

2. Authorization for criminal records release specified in Section 2(17) of this administrative regulation.

(3) A reapplying former foster or adoptive parent shall reenroll and complete training requirements, as specified in Section 6 of this administrative regulation, unless:

(a) The former foster or adoptive parent has previously completed training requirements, as specified in Section 6~~(5)~~~~(2)~~ of this administrative regulation; and

(b) An exception to reenrollment is provided by designated cabinet staff ~~that~~ [which] have ascertained that the former foster or adoptive parent otherwise meets the necessary skill level.

**(4) The foster care registry requirements of Section 6 of this administrative regulation shall be met.**



Section 16. Placement Considerations. (1) Unless an exception is approved pursuant to subsections (2) or (3) of this section because a placement is in the best interest of the child and specific support services shall be provided, the requirements established by this subsection shall apply to foster homes.

(a) More than six (6) children, including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall not reside in a foster home.

(b) More than two (2) children under age two (2), including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall not reside in a foster home.

(c) A child with medical complexity shall be placed in an approved medically complex home.

(2) To request an exception to the criteria established by subsection (1) of this section, cabinet staff shall submit the DPP-112A, DCBS Placement Exception Request, to designated cabinet staff prior to the proposed placement documenting:

(a) The reason the placement is in the best interest of the child; and

(b) Specific support services to be provided.

(3) The number of foster children residing in a foster family home may exceed the limitation established in subsection (1)(a) of this section with documentation on the DPP-112A in order to allow:

(a) A parenting youth in foster care to remain with the child of the parenting youth;

(b) Siblings to remain together;

(c) A child with an established meaningful relationship with the family to remain with the family;

(d) A family with special training or skills to provide care to a child who has a severe disability; or

(e) Other circumstances noted in the DPP-112A and approved by the service region administrator or designee.

(4) If an exception to subsection (1) or (2) of this section is necessary for a placement to occur outside of normal business hours:

(a) Cabinet staff shall verbally provide all information contained within the DPP-112A to designated cabinet staff prior to the placement;

(b) A verbal approval from designated cabinet staff shall be required prior to the placement occurring; and

(c) The completed DPP-112A shall be submitted on the first business day following placement.

(5) Cabinet staff shall inform the foster parent of conditions related to the child in accordance with:

(a) KRS 605.090(1)(b); and

(b) KRS 605.090(6).

(6) Cabinet staff shall place a child with higher level needs in an advanced level home or above if a relative or fictive kin placement has not been identified.

(7) A foster or adoptive parent may adopt a child for whom parental rights have been terminated if:

(a) Foster or adoptive parent adoption is determined by cabinet staff to be in the best interest of the child;

(b) The child resides in the foster or adoptive home; and

(c) Criteria in 922 KAR 1:100 are met.

(8) If a foster or adoptive parent expresses interest in adopting a foster child currently placed in the home and an alternative permanent placement is in the child's best interest, cabinet staff shall meet with the foster or adoptive parent prior to selection of an adoptive home to explain:

(a) Why an alternative permanent placement is in the child's best interest; and

(b) The foster or adoptive parent's right to submit a request to the cabinet to reconsider the recommendation.

Section 17. Requirements for Respite Care Providers. (1) A respite care provider shall:

(a) Be:

1. An approved foster or adoptive home; or

2. Approved in accordance with subsection (2) of this section; and

(b) Receive preparation for placement of a child, including

information in accordance with:

1. KRS 605.090(1)(b); and

2. Section 4(1)(e) through (g) of this administrative regulation, if the child is designated as medically complex.

(2) If a foster or adoptive parent chooses a respite care provider who is not an approved foster or adoptive home, the respite care provider shall:

(a)1. Meet criteria established in Sections 2(1), (2), (17), (18) and 3 of this administrative regulation if respite care is provided outside the home of the foster or adoptive parent; or

2. Meet criteria established in Section 2(1), (2), (17), and (18) of this administrative regulation if respite care is provided inside the home of the foster or adoptive parent; and

(b)1. If providing respite care for a child described in Section 5(1)(b) of this administrative regulation, have:

a. Child-specific training in the mental health treatment of children or their families; or

b. A certificate of completion for twelve (12) hours of care plus training specified in 922 KAR 1:495, Section 6(1); or

2. If providing respite care for a child with medical complexity or specialized medical complexity:

a. Meet training requirements in accordance with 922 KAR 1:495, Section 7;

b. Hold a current certificate in first aid;

c. Hold a current certificate in infant, child, and adult CPR; and

d. Receive child specific training from a health professional or a foster parent who has been trained by a health professional in how to care for the specific medical needs of the child.

(3) A respite care provider:

(a) May attend pre-service training as specified in Section 6 of this administrative regulation; and

(b) Shall comply with Sections 16 and 17 of this administrative regulation.

Section 18. Waiver Review Process. (1) The department may waive requirements for a relative or fictive kin seeking approval as a child specific foster home if the removal of those requirements does not jeopardize the health, safety, or welfare of the child being placed.

(2) The department shall not grant a waiver to the requirements established in the following sections of this administrative regulation:

(a) Section 2, subsections (1)(a) through (7), (10) through (12), (16) through (18); or

(b) Section 3, subsections (1) through (5), (6)(b), (7) through (10)(c), (10)(e) through (10)(f), (11) through (18).

(3) An applicant may request a waiver of non-safety standards. A representative of the department shall submit a written request that states the:

(a) Specific provision(s) for which a waiver is requested; and

(b) Justification for the requested waiver.

(4) A child specific foster home that seeks approval as a basic foster home or higher level shall complete all prior waived training and meet the requirements established in Sections 2 and 3 of this administrative regulation.

Section 19. Emergency Preparedness. Each foster home shall submit an emergency preparedness plan to the department that would allow the department to identify, locate, and ensure continuity of services to children who are in the custody of the cabinet.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-107, Health Information Required for Foster or Adoptive Parents, Applicants, or Adult Household Members", 10/15;

(b) "DPP-108, Health Information Required for Foster or Adoptive Parents or Applicants Regarding Dependent Children", 10/15; and

(c) "DPP-112A, DCBS Placement Exception Request", 11/22[07/22][4/19].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at

<https://chfs.ky.gov/agencies/dcbp/Pages/default.aspx>.

MARTA MIRANDA-STRAUB, Commissioner  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 8, 2022

FILED WITH LRC: November 9, 2022 at 2:10 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: Krista Quarles,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for public agency foster homes, adoptive homes, and respite care providers caring for foster or adoptive children.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish standards for public agency foster parents, adoptive parents, and respite care providers who care for children in the custody of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1), 199.472(1), and 605.100(1) require the cabinet to promulgate administrative regulations necessary to operate programs to fulfill the responsibilities vested in the cabinet; arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective needs; and promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing criteria for public agency foster parents, adoptive parents, and respite care providers.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes requirements related to the foster home registry that were passed in House Bill 312 of the 2020 Regular Session and codified in KRS 199.660. The foster home registry is already in operation, but this administrative regulation is being updated for consistency with statute and other regulatory actions. The amendment includes actions that must be taken by cabinet staff related to foster homes that are or have been closed for cause or put under corrective action. Inactive foster or adoptive homes will remain open for twelve months rather than two (2) years unless an exception is permitted in order to provide the cabinet with more accurate data relating to available foster placement homes and options. Amendment to this administrative regulation was also necessary to provide consistency with amendments being made to 922 KAR 1:340 relating to independent living programs and services. Incorporated material, the DPP-112A, is being amended to include the proposed or actual placement date, and request information relating to family strengths and supports, transportation, and children with medical complexity. The administrative regulation and material incorporated by reference, the DPP-112A, are being further amended in response to Children's Alliance comments to provide consistency with 922 KAR 1:310 and clarify requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment includes processes and requirements for cabinet staff relating to the foster care registry that were required by legislation that passed in 2020 and have been adopted into policy. This amendment also makes updates consistent with other regulatory amendments in process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate, administer, and enforce programs mandated by federal law or to qualify for the receipt of federal funds. KRS 199.472(1) requires the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for

foster or adoptive parenthood.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that cabinet staff are meeting state and federal requirements related to public foster and adoptive homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 1, 2022, there were 8,760 children placed in out-of-home care in the commonwealth. 2,947 of those children were placed in cabinet foster homes regulated by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment adds requirements on cabinet staff relating to the foster care registry, there are no new requirements for foster homes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment does not negatively or positively impact foster or adoptive homes.

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

(a) Initially: Staff are already meeting the additional administrative requirements required by this amendment. There are no costs associated with this amendment.

(b) On a continuing basis: Staff are already meeting the additional administrative requirements required by this amendment. There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administration of this program is partially reimbursable with federal Title IV-E dollars of the Social Security Act and otherwise funded by General Funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation is applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671

(2) State compliance standards. KRS 194A.050(1), 199.472(1), 605.100(1)

(3) Minimum or uniform standards contained in the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472(1), 605.100(1), 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671

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

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

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

(c) How much will it cost to administer this program for the first year? In SFY 2020, Kentucky spent approximately \$400,000,000 on expenditures related to caring for children in the cabinet's custody. There are no costs associated with this specific amendment.

(d) How much will it cost to administer this program for subsequent years? Expenditures related to the cost of caring for children in the cabinet's custody have decreased as child welfare prevention services have increased since implementing the Family First Prevention Services Act. There are no costs associated with this specific amendment.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

(c) How much will it cost the regulated entities for the first year? There are no costs associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs associated with this amendment.

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

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](#).

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**  
**Division of Student and Administrative Services**  
**(Amendment)**

**11 KAR 4:080. Student aid applications.**

RELATES TO: KRS 164.518, 164.744(2), 164.748(4),(7),(8), 164.753(3),(4),(6), 164.7535, 164.769, 164.780, 164.785, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3),(6), 164.7535, 164.769(5),(6)(f), 164.7894(6), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) authorizes the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7894(6) requires the Authority to promulgate administrative regulations as may be needed for the administration of the Kentucky Coal County College Completion Program. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. To participate in a specified grant, scholarship, or work-study program administered by the Kentucky Higher Education Assistance Authority, the following application forms shall be completed for the appropriate academic year in which an award is sought in accordance with their instructions:

(1) For the KHEAA Grant Program established in 11 KAR 5:130, the Free Application for Federal Student Aid (FAFSA);

(2) For the KHEAA Work-Study Program established in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;

(3) For the Teacher Scholarship Program established in 11 KAR 8:030, the Teacher Scholarship Application;

(4) For the Early Childhood Development Scholarship Program established in 11 KAR 16:010:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Early Childhood Development Scholarship Application;

(5) For the Robert C. Byrd Honors Scholarship Program established in 11 KAR 18:010:

(a) For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and

(b) For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients;

(6) For the Go Higher Grant Program established in 11 KAR 5:200;

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Go Higher Grant Program Application;

(7) For the Coal County Scholarship Program for Pharmacy Students established in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students Application;

(8) For the Kentucky Coal County College Completion Scholarship Program established in 11 KAR 20:020:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Kentucky Coal County College Completion Scholarship Application;

(9) For the Optometry Scholarship Program established in KRS 164.7870, the Optometry Scholarship Application;

(10) For the Dual Credit Scholarship Program established in KRS 164.786, the Dual Credit Scholarship Application; and

(11) For the Work Ready Kentucky Scholarship Program established in KRS 164.787:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Work Ready Kentucky Scholarship Application.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Free Application for Federal Student Aid July 1, 2023 - June 30, 2024[July 1, 2022 - June 30, 2023]" (FAFSA), October 2022[2021];

(b) The "Free Application for Federal Student Aid July 1, 2022 - June 30, 2023[July 1, 2021 - June 30, 2022]" (FAFSA), October 2021[2020];

(c) The "KHEAA Work-Study Program Student Application", July 2001;

(d) The "Teacher Scholarship Application", June 2006;

(e) The "Early Childhood Development Scholarship Application", April 2006;

(f) The "Robert C. Byrd Honors Scholarship Program", June 2009;

(g) The "Robert C. Byrd Honors Scholarship Program-GED Recipients", June 2009;

(h) The "Go Higher Grant Program Application", January 2008;

(i) The "Coal County Scholarship Program for Pharmacy Students Application", February 2011;

(j) The "Kentucky Coal County College Completion Scholarship Application", October 2014;

(k) The "Optometry Scholarship Application", January 2022;

(l) The "Dual Credit Scholarship Application", July 2021; and

(m) The "Work Ready Kentucky Scholarship Application", August 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at [www.kheaa.com](http://www.kheaa.com).

CATHE DYKSTRA, Chair KHEAA Board

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: November 7, 2022 at 1:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, January 26, 2023, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2023. 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: Hon. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email [dbarber@kheaa.com](mailto:dbarber@kheaa.com).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by the Authority.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the

administration of the College Access Program (CAP), Kentucky Tuition Grant (KTG) Program, KHEAA Work-Study Program, Teacher Scholarship Program, Early Childhood Development Scholarship Program, Go Higher Grant Program, Coal County Scholarship Program for Pharmacy Students, the Kentucky Coal County College Completion Scholarship Program, the Optometry Scholarship Program, the Dual Credit Scholarship Program, and the Work Ready Kentucky Scholarship Program pursuant to KRS 164.518(3), 164.744(2), 164.746(6), 164.748(4),(7)(8), 164.753(3),(4),(6), 164.7535, 164.769, 164.780, 165.785, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.42, and 20 U.S.C. 1070d-31 - 1070d-41.

(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 prescribing the applications to be utilized under the grant, scholarship and work-study programs administered by the Authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by prescribing and incorporating the various application forms to be used by students to apply for the financial aid programs administered by the 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: The amendment changes the existing regulation by incorporating the latest version of the Free Application for Federal Student Aid (FAFSA) for the 2022-2023 and 2023-2024 academic years that are to be completed by applicants for participation grant programs administered by the Authority.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to require student recipients to complete the correct versions of the FAFSA for the desired academic year for which grant aid is sought.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by specifying the versions of the FAFSA applications to be used when applying for an award under the student financial aid programs administered by the Authority.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the state student aid programs by requiring completion of the correct version of the FAFSA based on academic year for which an award is sought.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment to this administrative regulation will affect all those individuals who seek to apply for student financial aid programs administered by the Authority.

(4) Provide an analysis 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, 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: Those individuals who seek to participate in the various student financial aid programs administered by KHEAA will be required to complete the correct version of the FAFSA application as specified in this regulation in order to be considered for any award for a specific academic year.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, applicants will be considered for awards under the KHEAA-administered student aid programs.

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

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

regulation.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required in order to implement this administrative regulation since it merely specifies the required version of the FAFSA as well as other student assistance programs to be used by program participants.

(7) Provide an assessment of whether an 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 amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### 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? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.744(2), 164.746(6), 164.748(4),(7)(8), 164.753(3),(4),(6), 164.7535, 164.769, 164.780, 165.785, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.42, and 20 U.S.C. 1070d-31 - 1070d-41.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

(a) How much 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 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 regulation will not generate any revenue.

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

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The regulated entities - applicants for KHEAA-administered aid programs will incur no cost savings as a result of this regulation during the first full year in which this administrative regulation is in effect since there are no

costs incurred by those regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Same as 4a above.

(c) How much will it cost the regulated entities for the first year? The regulated entities - applicants for KHEAA-administered aid programs - will incur no costs for the first year in which this administrative regulation is in effect.

d. How much will it cost the regulated entities for subsequent years? Same as 4c above.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services  
(Amendment)**

**11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.**

RELATES TO: KRS 164.740-164.785

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

**Section 1. Definitions.**

(1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution.

(2) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(3) "Authority" is defined by KRS 164.740(1).

(4) "College Access Program" or "CAP" means the program of student financial assistance grants authorized under KRS 164.7535 to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(5) "Correspondence course" means a home study course that:

(a) Is provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution; and

(b) Meets the following requirements:

1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and returns the examinations to the institution for grading;

2. The institution provides instruction through the use of video cassettes or video discs in an academic year, unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and

3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course.

(6) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(7) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) As a condition of enrollment as a regular student, requires that the person:

1. Have a certificate of graduation from a school providing secondary education, or the equivalent of a certificate; or

2. a. Be beyond the age of compulsory attendance in Kentucky; and

b. Have the ability to benefit from the training offered by the institution;

(c) Either:

1. Has its headquarters or main campus in Kentucky; or

2. If based outside of Kentucky, offers no more than forty-nine (49) percent of the courses offered in Kentucky as online courses; and

(d) 1. For purposes of the College Access Program, is a public or private participating institution; or

2. For purposes of the Kentucky Tuition Grant Program, is a private independent college or university, accredited by a regional accrediting association recognized by the United States Department of Education, that is a participating institution whose institutional programs are not comprised solely of sectarian instruction.

(8) "Eligible institution" is defined by KRS 164.740(4).

(9) "Eligible noncitizen" means an individual who is:

(a) Either:

1. A U.S. national;

2. A U.S. permanent resident with an Alien Registration Receipt Card (1-151 or 1-551); or

3. A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

a. "Refugee";

b. "Asylum granted";

c. "Indefinite parole" or "humanitarian parole"; or

d. "Cuban-Haitian entrant"; or[and]

4. A citizen of:

a. The Freely Associated States;

b. The Federated States of Micronesia;

c. The Republic of Palau; or

d. The Republic of the Marshall Islands; and

(b) Not in the United States on a:

1. F1 or F2 student visa;

2. J1 or J2 exchange visa; or

3. G series visa; or[-]

4. Deferred Action for Childhood Arrivals (DACA) status.

(10) "Eligible program of study" means an undergraduate program, of a least two (2) academic years' duration, offered by an educational institution which:

(a) For purposes of the KTG or CAP Grant Programs, leads to a degree; or

(b) For purposes of only the CAP Grant Program:

1. Leads to a certificate or diploma while attending a publicly operated vocational-technical institution; or

2. Is designated as an equivalent undergraduate program of study by the Council on Postsecondary Education.

(11) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying the federal methodology established in 20 U.S.C. 1087kk through 1087vv to the information that the student and his family provided on the application.

(12) "Federal act" is defined by KRS 164.740(8) and means 20 U.S.C. 1001 through 1146a.

(13) "Full-time student" means an enrolled student who is carrying a full-time academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student, except that correspondence courses shall not be counted in determining the student's full-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. Twelve (12) semester hours or eighteen (18) quarter hours per academic term in an educational program using a semester, trimester, or quarter system;

2. Twenty-four (24) semester hours or thirty-six (36) quarter hours per academic year for an educational program using credit hours, but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one (1) academic year;

3. Twenty-four (24) clock hours per week for an educational program using clock hours;

4. In an educational program using both credit and clock hours, any combination of credit and clock hours if the sum of the following fractions is equal to or greater than one (1):

a. For a program using a semester, trimester, or quarter system, the number of credit hours per term divided by twelve (12) and the number of clock hours per week divided by twenty-four (24); or

b. For a program not using a semester, trimester, or quarter system, the number of semester or trimester hours per academic year divided by twenty-four (24), the number of quarter hours per academic year divided by thirty-six (36), and the number of clock hours per week divided by twenty-four (24);

5. A series of courses or seminars that equals twelve (12) semester hours or twenty-four (24) quarter hours in a maximum of eighteen (18) weeks; or

6. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(14) "Grant" is defined by KRS 164.740(9).

(15) "Kentucky Tuition Grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(16) "KHEAA grant" means an award of a student financial assistance grant under the College Access Program or the Kentucky Tuition Grant Program or a combination of the two (2).

(17) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards:

(a) That are made to an individual for all academic years of the eligible program of study in which the student receives a KHEAA grant (including any KHEAA grant limit previously used in a different eligible program of study or at a different educational institution); and

(b) That shall be:

1. Measured in terms of the applicable percentage of the maximum KHEAA grant that would have been disbursed for the academic year to a full-time student and not fully refunded;

2. Depleted each academic term by subtracting, from the applicable percentage, the percentage used for the academic term, derived by dividing the net amount of KHEAA grant disbursed for the academic term by the maximum KHEAA grant award for the academic year that would have been disbursed to a full-time student, using the then current maximum KHEAA grant; and

3. Based upon the following applicable percentages representing the aggregate limitation of KHEAA grant awards:

a. 200 percent for a student enrolled in a two (2) year eligible program of study; or

b. 400 percent for a student enrolled in a four (4) year eligible program of study.

(18) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(6), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authority's grant programs.

(19) "On-ground course" means a course that meets the following criteria:

(a) Instruction is delivered face-to-face, typically in a lecture-style format, in a setting in which the student and the instructor are in the same physical location on the educational institution's campus; and

(b) Is not an online course.

(20) "Online course" means a course for which any portion of the instruction is transmitted electronically over telecommunication lines or the Internet.

(21) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:130 through 5:145.

(22) "Participating institution" is defined in KRS 164.740(14).

(23) "Part-time student" means an enrolled student who is carrying an academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as at least a half-time student, except that correspondence courses shall not be counted in determining the student's part-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. At least six (6) semester hours per semester;

2. Six (6) quarter hours per quarter; or

3. Half of the academic workload of a full-time student as determined by the educational institution.

(24) "Pell Grant" means an award under the federal Pell Grant Program operated by the secretary under the provisions of 20 U.S.C. 1070a.

(25) "Resident of Kentucky" or "resident" means a person who is determined by the participating institution to be a resident of Kentucky in accordance with the criteria established in 13 KAR 2:045.

(26) "Total cost of education" means an amount determined for an academic year for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

CATHE DYKSTRA, Chair KHEAA Board

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: November 7, 2022 at 1:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, January 26, 2023, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 January 31, 2023. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative

regulation defines terms used in the administration of the College Access Program and Kentucky Tuition Grant programs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with KRS 164.753(4), which requires the Authority to promulgate administrative regulations pertaining to grants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by ensuring that those terms applicable to the KHEAA-administered grant programs are referenced accurately.

(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 defining those terms pertinent to the KHEAA-administered grant programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by adding four (4) new categories of non-citizens to the eligibility list for the grant programs administered by KHEAA. It will also add one (1) category of non-citizens to the ineligibility list. These changes are to be consistent with the federal Pell grant eligibility criteria.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to bring the state grant non-citizen eligibility groups into alignment with the federal Pell grant provisions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants. KRS 164.780 authorizes the Authority to provide grants to assist financially needy undergraduate students to attend educational institutions in Kentucky. This amendment conforms to the content of the authorizing statutes by ensuring that relevant terms applicable to the KHEAA grant programs are accurately defined within the regulation.

(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 ensuring that the definitions of those terms relevant to the KHEAA grant programs are complete and accurate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: For the 2021-22 academic year, KTG offers were made to 35,125 students. Of those offers, 13,730 students received awards. For the same period, CAP offers were made to 89,315 students. Of those offers, 53,956 students received awards.

(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, including: The revised definitions contained in the amendment will be applicable to the above-referenced groups. Four (4) new categories of non-citizens will now be eligible for a grant award while one (1) new categories of non-citizens will specifically be excluded from eligibility.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The revised definitions contained in the amendment will be applicable to the above-referenced groups.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Four (4) new categories of non-citizens will now be eligible for a grant award while one (1) new categories of non-citizens will specifically be excluded from eligibility.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Four (4) new categories of non-citizens will now be eligible for a grant award while one (1) new

categories of non-citizens will specifically be excluded from eligibility.

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

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

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the authority.

(7) Provide an assessment of whether an 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 does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### 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 Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(4).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

(a) How much 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 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 regulation will not generate any revenue.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):



Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The regulated entities – applicants for KHEAA grant awards - will incur no cost savings as a result of this regulation during the first full year in which this administrative regulation is in effect since there are no costs incurred by those regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Same as 4a above.

(c) How much will it cost the regulated entities for the first year? The regulated entities – applicants for KHEAA grant awards – will incur no costs for the first year in which this administrative regulation is in effect.

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services  
(Amendment)**

**11 KAR 5:145. CAP grant award determination procedure.**

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.7889(3)

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), 164.7889(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) authorizes the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that establishes the maximum amount available under the grant programs, and the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 4:080 and 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be \$6,206[5,846] or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (2) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution in an eligible program shall be the lesser of:

(a) \$1,250[1,100] for an applicant enrolled in a two (2) year institution;

(b) \$2,650[1,450] for an applicant enrolled in a four (4) year

institution; or

(c) The amount of eligibility the student has remaining within the aggregate KHEAA ~~grants~~[grant] limit.

(2) The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution in an eligible program shall be:

(a) The amount specified in subsection (1)(a) or (b) of this section:

1. Divided by twelve (12); and

2. Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and

(b) Not in excess of the maximum specified in subsection (1)(c) of this section.

(3) For any academic year, a student shall not receive more than \$2,500[2,200] if enrolled in a two (2) year institution or \$5,300[2,900] if enrolled in a four (4) year institution for an aggregate CAP grant award.

Section 3. (1) A KHEAA grant awarded to an incarcerated individual shall be considered an over award to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(2) A KHEAA grant award shall not be made for a summer academic term.

Section 4. (1) A KHEAA grant award shall not exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student.

(3) The KHEAA Grant Program Officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an over award.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his or her need, the excess shall be considered to be an over award. If an over award occurs, this amount shall be returned to the authority immediately.

Section 5. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 6. If the educational institution receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant, and:

(1) If the grant has not yet been disbursed for the fall academic term, the reduction shall be made to both the fall and spring disbursements and the educational institution shall notify the student of the reduction;

(2) If the grant for the fall academic term has already been disbursed and the student enrolls for the spring academic term, the reduction shall be made to the spring disbursement and the educational institution shall notify the student of the reduction;

(3) If the grant for the fall academic term has already been disbursed and the student does not enroll for the spring academic term, the educational institution shall notify the student of the fall overaward and the student shall repay the overaward to the authority; or

(4) If both the fall and spring disbursements have been made, the educational institution shall notify the student of the overaward and the student shall repay the overaward to the authority.

Section 7. (1) Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant.

(2) Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

CATHE DYKSTRA, Chair KHEAA Board

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: November 7, 2022 at 1:40 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on Thursday, January 26, 2023, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2023. 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:** Hon. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

(b) The necessity of this administrative regulation: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students applying for a CAP grant meet the required financial need criteria and that those applicants receive the maximum CAP grant allowed for any academic period.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will increase the maximum expected family contribution level necessary to demonstrate financial need for eligibility for the CAP grant program as well as increase the overall annual maximum award amount for recipients attending a two-year or four-year institution.

(b) The necessity of the amendment to this administrative regulation: The amendment conforms to the content of the authorizing statutes by establishing the maximum expected family contribution limit for participation in the CAP grant program as well as the maximum award amount.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing the maximum expected family contribution limit as well as the maximum award amount under the CAP Grant program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by providing notice to the public of the expected family contribution limit and maximum award amount for

this program as required by the enabling statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Students at a total of fifty-four (54) Kentucky postsecondary institutions currently participate in the CAP grant program. In the academic year ending June 30, 2021, there were 229,800 applicants for CAP grant awards. A total of 56,700 students met the eligibility criteria and received CAP grant awards during that period.

(4) Provide an analysis 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, 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 individuals are not required to take any actions in order to comply with the amendment to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to applicants to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individuals who seek to participate in the CAP grant program will benefit by the increase in the expected family contribution (EFC) limit. Specifically, students with a higher EFC will be eligible to participate in the program up to the maximum limit established in the amendment. Likewise, all applicants will benefit from an increase in the maximum award amount.

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

(a) Initially: The amendment to this administrative regulation increases the maximum expected family contribution level necessary to demonstrate financial need, making grants potentially available to more students. Likewise, the award amount to each recipient would be increased to some extent depending upon the type of institution in which the recipient is enrolled. However, the funds available for grants, and, in general, the overall cost of administering the program will neither increase nor decrease.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Grants for students under the College Access Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs, while administrative costs have, to this point, been borne by the authority through agency receipts.

(7) Provide an assessment of whether an 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 amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### 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? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

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

requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(4), 164.7889(3).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

(a) How much 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 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 regulation will not generate any revenue.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The regulated entities - applicants for CAP grant awards - will incur no cost savings as a result of this regulation during the first full year in which this administrative regulation is in effect since there are no costs incurred by those regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Same as 4a above.

(c) How much will it cost the regulated entities for the first year? The regulated entities - applicants for CAP grant awards - will incur no costs for the first year in which this administrative regulation is in effect.

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

## BOARDS AND COMMISSIONS

### Personnel Board (Amendment)

#### 101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.005, 18A.0751(1)(e), (4)(e), 18A.111  
STATUTORY AUTHORITY: KRS 18A.005, 18A.075(1), 18A.0751(1)(e), (4)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1)(e) requires the Personnel Board to promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.0751(4)(e) authorizes the Personnel Board to promulgate administrative regulations to establish an initial probationary period in excess of six (6) months for specific job classifications. This administrative regulation establishes the requirements relating to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or final month, depending upon the length of initial probationary period, except as established in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

| Title Code | Job Classification   | Length of Initial Probationary Period |
|------------|--|---------------------------------------|
| 20000538   | Golf Course Assistant Superintendent[+]                            | 9 months                              |
| 20000539   | Golf Course Superintendent[+]                                      | 9 months                              |
| 20000558   | Parks Golf Professional  | 9 months                              |
| 20000677   | State Park Ranger[+]   | 9 months                              |
| 20000562   | Resort Park Manager I  | 12 months                             |
| 20000563   | Resort Park Manager II   | 12 months                             |
| 20000564   | Resort Park Manager III  | 12 months                             |
| 20000568   | Parks Program Services Supervisor                                  | 9 months                              |
| 20000569   | Parks Camping/Boat Dock Manager                                    | 9 months                              |
| 20000570   | Park Business Manager I  | 12 months                             |
| 20000571   | Park Business Manager II   | 12 months                             |
| 20000572   | Park Manager I/Historic Site Manager                               | 12 months                             |
| 20000573   | Park Manager II  | 12 months                             |
| 20000574   | Park Manager III   | 12 months                             |
| 20000609   | Conservation Officer Recruit                                       | 12 months                             |
| 20000616   | Veterans Benefits Field Rep I                                      | 9 months                              |
| 20000618   | Veterans Benefits Regional Administrator                           | 9 months                              |
| [20000672] | [Facilities Security Sergeant]                                     | [12 months]                           |
| [20000673] | [Facilities Security Lieutenant]                                   | [12 months]                           |
| 20000676   | State Park Ranger Recruit  | 12 months                             |
| [20000680] | Facilities Security Officer II                                     | [12 months]                           |
| [20000683] | Mounted Patrol Officer Recruit                                     | [12 months]                           |
| 20000687   | Public Safety[Police] Telecommunicator I                           | 12 months                             |
| 20000688   | Public Safety[Police] Telecommunicator II                          | 12 months                             |
| [20000689] | [Police Telecommunications Shift Supervisor]                       | [12 months]                           |
| 20000690   | Public Safety[Police] Telecommunication Supervisor                 | 12 months                             |
| 20000692   | CVE Inspector I  | 12 months                             |
| 20000694   | CJIS (Criminal Justice Information System) Compliance Specialist I | 12 months                             |
| 20000695   | CJIS Compliance Specialist II                                      | 12 months                             |

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|            |   |             |
|------------|---|-------------|
| 20000696   | CJIS Compliance Specialist III                                      | 12 months   |
| 20000697   | CJIS Compliance Supervisor  | 12 months   |
| 20000698   | Transportation Operations Center Specialist I                       | 12 months   |
| 20000703   | Polygraph Examiner II   | 12 months   |
| 20000704   | Polygraph Examiner I  | 12 months   |
| 20000713   | Driver's Test Administrator   | 12 months   |
| 20000719   | Law Enforcement Training Instructor I                               | 12 months   |
| 20000722   | Law Enforcement Training Instructor I - Telecommunications          | 12 months   |
| 20000813   | Boiler Inspector I  | 12 months   |
| 20000817   | HVAC Inspector I  | 12 months   |
| [20000820] | Fire Protection Systems Inspector                                   | [12 months] |
| 20000821   | OSH Industrial Hygienist I  | 12 months   |
| 20000834   | OSH Compliance Officer I  | 12 months   |
| 20000852   | OSH Safety Consultant I   | 12 months   |
| 20000856   | Industrial Hygienist Consultant I                                   | 12 months   |
| 20000888   | Insurance Fraud Investigator I                                      | 12 months   |
| 20000889   | Insurance Fraud Investigator II                                     | 12 months   |
| 20000890   | Insurance Fraud Investigator Supervisor                             | 12 months   |
| 20000938   | Forensic Firearms and Toolmark Examiner I                           | 12 months   |
| 20000940   | Forensic Chemist I  | 12 months   |
| 20000941   | Forensic Chemist II   | 12 months   |
| 20000943   | Forensic Biologist I  | 12 months   |
| 20000944   | Forensic Biologist II   | 12 months   |
| 20000953   | Forensic Computer Examiner I  | 12 months   |
| 20000954   | Forensic Computer Examiner II                                       | 12 months   |
| 20000955   | Forensic Computer Examiner III                                      | 12 months   |
| 20000963   | Therapy Program Assistant   | 9 months    |
| 20000974   | Audiologist I   | 12 months   |
| 20001001   | Patient Aide I  | 9 months    |
| 20001021   | Nursing Investigator  | 12 months   |
| 20001037   | Medical Investigator I  | 12 months   |
| 20001038   | Medical Investigator II   | 12 months   |
| [20001105] | [KSB/KSD Administrator-III]   | [12 months] |
| [20001107] | [KSB/KSD Administrator-V]   | [12 months] |
| 20001122   | Disability Adjudicator I  | 12 months   |
| 20001125   | Social Service Worker I   | 9 months    |
| 20001132   | Field Services Supervisor   | 12 months   |
| 20001135   | Juvenile Facility Superintendent I                                  | 12 months   |
| 20001136   | Juvenile Facility Superintendent III                                | 12 months   |
| 20001137   | Facilities Regional Administrator                                   | 12 months   |
| 20001138   | Youth Services Program Supervisor                                   | 12 months   |
| 20001139   | Juvenile Facility Superintendent II                                 | 12 months   |
| 20001140   | Family Services Office Supervisor                                   | 12 months   |
| 20001142   | Human Rights Specialist   | 12 months   |
| 20001157   | Administrative Hearing Officer I                                    | 12 months   |
| 20001159   | Human Rights Enforcement Branch Manager                             | 12 months   |
| 20001162   | Human Rights Research/Information Compliance Supervisor             | 12 months   |
| 20001163   | Human Rights Housing Compliance Supervisor                          | 12 months   |
| 20001164   | Human Rights Employment/Public Accommodations Compliance Supervisor | 12 months   |
| 20001165   | Human Rights Compliance Enforcement Officer II                      | 12 months   |
| 20001166   | Probation and Parole Officer I                                      | 12 months   |
| 20001171   | Youth Worker I  | 12 months   |
| 20001174   | Youth Worker Supervisor   | 12 months   |
| 20001175   | Juvenile Services District Supervisor                               | 12 months   |
| 20001184   | Service Region Administrator  | 12 months   |
| 20001185   | Service Region Administrator Associate                              | 12 months   |
| 20001186   | Service Region Clinical Associate                                   | 12 months   |

|          |   |           |
|----------|---|-----------|
| 20001841 | Criminal Intelligence Analyst I                 | 12 months |
| 20001842 | Criminal Intelligence Analyst II                | 12 months |
| 20001876 | Law Clerk                                       | 12 months |
| 20001895 | Environmental Administrative Hearing Officer    | 12 months |
| 20001904 | Investigator I                                  | 12 months |
| 21000900 | Financial Institutions Examiner I               | 12 months |
| 21000901 | Financial Institutions Examiner II              | 12 months |
| 21002025 | Highway Technician Assistant I                  | 12 months |
| 21002026 | Highway Technician Assistant II                 | 12 months |
| 21002027 | Highway Technician I                            | 12 months |
| 21002028 | Highway Technician II                           | 12 months |
| 21002029 | Highway Technician III                          | 12 months |
| 21002030 | Highway Technician IV                           | 12 months |
| 21002031 | Highway Technician Superintendent I             | 12 months |
| 21002032 | Highway Technician Superintendent II            | 12 months |
| 21002326 | Apprentice I                                    | 12 months |
| 21002327 | Apprentice II                                   | 12 months |
| 21002476 | Boards and Commissions Support Specialist       | 12 months |
| 21002825 | Advanced Practice Registered Nurse Investigator | 12 months |
| 21003600 | Public Safety Telecommunication Manager         | 12 months |
| 21003601 | Public Safety Telecommunicator III              | 12 months |

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. If an employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. A written notification shall be sent to the employee to advise the employee of the effective date of reversion. A copy of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) Except as established in KRS 18A.111, the promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the appropriate month following promotion as established in KRS 18A.005(27).

(4) The promotional probationary period shall be the same length as the initial probationary period for each job classification.

**Section 3. Probationary Period Upon Reinstatement.**

(1) An employee who is reinstated to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status. This shall include an employee ordered reinstated pursuant to KRS 18A.111(3), unless the board rules otherwise.

(2) An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: November 7, 2022

FILED WITH LRC: November 8, 2022 at 9:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 26, 2023, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive,

Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through end of the day, January 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email [stafford.easterling@ky.gov](mailto:stafford.easterling@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines the mandatory initial probationary periods of specific job classifications from the effective date of appointment.

(b) The necessity of this administrative regulation: This regulation is necessary to set the requirements of probationary periods.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 18A.075(1)(4)(e) authorizes the Personnel Board to establish initial probationary periods.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide effective administration of the statutes by its requirements to establish probationary periods.

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

(a) How the amendment will change this existing administrative regulation: This amendment sets the mandatory probationary period for the job classifications of Public Safety Telecommunicator III and Public Safety Telecommunications Manager to a twelve (12) -month term, expanding the current six (6) -month probationary period due to organizational need. There are also a total of eight (8) positions, Police Telecommunications Shift Supervisor, KSB/KSD Administrator III, and KSB/KSD Administrator V, Facilities Security Sergeant, Facilities Security Lieutenant, Facilities Security Officer II, Mounted Patrol Officer Recruit, and Fire Protection Systems Inspector that have been abolished as requested by their respective agencies and need to be removed from this administrative regulation. Additionally, there were seven (7) classification name changes, and two (2) new classifications added to the regulation, as requested by their respective agencies.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide uniformity with the requirements of the Fair Labor Standards Act.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment ensures consistent twelve (12) -month initial probationary periods within the Justice and Public Safety Cabinet, Kentucky State Police for these job classifications. Removing positions that have been abolished by their agencies. Updating name changes and adding new positions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity and consistently required for establishment of initial probationary periods in addition to meeting the needs of the Justice and Public Safety Cabinet, Kentucky State Police, and the Personnel Cabinet. This amendment also removes two (2) abolished positions with the Department of Education, Kentucky School for the Blind (KSB)/Kentucky School for the Deaf (KSD), one (1) abolished position with the Justice and Public Safety Cabinet, Kentucky State Police, and five (5) abolished positions reviewed and processed by the Personnel Cabinet, Department of Human Resources Administration (DRHA). The

DHRA also reviewed and submitted four (4) job classification name changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state government agencies; however, this amendment affects only the Justice and Public Safety Cabinet, Kentucky State Police, the Department of Education, Kentucky School for the Blind (KSB)/Kentucky School for the Deaf (KSD), the Tourism, Arts and Heritage Cabinet, the Education and Labor Cabinet, and the Personnel Cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The impacted agencies will need to implement minor procedural changes to reflect the expansion of the initial probationary period from six (6) months to twelve (12) months for the two (2) job classifications specified, and the Personnel Cabinet will update the state job classification list to remove the abolished positions and update the name changes accordingly.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The expansion of the initial probationary period from six (6) months to twelve (12) months for Public Safety Telecommunicator III and Public Safety Telecommunications Manager, makes this Class service uniform. By removing the Police Telecommunications Shift Supervisor, KSB/KSD Administrator III, KSB/KSD Administrator V, Facilities Security Sergeant, Facilities Security Lieutenant, Facilities Security Officer II, Mounted Patrol Officer Recruit, and Fire Protection Systems Inspector, a valid list of job classifications is maintained within this regulation, as well as the name changes.

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

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

(b) On a continuing basis: There will be no ongoing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

#### FISCAL NOTE

(1) What 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 Personnel Board, the Personnel Cabinet, the Justice and Public Safety Cabinet, Kentucky State Police, the Department of Education, Kentucky School for the Blind (KSB)/Kentucky School for the Deaf (KSD), the Tourism, Arts and Heritage Cabinet, and the Education and Labor Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.005, KRS 18A.075(1), and KRS 18A.0751(1)(e) and (4)(e).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.

(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 revenue will be generated.

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

(c) How much will it cost the regulated entities for the first year? There are no estimated costs to administer the amendments to this regulation.

(d) How much will it cost the regulated entities for subsequent years? There are no estimated costs for subsequent years to administer the amendments to this regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.

(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.030(1)] The amendment to this regulation will have no economic impact of any amount on state or local government or regulated entities.

## BOARDS AND COMMISSIONS

### Board of Dentistry

#### (Amendment)

### 201 KAR 8:016. Registration of dental laboratories.

RELATES TO: KRS 313.021, 313.022, 313.550

STATUTORY AUTHORITY: KRS 313.021(1)(a), (c), 313.022(1)(c), 313.080, 313.090, 313.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)(a) requires the board to govern dental laboratories. KRS 313.021(1)(c) requires the board to promulgate administrative regulations for any license or registration created by the board. KRS 313.022(1) requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes requirements for the issuance and renewal of dental laboratory registration with the board. This administrative regulation establishes fees for the issuance, renewal, and reinstatement of registrations of dental

laboratories with the board.

Section 1. (1) Each commercial dental laboratory operating, doing business, or intending to operate or do business in ~~Kentucky~~[the state] shall register with the board[~~and pay the fee established in Sections 4 and 8 of this administrative regulation~~].

(2) A dental laboratory shall be considered operating or doing business in ~~Kentucky~~[within this state] if its work product is prepared pursuant to a written authorization originating within this state.

Section 2. The board shall not issue a registration to a commercial dental laboratory unless the applying dental laboratory is operated under the supervision of at least one (1) certified dental technician (CDT) or dentist licensed in this state in accordance with KRS 313.550.

Section 3. If the dental laboratory has violated any provision of KRS Chapter 313 or 201 KAR Chapter 8, the dental laboratory shall be subject to disciplinary action pursuant to KRS 313.080 and 313.100.

Section 4. ~~[Each commercial dental laboratory shall pay a fee of \$150 to the board before a registration shall be issued to the applicant.~~

~~Section 5.~~ Upon the granting of a registration, the board shall assign to that laboratory a dental registration number. The laboratory registration number shall appear on all invoices or other correspondence of the laboratory.

~~Section 6.~~ A dentist shall use only those services of a commercial dental laboratory that is duly registered with the board as required by this administrative regulation. A dentist shall include the registration number of the dental laboratory on the dentist's work order.

#### Section 6.[~~Section 7.~~] Initial Registration.

(1) The owner or operator of a commercial dental laboratory desiring to obtain a registration shall:

(a) Submit an Application for Registration of Dental Laboratories; and

(b) Pay the fee required by 201 KAR 8:520.

~~(2) [Each commercial dental laboratory operating, doing business, or intending to operate or do business within the state shall submit an Application for Registration of Dental Laboratory or Renewal of Registration of Dental Laboratory to the board on a form provided by the board accompanied with the registration or renewal fee required.]~~ The application shall include:

~~(a) [(4)]~~ The name, mailing address, phone number, and e-mail address of the laboratory;

~~(b) [(2)]~~ The physical address of the laboratory if different from the mailing address;

~~(c) [(3)]~~ The name and CDT number of the supervising CDT or the name and license number of the supervising dentist who is licensed in this state; and

~~(d) An acknowledgement by the supervising CDT or dentist who is licensed in this state that the laboratory:~~

~~1. [(4) A statement that the laboratory] Meets the infectious disease control requirements under Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control and Prevention (CDC) of the United States Public Health Service;~~

~~2. [(5) An acknowledgement by the supervising CDT or dentist who is licensed in this state that the laboratory] Will provide material disclosure to the prescribing dentist that contains the U.S. Food and Drug Administration registration number of all patient contact materials contained in the prescribed restoration in order that the dentist may include those numbers in the patient's record; and~~

~~3. [(6) An acknowledgement by the supervising CDT or dentist who is licensed in this state that he or she] Will disclose to the prescribing dentist the point of origin of the manufacture of the prescribed restoration. If the restoration was partially or entirely manufactured by a third-party provider, the point of origin disclosure shall identify the portion manufactured by a third-party provider and~~

the city, state, and country of the provider.

Section 7. Registration Renewal. (1) Commercial dental lab registrations shall expire on July 31 of each year and must be renewed to continue operating or doing business in Kentucky.

(2) To renew a registration, the owner or operator shall:

(a) Submit a Renewal Application for Registration of Dental Laboratories on or before July 31; and

(b) Pay the fee required by 201 KAR 8:520.

(3) The renewal application shall include the information required in Section 6(2)(a-d) of this administrative regulation.

~~[Section 8. Each commercial dental laboratory registered with the board shall be required to renew its registration before July 31 each year by completing and submitting a Renewal of Registration of Dental Laboratory form and paying a fee of \$150.]~~

Section 8.[Section 9.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Registration of Dental Laboratories", November 2022[June 2014]; and

(b) "Renewal Application for Registration of Dental Laboratories", November 2022[March 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: November 14, 2022

FILED WITH LRC: November 15, 2022 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this Amendment shall be held on January 25, 2023 at 4:00pm, Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed Amendment. 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 Amendment. Written comments shall be accepted through January 31, 2023. Send written notification of intent to be heard at the public hearing, or written comments on the proposed Amendment to the contact person below.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email [jeffrey.allen@ky.gov](mailto:jeffrey.allen@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for registering dental laboratories that do business in Kentucky.

(b) The necessity of this administrative regulation: KRS 313.021(1)(a) requires the board to exercise the administrative functions of the Commonwealth in the regulation of dental laboratories.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for registering dental laboratories that do business in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for registering dental laboratories in conformity with its authorizing statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes minor clarifications of the existing requirements for dental laboratory registration.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to clarify some registration requirements and to update Materials Incorporated by Reference in the existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation updates the requirements for registering dental laboratories that do business in Kentucky in conformity with its authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the requirements to register dental laboratories and updates the registration form, thereby reducing non-compliance and improving public safety.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect the approximately 250 dental laboratories doing business in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will still register in accordance with applicable law and administrative regulations. No additional actions are required as a result of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be accrued as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations.

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

(a) Initially: No 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? Not applicable.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment maintains existing fees and does not increase them, even indirectly.

(9) TIERING: Is tiering applied? No; this amendment impacts all similarly situated entities equally.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.021.

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

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

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

fire departments, or school districts) for subsequent years? None.

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

(d) How much will it cost to administer this program for subsequent years? No cost.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanation: Not applicable.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? 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? \$150 or less.

(d) How much will it cost the regulated entities for subsequent years? \$150 or less.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

## BOARDS AND COMMISSIONS

### Board of Dentistry (Amendment)

#### 201 KAR 8:571. Registration of dental assistants.

RELATES TO: KRS 214.615, 313.030, 313.045, 313.050, 313.080, 313.130

STATUTORY AUTHORITY: KRS 214.615(2), 313.021(1)(a), (b), (c), 313.030(3), 313.045

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.045(1) requires the board to promulgate administrative regulations relating to requirements and procedures for registration, duties, training, and standards of practice for dental assistants. This administrative regulation establishes the requirements and procedures for registration, duties, training, and standards of practice for dental assistants.

Section 1. Definitions. (1) "Coronal polishing" means a procedure that is the final stage of a dental prophylaxis on the clinical crown of the tooth after a dentist or a hygienist has verified there is no calcareous material.

(2) "Dental assistant" ~~means~~mean a person who is directly involved with the care and treatment of a patient under the direct supervision of a dentist and performs reversible procedures delegated by a dentist licensed in the Commonwealth.

Section 2. Supervision Requirements. A dental assistant operating under this administrative regulation shall be under the direct supervision of a Kentucky licensed dentist at all times while in the performance of patient care and treatment. The supervising dentist shall accept sole responsibility for the actions of the dental assistant.

Section 3. General Registration [~~Requirements~~]and

~~Documentation~~[General Training] Requirements. (1) A dentist licensed in the Commonwealth shall register all dental assistants in ~~their~~his or her practice on the Application for Renewal of Dental Licensure incorporated by reference in 201 KAR 8:532[201-KAR 8:530].

(2) A dental assistant shall maintain certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines set forth by the American Heart Association, as incorporated by reference in 201 KAR 8:532. The supervising dentist shall retain the current CPR certification of each dental assistant in their~~the~~ personnel file.

(3) The supervising dentist shall maintain a ~~[for the registered dental assistant the following:~~

~~(a) A copy of the certificate of completion issued for the completion of the Coronal Polishing Course if the course has been taken by the dental assistant;~~

~~(b) A copy of the certificate of completion issued for the completion of the Radiation Safety Course if the course has been taken by the dental assistant;~~

~~(c) A copy of the certificate of completion issued for the completion of the Radiation Techniques Course if the course has been taken by the dental assistant;~~

~~(d) A copy of the certificate of completion issued for the completion of the Starting Intravenous Access Lines if the course has been taken by the dental assistant;~~

~~(e) A copy of proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines set forth by the American Heart Association, as incorporated by reference in 201 KAR 8:531; and~~

~~(f) A statement of the competency of procedures delegated to the dental assistant from the Delegated Duties List that includes the name of the:~~

~~(a) [4.] Individual trained; and~~

~~(b) [2.] Licensee attesting to the competency of the dental assistant.~~

Section 4.~~[Section 3.]~~ Coronal Polishing Requirements. (1) A registered dental assistant may perform coronal polishing only if the assistant has~~[If coronal polishing is performed by a registered dental assistant, the assistant shall have]:~~

(a) Completed the training described in subsection (2) of this section; and

(b) Obtained a certificate from the authorized institution.

(2) The required training shall consist of an eight (8) hour course taught at an institution of dental education accredited by the Council on Dental Accreditation to include the following:

(a) Overview of the dental team;

(b) Dental ethics, jurisprudence, and legal understanding of procedures allowed by each dental team member;

(c) Management of patient records, maintenance of patient privacy, and completion of proper charting;

(d) Infection control, universal precaution, and transfer of disease;

(e) Personal protective equipment and overview of Occupational Safety and Health Administration requirements;

(f) Definition of plaque, types of stain, calculus, and related terminology and topics;

(g) Dental tissues surrounding the teeth and dental anatomy and nomenclature;

(h) Ergonomics of proper positioning of patient and dental assistant;

(i) General principles of dental instrumentation;

(j) Rationale for performing coronal polishing;

(k) Abrasive agents;

(l) Coronal polishing armamentarium;

(m) Warnings of trauma that can be caused by improper techniques in polishing;

(n) Clinical coronal polishing technique and demonstration;

(o) Reading component consisting of the topics established in subsection (2)(a) to (n) of this section;

(p) Passing score of seventy-five (75) percent or higher on a written comprehensive examination covering the material listed in this section[, which shall be passed by a score of seventy-five (75)



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percent or higher]; and

(g) Passing score on a clinical competency examination performed on a live patient and supervised by a licensed dentist.

(3) The supervising dentist shall retain in the personnel file for the registered dental assistant a copy of the certificate issued for completion of the Coronal Polishing Course.

[(p) Completion of the reading component as required by subsection (3) of this section; and

(q) Clinical competency examination supervised by a dentist licensed in Kentucky, which shall be performed on a live patient.

(3) A required reading component for each course shall be prepared by each institution offering coronal polishing education that shall:

(a) Consist of the topics established in subsection (2)(a) to (n) of this section;

(b) Be provided to the applicant prior to the course described in subsection (2) of this section; and

(c) Be reviewed and approved by the board based on the requirements of subsection (2)(a) to (n) of this section.

(4) The institutions of dental education approved to offer the coronal polishing course in Kentucky shall be:

(a) University of Louisville School of Dentistry;

(b) University of Kentucky College of Dentistry;

(c) Western Kentucky University Dental Hygiene Program; and

(d) Kentucky Community Technical College System Dental Hygiene or Dental Assisting Programs.

(5) An institution of dental education from a state outside of Kentucky meeting the standards of the institutions listed in subsection (4) of this section shall be approved upon request to the Kentucky Board of Dentistry.]

### Section 5.[Section 4.] X-rays by Registered Dental Assistants.

(1) A registered dental assistant may take x-rays only if the assistant has[under the direct supervision of a dentist licensed in Kentucky. If a registered dental assistant takes x-rays under the direct supervision of a dentist licensed in Kentucky, the dental assistant shall have] completed ten (10) hours of training as follows:

(a)[(1)] A six (6) hour course in dental radiography safety; and

(b)[(2)] A Four (4) course in dental radiography technique; or

(c) Four (4) hours of instruction in dental radiography technique [while] under the employment and supervision of the dentist in the office[- or a four (4) hour course in radiography technique].

(2) The supervising dentist shall retain in the personnel file for the registered dental assistant a copy of the certificates issued for completion of courses in dental radiography safety and technique.

### Section 6.[Section 5.] Requirements for Starting Intravenous Access Lines.

(1) A registered dental assistant in Kentucky may only start intravenous (IV) access lines if the assistant:

(a) Does so[An individual registered as a dental assistant in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to start intravenous (IV) access lines while] under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board; and

(b) Complete[shall submit documentation to the licensed dentist for whom the registered dental assistant will be providing services proving successful completion of a board-approved course in starting IV access lines that includes]based on]:

1.[(a)] Patient Safety Techniques;

2.[(b)] Anatomy and physiology of the patient;

3.[(c)] Techniques in starting and maintaining an IV access line; and

4.[(d)] Appropriate methods of discontinuing an IV access line.

(2) The supervising dentist shall retain in the personnel file for the registered dental assistant a copy of the certificate issued for completion of the Starting Intravenous Access Lines Course.[A registered dental assistant shall not start an IV access line if the individual has not completed a Board approved course in IV access lines.

Section 6. A dental assistant operating under this administrative regulation shall be under the direct supervision of the dentist

licensed in the Commonwealth. The dentist licensed in the Commonwealth shall accept sole responsibility for the actions of the dental assistant or dental auxiliary personnel while in the performance of duties in the dental office.]

### Section 7. Incorporation by Reference.

(1) "Delegated Duties[Duty] List", October 2022[May 2014], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: November 14, 2022

FILED WITH LRC: November 15, 2022 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this Amendment shall be held on January 25, 2023 at 4:00pm, Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed Amendment. 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 Amendment. Written comments shall be accepted through January 31, 2023. Send written notification of intent to be heard at the public hearing, or written comments on the proposed Amendment to the contact person below.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email [jeffrey.allen@ky.gov](mailto:jeffrey.allen@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for registering dental assistants in Kentucky.

(b) The necessity of this administrative regulation: KRS 313.045(1) requires the board to promulgate administrative regulations related to dental assistants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for registering dental assistants in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for registering dental assistants in conformity with its authorizing statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes minor clarifications of the existing requirements for registering dental assistants.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to clarify some registration and expanded duty requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation updates the requirements for registering dental assistants in conformity with its authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the requirements to register dental assistants, thereby reducing non-compliance and improving public safety.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect the approximately 3,000 dentists in Kentucky and the dental assistants they employ.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each dental assistant will continue to be registered in accordance with applicable law and administrative regulations. No additional actions are required as a result of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be accrued as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations.

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

(a) Initially: No 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? Not applicable.

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

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

(9) TIERING: Is tiering applied? No; this amendment impacts all similarly situated entities equally.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None, other than 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 313.045

(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.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No cost.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanation: Not applicable.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? 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? Nothing.

(d) How much will it cost the regulated entities 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.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### BOARDS AND COMMISSIONS Kentucky Board of Medical Licensure (Amendment)

#### 201 KAR 9:470. Standardized medical order for scope of treatment form.

RELATES TO: KRS 311.530-311.620, 311.621 - 311.643, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a), 311.6225(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. KRS 311.6225(2) requires the board to promulgate administrative regulations to develop the format for a standardized medical order for scope of treatment form to be approved by the board. This administrative regulation establishes the format of the standardized medical order for scope of treatment form approved by the board and authorized for use by board licensees practicing within the Commonwealth of Kentucky.

Section 1. Definition. "MOST form" means the medical order for scope of treatment form defined in KRS 311.621(12).

#### Section 2. Format of the MOST form.

(1) The MOST form maintained in the patient's medical chart ~~shall have the title "MOST, Medical Orders for Scope of Treatment,"~~ may be electronic or printed.

(2) If printed, it shall be:

(a) Printed on a single double-sided eight and a half (8.5) x eleven (11) inch piece of ~~pink paper,~~ and ~~shall be~~

(b) In a typed font of a size and style sufficient to include the information mandated by KRS 311.6225(1) and (3).

(3) ~~[(2)]~~ The acceptable and prevailing medical practice shall be for a licensee to use the standardized MOST form developed and adopted by the board.

#### Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "MOST, Medical Orders for Scope of Treatment", June 2022; ~~and~~

(b) "MOST Form Spanish", June 2022 ~~[December 2015, is incorporated by reference].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the board's Web site at <http://kbml.ky.gov>.

(3) An electronically fillable version of the MOST form shall be available for print or download on the board's Web site at <http://kbml.ky.gov>.

WILLIAM C. THORNBURY, Board President

APPROVED BY AGENCY: September 15, 2022

FILED WITH LRC: October 31, 2022 at 11:30 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 25, 2023 at 9:30 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118, email [leanne.diakov@ky.gov](mailto:leanne.diakov@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the format of the standardized medical order for scope of treatment form in the Commonwealth of Kentucky as mandated by KRS 311.6225 and to be used by the board's licensees.

(b) The necessity of this administrative regulation: This regulation is being promulgated as mandated by the General Assembly and to make available to the board's licensees a medical order for scope of treatment form consistent with KRS 311.6225.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the format of the standardized medical order for scope of treatment form in the Commonwealth of Kentucky as mandated by KRS 311.6225.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the format of the standardized medical order for scope of treatment form in the Commonwealth of Kentucky as mandated by KRS 311.6225 and to be used by the board's licensees.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows for the MOST form to be transmitted in print or electronic form and in languages other than English, consistent with directives of SB 173 (2022).

(b) The necessity of the amendment to this administrative regulation: It is necessary to promulgate this regulation per the directives of the Legislature in SB 173 (2022).

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to amendments to KRS 311.6225 pursuant to SB 173 (2022).

(d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to conform to the requirements of amended KRS 311.6225 pursuant to SB 173 (2022).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in Kentucky whose patients wish to memorialize their preferences for levels of life-prolonging treatment within their medical charts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians whose patients wish to memorialize their preferences for levels of life-prolonging treatment within their medical charts are required to use the standardized MOST form mandated by KRS 311.6225. This regulation sets forth the authorized formats for the MOST form.

(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 requirements of this administrative regulation known to the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the physician include having clear directives on what information the MOST form must include and the formats in which it may be memorialized.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administration regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

#### FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a) and 311.6225(2)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. None.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation

generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

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 amendment of this administrative regulation will not have a major economic impact on state or local government or regulated entities.

## BOARDS AND COMMISSIONS

### Board of Nursing (Amendment)

#### 201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.475

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 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 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the completed application form to the board office, for:

(a) RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;

(b) RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;

(c) Licensure or reinstatement as an advanced practice registered nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d) Renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e) Licensure as an RN and as an APRN, Application for RN and APRN Licensure;

(f) Retired licensure status, Application for Retired Status;

(g) APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky);

(h) APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License; or

(i) In addition to any other renewal form, for APRN renewal, APRN Practice Data;

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors

older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. An application shall lapse and the fee shall be forfeited if the application is not completed:

(1) For an application for licensure by endorsement, within six (6) months~~one (1) year~~ from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure", 10/2022~~1/2016~~, Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 02/2022, Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 10/2022~~1/2016~~, Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 02/2022, Kentucky Board of Nursing;

~~[(e) "Application for RN and APRN Licensure", 1/2016, Kentucky Board of Nursing;]~~

~~[(e)]~~~~[(f)]~~ "Application for Retired Status", 8/2004, Kentucky Board of Nursing;

~~[(f)]~~~~[(g)]~~ "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 02/2022, Kentucky Board of Nursing;

~~[(g)]~~~~[(h)]~~ "Annual Licensure Renewal Application, APRN with Kentucky RN License", 02/2022, Kentucky Board of Nursing; and

~~[(h)]~~~~[(i)]~~ "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx>~~[https://kbn.ky.gov/conpro/Pages/Laws-and-Regulations.aspx]~~.

AUDRIA DENKER, Board President

APPROVED BY AGENCY: October 20, 2022

FILED WITH LRC: November 9, 2022 at 9:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public

hearing on this administrative regulation shall be held on January 24, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by January 17, 2023, 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 January 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, email [Jeffrey.Prather@ky.gov](mailto:Jeffrey.Prather@ky.gov). Or submit a comment at <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey R. Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates various application forms for Licensed Practical Nurses (LPNs), Registered Nurses (RNs), and Advanced Practice Registered Nurses (APRNs).

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of the licensure provisions for KRS Chapter 314.

(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 incorporating the various forms and setting regulatory and statutory requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing for the appropriate application forms that may be filed electronically.

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

(a) How the amendment will change this existing administrative regulation: The changes are to license initial application forms for LPNs, RNs, and APRNs.

(b) The necessity of the amendment to this administrative regulation: Amendment is needed to update applications for electronic submission by applicants.

(c) How the amendment conforms to the content of the authorizing statutes: By requiring applications.

(d) How the amendment will assist in the effective administration of the statutes: To review applicants for compliance with licensure requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed nurse applicants, approximately 9,500.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary until the applicant is applies for licensure.

(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 beyond licensure fees under 201 KAR 20:240.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Board of Nursing will be able to process applications more efficiently.

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

administrative body to implement this administrative regulation:

(a) Initially: There is no additional cost.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

(d) How much will it cost to administer this program for subsequent years? No cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(Amendment)**

**301 KAR 2:221. Waterfowl seasons and limits.**

RELATES TO: KRS 150.010(45), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

**Section 1. Definitions.**

(1) "Active military personnel" means a member of the Armed Forces on active duty, including members of the National Guard and Reserves on active duty other than for training.

(2) "Adult" means a person who has reached his or her 18th birthday.

(3) "Dark geese" means Canada geese, cackling geese, white-fronted geese, or brants.

(4) "Light geese" is defined by KRS 150.010(20).

(5) "Light geese conservation order" is defined by KRS 150.010(21).

(6) "Veteran" means a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.

(7) "Waterfowl" is defined by KRS 150.010(45).

(8) "Youth" means a person who has not reached his or her 16th birthday.

**Section 2.** Except as established in 301 KAR 2:222 or 2:225, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

**Section 3. Season Dates.**

(1) The duck, coot, and merganser season shall:

(a) Begin on Thanksgiving Day for four (4) consecutive days; and

(b) Be from December 7 through January 31.

(2) The dark geese season shall be from Thanksgiving Day through February 15.

(3) The light geese season shall be from Thanksgiving Day through February 15.

(4) The light geese conservation order season shall be from February 16 through March 31.

(5) A person shall not hunt light or dark geese in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

**Section 4. Ballard Zone.**

(1) The Ballard Zone includes the portion of Ballard County north and west of:

(a) The Ballard-McCracken County line to State Road 358;

(b) State Road 358 to US 60;

(c) US 60 to the city limits of Wickliffe; and

(d) The city limits Wickliffe to the center of the Mississippi River.

(2) In the Ballard Zone, a person hunting waterfowl shall:

(a) Not hunt or establish a blind within:

1. 100 yards of another blind; or

2. Fifty (50) yards of a property line; and

(b) Not possess more than one (1) uncased or loaded shotgun while in a blind.

(3) The requirements of subsection (1) of this section shall not apply if the Light Geese Conservation Order, as established in

Section 3 of this administrative regulation, is the only waterfowl season open, excluding falconry seasons.

**Section 5. Bag and Possession Limits.**

(1) Ducks. The daily limit shall be six (6), which shall not include more than:

(a) Four (4) mallards;

(b) Two (2) hen mallards;

(c) Three (3) wood ducks;

(d) Two (2) black ducks;

(e) Two (2) redheads;

(f) One (1) pintail;

(g) One (1) scaup beginning Thanksgiving Day for four (4) consecutive days and December 7 through December 17;

(h) Two (2) scaup beginning on December 18 through January 31;

(i) One (1) mottled duck; or

(j) Two (2) canvasbacks.

(2) Coot. The daily limit shall be fifteen (15).

(3) Merganser. The daily limit shall be five (5), which shall not include more than two (2) hooded mergansers.

(4) Dark geese. The daily limit shall be five (5), which shall not include more than:

(a) Three (3) Canada geese or cackling geese, in combination;

(b) Two (2) white-fronted geese; or

(c) One (1) brant.

(5) Light geese. The daily limit shall be twenty (20), except that there shall not be a limit during the light geese conservation order season.

(6) The possession limit shall be triple the daily limit, except that there shall not be a light geese possession limit.

**Section 6. Shooting Hours.** A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) Sunset, except as established in 301 KAR 2:222; or

(2) One-half (1/2) hour after sunset if hunting light geese during the light geese conservation order season.

**Section 7. Falconry Waterfowl Season and Limits.**

(1) The ~~light geese~~ season for waterfowl shall be from Thanksgiving Day through the last Sunday in February~~[February 15]~~.

~~[(2) The light geese conservation order season shall be from February 16 through March 31.]~~

~~(3) The season for all other waterfowl shall be from Thanksgiving Day through February 15.]~~

~~[(2)][(4)] The daily limit shall be three (3) waterfowl[, except that there shall not be a limit on light geese during the light geese conservation order season].~~

~~[(3)][(5)] The possession limit shall be nine (9) waterfowl[, except that there shall not be a possession limit on light geese during the light geese conservation order season].~~

**Section 8. Permit for the Light Geese Conservation Order Season.**

(1) A person hunting light geese during the light geese conservation order season shall first obtain a free permit by completing the online Snow Geese Conservation Order Permit process on the department's Web site at fw.ky.gov.

(2) A person hunting light geese during the light geese conservation order season shall submit a Snow Geese Conservation Order Permit Survey to the department by April 10.

**Section 9. Special Youth Waterfowl Season.**

(1) ~~For the waterfowl season, [A youth shall only hunt waterfowl and gallinule on] the Saturday before Thanksgiving and the second Saturday in February shall be exclusive to youth hunters.~~

(2) A youth hunter shall be accompanied by an adult;

(3) ~~If hunting, youth hunters shall comply with [obey] the provisions of 301 KAR 2:221 and 301 KAR 2:222[;] and also [except that he or she may] hunt on the applicable additional dates established in this administrative regulation;~~

(4) An adult accompanying a youth who is waterfowl hunting

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shall:

- (a) Remain in a position to take immediate control of the youth's firearm;
- (b) Not hunt ducks, coots, mergansers, and gallinules; and
- (c) Not be required to possess a hunting license or waterfowl permit if he or she is not hunting.

Section 10. A Special Veterans and active Military Personnel Waterfowl Hunting Season.

(1) For the waterfowl season, [A veteran or active military personnel shall only hunt waterfowl and gallinule on] the Sunday before Thanksgiving and the second Sunday in February shall be exclusive to veterans or active military personnel hunters.

(2) If hunting, veteran or active-duty military hunters shall comply with [obey] the provisions of 301 KAR 2:221 and 301 KAR 2:222[,] and also [except that applicable hunters shall only] hunt on the applicable additional dates established in this administrative regulation.

(3) While in the field during the special veterans and active military personnel waterfowl hunting season, waterfowl hunters shall either have a state hunting license showing veteran status or carry proof of their veteran or active military personnel status. Acceptable forms of proof shall be a current military identification card, a VA-issued identification card, state issued driver's license or identification card with a veteran's designation, or an original or copy of a DD Form 214, DD Form 215, NGB Form 22, NGB Form 22-a, or DD Form 256.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Snow Geese Conservation Order Permit", April 2022; and
- (b) "Snow Geese Conservation Order Permit Survey", April 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or online at:

(a) <https://app.fw.ky.gov/snowgoosesurvey/snowgoose.aspx> for the "Snow Geese Conservation Permit"; and

(b) <https://app.fw.ky.gov/snowgoosesurvey/snowgoosesurvey.aspx> for the "Snow Geese Conservation Order Permit Survey."

RICH STORM, Commissioner

APPROVED BY AGENCY: November 15, 2022

FILED WITH LRC: November 15, 2022 at 11:43 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 31, 2023, at 11:00 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 January 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email [fwpubliccomments@ky.gov](mailto: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 waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R.

Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2023-2024 waterfowl hunting seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land.

(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 hunting season and bag limit requirements and providing reasonable hunting opportunity consistent with state, national, and international management 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 amendment will change the closing date for falconry waterfowl season to the last Sunday in February for all species of waterfowl. It removes reference to conservation order light geese seasons as federal rules no longer differentiate between falconry and regular hunting methods during the conservation order. It also corrects a grammatical edit which could be taken to make it illegal for veterans to hunt waterfowl during regular seasons.

(b) The necessity of the amendment to this administrative regulation: Waterfowl seasons and limits are set on an annual basis following the establishment of federal frameworks by the USFWS each year. It is the Department's responsibility to allow quality hunting opportunity within these federal frameworks. The changes in season length maximizes the number of hunting days allowed by federal frameworks.

(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: There are approximately 100 falconry waterfowl hunters in Kentucky that may be affected by this administrative regulation and the number of veteran and active duty military waterfowl hunters is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting bag limits.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with Federal law.

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

(a) Initially: There will not be an additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish fund.

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

regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

administrative bodies. [KRS 13A.010(13)] These amendments will not have a "Major Economic Impact".

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

(2) State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

(3) Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's migratory bird hunters. Restricting bag limits provides the state the ability to protect populations that may be of concern on the state level but not on a national scale. The greatest concentrations of migratory birds and the greatest hunting pressure often occur on public lands managed by the Department. The Department imposes more restrictive regulations on these lands in effort to meet migratory bird management objectives while still providing quality hunting opportunity.

**TOURISM, ARTS AND HERITAGE CABINET**  
**Department of Fish and Wildlife Resources**  
**(Amendment)**

**301 KAR 2:228. Sandhill crane hunting requirements.**

RELATES TO: KRS 150.010, 150.305, 150.340, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.170(3), (4), 150.330, 150.603(2), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.170(3)(4) authorizes license exemptions for people under twelve (12) and resident owners of farmlands, including their spouses and dependent children who hunt on those farmlands. KRS 150.330 authorizes take and possession of migratory birds when in compliance with the provisions of the Federal Migratory Bird Treaty Act and authorizes hunting of migratory birds with the appropriate permits. KRS 150.603(2) requires a person sixteen (16) years or older to possess a hunting license and a Kentucky migratory game bird and waterfowl permit in order to hunt migratory birds. This administrative regulation establishes the requirements for taking sandhill cranes within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions.

(1) "Crane" means a sandhill crane.

(2) "Wildlife Management Area" or "WMA" means a tract of land that:

(a) Is controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) Has "Wildlife Management Area" or "WMA" as part of its



official name.

Section 2. Applications and Permits.

(1) To apply for a crane hunting permit a person shall:

(a) Complete the online application process, not more than once per calendar year, on the department's Web site at fw.ky.gov between September 1 and September 30;

(b) Possess a valid hunting license by September 30, unless the applicant is license exempt as established in KRS 150.170; and

(c) Pay a three (3) dollar application fee.

(2) The department shall:

(a) Rank each applicant with a random electronic draw from all qualified applicants;

(b) Issue a crane hunting permit and one (1) printable crane tag to all ranked applicants up to the maximum number of crane tags allowed by the United States Fish and Wildlife Service for that season, as established in 50 C.F.R. 20, except that if the number of applicants:

1. Exceeds the maximum number of tags, then those applicants ranking higher than the maximum will not receive a permit; and

2. Is less than the maximum number of tags available, then the additional tags will be assigned to applicants in the order of ranking until all tags are assigned;

~~(c) Issue each permit via the department's Web site at fw.ky.gov;~~

~~(d) Issue the appropriate number of metal leg tags to each permit recipient prior to the crane hunting season; and~~

~~(e)] Disqualify an applicant who does not possess a hunting license prior to September 30, unless the applicant is license exempt as established in KRS 150.170.~~

(3) A person who does not have access to the internet may call the department's toll-free number at 1-800-858-1549 for assistance in applying.

(4) A crane hunting permit shall not be transferable.

(5) A person selected to receive a permit shall pass a bird identification test provided by the department prior to receiving a permit.

(6) A permit recipient shall complete and submit a post-season crane hunting survey on the department's website no later than fourteen (14) days after the close of the season.

(7) A person who fails to complete the post-season survey by the date specified in subsection (6) of this section shall be ineligible to be drawn the following year.

Section 3. Season, Bag Limits, and Hunting Requirements.

(1) Unless license exempt as established in KRS 150.170, a person shall not hunt a crane without a:

(a) Valid Kentucky hunting license;

(b) Valid Kentucky crane hunting permit; and

(c) Kentucky migratory game bird and waterfowl permit.

(2) A permit recipient shall possess a printed or electronic copy of a valid crane hunting permit, available via the customer's profile on the department's Web site at <https://app.fw.ky.gov/Myprofile/default.aspx> or mobile application:

(a) While crane hunting; and

(b) When in possession of a harvested crane.

(3) The season shall be from December 7 through January 31.

(4) The bag limit shall be:

(a) Two (2) cranes daily for permit holders with two (2) or more crane tags; or

(b) One (1) crane for permit holders with one (1) tag.

(5) A person shall only hunt cranes from sunrise to sunset.

(6) A person who has harvested a crane shall attach a department-issued printable[metal] tag to the leg of the crane prior to moving the carcass. The department-issued tags shall be available for print via the customer's profile on the department's Web site at <https://app.fw.ky.gov/Myprofile/default.aspx> or mobile application.

(7) A person shall check a harvested crane on the day the crane is harvested by:

(a) Calling 800-245-4263 and providing the information requested by the automated check-in system; or

(b) Completing the check-in process on the department's Web

site at fw.ky.gov; and

(c) Recording and retaining the check-in confirmation number for the rest of the current season.

(8) A hunter who has harvested a crane shall possess the check-in confirmation number when in the field during the current season.

(9) A person shall not knowingly falsify the harvest of a crane on the automated check-in system.

(10) A person hunting cranes shall not use or possess a shotgun shell containing:

(a) Lead shot; or

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting.

(11) A person shall not use the following to take cranes:

(a) A shotgun larger than ten (10) gauge;

(b) A shotgun shell larger than three and one-half (3 1/2) inches; or

(c) A shotgun shell with shot larger than size "T".

(12) A person hunting a crane on a Wildlife Management Area shall comply with the applicable WMA waterfowl hunting requirements, as established in 301 KAR 2:222, except that on:

(a) Barren River WMA crane hunting shall be prohibited within 100 yards of the normal summer pool level of 552 feet in the embayments established in subparagraphs 1. through 3. of this paragraph:

1. Beaver Creek;

2. Peters Creek; and

3. Skaggs Creek; and

(b) Green River Lake, crane hunting shall be prohibited within 100 yards of the normal summer pool level of 675 feet, east of the Hwy 551 bridge in the embayments established in subparagraphs 1. and 2. of this paragraph:

1. Green River to the Snake Creek Boat Ramp; and

2. Casey Creek to the Hwy 76 bridge.

RICH STORM, Commissioner

APPROVED BY AGENCY: November 15, 2022 at 11:43 a.m.

FILED WITH LRC: November 15, 2022

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 31, 2023, 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 January 31, 2023. 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, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes sandhill crane seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2023-2024 and beyond sandhill crane hunting requirements on private and public lands in accordance with the USFWS and Department management objectives.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department

to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing sandhill crane hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national and international management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will remove the requirement for leg tags on harvested cranes to be metal.

(b) The necessity of the amendment to this administrative regulation: This amendment will simplify the harvest of cranes for hunters. Many lost their tags or waited too late to request their tags. This will allow the department to issue paper tags that can be downloaded and printed.

(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: In most seasons, there are between 500-600 applicants for the crane quota hunt.

(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: Applicants will now have to cut tags off the permit that they print and attach those paper tags to harvested birds versus Department issued metal tags. Permit holder were previously required to print their permit, so this represents no new cost or effort by the permit holder.

(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 in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change reduces the chance an applicant wants to go hunting but can't because they do not have the required metal tags.

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

(a) Initially: This administrative regulation change will result in the savings of \$2000 in costs for tags, mailing supplies and mailing.

(b) On a continuing basis: There will be an continuing cost savings of \$2000 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees will be established directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not applied since the same requirements and limits apply to all crane hunters.

## FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.170(3),(4), 150.330, KRS 150.603(2), and 50 C.F.R. Parts 20 and 21.

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

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

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

(c) How much will it cost to administer this program for the first year? No new costs will be incurred in the administration of this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred in the administration of this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

## FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

(2) State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

(3) Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of

days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect roosting areas important to wintering sandhill cranes in Kentucky. Cranes are very susceptible to disturbance in roosting areas and closure maintains the use of these areas by cranes. The Department imposes more restrictive hunting regulations on sandhill cranes to meet management objectives while still providing quality hunting opportunity.

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amendment)**

**501 KAR 6:040. Kentucky State Penitentiary.**

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Penitentiary.

Section 1. Incorporation by Reference. (1) Kentucky State Penitentiary policies and procedures, November 14, 2022~~[May 11, 2017]~~, are incorporated by reference. Kentucky State Penitentiary policies and procedures include:

|                           |   |
|---------------------------|---|
| KSP 01-02-01              | Public Information and Media Communications (Amended 11/14/22 <del>[11/8/2005]</del> )  |
| KSP 02-01-02              | Inmate Canteen (Amended 11/14/22 <del>[3/14/17]</del> )   |
| KSP 02-12-02              | Inmate Funds (Amended 11/14/22 <del>[11/14/12]</del> )  |
| <del>[KSP 03-01-02]</del> | <del>Tobacco-Free (Amended 5/11/17)]</del>  |
| KSP 06-01-02              | Inmate File [Master Records] (Amended 11/14/22 <del>[11/14/12]</del> )  |
| KSP 10-02-01              | <u>Restrictive Housing</u> [Special Management] Unit Operating Procedures, Living Conditions and Classification (Amended 11/14/22 <del>[11/14/12]</del> ) |
| KSP 10-02-05              | <u>Special Security Unit</u> [Death Row] (Amended 11/14/22 <del>[5/11/17]</del> )   |
| <del>[KSP 10-04-04]</del> | <del>Special Needs Inmates (Amended 11/14/12)]</del>  |
| KSP 13-01-01              | Pharmacy Procedures (Amended 11/14/22 <del>[3/14/17]</del> )  |
| KSP 13-02-01              | Health Services (Amended 11/14/22 <del>[11/8/2005]</del> )  |
| KSP 13-02-03              | Continuity of Care (Amended 11/14/22 <del>[5/11/17]</del> )   |
| KSP 13-02-04              | Levels of Care and Staff Training (Amended 11/14/22 <del>[11/8/2005]</del> )  |
| KSP 13-02-05              | Consultations (Amended 11/14/22 <del>[9/14/2005]</del> )  |
| KSP 13-02-08              | Health Records (Amended 11/14/22 <del>[12/12/06]</del> )  |
| KSP 13-02-09              | Psychiatric and Psychological Services (Amended 11/14/22 <del>[3/14/17]</del> )   |
| KSP 13-02-13              | Optometric Services (Amended 11/14/22 <del>[1/7/13]</del> )   |

|                           |   |
|---------------------------|---|
| KSP 13-06-02              | Informed Consent (Amended 11/14/22 <del>[11/8/2005]</del> )   |
| KSP 14-03-01              | Marriage of Inmates (Amended 5/11/17)   |
| KSP 14-04-01              | Legal Services (Amended 11/14/22 <del>[3/14/17]</del> )   |
| KSP 14-06-01              | Inmate Grievance Procedure (Amended 11/14/22 <del>[3/14/17]</del> )   |
| KSP 15-06-01              | Adjustment Procedures (Amended 11/14/22 <del>[5/11/17]</del> )  |
| KSP 16-01-01              | Visiting Program (Amended 11/14/22 <del>[3/14/17]</del> )   |
| KSP 16-02-01              | Inmate Correspondence (Amended 11/14/22 <del>[5/11/17]</del> )  |
| KSP 16-03-02              | Inmate Telephone Access (Amended 11/14/22 <del>[3/14/17]</del> )  |
| KSP 16-04-01              | Inmate Packages (Amended 11/14/22 <del>[3/14/17]</del> )  |
| KSP 17-01-01              | Inmate Personal Property (Amended 11/14/22 <del>[9/14/2005]</del> )   |
| KSP 17-01-02              | Disposition of Unauthorized Property (Amended 11/14/22 <del>[11/8/2005]</del> )                               |
| KSP 17-01-03              | Procedures for Providing Clothing, Linens, and Other Personal Items (Amended 11/14/22 <del>[3/14/17]</del> )  |
| KSP 17-01-04              | Property Room, Clothing Storage and Property Inventory Control (Amended 11/14/22 <del>[11/8/2005]</del> )     |
| <u>KSP 17-01-06</u>       | <u>Missing or Stolen Inmate Personal Property</u> (Added 11/14/22)  |
| KSP 17-02-01              | Inmate Reception and Orientation (Amended 11/14/22 <del>[11/14/12]</del> )                                    |
| KSP 18-01-01              | Classification Committee (Amended 11/14/22 <del>[5/11/17]</del> )   |
| <del>[KSP 18-01-02]</del> | <del>Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) (Added 5/11/17)]</del>                          |
| KSP 18-01-05              | Meritorious Housing Unit (Amended 11/14/22 <del>[Added 5/11/17]</del> )                                       |
| KSP 18-06-01              | Classification Document and Case Planning (Amended 11/14/22 <del>[3/14/17]</del> )                            |
| <del>[KSP 18-10-04]</del> | <del>Parole Progress Report (Amended 3/14/17)]</del>  |
| KSP 18-15-01              | Protective Custody Unit (Amended 11/14/22 <del>[3/14/17]</del> )  |
| KSP 19-04-01              | Inmate Work Programs and Safety Inspections of Inmate Work Locations (Amended 11/14/22 <del>[3/14/17]</del> ) |
| KSP 19-04-02              | Unit Classification Committee and Inmate Work Assignments (Amended 11/14/22 <del>[3/14/17]</del> )            |
| KSP 19-05-01              | Correctional Industries (Amended 11/14/22 <del>[5/11/17]</del> )  |
| KSP 20-04-01              | Educational <u>Courses</u> [Programs] (Amended 11/14/22 <del>[5/11/17]</del> )                                |
| KSP 22-04-01              | Arts and Crafts Program (Amended 11/14/22 <del>[12/12/06]</del> )   |
| KSP 23-01-03              | Religious Services (Amended 11/14/22 <del>[3/14/17]</del> )   |
| KSP 25-01-01              | Release Preparation Program (Amended 11/14/22 <del>[3/14/17]</del> )  |
| KSP 25-01-02              | Inmate Release Procedure (Amended 11/14/22 <del>[3/14/17]</del> )   |
| KSP 25-10-01              | Discharge of Inmates by Shock Probation (Amended 11/14/22 <del>[11/14/12]</del> )                             |

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, Department of Corrections, 275 E. Main Street, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site at <https://corrections.ky.gov/About/Pages/lrcfilings.aspx>.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: November 1, 2022

FILED WITH LRC: November 14, 2022 at 3:50 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 24, 2023 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6866, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Kentucky State Penitentiary (KSP).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 196.035 and 197.020 and meets American Correctional Association (ACA) policy requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement practices or procedures to ensure the safe and efficient operation of the institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to KSP employees and inmates concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the institution into compliance with ACA expected practices and updates the procedures for the institution.

(b) The necessity of the amendment to this administrative regulation: The amendment meets the requirements of KRS 196.035 and 197.020 and updates practices for the institution in part to maintain accreditation with the ACA.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the institution.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 286 employees of the correctional institution, 851 inmates, and all visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will

have to follow the changes made in the policies and procedures. They will have to change their actions to comply with the operational changes made by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase in cost is not anticipated from the changes in operations made in the amendment. An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: An exact cost of implementation is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of implementation is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Corrections budgeted funds for the institution for the biennium.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.870-61.884, 196.035, 197.020, 197.025, 197.170, 439.510, 532.120

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the institution operates but does not increase costs from what was previously budgeted.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the institution operates but does not increase costs from what was previously budgeted.

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 are not anticipated.

(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? The regulation impacts how the institution operates, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the institution operates, but does not increase costs from what is budgeted for the biennium.

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)] A major economic impact is not anticipated.

**EDUCATION AND LABOR CABINET  
Department of Workplace Standards  
(Amendment)**

**803 KAR 1:081. Board, lodging, gratuities, and other allowances.**

RELATES TO: KRS 337.275, 337.285, 29 C.F.R. 531.31 – 531.58

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to promulgate administrative regulations permitting allowances as part of the wage rates applicable under the statutes for board, lodging, gratuities, and other facilities. This administrative regulation establishes what allowances may be credited toward the payment of wages as required KRS Chapter 337.

**Section 1. Definitions.**

(1) "Tip" means a sum presented by a customer as a gift or gratuity in recognition of some service performed. A tip is distinguished from a payment of a charge made for the service.

(2) "Tipped employees" is defined by KRS 337.010(2)(d).

(3) "Wages" is defined by KRS 337.010(1)(c).

**Section 2. Board, Lodging, and Other Facilities.**

(1) In accordance with KRS 337.275 and 337.285, an employer may be permitted to include as wages paid to an employee, the reasonable cost of providing an employee with board, lodging, or other facilities if they are customarily provided by the employer to employees.

(a) Reasonable cost shall not include a profit to the employer or to any affiliated person.

(b) This section shall not prohibit payment of wages in facilities provided either as additions to a stipulated wage or as items for which deductions from the stipulated wage will be made. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only if customarily provided to the employee. Not only shall the employee receive the benefits of the facility for which the employee is charged, but acceptance of the facility shall be voluntary and uncoerced.

(2) The criteria for board, lodging, or other facilities being customarily provided as applicable to KRS 337.275 and 337.285

shall be as established in 29 C.F.R. 531.31.

(3) Other facilities.

(a) The criteria for "other facilities", as applicable to KRS 337.275 and 337.285, shall be as established in 29 C.F.R. 531.32(a).

(b) The cost of providing facilities that are primarily for the benefit or convenience of the employer shall not be recognized as reasonable and shall not be included in computing wages. Facilities primarily for the benefit or convenience of the employer shall include, for example:

1. Tools of the trade and other materials and services incidental to carrying on the employer's business;

2. The cost of any construction by or for the employer; and

3. The cost of uniforms and of their laundering, if the nature of the business requires the employees to wear a uniform.

(4) The prohibition of kickbacks, as applicable to KRS 337.275 and 337.285, shall be as established in 29 C.F.R. 531.35.

(5) The criteria for payment if additions or deductions are involved in nonovertime workweeks, as applicable to KRS 337.375 and 337.285, shall be as established in 29 C.F.R. 531.36(a).

(6) Overtime workweeks.

(a) Pursuant to KRS 337.285, an employee shall receive compensation for overtime hours at a rate of not less than one and one-half (1 1/2) times the rate at which the employee is employed. If overtime is worked by an employee who receives the whole or part of his or her wage in facilities and it becomes necessary to determine the portion of wages represented by facilities, all of the facilities shall be measured by the requirements of this administrative regulation.

(b) Deductions may be made on the same basis in an overtime workweek as in non-overtime workweeks, if their purpose and effect are not to evade the overtime requirements of KRS 337.285.

1. The amount deducted shall not exceed the amount that could be deducted if the employee had only worked the maximum number of straight-time hours during the workweek.

2. Deductions in excess of this amount for the items shall be prohibited in overtime workweeks as well as in non-overtime workweeks.

3. There shall not be a limit on the amount that may be deducted for board, lodging, or other facilities in overtime workweeks if these deductions are made only for the reasonable cost of the items provided.

(c) If deductions are made from the stipulated wage of an employee, the regular rate of pay shall be based on the stipulated wage before any deductions have been made. If board, lodging, or other facilities are customarily provided as addition to a cash wage, the reasonable cost of the facilities to the employer shall be considered as part of the employee's regular rate of pay.

**Section 3. Payment Made to Person Other than Employee.**

(1) Amounts deducted for taxes. Taxes assessed against the employee and collected by the employer and forwarded to the appropriate governmental agency shall be included as wages. This principle shall be applicable to the employee's share of Social Security, as well as other federal, state, or local taxes. A deduction shall not be made for any tax or share of a tax that the law requires to be borne by the employer.

(2) The criteria for payments to third persons pursuant to a court order, as applicable to KRS 337.275 and 337.285, shall be as established in 29 C.F.R. 531.39(a).

(3) The criteria for payments to an employee's assignee, as applicable to KRS 337.275 and 337.285, shall be as established in 29 C.F.R. 531.40.

**Section 4. Payment of Wages to Tipped Employees.**

(1) Conditions for taking tip credits in making wage payments.

(a) The wage credit permitted on account of tips under KRS 337.275(2) shall be taken only with respect to wage payments made under KRS Chapter 337 to those employees whose occupations in the workweeks for which the payments are made are those of "tipped employees."

(b) To determine if a tip credit may be taken in paying wages to a particular employee, it is necessary to know:

1. What payments constitute tips;

2. If the employee receives more than thirty (30) dollars a month in payments in the occupation in which the employee is engaged; and

3. If in the occupation the employee receives these payments in that amount customarily and regularly.

(2) General characteristics of tips.

(a) To qualify as a tip, the customer shall determine:

1. If a tip is given;

2. The amount of the tip; and

3. Who shall be the recipient of the tip, except where a tip pool is used.

(b) Only tips actually received by an employee as money ~~[belonging to the employee, which are used as the employee chooses free of any control by the employer,]~~ shall be counted in determining if the employee is a tipped employee within the meaning of the KRS Chapter 337 and in applying the provisions of KRS 337.275(2).

(3) The following shall not be considered tips:

(a) Criteria established in 29 C.F.R. 531.55(a);

(b) If the employment agreement includes that amounts presented by customers as tips belong to the employer and shall be credited or turned over to the employer, the employee is in effect collecting for his or her employer additional income from the operations of the employer's establishment. Even though the amounts are not collected by imposition of any compulsory charge on the customer, the employee is not receiving tips within the meaning of KRS Chapter 337.

(4) More than thirty (30) dollars a month in tips. If an employee employed is not a tipped employee, the employee shall receive the full compensation required by KRS Chapter 337 in cash or allowable facilities without any credit for tips received.

(a) Pursuant to KRS 337.010(2)(d), tipped employee does not require that the calendar month be used in determining if more than thirty (30) dollars a month is customarily and regularly received as tips. A recurring monthly period beginning on the same day of the calendar month may be used.

(b) The fact that an employee is part of a group that has a record of receiving more than thirty (30) dollars a month in tips shall not qualify the employee as a tipped employee.

(5) The criteria for "customarily and regularly", as applicable to KRS 337.010(2)(d), shall be as established in 29 C.F.R. 531.57.

(6) Criteria for the exception of initial and terminal months of employment from the requirement that a tipped employee receive more than thirty (30) dollars a month in tips shall be as established in 29 C.F.R. 531.58.

(7) The tip wage credit. In determining compliance with the wage payment requirements of KRS 337.275(2), the amount paid to a tipped employee by an employer shall be deemed to be increased on account of tips by an amount equal to the formula established in KRS 337.275(2) if the employer satisfies all the requirements in the workweek for which the wage payment is made.

(a) This credit shall be in addition to any credit for board, lodging, or other facilities that may be allowable under this administrative regulation. The actual amount shall be left by KRS 337.275(2) to determination by the employer on the basis of the employer's information taken from his or her records concerning the tipping practices and receipts in the establishment. In order for an employer to take the maximum credit allowed by this special provision, the tipped employee shall receive the maximum in ~~[actual]~~ tips.

(b) If the employee is receiving less than the amount credited, the employer shall be required to pay the balance so that the employee receives at least the minimum wage with the combination of wages and tips.

1. The tip credit shall be taken only for hours worked by the employee in an occupation in which the employee qualifies as a tipped employee.

2. An employer shall not use any part of an employee's tips to pay the minimum wage to any employee; but may only apply credit toward the payment of the minimum wage to the employee who actually received the tip.

3. Under employment agreements requiring tips to be turned over or credited to the employer to be treated as part of the employer's gross receipts, the employer shall pay the employee the

full minimum hourly wage.

(8) Overtime payments. If overtime is worked by a tipped employee who is subject to the overtime pay provisions of KRS 337.285, the regular rate of pay shall be determined by dividing the employee's total remuneration for employment in any workweek by the total number of hours actually worked in that workweek for which the compensation was paid. A tipped employee's regular rate of pay includes the amount of tip credit taken by the employer (not in excess of the formula established in KRS 337.275(2)), the reasonable cost of any facilities provided the employee by the employer, and the cash wages including commissions and bonuses paid by the employer. Any tips received by the employee in excess of the tip credit need not be included in the regular rate. The tips shall not constitute payments made by the employer to the employee as remuneration for employment.

(9) Tip pooling. Pursuant to KRS 337.275(2), employees may enter into an agreement to divide tips among themselves. If employees enter into this type of agreement, the amounts retained by the employees shall be considered tips of the individuals who retain them. ~~[If an employer requires employees to pool tips, credit shall not be taken and the employer shall pay the employee the full minimum wage.]~~

Section 5. Records. If an employer uses the reasonable cost of providing an employee with board, lodging, or other facilities in meeting the requirements of KRS 337.275 and 337.285, it shall be necessary to keep the following records, in addition to those required by KRS 337.320:

(1) The facility being provided by the employer to the employee; and

(2) The cost being charged for the facility by the employer.

KIMBERLEE C. PERRY, Commissioner

JAMIE LINK, Secretary

APPROVED BY AGENCY: October 31, 2022

FILED WITH LRC: November 2, 2022 at 9:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2023, at 10:00 a.m. (EDT) at the Kentucky Education and Labor Cabinet, 500 Mero Street, Frankfort, Kentucky 40601 in the first-floor hearing room. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 January 31, 2023. 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: Duane Hammons, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-1507, fax (502) 564-5484, email Kenneth.hammons@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Duane Hammons

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clarifies what allowances may be credited toward the payment of wages as required in KRS 337.275 and 337.285.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify what allowances may be credited toward the payment of wages as required in the statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations permitting allowances as part of the wages rate applicable under the statutes for board lodging, gratuities, and other facilities.

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

regulation provides guidance on what allowances may be credited toward payment of wages to ensure that employees receive proper wages.

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

(a) How this amendment will change this existing administrative regulation: This regulation will clarify when and how a tip-pool may be used.

(b) The necessity of the amendment to this administrative regulation: With the enactment of 22 R.S. SB 180 an amendment to the regulation was necessary due to a change in the law with respect to tip pooling.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations permitting allowances as part of the wages rate applicable under the statutes for board, lodging, gratuities, and other facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure regulatory clarity with respect to when tip-pooling is allowed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as their employees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Organizations that have tipped employees will now be allowed to use a mandatory tip pool, should

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved clarity on when a tip pool is allowed.

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

(a) Initially: This administrative regulation is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers and employees covered by KRS Chapter 337 are treated equally.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Most state and local governmental entities are subject to KRS Chapter 337.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295.

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

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

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

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

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

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

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanations: This administrative regulation does not impose any additional requirements or expenditures.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no additional cost for entities covered by 803 KAR 1:081 with respect to this amendment as the amendment simply allows for mandatory tip pooling.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no additional cost to the entities covered by 803 KAR 1:081. This amendment does not impose any additional expenditures to employers.

(c) How much will it cost the regulated entities for the first year? There is no additional cost for regulated entities to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

(d) How much will it cost the regulated entities for subsequent years? There is no additional cost to the regulated entities to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

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

Cost Savings (+/-): See above.

Expenditures (+/-): No increase.

Other Explanation:

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

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Office of Inspector General

##### Division of Audits and Investigations

##### (Amendment)

#### 902 KAR 55:110. Monitoring system for prescription controlled substances.

RELATES TO: KRS 218A.010(11), 218A.202, 218A.240, 42 C.F.R. Part 2

STATUTORY AUTHORITY: KRS 194A.050, 218A.202(1), 118A.010(17), 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202(1) directs the Cabinet for Health and Family Services to establish and maintain an electronic system for monitoring Schedule

II, III, IV, and V controlled substances. KRS 218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A. This administrative regulation establishes criteria for reporting prescription data, establishes procedures to correct errors, and allows for disclosure of data[providing reports] to authorized persons[, and a waiver for a dispenser who does not have an automated recordkeeping system].

Section 1. Definitions. (1) "Branch" means the Drug Enforcement and Professional Practices Branch in the Division of Audits and Investigations, Office of Inspector General, Cabinet for Health and Family Services.

(2) "Cabinet personnel" means an individual who:

(a) 1. Is directly employed by the Cabinet for Health and Family Services; or

2. Is employed by an agent or contractor of the cabinet;

(b) Has undergone KASPER training; and

(c) Has been approved to use the KASPER system.

(3) "Central registry" is an entity defined by 908 KAR 1:374, Section 1(3) that may report information to KASPER on behalf of a narcotic treatment program.

(4) "Dispenser" is defined by KRS 218A.010(12)[218A.040(14)], and shall:

(a) Include a dispenser who has a DEA (Drug Enforcement Administration) number or is a pharmacist who owns or is employed by a facility that operates a pharmacy that has a DEA number; ~~and~~

(b) Include a narcotic treatment program licensed pursuant to 908 KAR 1:374, and

(c) Not include an individual licensed to practice veterinary medicine under KRS Chapter 321.

(5)[(4)] "Health facility" is defined by KRS 216B.015(13).

(6)[(5)] "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(7)[(6)] "Patient identifier" means a patient's:

(a) Full name;

(b) Address, including zip code;

(c) Date of birth; and

(d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(8)[(7)] "Practitioner" is defined by KRS 218A.010(40)[218A.040(39)].

(9)[(8)] "Report" means a compilation of data concerning a patient, dispenser, practitioner, or controlled substance.

(10)[(9)] "Suspected drug overdose" means an acute condition that:

(a) May include physical illness, coma, mania, or hysteria that is the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined; and

(b) Relates to injury or poisoning by ~~or other adverse effect of~~ any substance corresponding to the following International Classification of Disease (ICD) version 10 (ICD-10) codes, or equivalent codes in the most recent version of the International Statistical Classification of Diseases and Related Health Problems:

1. T40;

2. T42; or

3. T43.

Section 2. Data Reporting. (1) A dispenser or a health facility that has a DEA number shall report all dispensed Schedule II, III, IV, or V controlled substances, except:

(a) During the circumstances specified in KRS 218A.202(3)(a) through (c); or;

(b) If the controlled substance is dispensed by a narcotic treatment program for use to treat substance use disorder and the patient has not provided written consent that meets the requirements of 42 C.F.R. 2.31.

(2) A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

(a) Patient identifier;

(b) National drug code of the drug dispensed;

(c) Metric quantity of the drug dispensed;

(d) Date of dispensing;

(e) Estimated days the supply of dispensed medication will last;

(f) Drug Enforcement Administration registration number of the prescriber;

(g) Prescription number or dispensing identification number assigned by the dispenser or health facility; and

(h) The Drug Enforcement Administration registration number of the dispenser.

(3) The data identified in subsection (2) of this section shall be transmitted no later than close of business on the business day immediately following the dispensing unless the cabinet grants an extension as provided in subsection (4) or (5) of this section.

(4)(a) An extension may be granted if the dispenser, health facility, or central registry:

1. ~~[The dispenser]~~ Suffers a mechanical or electronic failure; or

2. ~~[The dispenser]~~ Cannot meet the deadline established by subsection (3) of this section because of reasons beyond his or her control.

(b) To request an extension, a written request shall: ~~[dispenser shall apply to the branch in writing for an extension]~~

1. Be submitted to the branch:

a. [listed in paragraph (a) of this subsection] Within twenty-four (24) hours of discovery of the circumstances necessitating the request; or

b. If state offices are closed, on the next day that ~~[date]~~ state offices are open for business ~~]~~ following ~~[the]~~ discovery of the circumstances necessitating the request; and

2. Provide a ~~[An application for an extension shall state the]~~ justification for the extension, including the length ~~[and the period]~~ of time ~~[for which]~~ the extension is necessary.

(5) An extension shall be granted ~~[to a dispenser]~~ if the cabinet or its agent is unable to receive electronic reports transmitted by the dispenser.

(6) Except as provided in subsection (8) of this section, the data shall be transmitted by:

(a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;

(b) Secure File Transfer Protocol;

(c) https protocol; or

(d) Secure Virtual Private Network connection.

(7) The data shall be transmitted in the telecommunications format for controlled substances established by the most recent version of the Implementation Guide, ASAP Standard for Prescription Monitoring Programs, developed by the American Society for Automation in Pharmacy, ~~[Version 4.2,]~~ or a comparable format approved by the branch.

(8) A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the telecommunications format for controlled substances established by the Implementation Guide, ASAP Standard for Prescription Monitoring Programs shall report the data identified in subsection (2) of this section using an Internet accessible web portal designated by the cabinet.

(9) To meet the reporting requirement of KRS 218A.202(4), a hospital shall report to the cabinet all positive toxicology screens ordered by the hospital's emergency department to evaluate a patient's suspected drug overdose via the Kentucky Health Information Exchange.

Section 3. Compliance. A dispenser may presume that the patient identification information ~~[established in Section 5 of this administrative regulation and]~~ provided by the patient or the patient's agent in accordance with Section 5 of this administrative regulation is correct.

Section 4. Request for Report. (1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(2) A request for a KASPER patient report shall be made electronically at [www.chfs.ky.gov/KASPER](http://www.chfs.ky.gov/KASPER).



(3)(a) A request for a KASPER provider report made by a law enforcement or prosecutorial official~~[peace officer]~~ authorized to receive data under KRS 218A.202, or a designated representative of a board responsible for the licensure, regulation, or discipline of prescribing practitioners shall be made by written application on the KASPER Report Request for Law Enforcement and Licensure Boards, Form DCB-20L.

(b) If the request made by a law enforcement or prosecutorial official authorized to receive data under KRS 218A.202 is for KASPER data on dispensing of controlled substances by a narcotic treatment program to treat substance use disorder, a report shall not be disclosed to the official unless there is a valid court order requiring the release of the information and all other applicable provisions of 42 C.F.R. Subpart E are met.

(4) A medical examiner engaged in a death investigation pursuant to KRS 72.026 may query KASPER for a report on the decedent.

#### Section 5. Patient Identification Number.

(1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dispenser the patient's Social Security number for purposes of the dispenser's mandatory reporting to KASPER.

(2) If a patient is an adult who does not have a Social Security number, the patient's driver's license number shall be disclosed.

(3) If a patient is an adult who has not been assigned a Social Security number or a driver's license number, the number 000-00-0000 shall be used in the Social Security field.

(4) If a patient is a child who does not have a Social Security number or a driver's license number, the number "000-00-0000" shall be used in the Social Security field.

(5) If a patient is an animal, the number "000-00-0000" shall be used in the Social Security number field.

Section 6. KASPER Data and Trend Reports. Cabinet personnel shall have authorized access to the data obtained from the KASPER system and trend reports in accordance with KRS 218A.240(7)(a).

Section 7. Data Retention. Data shall be maintained in KASPER according to the Office of Inspector General's retention schedule on file with the State Libraries, Archives and Records Commission.

Section 8. Error Resolution. (1) A patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic to whom a report has been disclosed under KRS 218A.202(9) or this administrative regulation may request that information contained in KASPER be corrected if the patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic believes that any information is inaccurate. The patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic shall:

(a) Contact the dispenser who reported the information required by Section 2(2) of this administrative regulation; and

(b) Request that the dispenser correct the information.

(2) If, upon receipt of a request from a patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic pursuant to subsection (1) of this section, the dispenser confirms that the information was reported in error, the dispenser shall:

(a) Transmit corrected information to update the KASPER database within seven (7) calendar days of the request for the correction; and

(b) Notify the patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic that the corrected information has been transmitted.

(3) If a dispenser identifies a KASPER system generated error, the dispenser shall notify the branch. Upon verification of the error, the branch shall:

(a) Correct the information in the KASPER database; and

(b) Notify the patient, patient's representative, practitioner, pharmacist, health facility, private practitioner's office or clinic within five (5) working days of the correction.

Section 9. Referrals to Licensing Boards. If the cabinet becomes aware that a prescriber or dispenser has failed to comply with the reporting requirements of KRS 218A.202 and this administrative regulation, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser.

#### Section 10. Disclosure of Data or Report.

(1) The cabinet shall only disclose data to:

(a) The persons and entities authorized to receive that data under KRS 218A.202(7); and

(b) The persons and entities authorized to receive data pursuant to 42 C.F.R. Part 2, Subparts C, D, and E if the data to be disclosed includes information on controlled substances dispensed by a narcotic treatment program for use to treat substance use disorder.

(2) As a condition precedent to the disclosure of data or a report pursuant to KRS 218A.202(7)(f), a hospital or long-term care facility shall maintain, and provide upon request by the cabinet, a copy of the hospital or long-term care facility's policy for the management of KASPER data and reports, which:

(a) Describes the hospital or long-term care facility's internal procedures for educating the designated employee or employees on the:

1. Proper use of the KASPER system;

2. Prohibition on the improper use or intentional disclosure of KASPER data to unauthorized individuals; and

3. Sanctions imposed for the improper use or intentional disclosure of KASPER data to unauthorized individuals, including criminal misdemeanor offenses; and

(b) Describes the hospital or long-term care facility's internal procedures for auditing the account, including:

1. The manner in which an employee is added to or removed from access to the account if the employee ends employment or is no longer designated to query KASPER; and

2. The actions taken if a designated employee with access to the employer's KASPER account intentionally misuses his or her privileges to KASPER data or a report, which shall include a report of the incident to the branch~~[Office of Inspector General]~~.

(3)(a) An individual authorized to receive data under KRS 218A.202(7) shall not provide the data to any other entity except:

1. As provided in KRS 218A.202(9); and

2. For substance use disorder treatment data, as provided in 42 C.F.R. 2.32; or

(b) As provided in paragraph (c)(b) of this subsection.

(c)(b) In addition to the purposes authorized under KRS 218A.202(9)(e), and pursuant to KRS 218A.205(2)(a) and (6), a practitioner or pharmacist who obtains KASPER data or a report under KRS 218A.202(7)(e)1. or who in good faith believes that any person, including a patient, has violated the law in attempting to obtain a prescription for a controlled substance, may report suspected improper or illegal use of a controlled substance to law enforcement or the appropriate licensing board.

(4) A hospital or long-term care facility shall maintain and adhere to the entity's internal policy regarding the management of KASPER data and reports.

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

~~(a) "Implementation Guide, ASAP Standard for Prescription Monitoring Programs", American Society for Automation in Pharmacy, Version 4.2, September 2014; and~~

~~(1)(b) "KASPER Report Request for Law Enforcement and Licensure Boards", Form DCB-20L, October 2022[2017], is hereby incorporated by reference.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Drug Enforcement and Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dai/deppb/Pages/kasper.aspx>.

ADAM MATHER, Inspector General  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 1, 2022

FILED WITH LRC: November 9, 2022 at 2:10 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 23, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this hearing shall notify this agency in writing by January 16, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

**CONTACT PERSON:** Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for reporting prescription data, establishes procedures to correct errors, and allows for disclosure of data to authorized persons.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 218A.202 and 42 C.F.R. Part 2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.202 by establishing criteria for reporting prescription data and establishing related procedures and protections of the data.

(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 Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) and related procedures and data protections.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes needed changes to reflect amendments to the federal law, 42 C.F.R. Part 2, that now allows the reporting of disordered substances dispensed for use to treat substance use disorder (SUD) to state prescription drug monitoring programs. Such reporting was prohibited by federal regulations until July 2020.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect changes in the federal law and the expansion of KASPER to allow reporting of controlled substances used to treat SUDs.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 218A.202 requires the cabinet to establish and maintain an electronic prescription drug monitoring program to monitor dispensing of all controlled substances.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make needed changes to require the reporting of all controlled substances to KASPER, including those dispensed for use in SUD treatment. Including in KASPER all controlled substances a patient is taking will allow providers to give individuals with SUD more comprehensive, safe, and effective treatment, and it will reduce the possibility of diversion, misuse, and abuse of controlled substances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects licensed narcotic treatment programs (NTPs) and the central registry used by narcotic treatment programs to report data. There are thirty-two (32) full-service NTPs and three (3) medication stations in Kentucky and one (1) central registry.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with existing Kentucky law and a change in federal regulations, narcotic treatment programs will be required to report certain data regarding dispensed controlled substances to KASPER. They will be required to comply with the same reporting requirements that are already in place for other dispensers of controlled substances.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): NTPs will have to obtain an electronic device and any software necessary to allow them to transmit the required data.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): NTPs will be able to access and share information regarding their patients' access to controlled substances, giving NTPs and all prescribers a more comprehensive picture of patients' treatment and promoting safer, more effective treatment.

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

(a) Initially: The Office of Inspector General (OIG) is using existing staff to manage the project and consult with developers regarding changes that will be needed for KASPER as well as providing outreach and training to providers. OIG will have to pay developers an estimated \$180,000 to make the necessary system changes.

(b) On a continuing basis: The continuing costs will be minimal as the additional data will be included in the ongoing KASPER work.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee is charge to providers for KASPER use and this amendment does not implement a fee.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated by it.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts all dispensers of controlled substances and the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.202, 218A.250, and 42 C.F.R. Part 2.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be little if any increase in continuing costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? It is expected that most NTPs already have the electronic devices and software capability necessary to transmit the required data, so any costs to regulated entities are expected to be minor.

(d) How much will it cost the regulated entities for subsequent years? It is expected that most NTPs already have the electronic devices and software capability necessary to transmit the required data, so any costs to regulated entities are expected to be minor.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. It is expected that most NTPs already have the electronic devices and software capability necessary to transmit the required data, so any costs to regulated entities are expected to be minor. The cabinet does not believe this amendment will have a major economic impact on the regulated entities.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R Part 2

(2) State compliance standards. KRS 218A.202

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 2

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This

administrative regulation does impose stricter requirements than federal laws or regulations. There is no federal requirement to report the dispensing of any controlled substances to prescription drug monitoring programs. The reporting requirement is in state law, KRS 218A.202.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. It is required by state law.

#### **CABINET FOR HEALTH AND FAMILY SERVICES Office for Children with Special Health Care Needs Children with Special Health Care Needs Services (Amendment)**

##### **911 KAR 1:060. Medical staff.**

RELATES TO: KRS 200.460, 313.035

STATUTORY AUTHORITY: KRS 194A.030(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(5) authorizes the Office for Children with Special Health Care Needs to promulgate administrative regulations to implement and administer its responsibilities. This administrative regulation establishes requirements relating to the Office for Children with Special Health Care Needs Medical Staff.

Section 1. Definitions. (1) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(2) "Dentist" is defined by KRS 313.010(10).

(3) "MAC" means the Medical Advisory Committee, which is an internal OCSHCN committee that consists of thirteen (13) members and advises OCSHCN on issues pertaining to medical staff qualification, credentialing, quality, and other related issues.

(4) "OCSHCN" means Office for Children with Special Health Care Needs.

(5) "Physician" is defined by KRS 311.550(12).

(6) "Physician assistant" is defined by KRS 311.840(3).

(7) "Psychologist" is defined by KRS 319.010(9).

Section 2. Qualifications for Acceptance to OCSHCN Active Medical Staff. (1) In order to be eligible for acceptance to the OCSHCN active medical staff, an individual shall be:

(a) Licensed to practice in Kentucky as a:

1. Physician;
2. Dentist;
3. Advanced practice registered nurse;
4. Physician assistant; or
5. Psychologist; and

(b) Able to document:

1. Background, experience, training, and competence;
2. Adherence to the ethics of the individual's profession;
3. Professionalism; and
4. Interpersonal skills.

(2) A physician or dentist shall be:

(a)1. Eligible for membership in the national medical or dental society; or

2. Enrolled as a member of the national medical or dental society; and

(b) Enrolled as a participating provider in the Kentucky Medicaid program, in accordance with 907 KAR 1:672.

(3) For specific medical specialties, for which there is a generally recognized certification by a board giving examinations in the field, the individual shall be:

(a) Eligible to sit for the examination of the board; or

(b) Board certified.

(4) ~~[The OCSHCN executive director, upon advice of the MAC, may exempt an individual from the requirements established in subsection (3) of this section if the individual:~~

~~(a) Agrees to provisional status for twelve (12) months; and~~

~~(b) Agrees to provide the MAC at the completion of twelve (12) months, with three (3) references, including:~~

~~1. Two (2) peer reference letters that:~~

~~a. Are written by Kentucky physicians, dentists, or psychologists~~

as appropriate; and

b. Are completed on the:

- (i) OCSHCN-60g, Peer Reference Letter Medical or Dental; or
- (ii) OCSHCN-60h, Peer Reference Letter Psychologist; and

2. One (1) reference letter that:

a. (i) Is written by the medical director of a Kentucky children's hospital where the individual is

(ii) If not on medical staff at a children's hospital, is written by the medical director at the Kentucky hospital where the individual is on medical staff and admits the majority of the individual's patients; and

b. Is completed on the OCSHCN-60j, Facility Recommendation Letter.

(5) For initial appointment to the medical staff in a dental specialty area, the individual shall be licensed in the specialty area, in accordance with KRS 313.035 and 201 KAR 8:532.

Section 3. Categories of Medical Staff. The medical staff shall consist of the following categories:

(1) Temporary active status, pursuant to Section 6 of this administrative regulation;

(2) Active status, pursuant to Sections 2, 4, and 5 of this administrative regulation; and

(3) [Provisional status, pursuant to Sections 2, 4, 5, and 7 of this administrative regulation; and

(4) Contracted status, pursuant to Section 7[8] of this administrative regulation.

Section 4. Initial Application Process for Active Medical Staff. (1) An individual seeking initial appointment to the medical staff shall submit to OCSHCN a completed application packet containing:

(a) A completed and signed:

1. a. OCSHCN-60a, Application for Active Medical or Dental Staff, if the individual is a dentist or physician;

b. OCSHCN-60b, Application for Active Medical APRN Staff, if the individual is an advanced practice registered nurse;

c. OCSHCN-60c, Application for Active Psychology Staff, if the individual is a psychologist; or

d. OCSHCN-60d, Application for Active Medical Physician Assistant Staff, if the individual is a physician assistant;

2. OCSHCN-60e, Authorization, Attestation, and Release; and

3. OCSHCN-60f, Anti-Harassment and Discrimination Acknowledgment;

4. OCSHCN- 60g, Two Peer Reference Letters Medical or Dental;

(b) A copy of the individual's current Council for Affordable Quality Healthcare (CAQH) application;

(c) A current curriculum vitae;

(d) A copy of the individual's malpractice insurance endorsement; and

(e) The applicable information required by subsections (2) through[though] (5) of this section.

(2) If the individual is a dentist or physician, the following attachments shall be included:

(a) A copy of the individual's license to practice, issued by the Kentucky:

1. Board of Dentistry; or

2. Board of Medical Licensure; and

(b) If applicable, a copy of the individual's current Form DEA-223, Controlled Substance Registration Certificate issued by the United States Department of Justice, Drug Enforcement Administration.

(3) If the individual is an advanced practice registered nurse, the following attachments shall be included:

(a) A copy of a signed Collaborative Practice Agreement between the physician and the individual, as submitted to the Kentucky Board of Nursing; and

(b) A copy of the individual's current credentialing from the:

1. American Nurses Credentialing Center (ANCC); or

2. American Academy of Nurse Practitioners (AANP).

(4) If the individual is a psychologist, the application packet shall include a copy of the individual's license to practice, issued by the Kentucky Board of Examiners of Psychology.

(5) If the individual is a physician assistant, the following

attachments shall be included:

(a) A copy of the individual's license to practice, issued by the Kentucky Board of Medical Licensure;

(b) A copy of the initial and any applicable Supplemental Application for Physician to Supervise Physician Assistant, as submitted to the Kentucky Board of Medical Licensure; and

(c) A copy of the National Commission on Certification of Physician Assistants (NCCPA) certification.

Section 5. Procedures for Application Review and Appointment.

(1) Within seven (7) working days of receipt of the application pursuant to Section 4 of this administrative regulation, designated OCSHCN staff shall request that:

(a) Individuals listed as references complete the[:

4.] OCSHCN 60g, Peer Reference Letter Medical or Dental[; or 2. OCSHCN-60h, Peer Reference Letter Psychologist, if the individual is a psychologist]; and

(b) An individual submit missing information or other required documents necessary to an evaluation of the individual's qualifications.

(2) If the documentation requested pursuant to subsection (1) of this section is not received by OCSHCN within forty-five (45) working days from the date of the request, designated OCSHCN staff shall notify the individual in writing that:

(a) The individual shall be responsible for following up to obtain missing information and ensuring receipt by OCSHCN within twenty (20) working days of written notice;

(b) Failure to submit the missing information within twenty (20) working days of written notice under paragraph (a) of this subsection shall result in the application being placed in closed status without further review;

(c) Reapplication for staff appointment shall not be considered for a period of six (6) months from the date of the notice that the application has been closed pursuant to paragraph (b) of this subsection; and

(d) Reapplication for staff appointment shall be processed as an initial application.

(3) Upon receipt of documentation requested pursuant to subsection (1) of this section, designated OCSHCN staff shall make the application and other documentation available to the MAC chair, who shall present the application at the next meeting of the MAC.

(4) The MAC shall:

(a) Ensure that all necessary documents and investigations have been validated with objectivity, fairness, and impartiality, and that recommendations are soundly based and compatible with the objectives of OCSHCN;

(b) Determine if the individual meets all necessary qualifications for the category of staff membership and clinical privileges requested;

(c) If the MAC determines that the individual meets all necessary qualifications for the category of staff membership and clinical privileges requested, recommend to designated OCSHCN staff:

1. Appointment to the appropriate staff category; and

2. Granting of privileges according to the specialty to which the individual shall be assigned; and

(d) If the MAC determines that the individual does not meet all necessary qualifications for the category of staff membership and clinical privileges requested:

1. Defer consideration of the application, if clarifying information is needed; or

2. Reject the application.

(5) Upon the MAC approving the individual, designated OCSHCN staff shall add the individual approved in accordance with this section to OCSHCN's active medical staff for a period of three (3) years.

(6) An individual aggrieved by an adverse decision pursuant to subsection (4)(d) of this section may request to address the MAC to seek reconsideration pursuant to Section 12[43] of this administrative regulation.

Section 6. Temporary Active Medical Staff. (1) The executive director or designee may make a temporary active medical staff appointment if necessary to provide clinical coverage. This type of

staff appointment shall be:

- (a) Emergency in nature;
  - (b) Made based on information currently available that may reasonably be obtained as to the competence and ethical standing of the individual; and
  - (c) Reviewed by the MAC within six (6) months following the appointment.
- (2) A temporary active medical staff appointment shall last no longer than six (6) months, at which time the appointment shall be eligible for conversion to the active medical staff pursuant to the processes established in Sections 4 and 5 of this administrative regulation.
- (3) Each appointee to the temporary active medical staff shall have an assigned member of the active medical staff review performance during clinic and make recommendations to the MAC as necessary regarding conversion to the active medical staff.
- (4) An appointee to temporary active medical staff status shall be compensated in accordance with Section 10[44] of this administrative regulation.

~~[Section 7. Provisional Staff. (1) In accordance with Section 2(4) of this administrative regulation, the executive director may make a provisional staff appointment if an individual meets the requirements of Sections 2, 4, and 5 of this administrative regulation.~~

~~(2) An appointment to provisional status shall be effective for twelve (12) months.~~

~~(3) Prior to the end of the twelve (12) months, the MAC shall:~~

- ~~(a) Review reference letters submitted in accordance with Section 2(4) of this administrative regulation; and~~
- ~~(b) Make a recommendation to designated OCSHCN staff at its next meeting as to whether to:~~
  - ~~1. Move the appointee to active status; or~~
  - ~~2. Terminate provisional status.~~

~~(4) An appointee aggrieved by a recommendation to terminate provisional status may be heard by the MAC pursuant to Section 13 of this administrative regulation.]~~

Section 7.~~[Section 8.]~~ Contracted Staff. (1) In accordance with KRS Chapter 45A, OCSHCN may contract with medical or dental specialists to provide services to children outside of OCSHCN offices and clinics.

(2) OCSHCN-enrolled children may be referred to contracted staff by a member of the active OCSHCN medical staff or the OCSHCN medical director.

Section 8.~~[Section 9.]~~ Annual Review and Reappointment Process. (1) OCSHCN shall, on an annual basis, verify for each member of the active medical staff:

- (a) Current state license; and
- (b) Current malpractice insurance.

(2) Each member of the active medical staff shall undergo a re-credentialing process every three (3) years. Required documents to be submitted to OCSHCN shall include:

- (a) OCSHCN-60i, Renewal Application for Active Medical or Dental Staff; and
- (b) All documents requested by OCSHCN-60i, Renewal Application for Active Medical or Dental Staff.

(3) The reappointment evaluation shall include:

- (a) Review of required forms and documents;
- (b) Timely completion and preparation of medical and other required patient records;
- (c) Satisfactory evidence of compliance with ethics;
- (d) Compliance with OCSHCN procedures;
- (e) General cooperation and ability to work with others;
- (f) Results of quality assurance audits, if conducted; and
- (g) Reports of disciplinary action requested, or proceedings initiated against a provider at any institution.

(4) At each regularly scheduled meeting, the MAC shall complete a review of the active medical staff that are due for a three (3) year re-credentialing appraisal. The review shall include:

- (a) OCSHCN-60i, Renewal Application for Active Medical or Dental Staff; and
- (b) Any other information pertinent to continuation on the

medical staff.

(5) After the review, the MAC shall make a determination to re-credential or not re-credential based on the information requested in this section.

Section 9.~~[Section 10.]~~ Duties and Responsibilities of Medical Staff. (1) Each member of the medical staff shall assume the same responsibility for care and treatment of the staff member's assigned patients as in private practice.

(2) A resident physician or dentist in training may assist in the care of patients, if a member of the active medical staff:

- (a) Remains entirely responsible for the care of each patient;
- (b) Examines and, if indicated, recommends treatment for each new patient under the staff member's care;

(c) Remains present in the surgical suite at all operations and other procedures in which general anesthesia is used;

(d) Directs the examination of all patients assigned to the active staff member for discharge from the hospital and designates follow-up care; and

(e) Maintains oversight of the resident physician or dentist.

(3) Active medical staff members assigned to OCSHCN clinics shall be present to conduct an assigned clinic. If an active medical staff member cannot be present to conduct an assigned clinic, the staff member shall:

(a) Make arrangements with another member of the OCSHCN medical staff to serve in the staff member's place, if the staff member advises the assigned OCSHCN staff of this change; or

(b) Request that assigned OCSHCN staff reschedule the clinic, if the request is timely enough to allow OCSHCN staff to notify patients of the rescheduling.

(4) For a clinic with more than one (1) provider representing different specialties, if an active medical staff member cannot be present to conduct an assigned clinic, the staff member shall:

(a) Make arrangements with another member of the OCSHCN medical staff to serve in the staff member's place, if the staff member advises the assigned OCSHCN staff of this change; or

(b) Make arrangements with the other active medical staff members assigned to the clinic to reschedule the entire clinic, if the request is timely enough to allow OCSHCN staff to notify patients of the rescheduling.

(5) If an active medical staff member who has responsibility for a clinic fails to attend two (2) clinics during a twelve (12) month period and does not comply with subsection (3) or (4) of this section, the active medical staff member shall be:

(a) Removed from the active medical staff; and

(b) Advised in writing of:

1. The removal; and

2. Right to be heard by the MAC pursuant to Section 12[43] of this administrative regulation.

(6) Medical staff members participating in OCSHCN onsite clinics shall document a summary of each patient visit. Documentation shall be completed:

(a) On the day of the visit; or

(b) Within seventy-two (72) hours of the visit if it cannot be finished on the day of the visit.

(7) Medical staff members participating in OCSHCN onsite clinics shall:

(a) Not remove patient medical records from OCSHCN premises; and

(b) Authenticate their medical record entries regarding diagnosis, findings, and recommendations for treatment, by:

1. Signature; or

2. Initials.

(8) If a medical staff member elects to initial the medical record pursuant to subsection (7) of this section, OCSHCN shall maintain a legend for purpose of identity, which shall include the typed or printed name of the medical staff member, followed by hand signed initials.

(9) A medical staff member may see OCSHCN patients in the staff member's private office, as deemed necessary by the medical staff member. Office visit records shall be:

(a) Completed; and

(b) Forwarded to the assigned OCSHCN office within three (3)

working days of the visit.

(10) To the extent possible, total care for the child shall be considered while the specific condition for which treatment is sought is being cared for. Coexistent diseases, disabilities, or anomalies shall be investigated and treated if:

(a) The referring physician or dentist, if any, approves and consents; and

(b) The services fall within the categories eligible for treatment by OCSHCN in accordance with 911 KAR 1:010.

(11) A program of total care for the child shall be developed by a team approach. There shall be discussion of all phases of the problem of each child by all medical personnel concerned with the child's care, including therapists and other professional personnel. Team care shall be provided within the context of a multidisciplinary clinic.

(12) Contracted staff shall be available for consultation and treatment if indicated. Arrangements for contracts shall be made through the assigned OCSHCN office on an individual basis.

Section 10.~~[Section 14.]~~ Compensation. (1) A member of the medical staff shall be compensated for services provided during ~~[onsite]~~ OCSHCN clinics in accordance with a contract agreed to pursuant to the provisions of KRS Chapter 45A.

(2) If OCSHCN staff refer patients to a member of the active medical staff for services outside of an OCSHCN clinic, information needed to bill the appropriate insurance carrier shall be included.

Section 11.~~[Section 12.]~~ Corrective Action. (1) The following parties may request corrective action be directed toward a member of the medical staff:

(a) Any member of the medical staff;

(b) The chair of the MAC;

(c) OCSHCN staff; or

(d) A member of the family of an OCSHCN-enrolled child.

(2) The basis for a request for corrective action shall include activities or professional conduct that are considered to be:

(a) Contrary to the standards or aims of the medical staff; or

(b) Disruptive to OCSHCN operations, programs, or clinics.

(3) A request for corrective action shall be:

(a) In writing;

(b) Addressed to the executive director; and

(c) Supported by references to the specific activities or conduct that constitutes grounds for the request.

(4) Within ten (10) working days of receipt of a request for corrective action, the executive director or designee shall:

(a) Initiate an investigation of the facts and circumstances surrounding the grounds for the requested corrective action;

(b) Interview the member of the medical staff against whom the corrective action is requested;

(c) Document the interview in writing; and

(d) Submit a report and recommendation to the MAC for consideration.

(5) Within ninety (90) working days following the receipt of the recommendation by the executive director, the MAC shall make recommendations on the request.

(6) In accordance with subsection (5) of this section, the MAC may:

(a) Reject the request for corrective action;

(b) Issue a warning, letter of admonition, or letter of reprimand;

(c) Impose terms of probation or a suspension from the medical staff; or

(d) Recommend that the affected member's medical staff membership be suspended or revoked.

(7) The executive director shall have the authority to summarily suspend or dismiss a member of the medical staff if action is needed immediately in the interest of patient care. Grounds for summary suspension or dismissal from the medical staff shall include:

(a) Action by the governing Board of Medical Licensure, Board of Dentistry, Board of Nursing, or Board of Examiners of Psychology, in which a member's license is revoked or suspended;

(b) Loss of hospital privileges; or

(c) Behavior that creates a risk of harm to children or OCSHCN staff.

Section 12.~~[Section 13.]~~ Request for Reconsideration. (1) A provider may request to appear before the MAC to advocate for reconsideration if the provider:

(a) Was denied appointment to the medical staff pursuant to Section 5 of this administrative regulation;

(b) ~~[Had provisional status terminated pursuant to Section 7 of this administrative regulation;~~

(c) ~~[e)]~~ Was removed from the active medical staff pursuant to Section ~~9(5)~~~~[40(5)]~~ of this administrative regulation; or

(d) ~~[c)]~~~~(4)]~~ Has been the subject of corrective action pursuant to Section ~~11~~~~[42]~~ of this administrative regulation.

(2) A provider who is aggrieved pursuant to subsection (1) of this section shall complete form OCSHCN-60k, Request for Reconsideration by Medical Advisory Committee, to include:

(a) Name of provider;

(b) Specialty;

(c) Address;

(d) Telephone;

(e) E-mail address, if available;

(f) Justification for reconsideration;

(g) Supporting documentation, if available, including:

1. Verification of training or work history; and

2. Provider statements or recommendations; and

(h) Dated signature of the provider.

(3) The MAC shall review the completed form and supporting documentation.

(4) The MAC may request additional information as needed within five (5) working days of the review date.

(5) The provider shall return the information requested pursuant to subsection (4) of this section within ten (10) working days.

(6) The MAC shall communicate to the provider:

(a) The date to appear before the MAC; and

(b) Within five (5) working days of the receipt of all information requested.

(7) Following the provider's appearance at the MAC, the MAC shall communicate within five (5) working days to the provider:

(a) The decision made; and

(b) A brief explanation.

Section 13.~~[Section 14.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) OCSHCN-60a, "Application for Active Medical or Dental Staff," 06/2022~~[04/2019]~~;

(b) OCSHCN-60b, "Application for Active Medical APRN Staff," 06/2022~~[04/2019]~~;

(c) OCSHCN-60c, "Application for Active Psychology Staff," 06/2022~~[04/2019]~~;

(d) OCSHCN-60d, "Application for Active Medical Physician Assistant Staff," 06/2022~~[04/2019]~~;

(e) OCSHCN-60e, "Authorization, Attestation, and Release," 01/2019;

(f) OCSHCN-60f, "Anti-Harassment and Discrimination Acknowledgment," 01/2019;

(g) OCSHCN-60g, "Peer Reference Letter Medical or Dental," 06/2022~~[04/2019]~~;

(h) ~~[OCSHCN-60h, "Peer Reference Letter Psychologist," 01/2019;~~

(i) ~~[OCSHCN-60i, "Renewal Application for Active Medical or Dental Staff," 06/2022~~~~[04/2019]~~; and

(j) ~~[OCSHCN-60j, "Facility Recommendation Letter," 01/2019; and]~~

(k) ~~[OCSHCN-60k, "Request for Reconsideration by Medical Advisory Committee," 06/2022~~~~[04/2019]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office for Children with Special Health Care Needs, 310 Whittington Parkway, Suite 200, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the agency's Web site at <https://chfs.ky.gov/agencies/ccshcn>.

IVANORA ALEXANDER, Executive Director  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 1, 2022

FILED WITH LRC: November 14, 2022 at 2:15 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 23, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by January 16, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2023. 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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements relating to the Office for Children with Special Health Care Needs medical staff.

(b) The necessity of this administrative regulation: This amended regulation is needed to ensure that medical providers are adhering to the same standards for acceptance as other providers in the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation amendment uses the authorized statutes as a base to build the guidance provided in this regulation. This amended regulation updates the forms to include a space for peer reference emails and office contacts. It removes the requirement for submission of a hospital facility reference for those such as psychologists and dentists, who do not have hospital facility admitting privileges. Finally, it removes the question relating to narcotic license from forms OCSHCN-60 as the question is inapplicable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment deletes the OCSHCN-60h form, which was duplicative, and revises other forms to include email addresses for references, to expedite the application process, and facilitate electronic storage of records. It removes the requirement for submission of a hospital facility reference for those such as psychologists and dentists, who do not have hospital facility admitting privileges.

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

(a) How the amendment will change this existing administrative regulation: This amended regulation allows Kentucky to efficiently administer the program through the use of email. This amendment removes the process for provisional status.

(b) The necessity of the amendment to this administrative regulation: This amendment allows the streamlining of internal processing, through the use of email.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the existing statutes by updating materials incorporated by reference. It amends the forms. It further removes a requirement for a hospital facility reference for those individuals who do not have admitting privileges,

at Section 2 (4)(b)(2).

(d) How the amendment will assist in the effective administration of the statutes: This amendment deletes the OCSHCN-60h form, which was duplicative, and revises other forms to include an email address for peer references.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Office for Children with Special Health Care Needs; children enrolled in the program and their families; physicians, physician assistants, nurses, psychologists, and dentists.

(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 applicants will include an email address for their references.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The proposed amended regulation will reduce the cost relating to mailing various documents.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendments will impact the above agencies in a positive way by improving the means of communication and expediting response time.

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

(a) Initially: None. Services are currently in place and there is no additional cost.

(b) On a continuing basis: None. Services are currently in place and there is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Maternal and Child Health grant, and State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need for an increase of funding requests to implement these proposed changes.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees will be increased based on this amended regulation.

(9) TIERING: Is tiering applied? There is no tiering for this program as there are no fees related to this program or regulation.

#### FISCAL NOTE

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

Kentucky Office for Children with Special Health Care Needs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 200.460, KRS 313.035

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amended regulation will not affect expenditures and revenue. Services are currently in place and there is no additional cost.

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

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

(c) How much will it cost to administer this program for the first year? This amended regulation will not require additional costs.

(d) How much will it cost to administer this program for

subsequent years? This amended regulation will not require additional costs.

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

Revenues (+/-):

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? Minimal.

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

(c) How much will it cost the regulated entities for the first year? Nothing.

(d) How much will it cost the regulated entities 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.

Cost Savings (+/-): 0

Expenditures (+/-): 0

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The regulation and forms will not have a major economic impact. The amendments are presented to provide an email address for references on the forms, and make minor revisions to allow the inclusion on the same pages.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office for Children with Special Health Care Needs  
Children with Special Health Care Needs Services  
(Amendment)**

**911 KAR 1:085. Early Hearing Detection and Intervention Program.**

RELATES TO: KRS 13B.050, 194A.030(5), 200.460-200.499, 211.645[(5)], 211.647, 213.046(16), 216.2970, 334A[-.020(5)]

STATUTORY AUTHORITY: KRS 194A.030(5), 194A.050(1), 211.647(3), 216.2970(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet, to implement programs mandated by federal law, or to qualify for federal funds. KRS 211.647(3) requires the Office for Children with Special Health Care Needs to identify and refer for treatment infants at risk for hearing loss and establish standards for infant audiological assessment and diagnostic centers. KRS 216.2970(1) requires the OCSHCN to promulgate administrative regulations establishing approved methods for auditory screening for all infants born in hospitals offering obstetric services and alternative birthing centers with at least forty (40) births per year. This administrative regulation establishes standards, eligibility criteria, application processes, reporting requirements, and appeal rights for entities seeking designation as approved infant audiological assessment and diagnostic centers, and identifies approved methods for auditory screening for newborn infants in hospitals and alternative birthing centers.

Section 1. Definitions. (1) "AAA Guidelines" means the "Clinical Guidance Document Assessment of Hearing in Infants and Young Children"["Audiologic Guidelines for the Assessment of Infants and Young Children"] published by the American Academy of Audiology.

(2) "ASHA Guidelines" means the "Guidelines for the Audiologic Assessment of Children from Birth to 5 Years of Age"["ASHA Guidelines for the Audiologic Assessment of Children from Birth to 5 Years of Age"] published by the American Speech-Language-Hearing Association.

(3) "Audiologist" is defined by KRS 334A.020(5).

(4) "Audiology extern" means a student engaged in the clinical experience component of an audiology doctoral degree program.

(5) "Auditory brainstem response" or "ABR" means an objective electrophysiologic measurement of the brainstem's response to the ear when stimulated with a click sound or tone burst.

(6) "Automated auditory brainstem response" or "AABR" means an automatic ABR resulting in a pass/refer outcome.

(7) "JCIH Guidelines" means[the] "Year 2019[2007] Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs"["Joint Committee on Infant Hearing"] published by the Joint Committee on Infant Hearing.

(8) "Office for Children with Special Health Care Needs" or "OCSHCN" is defined by KRS 211.645(2).

(9) "Otoacoustic emissions" means an objective physiological test method for measuring responses elicited directly from the cochlea.

Section 2. Eligibility Criteria for Centers. (1) In order to be eligible for designation as a Level 1 infant audiological assessment and diagnostic center, an entity located in Kentucky shall:

(a) Employ at least one (1) audiologist who:

1. Is currently licensed pursuant to KRS Chapter 334A;

2. Has experience testing children in the age range newborn to three (3) years; and

3.a. Performs all evaluations; or

b. Directly supervises audiology externs performing evaluations;

(b) Possess the capacity to complete the following tests:

1. Otoscopic examination;

2. Tympanometry;

3. Ipsilateral acoustic reflex measurement;

4. Contralateral acoustic reflex measurement;

5. Ear-specific behavioral observation audiometry;

6. Speech awareness threshold;

7. Speech recognition or reception threshold;

8. Play audiometry; and

9. Either:

a. Otoacoustic emissions with diagnostic or screening capabilities; or

b. ABR screening;

(c) Annually calibrate all measuring and testing equipment; and

(d) Submit a complete application and assurance packet in accordance with Section 3 of this administrative regulation.

(2) In order to be eligible for designation as a Level 2 infant audiological assessment and diagnostic center, an entity located in Kentucky shall:

(a) Meet the requirements specified in subsection (1) of this section; and

(b) Possess the capacity to complete:

1. Otoacoustic emissions with diagnostic or screening capabilities;

2. Frequency-specific ABR;

3. Bone conduction ABR; and

4. Real ear measures.

Section 3. Application Process. (1) An entity seeking designation as an infant audiological assessment and diagnostic center shall submit to OCSHCN a completed application packet containing:

(a) Completed and signed form OCSHCN-E106[OCSHCN-E106], Potential Infant Audiological Assessment and Diagnostic Center Questionnaire;

(b) Copies of current professional licenses for audiologists performing evaluations;

(c) Copies of current calibration certificates for audiological testing equipment; and

(d) Copies of policies and procedures for tests and measures requested on the OCSHCN-E106[OCSHCN-E106], Potential Infant Audiological Assessment and Diagnostic Center Questionnaire.

(2) OCSHCN shall review an entity's application within thirty (30)



calendar days of receiving a complete packet submitted in accordance with subsection (1) of this section.

(3) Upon review of an entity's application packet, OCSHCN's executive director or designee shall approve the entity as a Level 1 Infant Audiological Assessment and Diagnostic Center if:

(a) The entity meets the requirements specified in Section 2(1) of this administrative regulation; and

(b) OCSHCN determines that the entity's policies and procedures conform to best practice standards as described in JCIIH Guidelines and:

1. AAA Guidelines; or
2. ASHA Guidelines.

(4) Upon review of an entity's application packet, OCSHCN's executive director or designee shall approve the entity as a Level 2 Infant Audiological Assessment and Diagnostic Center if:

(a) The entity meets the requirements specified in Section 2(2) of this administrative regulation; and

(b) OCSHCN determines that the entity's policies and procedures conform to best practice standards as described in JCIIH Guidelines and:

1. AAA Guidelines; or
2. ASHA Guidelines.

(5) If OCSHCN's executive director or designee determines that the entity does not meet the requirements specified in Section 2 of this administrative regulation, OCSHCN shall:

(a) Advise the entity and request clarifying information; or

(b) Deny the designation as an Infant Audiological Assessment and Diagnostic Center and notify the entity of appeal rights pursuant to Section 8 of this administrative regulation.

(6) Approvals shall expire on December 31 of odd-numbered years. All entities seeking continued approval shall re-apply by December 1 of that year in accordance with this section.

Section 4. Publication of Approved List. (1) In accordance with KRS 211.647, OCSHCN shall maintain a current listing of all approved Infant Audiological Assessment and Diagnostic Centers, with contact information.

(2) OCSHCN shall make the listing public through the following methods:

(a) Posting on its agency Web site, <http://chfs.ky.gov/agencies/ccshcn>;

(b) Providing to the Cabinet for Health and Family Services, Office of Administrative and Technology Services, for inclusion on the KY-CHILD electronic information system used by birthing hospitals and centers;

(c) Enclosing as an attachment to correspondence with parents; and

(d) Mailing a listing to birthing hospitals and centers upon request.

Section 5. Removal from Approved List and Updates Required.

(1) OCSHCN shall remove an entity from the approved list and notify the entity of the removal if the entity requests removal.

(2) If OCSHCN receives a complaint that an entity no longer meets the requirements of Section 2 of this administrative regulation, OCSHCN shall:

(a) Advise the entity of the complaint;

(b) Request clarifying information from the entity;

(c) Review any information received; and

(d) Determine whether the entity meets the eligibility requirements of Section 2 of this administrative regulation.

(3) If OCSHCN determines that the entity no longer meets the eligibility requirements, the office~~[commission]~~ shall:

(a) Notify the entity of appeal rights pursuant to Section 8 of this administrative regulation; and

(b) Remove the entity from the approved list.

(4) Following approval, an Infant Audiological Assessment and Diagnostic Center shall provide documentation via form OCSHCN-E107~~[CCSHCN-E107]~~, Infant Audiological Assessment and Diagnostic Center Program Modification, if the ~~[following]-~~changes in circumstances occur:

- (a) Employment or termination of employment of an audiologist;
- (b) Change in licensure status of an audiologist;

(c) Relocation of agency, name change, or addition of a location; or

(d) Modification to policy or procedure with regard to evaluations described in Section 2 of this administrative regulation.

Section 6. Reporting Requirements. (1) Upon completion of diagnostic testing of an infant or child aged birth to three (3) years described in KRS 211.647(5), an approved Infant Audiological Assessment and Diagnostic Center shall report to OCSHCN via form OCSHCN-E3:

(a) Identifying and demographic information;

(b) Results of the follow-up audiological evaluation; and

(c) Documentation of the referral required by KRS 211.647(5).

(2) An approved Infant Audiological Assessment and Diagnostic Center shall submit information specified in subsection (1) of this section electronically via the KY-CHILD electronic information system for permanent hearing loss, within forty-eight (48) hours~~[within seven (7) calendar days]~~ of evaluation, via form OCSHCN-E3.

(3) Scheduled appointments which are not kept by families shall be marked in the KY-CHILD electronic information system as no-show within four (4) calendar days if not rescheduled.

Section 7. Resource and Informational Materials. OCSHCN shall make available to families of all newborns and children ages birth to three (3) years identified as having permanent hearing loss information provided by the Kentucky Commission on the Deaf and Hard of Hearing.

Section 8. Appeal Rights. An entity denied designation as an Infant Audiological Assessment and Diagnostic Center or which has been removed from the approved list may request an administrative hearing in accordance with 911 KAR 1:090~~[KRS 13B.050]~~.

Section 9. Approved Methods of Auditory Screening for Newborn Infants and Children Ages Birth to Three (3) Years.

(1) Auditory screenings pursuant to KRS 216.2970(1) shall include at least one (1) of the following physiological tests:

(a) AABR; or

(b) Otoacoustic emissions.

(2) Auditory screening reports shall:

(a) Document the results of physiological tests conducted;

(b) Document the presence of any risk factors pursuant to KRS 211.645(5); and

(c) Be submitted via the KY-CHILD electronic information system.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Clinical Guidance Document Assessment of Hearing in Infants and Young Children", 1/2020"Audiologic Guidelines for the Assessment of Infants and Young Children August 2012";

(b) "OCSHCN-E106~~[CCSHCN-E106]~~, Potential Infant Audiological Assessment and Diagnostic Center Questionnaire", 6/2022~~[2009]~~;

(c) "OCSHCN-E107~~[CCSHCN-E107]~~, Infant Audiological Assessment and Diagnostic Center Program Modification", 6/2022~~[2009]~~;

(d) "Guidelines for the Audiologic Assessment of Children From Birth to 5 Years of Age"~~[,] 2004 American Speech-Language-Hearing Association~~~~[, and]~~

(e) "Year 2019~~[2007]~~ Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs"~~[, 2007] Joint Committee on Infant Hearing~~~~[, and]~~

(f) "OCSHCN-E3 Audiology Update Form (AUF) Worksheet", 6/2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office for Children with Special Health Care Needs, 310 Whittington Parkway, Suite 200, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the agency's Web site at <https://chfs.ky.gov/agencies/ccshcn>.

IVANORA ALEXANDER, Executive Director  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY:

FILED WITH LRC: November 15, 2022 at 10:20 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 23, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by January 16, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2023. 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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended regulation helps provide guidance that follows the Early Hearing Detection and Intervention Act and state authority.

(b) The necessity of this administrative regulation: This amended regulation is needed to ensure that agencies receiving Early Hearing Detection and Intervention Act funding are following the same guidance and outlines the identification process for infant hearing loss.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation amendment uses the authorized statutes as a base to build the guidance provided in this regulation. This amended regulation allows Kentucky to provide more up-to-date, guidance for assessment and diagnostic audiological centers and revises the reference to "Commission" to "Office," which had been revised earlier. In 2018 Ky. Acts Ch. 114, sec. 1, the General Assembly renamed the "Commission for Children with Special Health Care Needs" as the "Office for Children with Special Health Care Needs." This regulation amends the time frame, when there is evidence of hearing loss, for return of form OCSHCN-E3 to 48 hours from 7 days, to be in compliance with KRS 211.647(5).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation allows Kentucky to provide more up-to-date guidance for assessment and diagnostic audiological centers. This regulation includes a provision to clarify that appeals will go to the Cabinet for Health and Family Services Office of Ombudsman and Administrative Hearings.

(2) If 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 regulation amends the time frame, when there is evidence of hearing loss, for return of form OCSHCN-E3 to 48 hours, from 7 days. The amendment updates the American Academy of Audiology's guidance document to "Clinical Guidance Document Assessment of Hearing in Infants and Young Children," which was published in 2020. The regulation includes an option for audiological centers to notify the office of a name change, by use of the modification form. Finally, the amendment updates references,

including references in forms, to reflect "Office," as referenced in the rest of KAR Chapter 911, rather than "Commission."

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to comply with current guidelines relevant to the Early Hearing Detection Act.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the existing statutes by updating materials incorporated by reference.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific updates that follow the existing statutes to best serve the audiological centers seeking certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Office for Children with Special Health Care Needs; Children with special health care needs and their families; and Kentucky assessment and diagnostic audiological centers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendments are suggested based on needs of the above agencies. The proposed amendments will impact the above agencies in a positive way in updating the reference materials, and to make the regulation consistent with the statute.

(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 agencies above will need to ensure they meet the specified expectations in the updated reference materials. These amendments are to update practice reference materials that take into account newer procedural standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The proposed amended regulation will cost the agencies a minimal amount if not an actual reduction in costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended regulation should result in more updated practice references for providers.

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

(a) Initially: None. Services are currently in place and there is no additional cost.

(b) On a continuing basis: None. Services are currently in place and there is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Early Hearing Detection and Intervention Act funding, and State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need for an increase of funding requests to implement these proposed changes

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees will be increased based on this amended regulation.

(9) TIERING: Is tiering applied? There is no tiering for this program as there are no fees related to this program or regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 280g-1

(2) State compliance standards. KRS 194A.030(5), 194A.050(1), 211.647(3), 216.2970(1), 7.136(2)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 280g-1

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to the administrative regulation is consistent with federal requirements and does not impose stricter requirements

than the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment to the administrative regulation is consistent with federal requirements and does not impose stricter requirements than the federal mandate.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Office for Children with Special Health Care Needs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 211.647(3) and 42 U.S.C. 280g-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. This amended regulation will not affect expenditures and revenue. Services are currently in place and there is no additional cost.

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

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

(c) How much will it cost to administer this program for the first year? This amended regulation will not require additional costs.

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

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

Revenues (+/-):

Expenditures (+/-): 0

Other Explanation: 0

(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? Minimal, in that an email is provided which would save postage.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Minimal, in that an email is provided which would save postage.

(c) How much will it cost the regulated entities for the first year? Nothing.

(d) How much will it cost the regulated entities 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.

Cost Savings (+/-): 0

Expenditures (+/-): 0

Other Explanation:

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

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](#).

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**  
**Division of Student and Administrative Services**  
**(New Administrative Regulation)**

**11 KAR 5:037. CAP Grant student eligibility.**

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535  
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) required the Authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorized the Authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. This administrative regulation establishes student eligibility criteria for the college access program.

Section 1. In order to qualify for disbursement of a college access program grant, a student shall:

- (1) Be a resident of Kentucky;
- (2) Be enrolled at an educational institution as at least a part-time student as determined by the educational institution, in an eligible program of study and not have previously earned a first baccalaureate or professional degree;
- (3) Demonstrate financial need in accordance with 11 KAR 5:130 and 11 KAR 5:145 for CAP grant assistance;
- (4) Have remaining KHEAA grant limit;
- (5) Not receive financial assistance in excess of the need to meet educational expenses;
- (6) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution in which the student is enrolled;
- (7) Satisfy all financial obligations to the Authority under any program administered pursuant to KRS 164.740 to 164.7891 and to any educational institution, except that ineligibility for this reason may be waived by the executive director of the Authority, at the recommendation of a designated staff review committee, for cause;
- (8) Be a citizen of the United States or an eligible noncitizen;
- (9) Be receiving at least part-time credit at an educational institution in an eligible program of studying and paying at least part-time tuition and fees to that institution, if the student is studying abroad or off-campus.
- (10) Have been eligible to receive a CAP Grant in the preceding year, if the student is enrolled in an equivalent undergraduate program of study, established by the Authority in 11 KAR 15:090, Section 5;
- (11) Be:
  - (a) Attending an eligible institution with the main campus or headquarters located in Kentucky; or
  - (b) Attending at least fifty (50) percent of courses on-ground in Kentucky if enrolled at an eligible institution with the main campus or headquarters not located in Kentucky; and
- (12) Not be:
  - (a) In default on any loan under Title IV of the federal act, codified at 20 U.S.C. 1070 to 1099, unless eligibility has been reinstated;
  - (b) Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified at 20 U.S.C. 1070 to 1099; and
  - (c) Liable for overpayment of any grant or loan under Title IV of the federal act, codified at 20 U.S.C. 1070 to 1099.

CATHE DYKSTRA, Chair KHEAA Board

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: November 7, 2022 at 1:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, January 26, 2023, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2023. 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: Hon. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes student eligibility requirements for the College Access Program (CAP) grant.
  - (b) The necessity of this administrative regulation: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes eligibility requirements for the College Access Program (CAP) grant program.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure that grant applicants meet the eligibility criteria in order to receive CAP grant funds.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: N/A
  - (b) The necessity of the amendment to this administrative regulation: N/A
  - (c) How the amendment conforms to the content of the authorizing statutes: N/A
  - (d) How the amendment will assist in the effective administration of the statutes: N/A
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed regulation will positively impact all applicants for awards under the CAP grant program by establishing the eligibility criteria for this program. For academic year ending June 30, 2022, 224,272 individuals submitted the Free Application for Federal Student Aid (FAFSA) which serves as the application for KHEAA-administered grant programs including CAP. Of those, 89,315 applicants were eligible and received an offer of a CAP grant. A total of 53,956 individuals accepted these offers and received CAP grant awards during that same period.
- (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: Applicants for the CAP grant program will be required to comply with the provisions of this administrative regulation, including submitting the specified application and satisfying the eligibility criteria.

(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 applicants in order to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) Applicants who comply with this administrative regulation will be considered for an award under this program.

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

(a) Initially: Based on the total CAP grant disbursement in academic year 2021-2022, of \$106,605,000, the initial year of this new administrative regulation is estimated to be that same cost.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Awards under this program are funded entirely through net lottery revenue.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this regulation. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### 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? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(4).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Since this administrative regulation is merely replacing the original CAP grant regulation, 11 KAR 5:034, it will not result in any additional expenditures beyond those already being made for the CAP grant program.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs are associated with this

regulation for subsequent years.

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

Revenues (+/-):

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? The regulated entities – applicants for CAP grant awards – will incur no cost savings as a result of this regulation during the first full year in which this administrative regulation is in effect since there are no costs incurred by those regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Same as 4a above.

(c) How much will it cost the regulated entities for the first year? The regulated entities – applicants for CAP grant awards – will incur no costs for the first year in which this administrative regulation is in effect.

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### BOARDS AND COMMISSIONS

##### Board of Optometric Examiners (New Administrative Regulation)

#### 201 KAR 5:002. Board administration and optometric practice.

RELATES TO: KRS 7, KRS 320.230, 320.295, 320.300(4), 320.310(1)(f), (2), (3), 326.060

STATUTORY AUTHORITY: KRS 320.230, 320.240, 320.240(4), (7), 320.295, 320.310(1)(f), (2), (3), 320.240(4), (7), (8),

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. 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. 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. KRS 320.310(2) permits each doctor of optometry to maintain branch offices. This administrative regulation requires each doctor of optometry to furnish information concerning each office to the board. KRS 320.230 allows the board members to receive per diem compensation to be determined by administrative

regulation of the board not to exceed \$125. This administrative regulation prescribes the board member's per diem compensation. KRS 320.300(4) prohibits a person from practicing optometry under any name other than his own except as permitted by the board in its administrative regulations. This administrative regulation prescribes the instances where a doctor of optometry may practice under a trade name. KRS 320.310(1)(f) authorizes the board to promulgate administrative regulations to permit the practice of optometry outside of the licensee's regular office for a charitable purpose as defined by the board. This administrative regulation establishes the standards for the practice of optometry outside the licensee's office for a charitable purpose.

Section 1. Definitions.

- (1) "Board Member's Compensation" shall mean that each Board Member is eligible for a per diem of \$100 for each day in which that member conducts work on behalf of the Board.
- (2) "Charitable organization" means a nonprofit entity accepted by the Internal Revenue Service and organized for benevolent, educational, philanthropic, humane, social welfare, or public health purposes.
- (3) "Charitable purpose" means a purpose that holds itself out to be benevolent, educational, philanthropic, humane, or for social welfare or public health.
- (4) "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.
- (5) "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. Advertising.

- (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.
- (4) 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.
- (5) The advertisement of eye glass lenses shall include: single vision or specified type of multifocal lenses.
- (6) 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.
- (7) If dispensing fees are not included in the advertisement of visual aid glasses, the advertisement shall so state.
- (8) 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.
- (9) Except as provided in subsection (10) 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.

(10) 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.

(11) 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;

(12) A doctor of Optometry shall not advertise 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 3. Unprofessional Conduct.

(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.

(2) 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.

(3) The signed spectacle prescription, or contact lens prescription shall be given to the patient at the completion of the examination and payment of fees.

(4) 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.

(5) 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.

(6) 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.

(7) Clinical patient care shall be determined by the Doctor of Optometry and not determined by outside influences or third parties.

(8) A Doctor of Optometry shall not engage in any unlawful, grossly unprofessional, or incompetent practice, nor shall they 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.

(9) 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.

(10) 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.

(11) A Doctor of Optometry shall treat with confidentiality the protected health information obtained from the patient, except as otherwise required by law.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) It is unprofessional conduct for a doctor of optometry to fail to inform the board of the change in location, mailing address, and telephone number of each office they practice in within thirty (30) days of any change.

#### Section 4. Expungement Eligibility and 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.

Section 5. Trade Names. A doctor of optometry may practice under a trade name if:

(1) It is not the same as his name; and

(2) The name of each doctor of optometry practicing in their office is prominently displayed on:

(a) The exterior of the main entrance to the office; and

(b) Stationery, prescription pads, telephone directory listings, and other items bearing or displaying the trade name.

Section 6. Practice of Optometry Outside of Regular Office for a Charitable Purpose.

(1) In order for a Kentucky licensed doctor of optometry to provide optometric services outside the doctor of optometry's regular office for a charitable purpose, a charitable organization shall provide to the board:

(a) A written request to include the services of Kentucky licensed doctor of optometry at least thirty (30) days before the optometric services are to be offered;

(b) Proof of its nonprofit status;

(c) Assurance that the participating doctor of optometry shall not be compensated or remunerated in any manner;

(d) The names of all participating doctors of optometry;

(e) The address of the location where the optometric services will be offered;

(f) The dates and times the optometric services will be offered, which shall not exceed seven (7) days per event;

(g) A statement of the nature of the optometric services to be provided and the class of individuals who are intended to be the recipients of the optometric services;

(h) A statement that the charitable organization shall require every participating doctor of optometry to develop and maintain a permanent patient record for each individual treated by that doctor of optometry; and

(i) A statement that the charitable organization shall require every participating doctor of optometry to comply with the minimum eye examination requirements of Section 3 of this administrative regulation.

(2) The board or its acting president may waive the thirty (30) day requirement based on exigent circumstances that prevented the charitable organization from complying with the thirty (30) day requirement.

(3) The board or its acting president shall notify the charitable organization in writing if its request has been approved within ten (10) business days of receipt of the completed request.

(4) A written request may include multiple events on different dates if the events are scheduled within twelve (12) months of the

date the completed request is received by the board.

(5) Requirements for Eyeglasses Provided.

(a) If eyeglasses are provided as part of the charitable service, all materials shall be new, first quality and free from defects.

(b) Eyeglass material shall be:

1. First quality and meet the requirements of inspection, tolerance, and testing procedures as outlined in the American Standard Prescription Requirements; and

2. Made to meet the individual recipient's personal prescription.

(6) Failure to comply with the terms of this administrative regulation may result in denial or withdrawal of approval.

WILLIAM REYNOLDS, Board President

APPROVED BY AGENCY: November 15, 2022

FILED WITH LRC: November 15, 2022 at 11:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, January, 23rd 2023 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 January 31, 2023. 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 appropriate regulation 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 administration of Optometric practice in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes the standards for the appropriate administration and regulation 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 administration and regulation 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 regulation of Optometry Services.

(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.

(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 7, and KRS Chapter 320.

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

(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 Expired Regulations for Advertising, Expungement of Minor Violations, and Unprofessional Conduct which had previously been effect largely in this form. Additionally it consolidates some other existing regulations. 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 23:051. Renewal, termination, reinstatement of license.**

RELATES TO: KRS 39A.180, 39A.190, 335.010-335.160, 335.990

STATUTORY AUTHORITY: KRS 39A.180, 335.070(1), (3), (6), (7), 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(6) authorizes the board to renew licenses and set requirements for continued education. This administrative regulation establishes the requirements for renewals, reinstatements, and terminations of licenses to engage in the practice of social work.

Section 1. Definition. "Licensee" means a person licensed under KRS 335.010 through 335.160.160 as:

- (1) A certified social worker;
- (2) A licensed social worker; or
- (3) A licensed clinical social worker.

Section 2. (1)(a) Pursuant to KRS 335.130(1), a licensee shall renew the licensee's license on a three (3) year basis in order to continue to practice social work in Kentucky.

(b) The three (3) year renewal cycle shall be calculated based on the date of the issuance of the initial license.



(2) A Renewal Form shall be submitted with the appropriate fee and continuing education requirements as established in 201 KAR 23:020 and 201 KAR 23:075.

(3) A licensee shall file the licensee's current mailing address with the board and shall immediately notify the board in writing if the address changes.

Section 3. If a licensee reapplies after the date of expiration and before three (3) month the licensee shall:

(1) Pay a penalty of 100 dollars;

(2) Cease and desist the practice of social work immediately;

(3) Submit a renewal form along with documentation of completed continuing education requirements per 201 KAR 23:075, Section 2; and

(4) Submit official documentation of employment beginning with the date of expiration of the license.

Section 4. If a licensee has not renewed the licensee's license at the end of three (3) months, the licensee shall submit a new application in accordance with existing requirements for initial applicants under KRS Chapter 335 and 201 KAR Chapter 23.

Section 5. Upon payment of the renewal fee and the late renewal penalty, the date of the license shall be retroactive to the date of expiration.

Section 6. Incorporation by Reference.

(1) "Application For Renewal", 05/2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes St Suite 310, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at bsw.ky.gov.

WHITNEY CASSITY-CAYWOOD, Board Chair

APPROVED BY AGENCY: November 9, 2022

FILED WITH LRC: November 15, 2022 at 11:59 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2023, 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 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 January 31, 2023. 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 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 license. Access to licensure would maintain the current access to services to the citizens of the Commonwealth and provide social workers access to current employment opportunities. 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 335.10 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(7) authorizes the board to establish requirements for a license 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 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 6,000 licensed social workers, licensed clinical social workers, and certified social workers in Kentucky, public schools, hospitals, 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 and testing requirements will be able to apply for a renewal or reinstatement immediately upon the filing of the emergency administrative regulation or will have their prior license validated.

(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 and will waive any fees incurred.

(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 without any disruptions.

(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 licensed social workers to provide social work services will be impacted by this administrative regulation. These entities include public school districts, hospitals, 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 (7) 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 office 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 134.010(13)].

**TOURISM, ARTS AND HERITAGE CABINET**  
**Department of Fish and Wildlife Resources**  
**(Repealer)**

**301 KAR 2:219. Repeal of 301 KAR 2:224 and 301 KAR 2:226.**

RELATES TO: KRS 150.330

STATUTORY AUTHORITY: 150.025(1), 150.600 (1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. It also authorizes the department to make administrative regulations which apply to a limited area or to the entire state. KRS 150.600 (1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within the frameworks established by 50 C.F.R. Parts 20 and 21. 301 KAR 2:224 and 301 KAR 2:226 are being repealed because the requirements have been incorporated into 301 KAR 2:221.

Section 1. The following administrative regulations are hereby repealed:

(1) 301 KAR 2:224, Waterfowl hunting zones; and

(2) 301 KAR 2:226, Youth waterfowl, moorhen and gallinule hunting seasons.

RICH STORM, Commissioner

APPROVED BY AGENCY: November 15, 2022

FILED WITH LRC: November 15, 2022 at 11:43 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 31, 2023, at 9:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2023. 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 Affairs, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: These administrative regulations establish hunting zones for migratory birds and establish special youth waterfowl seasons consistent with federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the means by which migratory birds may be harvested in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. It also authorizes the department to make administrative regulations which apply to a limited area or to the entire state. KRS 150.600 (1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the

taking of waterfowl within the frameworks established by 50 C.F.R. Parts 20 and 21.

(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 means by which migratory bird harvest may occur and how harvested birds are handled consistent with state, national, and international management goals.

(2) If 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 regulations will be repealed.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary as the amendments to 301 KAR 2:221 shall include updated sections to address the subject matter contained in these regulations, thus making these regulations outdated and redundant.

(c) How the amendment conforms to the authorizing statutes: The requirements of the authorizing statutes shall be addressed in the updates to 301 KAR 2:221.

(d) How the amendment will assist in the effective administration of the statutes: The repeal of these regulations and inclusion of their subject matter in 301 KAR 2:221 shall consolidate the regulatory requirements for waterfowl hunting in one regulation.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 40,000 migratory bird hunters in Kentucky who are impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no additional actions required to comply.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters will have fewer administrative regulations to understand and comply with.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Divisions of Wildlife and Law Enforcement 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 150.025(1), 150.600(1), 50 C.F.R. 20, 21.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 by this administrative regulation 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? No revenue will be generated during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings for the regulated entities in the first full year of this administrative regulation is in effect.

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

(c) How much will it cost the regulated entities for the first year? There will be no cost for the regulated entities in the first full year of this administrative regulation is in effect.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost for the regulated entities in subsequent years this administrative regulation is in effect.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

(2) State compliance standards. The Department of Fish and Wildlife Resources sets migratory bird seasons and methods by which migratory birds may be harvested within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

(3) Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag, possession limits

and means by which migratory birds may be legally harvested. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during, and after periods open for hunting and allows for the harvest and means of harvest of light geese under a conservation order season.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters.

**JUSTICE AND PUBLIC SAFETY CABINET  
Office of the Secretary  
(New Administrative Regulation)**

**500 KAR 16:010. Funds disbursement from the elder and vulnerable victims trust fund.**

RELATES TO: KRS 15A.011, 41.305, 209.005, 381.280(3)

STATUTORY AUTHORITY: KRS 15A.160, 41.305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 41.305 requires the Justice and Public Safety Cabinet to administer the elder and vulnerable victims trust fund and to promulgate administrative regulations to implement operation of the fund. KRS 15A.160 and 41.305 authorize the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation defines the terms, standards, and criteria governing the disbursement of money from the fund.

**Section 1. Definitions.**

(1) "Cabinet" means the Justice and Public Safety Cabinet as defined by KRS 15A.011(1).

(2) "Elder Abuse Committee" is defined by KRS 209.005(1).

(3) "Elder and vulnerable victim" means

(a) A natural person sixty-five (65) years of age or older; or

(b) A natural person eighteen (18) years of age or older who, because of mental or physical dysfunction, is unable to manage his or her own resources, carry out the activities of daily living, or protect himself or herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services.

(4) "Funded program" means any program, campaign, project, or combination thereof, proposed by an applicant for which the trust fund review panel grants an award of funds from the elder and vulnerable victims trust fund.

(5) "Trust fund review panel" means the Elder Abuse Committee, with a representative from the cabinet and a representative from the Administrative Office of the Courts.

**Section 2. Funding Criteria.**

(1) The trust fund review panel may disburse funds from the elder and vulnerable victims trust fund.

(2) If funds are disbursed from the elder and vulnerable victims trust fund, the trust fund review panel shall disburse said money in accordance with KRS 41.305.

(3) In accordance with KRS 41.305(6), the trust fund review panel may only disburse available money from the elder and vulnerable victims trust fund to applicants that are qualified under KRS 41.305(6) as public or private nonprofit organizations, including government organizations, which have completed the application incorporated by reference in section 6 of this administrative regulation.

(4) The applicant shall:

(a) Complete and submit the application online at

<https://justice.ky.gov/Pages/index.aspx> in the Grants Management Division section no later than August 1 of the state fiscal year prior to the state fiscal year in which the award funds would be disbursed. The trust fund review panel may grant an extension of time up to and including September 1 of the state fiscal year prior to the state fiscal year in which the award funds would be disbursed; and

(b) Seek funding to:

1. Develop or operate the programming outlined in KRS 41.305(6)(c); and

2. Demonstrate the ability to comply with KRS 41.305(6)(a), (b), (c)1., 2., 3., and 4.

(5) The trust fund review panel shall make its decision as to disbursement of available money based on:

(a) The requirements in KRS 41.305;

(b) An assessment of the applicant's ability to meet the purposes of KRS 41.305;

(c) The strength of the applicant's plan, including project overview and proposed budget;

(d) If applicable, consideration of whether grant requirements were met for a previous grant, including consideration of whether the applicant properly submitted required reports as well as the content of the reports;

(e) An area of specific grant focus determined by the Elder Abuse Committee, if any; and

(f) Other factors of similar importance in assessing the strength of an application.

**Section 3. Awards.**

(1) The trust fund review panel shall provide written notice of its decision regarding a grant application to a grant applicant no later than January 1 of state fiscal year prior to the state fiscal year in which the award funds would be disbursed.

(2) If an award is granted to an applicant, the applicant shall execute a memorandum of agreement with the cabinet memorializing the proposed program prior to the disbursement of any funds.

(3) Disbursement of money from the elder and vulnerable victims trust fund shall occur during the state fiscal year following the approval of funding by the trust fund review panel.

(4) Denial of an award to an applicant by the trust fund review panel shall not be subject to an appeal.

**Section 4. Reporting.** If an application for funding is approved by the trust fund review panel and funds are disbursed to the applicant, the organization or entity who is granted the funds shall:

(1) Submit a quarterly report on the status of the funded program to the Grants Management Division (GMD) with the cabinet;

(2) Submit a follow-up report within five (5) calendar days of conclusion of the funded program to the GMD; and

(3) Submit a final report monitoring the success of the funded program within six (6) months of the conclusion of the funded project to the GMD.

(4) Any report required by this section shall be in writing and delivered to [JUSIGX@ky.gov](mailto:JUSIGX@ky.gov). An email shall constitute a writing for purposes of this section.

**Section 5. Incorporation by Reference.**

(1) "Elder and Vulnerable Victims Trust Fund Grant Application", 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed on the Justice and Public Safety Cabinet Web site at <https://justice.ky.gov/about/pages/lrcfilings.aspx>.

VICTORIA L. ELRIDGE, Committee Chairperson

KERRY HARVEY, Secretary

APPROVED BY AGENCY: October 19, 2022

FILED WITH LRC: November 1, 2022 at 9:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January

23, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2023. 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: Nathan Goens, Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the terms, standards, and criteria governing the disbursement of grant money from the elder and vulnerable victims trust fund.

(b) The necessity of this administrative regulation is: This administrative regulation is needed to establish the grant application process pursuant to KRS 41.305.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 41.305, the Justice and Public Safety Cabinet is required to promulgate administrative regulations to implement its fiscal, programmatic, and disbursement authority over the trust fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation complies with the requirement and need to have administrative regulations related to the Justice and Public Safety Cabinet's fiscal, programmatic, and disbursement authority over the trust fund, and the administrative regulation establishes definitions and parameters for the operations of the trust fund review panel in its work related to disbursement of money from the elder and vulnerable victims trust fund.

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

(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: Approximately 30 public and private nonprofit organizations, including government organizations, involved in the development or operation of elder or vulnerable adult abuse, neglect, or financial exploitation prevention or intervention programs which apply for a grant from the elder and vulnerable victims trust fund will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In addition to completing the grant application incorporated in the administrative regulation by reference, the entities applying for grants will have to understand the definitions, how they apply in the application requirements, and the process required to apply for disbursement of money from the elder and vulnerable victims trust fund. Those entities awarded a grant will

be required to submit reporting related to the funded program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulation is not expected to involve any monetary costs beyond the costs associated with an unknown amount of time necessary to complete the required application and, if awarded, draft the required reports.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities and individuals will better understand how to apply for grant money under the trust fund, which will result in timely and efficient disbursement of money from the elder and vulnerable victims trust fund as well as the increased likelihood of such entities receiving a funding grant from the elder and vulnerable victims trust fund.

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

(a) Initially: There will be a nominal amount of cost associated with implementing the regulation related to the time necessary for collecting and relaying applications and related award reports to the elder trust fund review panel, which is made up of unpaid volunteers, for review.

(b) On a continuing basis: No cost is anticipated in the continuing implementation of this administrative regulation beyond a nominal amount of cost associated with collecting and relaying applications and related award reports to the elder trust fund review panel, which is made up of unpaid volunteers, for review.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's biennial budget and any portion of the Cabinet for Health is the source of funding for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased in this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

## FISCAL NOTE

(1) What 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 Justice and Public Safety Cabinet, the Cabinet for Health and Family Services, the trust fund review panel, and any government organizations involved in the development or operation of elder or vulnerable adult abuse, neglect, or financial exploitation prevention or intervention programs which apply for a grant from the elder and vulnerable victims trust fund.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 41.305

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

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

(c) How much will it cost to administer this program for the first year? There will be a nominal amount of costs associated with administering the program related to the amount of time necessary

to collect and relay grant applications and related award reports to the elder trust fund review panel, which is made up of unpaid volunteers, for review.

(d) How much will it cost to administer this program for subsequent years? There will be a nominal amount of ongoing costs associated with administering the program in subsequent years related to the amount of time necessary to collect and relay grant applications and related award reports to the elder trust fund review panel, which is made up of unpaid volunteers, for review.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings for regulated entities in the first year.

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

(c) How much will it cost the regulated entities for the first year? The regulation is not expected to involve any monetary costs beyond the costs associated with the time necessary to complete the required application for a grant award.

(d) How much will it cost the regulated entities for subsequent years? The regulation is not expected to involve any monetary costs for regulated entities for subsequent years beyond the costs associated with the time necessary to complete the required application and, if awarded, draft the required reports.

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 is not anticipated to have a major economic impact.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of Inspector General**  
**Division of Health Care**  
**(New Administrative Regulation)**

**902 KAR 20:480. Assisted living communities.**

RELATES TO: KRS 194A.700—194A.729, 209.032, 216.515, 216.530, 216.532, 216.595, 216.718, 216.765, 216.789, 216B.015(13), 216B.020(1), 216B.105, 216B.160, 216B.165, 218A.200(6), 21 C.F.R. Part 1317, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2–1320d-8

STATUTORY AUTHORITY: KRS 194A.707(1), (9), 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.707(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations under KRS Chapter 13A for an initial and re-licensure review process for assisted living communities. KRS 194A.707(9) permits the cabinet to promulgate administrative regulations to establish an assisted living community and assisted living community with dementia care licensure fee that shall not exceed costs of the program to the cabinet. KRS

216B.042(1) requires the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the minimum licensure requirements for the operation of social model assisted living communities, assisted living communities that provide basic health and health-related services, and assisted living communities with a secured dementia care unit.

**Section 1. Definitions.**

- (1) "Activities of daily living" is defined by KRS 194A.700(1).
- (2) "Ambulatory" is defined by KRS 194A.700(2).
- (3) "Assistance with activities of daily living and instrumental activities of daily living" is defined by KRS 194A.700(3).
- (4) "Assistance with self-administration of medication" is defined by KRS 194A.700(4).
- (5) "Assisted living community" is defined by KRS 194A.700(5).
- (6) "Assisted living community with dementia care" is defined by KRS 194A.700(6).
- (7) "Assisted living services" is defined by KRS 194A.700(7).
- (8) "Basic health and health-related services" is defined by KRS 194A.700(8).
- (9) "Dementia" is defined by KRS 194A.700(10).
- (10) "Dementia care services" is defined by KRS 194A.700(11).
- (11) "Dementia-trained staff" is defined by KRS 194A.700(12).
- (12) "Direct care service" is defined by KRS 216.718(4).
- (13) "Hands-on assistance" is defined by KRS 194A.700(13).
- (14) "Health facility" is defined by KRS 216B.015(13) to include assisted living communities.
- (15) "Instrumental activities of daily living" is defined by KRS 194A.700(15).
- (16) "Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of the resident's affairs.
- (17) "Living unit" is defined by KRS 194A.700(16).
- (18) "Managing agent" means an individual or legal entity designated by the licensee through a management agreement to act on behalf of the licensee in the on-site management of the assisted living community.
- (19) "Medication administration" is defined by KRS 194A.700(17).
- (20) "Medication management" is defined by KRS 194A.700(18).
- (21) "Medication reconciliation" means the process of identifying the most accurate list of all medications the resident is taking, including the name, dosage, frequency, and route, by comparing the resident record to an external list of medications obtained from the resident, hospital, prescriber, or other provider.
- (22) "Medication setup" is defined by KRS 194A.700(19).
- (23) "Person-centered care" is defined by KRS 194A.700(21).
- (24) "Resident" is defined by KRS 194A.700(22).
- (25) "Secured dementia care unit" is defined by KRS 194A.700(23).
- (26) "Service plan" is defined by KRS 194A.700(24).
- (27) "Significant financial interest" is defined as the lawful ownership of an out-of-state or a Kentucky-licensed health facility or health service, or other entity regulated by the cabinet, whether by share, contribution, or otherwise in an amount equal to or greater than twenty-five (25) percent of total ownership of the out-of-state or Kentucky-licensed health facility or health service, or other cabinet-regulated entity.
- (28) "Temporary condition" is defined by KRS 194A.700(26).
- (29) "Unlicensed personnel" is defined by KRS 194A.700(27).

**Section 2. Licensure Categories.** (1) The licensure categories established by this administrative regulation include the following:

- (a) A social model assisted living community (ALC) license for any facility that provides assisted living services, excluding basic health and health-related services;
- (b) An assisted living community with basic health care (ALC-BH) license for any facility that:
  1. Provides assisted living services, including basic health and

health-related services directly to its residents; and

2. Does not have a secured dementia care unit; and

(c) An ALC with dementia care (ALC-DC) license for any facility that provides assisted living services and dementia care services in a secured dementia unit.

(2) In accordance with KRS 194A.710(3), a license issued under this administrative regulation shall not be assignable or transferable.

(3) In accordance with KRS 194A.704, a personal care home that is in substantial compliance with KRS 194A.703 shall convert its license to an ALC-BH or ALC-DC license, if applicable, by submitting the application, accompanying documentation, and fee required by Section 3(2) of this administrative regulation at least sixty (60) days prior to the date of annual renewal of the facility's personal care home license.

### Section 3. Licensure Application and Fees.

(1) In accordance with KRS 216B.020(1), an ALC, ALC-BH, or ALC-DC shall be exempt from certificate of need.

(2) An applicant for a provisional, initial license or annual renewal as an ALC, ALC-BH, or ALC-DC shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate an Assisted Living Community at least sixty (60) days prior to the:

1. Planned opening; or

2. Annual renewal date;

(b) Proof of approval by the State Fire Marshal's office;

(c) A copy of a blank lease agreement that includes the elements required by KRS 194A.713 and any documentation incorporated in the agreement;

(d) An organizational chart that identifies all entities and individuals with a significant financial interest in the prospective or existing licensee, including the relationship with the licensee and with each other;

(e) A description of any special programming that may be provided in accordance with KRS 194A.713(11);

(f) If applying for a provisional, initial license, or if changes have been made since the date of the previous renewal, a copy of the facility's floor plan that shall identify the:

1. Living units, including features that meet the requirements of KRS 194A.703(1);

2. Central dining area;

3. Laundry facility; and

4. Central living room;

(g) Whether in the preceding seven (7) years any individual with a significant financial interest in the entity seeking initial licensure or renewal as an ALC, ALC-BH, or ALC-DC had a significant financial interest in an out-of-state or a Kentucky-licensed health facility or health service, or other entity regulated by the cabinet, that had its license or certificate to operate denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm;

(h) 1. A copy of the applicant's compliance history for any other care facility the applicant operates if applying for a provisional, initial license as an:

a. ALC or ALC-BH; or

b. ALC-DC that did not have a dementia unit in operation prior to July 14, 2022.

2. Documentation of the applicant's compliance history shall include a copy of all enforcement action issued by the regulatory agency against the care facility including violations, fines, or negative action against the facility's license during the seven (7) year period prior to application for a provisional, initial license; and

(i) A nonrefundable fee made payable to the Kentucky State Treasurer in accordance with the following fee schedule:

| Number of Units | Initial and Annual Fee  |
|-----------------|-------------------------|
| <25             | \$500 + \$40 per unit   |
| 25-49           | \$1,000 + \$40 per unit |
| 50-74           | \$1,500 + \$40 per unit |
| 75-99           | \$1,750 + \$40 per unit |
| 100 or more     | \$2,000 + \$40 per unit |

(3)(a) Name change. An ALC, ALC-BH, or ALC-DC shall:

1. Notify the Office of Inspector General in writing within ten (10)

calendar days of the effective date of a change in the facility's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. An ALC, ALC-BH, or ALC-DC shall not change the location of the facility until an Application for License to Operate an Assisted Living Community accompanied by the documentation and fees required by subsection (2) of this section have been submitted to the Office of Inspector General.

(c) Change in number of living units.

1. An ALC, ALC-BH, or ALC-DC shall submit an Application for License to Operate an Assisted Living Community to the Office of Inspector General:

a. At least sixty (60) days prior to an increase in the number of living units; and

b. Accompanied by a fee of sixty (60) dollars per each additional unit.

2. If there is a decrease in the number of living units, an ALC, ALC-BH, or ALC-DC shall notify the Office of Inspector General within sixty (60) days of the decrease.

(d) Change of ownership.

1. The new owner of an ALC, ALC-BH, or ALC-DC shall submit an Application for License to Operate an Assisted Living Community accompanied by a fee of \$500 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing facility or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(e) Change of managing agent. An ALC, ALC-BH, or ALC-DC shall submit an updated Application for License to Operate an Assisted Living Community accompanied by a fee of twenty-five (25) dollars within ten (10) calendar days of the effective date of a change of managing agents.

(f) Information shared with lending institutions relative to financing for ALC projects. The cabinet's fee for providing information in accordance with KRS 194A.729 shall be \$250.

(g) Voluntary termination of operations. 1. An ALC or ALC-BH shall:

a. Notify the Office of Inspector General at least sixty (60) days prior to voluntarily relinquishing its license; and

b. Notify residents at least sixty (60) days prior to closure unless there is a sudden termination due to:

(i) Fire;

(ii) Natural disaster; or

(iii) Closure by a governmental agency.

2. An ALC-DC that elects to voluntarily terminate operations shall:

a. Relinquish its license; and

b. Comply with notification requirements and other the steps for voluntary relinquishment established by KRS 194A.7063.

(4) Upon receipt of an application accompanied by the documentation and fees required by subsection (2) or subsection (3)(b), (c), or (d) of this section, the Office of Inspector General shall:

(a) Review the application for completeness; and

(b) Return the application and accompanying licensure fee if:

1. An individual having a significant financial interest in the facility, within the seven (7) year period prior to the application date, had a significant financial interest in an out-of-state or a Kentucky-licensed health facility or health service, or other entity regulated by the cabinet, that had its license or certificate to operate denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm; or

2. The cabinet finds that the applicant misrepresented or submitted false information on the application.

### Section 4. Regulatory Functions and Authority to Enter Upon the Premises.

(1) In accordance with KRS 216.530, inspection of an ALC, ALC-BH, or ALC-DC shall be unannounced.

(2) Licensure review inspections shall be conducted in accordance with the survey intervals established by KRS 194A.707(2).

(3) Nothing in this administrative regulation shall prevent the cabinet from:

- (a) Conducting an investigation related to a complaint; or
- (b) Making an on-site survey of an ALC, ALC-BH, or ALC-DC more often if the cabinet deems necessary.
- (4) An ALC, ALC-BH, or ALC-DC shall be subject to the:
  - (a) Inspection requirements of 902 KAR 20:008, Section 2(12);
  - (b) Procedures for correcting violations established by 902 KAR 20:008, Section 2(13); and
  - (c) Civil monetary penalties imposed under KRS 194A.722(5) for any violation that poses imminent danger to a resident in which substantial risk of death or serious mental or physical harm is present.

#### Section 5. License Requirements.

- (1) In accordance with KRS 194A.707(3), an entity shall not operate as ALC, ALC-BH, or ALC-DC unless it is licensed.
- (2) The licensee shall be legally responsible for:
  - (a) The management, control, and operation of the facility in accordance with KRS 194A.710(1), regardless of the existence of a management agreement or subcontract; and
  - (b) Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the ALC, ALC-BH, or ALC-DC.
- (3) An ALC, ALC-BH, or ALC-DC shall not represent that the facility provides any service other than a service it is licensed to provide.
- (4)(a) Upon approving an application, the cabinet shall issue a single license for each building that is operated by the licensee as an ALC, ALC-BH, or ALC-DC, except as provided under paragraph (b) of this subsection.
  - (b)1. Upon approving an application for an ALC, ALC-BH, or ALC-DC, the cabinet shall issue a single license for two (2) or more buildings on a campus if operated by the same licensee.
- 2. A license for two (2) or more buildings on a campus shall include the:
  - a. Address;
  - b. Licensed resident capacity of each building;
  - c. Whether any building has residents that receive basic health and health-related services from the licensee; and
  - d. Whether any building has a dementia care unit.

#### Section 6. Physical Plant Requirements.

- (1) An ALC, ALC-BH, and ALC-DC shall comply with the requirements for living units as established by KRS 194A.703, including compliance with applicable building and safety codes as determined by the enforcement authority with jurisdiction.
- (2) Pursuant to KRS 216.595(3), an ALC-DC may request a waiver from the cabinet regarding building requirements to address the specialized needs of individuals with Alzheimer's disease or other brain disorders.
- (3) The request for a waiver shall follow the same process as a facility's request for a variance pursuant to 902 KAR 20:008, Sections 5 and 6.

#### Section 7. Operations and Services.

- (1) Resident criteria.
  - (a) In accordance with KRS 194A.711, a resident of an ALC, ALC-BH, or ALC-DC shall be ambulatory unless due to a temporary condition.
  - (b) An ALC, ALC-BH, or ALC-DC shall require a medical examination in accordance with KRS 216.765(1) prior to admission of a resident.
    - (c)1. An ALC, ALC-BH, or ALC-DC shall complete a functional needs assessment in accordance with KRS 194A.705(6) and provide a copy to the resident:
      - a. Upon move-in; and
      - b. As needed with updated information if there is a change in the resident's condition, but no later than once every twelve (12) months.
    - 2. The functional needs assessment shall be administered by a staff person with at least:
      - a. A bachelor's degree in health or human services or a related

field;

- b. An associate's degree in health or human services or a related field and at least one (1) year of experience working with the elderly or conducting assessments; or
- c. A high school diploma or its equivalency and two (2) years of experience working with the elderly or conducting assessments.
- 3. The functional needs assessment shall be used to ensure that the prospective or current resident:
  - a. Meets the eligibility criteria pursuant to KRS 194A.711;
  - b. Has at least minimal ability to verbally direct or physically participate in activities of daily living (ADL) or instrumental activities of daily living (IADL) during the time in which assistance is provided;
  - c. Is free from signs and symptoms of any communicable disease that is likely to be transmitted to other residents or staff;
  - d. Does not have any special dietary needs that the facility is unable to meet; and
  - e. Does not require twenty-four (24) hour nursing supervision.
- (2) Minimum requirements. Each ALC, ALC-BH, and ALC-DC shall:
  - (a) Provide each resident with a copy of the resident's rights established by KRS 216.515;
  - (b) Provide each resident with access to the services required by KRS 194A.705(1) according to the lease agreement;
  - (c) Except for a social model ALC, provide each resident with access to basic health and health-related services;
  - (d) Permit a resident to arrange for additional services under direct contract or arrangement with an outside party pursuant to KRS 194A.705(3) if permitted by the policies of the ALC, ALC-BH, or ALC-DC;
  - (e) Utilize a person-centered planning and service delivery process;
  - (f) Provide an emergency response system or personal medical alert device for residents to request assistance twenty-four (24) hours per day, seven (7) days per week;
  - (g) Allow residents the ability to furnish and decorate the resident's unit within the terms of the lease agreement;
  - (h) Allow the resident the right to choose a roommate if sharing a unit;
  - (i) Except for a resident of a secured dementia unit in an ALC-DC, notify the resident that the living unit shall have a lockable entry door in accordance with KRS 194A.703(1)(b). The licensee shall:
    - 1. Provide the locks on the unit;
    - 2. Ensure that only a staff member with a specific need to enter the unit shall have access to the unit and provide advance notice to the resident before entrance, if possible; and
    - 3. Not lock a resident in the resident's unit;
  - (j) Develop and implement a staffing plan for determining staffing levels that:
    - 1. Includes an evaluation conducted at least twice a year of the appropriateness of staffing levels in the facility;
    - 2. Ensures sufficient staffing at all times to meet the scheduled and reasonably foreseeable unscheduled needs of each resident as required by the residents' functional needs assessments and service plans on a twenty-four (24) hour per day basis; and
    - 3. Ensures that the facility can respond promptly and effectively to:
      - a. Individual resident emergencies; and
      - b. Emergency, safety, and disaster situations affecting staff or residents in the facility;
  - (k) Ensure that one (1) or more staff are available twenty-four (24) hours per day, seven (7) days per week, who are responsible for responding to the requests of residents for assistance with health or safety needs;
  - (l) Upon the request of the resident, provide directly or assist with arranging for transportation to:
    - 1. Medical and social services appointments;
    - 2. Shopping; and
    - 3. Recreation;
  - (m) Upon the request of the resident, provide assistance with accessing available community resources and social services;
  - (n) Provide culturally appropriate programs that help:
    - 1. Residents remain connected to their traditional lifeways; and
    - 2. Promote culturally sensitive interactions between staff and



residents; and

(o) Allow residents to voluntarily engage in one (1) or more IADLs without assistance or with minimal assistance as documented in the resident's service plan, but shall not force a resident to perform IADLs such as housekeeping, shopping, or laundry.

(3) Lease agreements.

(a) Upon entering into a lease agreement, each ALC, ALC-BH, and ALC-DC shall inform the resident in writing according to KRS 194A.705(4) about policies relating to the provision of services and contracting or arranging for additional services.

(b) A lease agreement entered into between a resident and an ALC, ALC-BH, or ALC-DC shall meet the minimum content requirements of KRS 194A.713.

(4) Policies and procedures. Each ALC, ALC-BH, and ALC-DC shall maintain written policies and procedures that are up-to-date and address the following:

(a) Reporting and recordkeeping of alleged or actual cases of abuse, neglect, or exploitation of an adult in accordance with KRS 194A.709;

(b) A description of dementia or other brain disorder-specific staff training as required by KRS 216.595(2)(i) if the facility provides special care for persons with a medical diagnosis of Alzheimer's disease or other brain disorders;

(c) How priority will be given to assist a resident during an emergency if evacuation of the facility is necessary and the resident requires hands-on assistance from another person to walk, transfer, or move from place to place with or without an assistive device pursuant to KRS 194A.717(5);

(d) Grievance policies required by KRS 194A.713(14);

(e) Except for a social model ALC, a method that incorporates at least four (4) components in an ongoing resident assessment done by a registered nurse or manager's (director) designee in accordance with KRS 216B.160(7);

(f) Conducting a functional needs assessment pursuant to KRS 194A.705(6);

(g) Infection control practices that address:

1. The prevention of disease transmission; and  
2. Cleaning, disinfection, and sterilization methods used for equipment and the environment;

(h) Reminders for medications, treatments, or exercises, if applicable;

(i) Except for a social model ALC, ensuring that all nurses and licensed health professionals have current and valid licenses to practice;

(j) Medication and treatment management, if the facility provides these services;

(k) Except for a social model ALC, delegation of tasks by registered nurses or other licensed health professionals;

(l) Except for a social model ALC, supervision of registered nurses and licensed health professionals;

(m) Except for a social model ALC, supervision of unlicensed personnel performing delegated tasks;

(n) Cardiopulmonary resuscitation unless the policies of the facility state that this procedure is not initiated by its staff, and each resident or prospective resident is informed of the facility's policy pursuant to KRS 194A.719(1)(d); and

(o) Compliance with the requirements of KRS 216B.165, including assurance that retaliatory action shall not be taken against a staff member who in good faith reports a resident care or safety problem.

(5) Resident grievances.

(a) Each ALC, ALC-BH, and ALC-DC shall post in a conspicuous place:

1. Information about the facility's grievance procedures; and  
2. The name, telephone number, and e-mail contact information for the individuals who are responsible for handling resident grievances.

(b) The notice shall also have:

1. Contact information for the long-term care ombudsman; and  
2. Information for reporting suspected abuse, neglect, or exploitation of an adult.

## Section 8. Business Operations.

(1) Display of license. The original current license shall be displayed at the main entrance of each ALC, ALC-BH, and ALC-DC.

(2) Quality management.

(a) For purposes of this section, "quality management activity" shall mean evaluating the quality of care by:

1. Periodically reviewing resident services, complaints made, and other issues that have occurred; and

2. Determining whether changes in services, staffing, or other procedures need to be made to ensure safe and competent services to residents.

(b) Each ALC, ALC-BH, or ALC-DC shall engage in quality management appropriate to the size of the facility and relevant to the type of services provided.

(c) Documentation about the facility's quality management activity shall be:

1. Maintained for at least two (2) years; and

2. Available to the Office of Inspector General at the time of the survey, investigation, or renewal.

(3) Restrictions.

(a) An ALC, ALC-BH, ALC-DC, or staff person shall not:

1. Accept a power-of-attorney from a resident for any purpose or accept appointment as a guardian or conservator; or

2. Borrow a resident's funds or personal or real property or convert a resident's property to the possession of the facility or staff person.

(b) An ALC, ALC-BH, ALC-DC, or staff person shall not serve as a resident's designated contact person or legal representative.

(4) Resident finances and property.

(a) An ALC, ALC-BH, or ALC-DC may assist a resident with household budgeting, including paying bills and purchasing household goods, but shall not otherwise manage a resident's property except as described in this subsection.

(b) If an ALC, ALC-BH, or ALC-DC accepts responsibility for managing a resident's personal funds as evidenced by the facility's written acknowledgment, the facility shall comply with KRS 216.515(8).

(c) Within thirty (30) days of the effective date of a facility-initiated or resident-initiated termination of housing or services or the death of the resident, the ALC, ALC-BH, or ALC-DC shall:

1. Provide to the resident, resident's legal representative, or resident's designated contact person a final statement of account;

2. Provide any refunds due; and

3. Return any money, property, or valuables held in trust or custody by the facility.

## Section 9. Dietary Services.

(1) Dining area. A dining area shall be available for residents of an ALC, ALC-BH, or ALC-DC.

(2) Therapeutic diets. If the facility provides therapeutic diets and the staff member responsible for food services is not a licensed dietician or certified nutritionist, the responsible staff person shall consult with a licensed dietician or certified nutritionist.

(3) Menu planning.

(a) Menus shall be planned in writing and rotated to avoid repetition.

(b) An ALC, ALC-BH, or ALC-DC shall meet the nutritional needs of residents.

(c) Meals shall correspond with the posted menu.

(d) Menus shall be planned and posted one (1) week in advance.

(e) If changes in the menu are necessary:

1. Substitutions shall provide equal nutritive value;

2. The changes shall be recorded on the menu; and

3. Menus shall be kept on file for thirty (30) days.

(4) Food preparation and storage.

(a) There shall be at least a three (3) day supply of food to prepare well-balanced, palatable meals.

(b) Food shall be prepared with consideration for any individual dietary requirement.

(c) Modified diets, nutrient concentrates, and supplements shall be given only on the written order of a physician.

(d) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and

breakfast.

(e) At least two (2) hot meals daily shall be offered.

(f) Between-meal snacks, including an evening snack before bedtime shall be offered to all residents.

(g) Adjustments shall be made if medically contraindicated.

(h) Food shall be:

1. Prepared by methods that conserve nutritive value, flavor, and appearance; and

2. Served at the proper temperature and in a form to meet individual needs.

(i) A file of tested recipes, adjusted to appropriate yield, shall be maintained.

(j) Food shall be cut, chopped, or ground to meet individual needs.

(k) If a resident refuses food served, substitutes of equal nutritional value and complementary to the remainder of the meal shall be offered and recorded.

(l) All opened containers or leftover food items shall be covered and dated when refrigerated.

(m) Drinking water shall be readily available to the residents at all times.

(n) Food services shall be provided in accordance with 902 KAR 45:005.

(5)(a) Nothing in this administrative regulation shall be construed as taking precedence over the resident's right to make decisions regarding his or her eating and dining.

(b) Information about the resident's eating and dining preferences shall be included in the resident's service plan based on the resident's preferences.

(c) If the resident's eating and dining preferences have a potential health risk, staff shall inform the resident and the resident's designated contact person or legal representative.

Section 10. Employee Records and Requirements. Employee records.

(1) Each ALC, ALC-BH, or ALC-DC shall maintain a current record of each:

(a) Staff person employed by the facility directly or by contract; and

(b) Regularly scheduled volunteer providing services.

(2) The record shall include the following:

(a) Evidence of current professional licensure, registration, or certification, if applicable;

(b) Documentation of orientation completed within thirty (30) days from the date of hire and annual training;

(c) Documentation of annual performance evaluations;

(d) Current job description, including qualifications, responsibilities, and identification of each staff person who provides supervision;

(e) Documentation of background checks in accordance with Section 14(1) of this administrative regulation; and

(f) Record of any health exams related to employment, including compliance with the tuberculosis testing requirements of 902 KAR 20:205.

(3)(a) Each employee record shall be retained for at least three (3) years after an employee or volunteer ceases to be employed by or provides services at the facility.

(b) If a facility ceases operation, employee records shall be maintained for three (3) years after facility operations cease.

Section 11. Prevention and Control of Tuberculosis and Other Communicable Diseases. (1) Each ALC, ALC-BH, and ALC-DC shall maintain written evidence of compliance with the screening and testing requirements of:

(a) 902 KAR 20:200, Tuberculosis (TB) testing for residents in long-term care settings; and

(b) 902 KAR 20:205, Tuberculosis (TB) testing for health care workers.

(2) An ALC, ALC-BH, and ALC-DC shall follow current requirements related to communicable diseases pursuant to KRS 194A.717(4).

(3) In accordance with KRS 194A.707(6), each ALC, ALC-BH, and ALC-DC may provide residents or their designated

representatives with educational information or educational opportunities on influenza disease by September 1 of each year.

Section 12. Disaster planning and emergency preparedness plan.

(1) Each ALC, ALC-BH, and ALC-DC shall:

(a) Have a written emergency disaster plan that:

1. Contains a plan for evacuation, including the written policy required by Section 7(4)(c) of this administrative regulation and KRS 194A.717(5);

2. Addresses elements of sheltering in place or provides instructions for finding a safe location indoors and staying there until given an all clear or told to evacuate;

3. Identifies temporary relocation sites; and

4. Details staff assignments in the event of a disaster or an emergency;

(b) Post an emergency disaster plan prominently;

(c) Provide building emergency exit diagrams to all residents;

(d) Post emergency exit diagrams on each floor; and

(e) Have a written policy and procedure regarding missing tenant residents.

(2)(a) Each ALC, ALC-BH, and ALC-DC shall:

1. Provide emergency and disaster training to all staff during the initial staff orientation and annually; and

2. Make emergency and disaster training available to residents annually.

(b) Staff who have not received emergency and disaster training shall be allowed to work only if trained staff are also working on site.

Section 13. Resident Records.

(1) Each ALC, ALC-BH, and ALC-DC shall maintain a record for each resident.

(2) Entries in the resident record shall be current, legible, permanently recorded, dated, and authenticated with the name and title of the staff person making the entry.

(3) Resident records, whether written or electronic, shall be protected against loss, tampering, or unauthorized disclosure.

(4) Each resident record shall include the following:

(a) Resident's name, date of birth, address, and telephone number;

(b) Name, address, and telephone number of the resident's legal representative or designated contact person;

(c) Names, addresses, and telephone numbers of the resident's health and medical service providers, if known;

(d) Health information, including medical history, allergies, tuberculosis test results, vaccination information, and if the provider is managing medications, treatments, or therapies, documentation of the administration of all medications or delivery of treatments or therapy services;

(e) The resident's advance directives, if any;

(f) Copies of any health care directives, guardianships, powers of attorney, or conservatorships;

(g) The resident's current and previous functional needs assessments and service plans;

(h) All records of communications pertinent to the resident's services;

(i) Documentation of significant changes in the resident's status and actions taken in response to the needs of the resident, including reporting to the appropriate supervisor or health care professional;

(j) Documentation of any incident or accident involving the resident and actions taken in response to the needs of the resident, including reporting to the appropriate supervisor or health care professional;

(k) Documentation that services have been provided as identified in the service plan and according to any required orders received from the resident's health care practitioner;

(l) Documentation of administration of medications and delivery of therapeutic services;

(m) Documentation of all verbal prescription orders received by phone and signed by the authorized health care practitioner within thirty (30) days;

(n) Documentation that the resident has received and reviewed the resident's rights;

- (o) Documentation of complaints received and any resolution;
- (p) Documentation of move-out or transfer to another setting, if applicable; and
- (q) Other documentation relevant to the resident's services or status.

(5) With the resident's knowledge and consent, if a resident is relocated to another facility or if care is transferred to another service provider, the ALC, ALC-BH, or ALC-DC shall convey to the new facility or provider the:

- (a) Resident's full name, date of birth, and insurance information;
- (b) Name, telephone number, and address of the resident's designated contacts or legal representatives, if any;
- (c) Resident's current documented diagnoses that are relevant to the services being provided;
- (d) Resident's known allergies that are relevant to the services being provided;
- (e) Name and telephone number of the resident's physician, if known, and the current physician orders that are relevant to the services being provided;
- (f) All medication administration records and treatment sheets that are relevant to the services being provided;
- (g) Most recent functional needs assessment; and
- (h) Copies of health care directives, "do not resuscitate" orders, and any guardianship orders or powers of attorney.

(6)(a) Following a resident's move-out or termination of services, an ALC, ALC-BH, or ALC-DC shall retain a resident's record for at least six (6) years.

(b) Arrangements shall be made for secure storage and retrieval of resident records if the facility ceases to operate.

(7) Ownership. (a) Any medical records shall be the property of the ALC, ALC-BH, or ALC-DC.

(b) The original medical record shall not be removed except by court order.

(c) Copies of medical records or portions thereof may be used and disclosed in accordance with the requirements established in this administrative regulation.

(8) Confidentiality and Security: Use and Disclosure.

(a) The ALC, ALC-BH, or ALC-DC shall maintain the confidentiality and security of resident records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

(b) The ALC, ALC-BH, or ALC-DC may use and disclose resident records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

(c) An ALC, ALC-BH, or ALC-DC may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

#### Section 14. Staff Requirements.

##### (1) Background checks.

(a) All owners and staff in a position that involves providing direct care services to residents shall:

1. Have a criminal record check performed pursuant to KRS 216.789(3);
2. In accordance with KRS 216.789(1), not have a criminal conviction or plea of guilty to a felony offense related to:
  - a. Theft;
  - b. Abuse or sale of illegal drugs;
  - c. Abuse, neglect, or exploitation of an adult; or
  - d. A sexual crime;
3. In accordance with KRS 216.789(2), not have a criminal conviction or plea of guilty to a misdemeanor offense related to abuse, neglect, or exploitation of an adult;
4. Not have a criminal conviction or plea of guilty to a felony or misdemeanor offense related to abuse, neglect, or exploitation of a child;
5. In accordance with KRS 209.032, not be listed on the

caregiver misconduct registry established by 922 KAR 5:120; and

6. In accordance with KRS 216.532, not be listed on the nurse aide abuse registry established by 906 KAR 1:100.

(b) Staff in a position that involves providing direct care services to residents shall submit to a:

1. Criminal background check upon initial hire and no less than every two (2) years thereafter; and
2. Check of the following registries upon initial hire and annually thereafter:

- a. Caregiver misconduct registry;
- b. Nurse aide abuse registry; and
- c. Central registry established by 922 KAR 1:470.

(c) An ALC, ALC-BH, or ALC-DC may use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of paragraphs (a) and (b) of this subsection.

(d) In accordance with KRS 216.789(4), an ALC, ALC-BH, or ALC-DC may temporarily employ an applicant pending receipt of the results of a criminal record check performed upon initial hire.

(2) Licensed health professionals and nurses. Except for a social model ALC, a licensed health professional or nurse who provides services to residents of an ALC-BH or ALC-DC shall possess a current Kentucky license to practice.

##### (3) Staffing.

(a) In accordance with KRS 194A.717(1), staffing in an ALC, ALC-BH, or ALC-DC shall be sufficient in number and qualifications to meet the twenty-four (24) hour scheduled needs of each resident pursuant to the lease agreement, functional needs assessment, and service plan.

(b) In accordance with KRS 194A.717(2), at least one (1) staff person shall be awake and on-site at all times at each:

1. Licensed entity; or
2. Building on the same campus for two (2) or more buildings operated by the same licensee.

(c) The designated manager (director) of the facility shall meet the requirements of KRS 194A.717(3).

##### (4) Availability of nurse.

(a) An ALC-BH and ALC-DC shall have a registered nurse available for consultation by staff performing delegated nursing tasks.

(b) The registered nurse shall be readily available in person, by telephone, or by other means to the staff at times the staff is providing delegated services.

##### (5) Delegation of assisted living services.

(a) Except for a social model ALC, a registered nurse or licensed health professional may delegate tasks in accordance with the practitioner's scope of practice standards only to those staff who possess the knowledge and skills consistent with the complexity of the tasks delegated.

(b) The ALC-BH or ALC-DC shall establish and implement a system to communicate up-to-date information to the registered nurse or licensed health professional regarding current available staff so the registered nurse or licensed health professional has sufficient information to determine the appropriateness of delegating tasks to meet individual resident needs and preferences.

(c) If the registered nurse or licensed health professional delegates tasks to unlicensed personnel, the registered nurse or health professional shall ensure that prior to the delegation the unlicensed staff person is trained in the proper methods to perform the tasks and demonstrates competence in performing the tasks.

(d) If an unlicensed staff person has not regularly performed the delegated assisted living task during the previous twenty-four (24) month period, the unlicensed staff person shall demonstrate competency in the task to the registered nurse or appropriate licensed health professional.

(e) The registered nurse or licensed health professional shall document instructions for the delegated tasks in the resident's record.

##### (6) Supervision of staff providing non-health related services.

(a) Staff who provide only those assisted living services identified in KRS 194A.700(7)(a)-(f), (i) or (n) shall be supervised periodically to:

1. Verify that the work is being performed competently; and

2. Identify problems and solutions to address issues relating to the staff's ability to provide the services.

(b) The supervision of unlicensed personnel shall be done by staff who:

1. Have the authority, skills, and ability to provide the supervision of unlicensed personnel;

2. Can implement changes as needed; and

3. Can train staff.

(c) Supervision includes:

1. Direct observation of an unlicensed staff person while the unlicensed staff person is providing the services; and

2. Indirect methods of gaining input such as gathering feedback from the resident.

(d) Supervisory review of unlicensed staff shall be provided at a frequency based on the unlicensed staff person's knowledge, skills, and performance.

(7) Supervision of staff providing delegated nursing or therapy tasks.

(a) An unlicensed staff person who performs delegated nursing or therapy tasks shall be supervised by a registered nurse or an appropriate licensed health professional according to the facility's policy to:

1. Verify that the work is being performed competently; and

2. Identify problems and solutions related to the staff person's ability to perform the tasks.

(b) Supervision of an unlicensed staff person performing medication or treatment administration shall:

1. Be provided by a registered nurse or appropriately licensed health professional; and

2. Include observation of the staff person administering the medication or treatment and the interaction with the resident.

(c) The direct supervision of an unlicensed staff person performing a delegated task shall be provided the first time the staff person performs the delegated task and on an as needed basis thereafter based on performance.

(8) Orientation and annual training. (a) Prior to working independently with residents and within thirty (30) days from the date of hire, all staff and management shall receive orientation education that addresses the topics required by KRS 194A.719(1) with emphasis on those most applicable to the employee's assigned duties.

(b) All staff and management shall receive annual training in accordance with KRS 194A.719(2), which shall include in-service education regarding Alzheimer's disease and other types of dementia.

#### Section 15. Medication Management.

(1) Medication management services.

(a) This section of this administrative regulation applies to facilities licensed to operate as an ALC-BH or ALC-DC.

(b) Medications or therapeutic services shall not be administered or provided to any resident except on the order of a licensed health care practitioner as authorized under the practitioner's scope of practice.

(c) Each facility subject to this section shall develop, implement, and maintain written medication management policies and procedures developed under the supervision and direction of a registered nurse, licensed health professional, or pharmacist consistent with scope of practice standards and guidelines.

(d) The policies and procedures shall address:

1. Requesting and receiving prescriptions for medications;

2. Preparing and giving medications;

3. Verifying that prescription drugs are administered as prescribed;

4. Documenting medication management activities;

5. Storage of medications, which shall include compliance with the following requirements:

a. All medications shall be kept in a locked place;

b. All medications requiring refrigeration shall be kept in a separate locked box in the refrigerator in the medication area; and

c. Drugs for external use shall be stored separately from those administered by mouth or injection;

6. Monitoring and evaluating medication use;

7. Resolving medication errors;

8. Communicating with the prescriber, pharmacist, resident and if applicable, designated contact person or legal representative;

9. Disposing of unused medications; and

10. Educating residents and designated contacts or legal representatives about medications.

(e) If controlled substances are being managed, the policies and procedures shall identify how the facility ensures security and accountability for the overall management, control, and disposition of those substances in accordance with subsection (21) of this section.

(f) All resident medications shall be plainly labeled with the:

1. Resident's name;

2. Name of the drug;

3. Strength;

4. Name of the pharmacy;

5. Prescription number;

6. Date;

7. Prescriber's name; and

8. Caution statements and directions for use, unless a modified unit dose drug distribution system is used.

(2) Provision of medication management services. Prior to providing medication management services to a resident pursuant to orders from the resident's health care practitioner in accordance with KRS 194A.708(1)(d), a registered nurse or prescribing practitioner shall conduct an assessment that shall:

(a) Be face-to-face with the resident;

(b) Determine what medication management services will be provided and how the services will be provided;

(c) Include an identification and review of all medications the resident is known to be taking. The review and identification shall include:

1. Indications for medications;

2. Side effects;

3. Contraindications; and

4. Possible allergic or adverse reactions, and actions to address these issues;

(d) Identify interventions needed in the management of medications to prevent diversion of medication by the resident or others who may have access to the medications; and

(e) Provide instructions to the resident and designated contacts or legal representatives on interventions to prevent diversion of medications such as misuse, theft, or illegal or improper disposition of medications.

(3) Individualized medication monitoring and reassessment. The ALC-BH or ALC-DC shall reassess the resident's medication management services in accordance with subsection (2) of this section:

(a) If the resident presents with symptoms or other issues that may be medication-related; and

(b) No later than every twelve (12) months.

(4) Resident refusal. The ALC-BH or ALC-DC shall:

(a) Document in the resident's record any refusal for an assessment for medication management; and

(b) Discuss with the resident the possible consequences of the resident's refusal and document the discussion in the resident's record.

(5) Individualized medication management plan.

(a) For each resident receiving medication management services, the ALC-BH or ALC-DC shall develop and maintain a current individualized medication management record for each resident based on the resident's assessment.

(b) The medication management record shall be updated if there is a change and contain:

1. A statement describing the medication management services that will be provided to the resident;

2. A description of storage of medications that:

a. Is based on the resident's needs and preferences;

b. Reduces risk of diversion; and

c. Is consistent with the manufacturer's directions;

3. Documentation of specific instructions relating to the administration of medications to the resident;

4. Identification of persons responsible for monitoring

medication supplies and ensuring that medication refills are ordered on a timely basis;

5. Identification of medication management tasks that may be delegated to unlicensed personnel;

6. Procedures for staff to notify a registered nurse or appropriate licensed health professional if a problem arises with medication management services; and

7. Any resident-specific requirements related to:

a. Documenting medication administration;

b. Verification that all medications are administered as prescribed; and

c. Monitoring of medication use to prevent possible complications or adverse reactions.

(c) Medication reconciliation shall be completed by a registered nurse, licensed health care practitioner acting within the practitioner's scope of practice, or authorized prescriber for each resident receiving medication management services.

(6) Administration of medication. A licensed health care professional may:

(a) Administer medications as authorized under the professional's scope of practice; or

(b) Delegate medication administration tasks in accordance with subsection (7) of this section.

(7) Delegation of medication administration. Unlicensed personnel may only administer oral or topical medication if delegated to them by a licensed health care professional. If medication is delegated to unlicensed personnel, the ALC-BH or ALC-DC shall ensure that the registered nurse or licensed health care professional has:

(a) Delegated medication administration to a staff person who has:

1. Successfully completed the Kentucky medication aide training program; and

2. Demonstrated the ability to competently follow the procedures;

(b) Instructed the unlicensed personnel in the proper methods to administer oral or topical medications;

(c) Specified, in writing, specific instructions for each resident and documented those instructions in the resident's records; and

(d) Communicated with the unlicensed personnel about the individual needs of the resident.

(8) Documentation of administration of medications.

(a) Each medication administered shall be documented in the resident's record.

(b) The documentation shall include the:

1. Signature and title of the staff person who administered the medication;

2. The medication name, dosage, date, and time administered; and

3. Method and route of administration.

(c) The staff person shall document the:

1. Reason why medication administration was not completed as prescribed, if applicable; and

2. Any follow-up procedures that were provided to meet the resident's needs if medication was not administered as prescribed and in compliance with the resident's medication management plan.

(9) Documentation of medication setup. At the time of medication setup, the authorized health care practitioner shall document the following in the resident's record:

(a) Date of medication setup;

(b) Name of medication;

(c) Quantity of dose;

(d) Times to be administered;

(e) Route of administration; and

(f) Name of the staff person completing the medication setup.

(10) Medication management for residents who will be away from the facility.

(a) An ALC-BH or ALC-DC shall develop and implement policies and procedures for giving accurate and current medications to the resident for planned or unplanned times away from the facility according to the resident's individualized medication management plan.

(b) The policies and procedures shall state that:

1. For planned time away, the medications shall be obtained from the pharmacy or set up by the registered nurse or authorized health care practitioner;

2. For unplanned time away, if the pharmacy is not able to provide the medications, a registered nurse or authorized health care practitioner shall provide medications in the amounts and dosages needed for the length of the anticipated absence, not to exceed seven (7) calendar days.

(c) The ALC-BH or ALC-DC shall:

1. Provide the resident with written information on medications, including any special instructions for administering or handling the medications;

2. Place the medications in a medication container or containers appropriate to the provider's medication system; and

3. Label the container or containers with the:

a. Resident's name; and

b. The dates and times that the medications are scheduled.

(11) Over-the-counter drugs and dietary supplements not prescribed.

(a) An ALC-BH or ALC-DC providing medication management services for over-the-counter drugs or dietary supplements shall retain those items in the original labeled container with directions for use prior to setting up for immediate or later administration.

(b) The ALC-BH or ALC-DC shall verify that the medications are up to date and stored as appropriate.

(12) Prescriptions. There shall be a current written or electronically recorded prescription for all prescribed medications that the ALC-BH or ALC-DC is managing for the resident.

(13) Renewal of prescriptions. Prescriptions shall be renewed at least every twelve (12) months or more frequently as indicated by the assessment in subsection (2) of this section.

(14) Verbal prescription orders. If an order is received by telephone, the order shall be:

(a) Recorded in the resident's medication management record; and

(b) Signed by the physician or health care practitioner as authorized under the practitioner's scope of practice within thirty (30) days.

(15) Written or electronic prescription. At the time a written or electronic prescription is received, it shall be:

(a) Communicated to the registered nurse in charge; and

(b) Recorded or placed in the resident's record.

(16) Medications provided by resident or family members. If a staff person becomes aware of any medications or dietary supplements that are being used by the resident and are not included in the assessment for medication management services, the staff person shall advise the registered nurse and document that in the resident record.

(17) Storage of medications. Except for the storage of controlled substances that shall be kept under a double lock in accordance with subsection (21)(b) of this section, an ALC-BH or ALC-DC shall store all prescription medications in securely locked and substantially constructed compartments according to the manufacturer's directions and permit only authorized personnel to have access.

(18) Prescription drugs. A prescription drug, prior to being set up for immediate or later administration, shall be kept in the original container in which it was dispensed by the pharmacy bearing the original prescription label with legible information including the expiration or beyond-use date of a time-dated drug.

(19) Prohibitions. No prescription drug supply for one (1) resident may be used or saved for use by anyone other than the resident.

(20) Disposition of medications.

(a) Any current medications being managed by the ALC-BH or ALC-DC shall be provided to the resident if:

1. The resident's service plan ends; or

2. Medication management services are no longer part of the service plan.

(b) The ALC-BH or ALC-DC shall dispose of any medications remaining with the facility:

1. That are discontinued or expired; or

2. Upon termination of the service plan or the resident's death.

(c) Upon disposition, the facility shall document in the resident's

record the disposition of the medication, including:

1. The medication's name, strength, prescription number as applicable, and quantity;
2. How the medication was disposed of or to whom the medications were given;
3. Date of disposition; and
4. Names of staff and other individuals involved in the disposition.

(21) Controlled substances.

(a) Controlled substances. An ALC-BH or ALC-DC shall not keep any controlled substances or other habit forming drugs, hypodermic needles, or syringes except under the specific direction of a prescribing practitioner.

(b) Controlled substances shall be kept under double lock, for example, stored in a locked box in a locked cabinet, and keys or access codes to the locked box and locked cabinet shall be accessible to designated staff only.

(c) There shall be a controlled substances bound record book with numbered pages that includes:

1. Name of the resident;
2. Date, time, kind, dosage, and method of administration of each controlled substance;
3. Name of the practitioner who prescribed the medications; and
4. Name of the nurse who:
  - a. Administered the controlled substance; or
  - b. Supervised self-administration by a resident whose medical record includes a written determination from a health care practitioner that the resident is able to safely self-administer a controlled substance under supervision.

(d) A licensed practitioner with access to controlled substances shall be responsible for maintaining a recorded and signed:

1. Schedule II controlled substances count daily; and
2. Schedule III, IV, and V controlled substances count at least one (1) time per week.

(e) All expired or unused controlled substances shall be disposed of, or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:

1. After expiration of the medication; or
  2. From the date the medication was discontinued.
- (f) If controlled substances are destroyed on-site:

1. The method of destruction shall render the drug unavailable and unusable;
2. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and
3. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the:
  - a. Date of destruction;
  - b. Resident name;
  - c. Drug name;
  - d. Drug strength;
  - e. Quantity;
  - f. Method of destruction;
  - g. Name and signature of the person responsible for the destruction; and
  - h. Name of the witness.

(g) For purposes of this paragraph, an ALC-BH or ALC-DC shall be treated the same as a licensed personal care home that stores and administers controlled substances in an emergency medication kit (EMK) in which case the facility shall comply with the same:

1. Requirement for licensed personnel established by 201 KAR 2:370, Section 2(4)(i);
2. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), (7), (8), and (9); and
3. Limitation on the number and quantity of medications established by 902 KAR 55:070, Section 2(6).

(22) Emergency drugs for non-controlled substances in an EMK.

(a) For purposes of this paragraph, an ALC-BH or ALC-DC shall be treated the same as a licensed personal care home that stores and administers non-controlled substances in an EMK in which case the facility shall comply with the same:

1. Requirement for licensed personnel established by 201 KAR

2:370, Section 2(4)(i); and

2. Limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

(b) An ALC-BH or ALC-DC that stores and administers non-controlled substances from a long-term care facility (LTCF) drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(b).

(23) Loss or spillage.

(a) An ALC-BH or ALC-DC shall develop and implement procedures to address loss or spillage of all controlled substances.

(b) The procedures shall require that if spillage of a controlled substance occurs, a notation shall be made in the resident's record explaining the spillage and the actions taken.

(c) The notation shall be signed by the person responsible for the spillage and include verification that any contaminated substance was disposed of.

(d) The procedures shall require that the ALC-BH or ALC-DC:

1. Investigate any known loss or unaccounted for prescription drugs;
2. Document the investigation in required records; and
3. Provide a copy of the detailed list of controlled substances lost, destroyed, or stolen to the Office of Inspector General:
  - a. Division of Audits and Investigations as soon as practical pursuant to KRS 218A.200(6); and
  - b. Division of Health Care.

Section 16. Assisted Living Communities with Dementia Care.

(1) An applicant for licensure as an ALC-DC shall provide services in a manner that is consistent with the requirements of KRS 194.7061(1) – (3).

(2) An ALC-DC shall comply with KRS 194A.7065 and KRS 216.595.

(3) The manager (director) of an ALC-DC shall complete ten (10) hours of annual dementia-specific training in the topics established by KRS 194A.7201(2).

(4) An ALC-DC shall:

- (a) Develop policies and procedures in accordance with KRS 194A.708(1); and
- (b) Provide a copy of the policies and procedures to the resident and the resident's designated contact person or legal representative at the time of move-in.

(5) An ALC-DC shall ensure that the facility complies with the staffing standards established by KRS 194A.7203, including the requirement for only dementia-trained staff to care for residents on its secured dementia unit unless a temporary emergency situation exists.

(6) An ALC-DC shall:

- (a) Provide all of the services listed in KRS 194A.7052(1);
- (b) Evaluate each resident on its secured dementia unit for engagement in activities and develop an individualized activity plan pursuant to KRS 194A.7052(2) and (3);
- (c) Provide a selection of daily structured and non-structured activities for residents on its secured dementia unit in accordance with KRS 194A.7052(4);

(d) Evaluate behavioral symptoms that negatively impact residents on its secured dementia unit and others in the facility and comply with the requirements of KRS 194A.7052(5);

(e) Offer support services to the families of residents on its secured dementia unit and others with significant relationships at least every six (6) months in accordance with KRS 194A.7052(6); and

(f) For dementia care units constructed after July 14, 2022, offer access to secured outdoor space in accordance with KRS 194A.7052(7).

(7) In addition to the training requirements of Section 14(8) of this administrative regulation, an ALC-DC shall meet the training requirements of KRS 194A.7205 for direct care staff who work in the facility's secured dementia care unit.

Section 17. Violation of Standards. An ALC, ALC-BH, or ALC-DC shall be subject to any applicable enforcement actions authorized by KRS 194A.722 and 902 KAR 20:008, Sections 7 and 8 for violations of the standards established by this administrative

regulation, KRS 194A.700—194A.729, 216.532, or 216.789.

Section 18. Denial and Revocation. (1) In addition to the reasons for denial or revocation of a license in accordance with 902 KAR 20:008, Section 8, the cabinet shall deny or revoke an ALC, ALC-BH, or ALC-DC license if it finds that:

(a) There has been a substantial failure by the facility to comply with the provisions of:

1. KRS 194A.700—194A.729, 216.532, or 216.789; or

2. This administrative regulation;

(b) The facility permits, aids, or abets the commission of any illegal act in the provision of assisted living services;

(c) The facility performs any act detrimental to the health, safety, or welfare of a resident;

(d) The facility obtains licensure by fraud or misrepresentation, including a false statement of a material in fact in:

1. The Application for License to Operate an Assisted Living Community; or

2. Any records required by this administrative regulation;

(e) The facility denies a representative of the cabinet access to any part of the facility's books, records, files, employees, or residents;

(f) The facility interferes with or impedes the performance of the duties and responsibilities of the long-term care ombudsman;

(g) The facility interferes with or impedes a representative of the cabinet in the enforcement of this administrative regulation or fails to fully cooperate with a survey or investigation by the cabinet;

(h) The facility destroys or makes unavailable any records or other evidence relating to the facility's compliance with this administrative regulation;

(i) The facility refuses to initiate a background check or otherwise fails to comply with the requirements of KRS 216.789;

(j) The facility fails to timely pay any fines assessed by the cabinet;

(k) The facility violates any applicable building or safety codes as determined by the building code or safety code enforcement authority with jurisdiction;

(l) There have been repeated incidents in the facility of personnel performing services beyond their competency level;

(m) The facility continues to operate beyond the scope of the facility's license after the timeframe specified for correction of the violation; or

(n) An individual with a significant financial interest in the facility:

1. Is convicted of a felony or gross misdemeanor that relates to the operation of the facility or directly affects resident safety or care; or

2. Had the application returned in accordance with Section 3(4) of this administrative regulation.

(2) The cabinet shall follow the notification requirements of 902 KAR 20:008, Section 8(2) and (3) for denial or revocation.

(3) In accordance with KRS 216B.105(2), the denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee files a request in writing for a hearing with the cabinet within thirty (30) days after the date of the notice.

Section 19. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form OIG – 20:480, "Application for Licensure to Operate an Assisted Living Community", November 2022 edition; and

(b) Form OIG – 20:480-A, "Functional Needs Assessment", November 2022 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/lcapplications.aspx>.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 26, 2022

FILED WITH LRC: November 3, 2022 at 12:55 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 23, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this hearing shall notify this agency in writing by January 16, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

**CONTACT PERSON:** Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles, Kara Daniel, and Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the minimum licensure requirements for the operation of social model assisted living communities (ALC), health care model assisted living communities that provide basic health and health-related services (ALC-BH), and assisted living communities with a secured dementia care unit (ALC-DC).

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to comply with the passage of SB 11 during the regular session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation conforms to the content of KRS 194A.700—194A.729 by establishing an initial and re-licensure review process, and minimum licensure requirements for the operation of social model ALCs, ALCs-BH, and ALCs-DC.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation assists in the effective administration of KRS 194A.700—194A.729 by establishing minimum licensure requirements for the operation of social model ALCs, ALCs-BH, and ALCs-DC.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new administrative regulation affects ALCs. There are approximately 114 ALCs certified by the Department for Aging and Independent Living that will convert to licensed facilities regulated by the Office of Inspector General after

adoption of 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: In accordance with SB 11 and this administrative regulation, entities that convert their certification status or otherwise seek licensure as an ALC, ALC-BH, or ALC-DC will be required to submit an initial and annual renewal application to the cabinet with accompanying documentation. They will have to comply with the minimum licensure standards established by KRS 194A.700—194A.729 and this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation was promulgated in accordance with the passage of SB 11, a measure brought forward by Kentucky's long-term care associations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In accordance with the passage of SB 11 during the 2022 regular session, this new administrative regulation will replace the current structure of certification of ALCs, which are currently prohibited from providing health services, with a framework that will allow ALCs to seek licensure to provide basic health and health-related services, including dementia care services. The overall goal of converting the current "social model" to a "health care model" will allow more seniors who reside in assisted living communities to age in place.

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

(a) Initially: The OIG anticipates an estimated cost of approximately \$352,000 to cover four (4) new staff positions that are needed to absorb the workload associated with inspecting and monitoring licensed assisted living communities.

(b) On a continuing basis: The OIG anticipates an estimated ongoing cost of approximately \$352,000 to cover the four (4) staff positions necessary to inspect and monitor licensed assisted living communities.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this new 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: ALCs are currently subject to the fee schedule established by 910 KAR 1:240, Section 2(1)(e) for initial certification and Section 3(2)(c) for annual renewal. This new administrative regulation retains the same fee schedule for ALCs and therefore does not increase fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation establishes fees as authorized by KRS 194A.707(9) and retains the same fee structure as currently established by 910 KAR 1:240.

(9) TIERING: Is tiering applied? Tiering is used because entities may seek licensure as a social model assisted living community, health care model assisted living community, or as an assisted living community with a secured dementia care unit defined by KRS 194A.700(6).

#### 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 assisted living communities (ALC), apartment-style personal care homes that convert to ALC licensure, and the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.707(1) and (9), 216B.042(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? Revenue is based on the number of licensed ALCs subject to the following fee schedule: Number of Units: <25, Rate: \$500 + \$40 per unit; Number of Units: 25-49, Rate: \$1,000 + \$40 per unit; Number of Units: 50-74, Rate: \$1,500 + \$40 per unit; Number of Units: 75-99, Rate: \$1,750 + \$40 per unit; Number of Units: 110 or more, Rate: \$2,000 + \$40 per unit.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Ongoing revenue is based on the number of licensed ALCs subject to the above fee schedule.

(c) How much will it cost to administer this program for the first year? The OIG anticipates an estimated cost of approximately \$352,000 to cover four (4) new staff positions that are needed to absorb the workload associated with inspecting and monitoring licensed ALCs during the first year.

(d) How much will it cost to administer this program for subsequent years? The OIG anticipates an estimated ongoing cost of approximately \$352,000 to cover the four (4) staff positions necessary to inspect and monitor licensed ALCs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The annual licensure fees paid by the roughly 114 assisted living communities is not anticipated to exceed \$500,000. Therefore, this new administrative regulation is not expected to have a major economic impact on the regulated entities.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 21 C.F.R. Part 1317, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2–1320d-8.

(2) State compliance standards. KRS 194A.707(1) and (9),



216B.042(1)

(3) Minimum or uniform standards contained in the federal mandate. 21 C.F.R. Part 1317, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2–1320d-8.

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

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

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office for Children with Special Health Care Needs  
(New Administrative Regulation)**

**911 KAR 1:090. Appeals.**

RELATES TO: KRS Chapter 13B, Chapters 311, 319, 334A, 42 U.S.C. 9902, 42 C.F.R. 435.603, KRS 194A.030, 200.460 - 200.499, 205.520(3), 205.5606(1), 200.654(13), 205.6317, 211.645, 211.647, 213.046(16), 216.2970, 334A.020(5)

STATUTORY AUTHORITY: KRS Chapter 13B, and 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet, to implement programs mandated by federal law, or to qualify for federal funds. This administrative regulation establishes appeal rights for eligibility, procedures for application, assignment of pay category, minimum monthly payments, fees, and reporting requirements for OCSHCN patients and diagnostic centers.

Section 1. Appeal Rights. An individual, provider, or entity who is affected by an adverse action in KAR Chapter 911, except those actions heard according to 911 KAR 1:060, may request an administrative hearing with the Cabinet for Health and Family Services Office of the Ombudsman and Administrative Review. A request for an administrative hearing shall be:

(1)(a) Mailed to the Office of the Ombudsman and Administrative Review, Quality Advancement Branch, 275 E. Main Street, 2 E-O, Frankfort, Kentucky 40621,

(b) Emailed to CHFS Listens Inbox at CHFS.Listens@ky.gov, or

(c) FAXED to (502) 564-9523, and

(2) Received within thirty (30) calendar days from the date of the written notice of the adverse action.

(3) The administrative hearing will be conducted in accordance with KRS Chapter 13B.

IVANORA ALEXANDER, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 1, 2022

FILED WITH LRC: November 14, 2022 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by January 16, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2023. 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: Krista Quarles,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes additional directions relating to the Office for Children with Special Health Care Needs appeals hearings.

(b) The necessity of this administrative regulation: This administrative regulation is needed to ensure that the administrative appeals process is clarified.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation amendment uses KRS Chapter 13B as a base to build the guidance provided in this regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the exact directions as to how to file an administrative appeal.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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: Kentucky Office for Children with Special Health Care Needs; children enrolled in the program and their families; and audiological diagnostic centers.

(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 applicants will know the exact administrative appeals process, without further review.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This is a new regulation, and no cost will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new regulation will impact the above in a positive way by identifying the means of appeal.

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

(a) Initially: None. Services are currently in place and there is no additional cost.

(b) On a continuing basis: None. Services are currently in place and there is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Maternal and Child Health grant, and State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need for an increase of funding requests to implement these proposed changes.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: No fees will be increases based on this amended regulation.

(9) TIERING: Is tiering applied? There is no tiering for this program as there are no fees related to this program or regulation.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Office for Children with Special Health Care Needs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 200.460, KRS 313.035

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This new regulation will not affect expenditures and revenue. Services are currently in place and there is no additional cost.

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

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

(c) How much will it cost to administer this program for the first year? This new regulation will not require additional costs.

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

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

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

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

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not cost regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not cost regulated entities in subsequent year.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of November 9, 2022

**Call to Order and Roll Call**

The November meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, November 9, 2022 at 1 p.m. in Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken.

**Present were:**

**Members:** Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senator Ralph Alvarado; 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; Jessica Beaubien, Kentucky Public Pensions Authority; Stephen Curley, Board of Physical Therapy; Mona Juett, Department of Tourism; Amy Barker, Department of Criminal Justice Training; Melvin Byne, Jon Johnson, Tony Youssefi, Office for Civil Rights and Small Business Development; Jon Johnson, Department of Highways; Todd Allen, Marty Park, Matt Ross, Department of Education; Lucretia Johnson, Oran McFarlan, Scott Wilhoit, Department of Workers' Claims; Abigail Gall, Department of Insurance; J.E.B. Pinney, Public Service Commission; Johnathan Scott, Office of Health Data and Analytics; Kara Daniel, Adam Mather, Office of Inspector General; Johnathan Scott, Department for Medicaid Services; Victoria Elridge, Marnie Mountjoy, Phyllis Sosa, Department for Aging and Independent Living; Laura Begin, Amanda Bolton, Todd Trapp, 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 009:110. Expedited route to certification. Cassie Trueblood, general counsel, represented the board.

At the October 14, 2022 meeting of this subcommittee, 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.

A motion was made and seconded to approve the following amendments: to amend Section 3(1) to: (1) require engagement with multiple student populations, including all of the listed populations represented in the student enrollment for the district where the candidate is completing the residency; and (2) allow engagement opportunities to be offered outside of the district where the candidate is completing the residency. Without objection, and with agreement of the agency, the amendments were approved.

**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. Jessica Beaubien, policy specialist, represented the systems.

A motion was made and seconded to approve the following amendments: to amend Section 1(7) to clarify the definition for "MEM." Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 001:415. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 7 and incorporated Form 6260 to clarify who qualifies as a dependent child; and (3) to amend Section 1(7) to clarify the definition for "MEM." Without objection, and with agreement of the agency, the amendments were approved.

**BOARDS AND COMMISSIONS: Board of Physical Therapy**

201 KAR 022:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants. Stephen Curley, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**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. Mona Juett, deputy commissioner, represented the department.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Criminal Justice Training: General Training Provision**

503 KAR 003:130E. Online basic and in-service training. Amy Barker, assistant general counsel, represented the department.

In response to a question by Representative Frazier Gordon, Ms. Barker stated that she did not have the exact number of individuals expected to complete online training, but she would follow up with that information.

**TRANSPORTATION CABINET: Office for Civil Rights and Small Business Development: Office of Minority Affairs**

600 KAR 004:010. Certification of disadvantaged business enterprises. Melvin Byne, executive director; Jon Johnson, assistant general counsel; and Tony Youssefi, staff assistant, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend Section 1 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Highways: Traffic**

603 KAR 005:350. Off-highway vehicles, safety, and routes.

In response to a question by Co-Chair West, Mr. Johnson stated that this administrative regulation was developed in response to 2021 legislation.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Education: School Terms, Attendance and Operation**

702 KAR 007:125. Pupil attendance. Todd Allen, general counsel; Dr. Marty Park, chief digital officer; and Matt Ross, policy advisor, represented the department.

In response to questions by Co-Chair Hale, Mr. Allen stated that, previous to this version of this administrative regulation, there were agreements between school districts of attendance and districts of residence for students who attended out-of-district. These agreements were primarily for the purpose of SEEK fund calculations. Sometimes, disputes arose regarding these agreements, and this administrative regulation formerly established provisions to address those disputes. House Bill 563 from the 2020 Regular Session of the General Assembly eliminated the need for these agreements; therefore, because there was no longer a need for provisions to address agreement disputes, this administrative regulation was being amended to delete those provisions.

A motion was made and seconded to approve the following amendments: to amend Sections 12 and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

In response to questions by Co-Chair West, Mr. Allen stated that, for a minority of students, virtual learning was a better option. After a pilot study, the department developed a program for students who chose virtual learning. The program was voluntary, and no student would be required to opt for virtual learning. Dr. Park stated that districts requested a high-quality program for virtual learning for students who were better suited to this learning environment. Students were better suited to a virtual learning environment for various reasons, including health, social, emotional, and mental health reasons. A very small percentage of students had requested this virtual option.

In response to a question by Co-Chair Hale, Dr. Park stated that, while the department did not have exact numbers of participating students, it was probably less than two (2) percent.

In response to a question by Representative Bridges, Dr. Park stated that this virtual program was not classified as alternative education, which had other specific requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Office of Special Instructional Services**

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

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Department of Workers' Claims**

803 KAR 025:089. Workers' Compensation medical fee schedule for physicians. Lucretia Johnson, deputy commissioner; Oran McFarlan, deputy general counsel; and Scott Wilhoit, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 through 5 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: Health Insurance Contracts**

806 KAR 017:531. Repeal of 806 KAR 17:350. Abigail Gall, executive advisor, represented the department.

#### **ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities**

807 KAR 005:001E. Rules of procedure. Jeb Pinney, executive advisor, represented the commission.

#### **CABINET FOR HEALTH AND FAMILY SERVICES: 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. Jonathan Scott, regulatory and legislative advisor, represented the exchange.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 3, 6, 7, 9, 11, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 5 to insert provisions concerning qualification for a Stand-Alone Dental Plan outside of the Qualified Health Plan enrollment period or a special enrollment period, as well as effective dates for those plans. Without objection, and with agreement of the agency, the amendments were approved.

#### **Office of Inspector General: Telehealth**

900 KAR 012:005. Telehealth terminology and requirements. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the office.

#### **Department for Medicaid Services**

907 KAR 001:008. Ambulatory surgical center services and reimbursement. Jonathan Scott, regulatory and legislative advisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to: (a) clarify that bilateral procedures shall be reimbursed at 150 percent of the rate established by the administrative regulation instead of billed charges; (b) clarify that reimbursement for multiple endoscopy and multiple procedure discounting shall follow the Medicare rules as established by federal regulation and the federal processing manual; (c) clarify that reimbursement shall be limited to the lesser of billed charges or the amount established by the administrative regulation; (d) add federal cross references; and (e) include information on how to access the revised ASC fee schedule; (2) to amend Section 3 to specify required forms; (3) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to add a new Section 7 to incorporate by reference the required forms. Without objection, and with agreement of the agency, the amendments were approved.

#### **Kentucky Children's Health Insurance Program**

907 KAR 004:020. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act.

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.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Medicaid Eligibility**

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

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

#### **Department for Aging and Independent Living: Aging Services**

910 KAR 001:090. Personal care attendant program and assistance services. Victoria Elridge, commissioner; Marnie Mountjoy, division director; and Phyllis Sosa, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4, 6 through 14, and 16 to comply with the drafting and

formatting requirements of KRS Chapter 13A; and (2) to amend Sections 2 and 12 to clarify that reassessments shall be biennially, rather than annually, to align with KRS 205.905. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Community Based Services: Division of Family Support: Child Welfare**

922 KAR 001:300. Standards for child-caring facilities. Laura Begin, regulation coordinator; Amanda Bolton, legislative and regulatory liaison; and Todd Trapp, division director, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**The following administrative regulations were deferred or removed from the November 9, 2022, subcommittee agenda:**

**STATE BOARD OF ELECTIONS: Electronic Voting Systems**

031 KAR 002:030E. E-Poll book product certification.

**PERSONNEL CABINET: Office of the Secretary**

101 KAR 002:210E. 2023 Plan year handbook for the Public Employee Health Insurance Program.

**FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems**

105 KAR 1:451E. Quasi-governmental employer reports on independent contractors and leased employees.

**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.

201 KAR 002:380. Board authorized protocols.

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

**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.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Education: Office of Learning Programs Development**

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

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Human Resource Management: Administration**

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

**Department for Public Health: 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.

**Office of Inspector General**

906 KAR 001:210. Health care services agencies.

**Department for Medicaid Services**

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 Developmental Health, Developmental and Intellectual Disabilities: Substance Abuse**

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

**Department for Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

921 KAR 002:006. Technical requirements for the Kentucky Transitional Assistance Program (KTAP). Laura Begin, regulation coordinator; Amanda Bolton, legislative and regulatory liaison; and Todd Trapp, division director, represented the department.

In response to questions by Co-Chair Hale, Ms. Begin stated that this package of administrative regulations would both increase the number of individuals eligible and the amount each recipient may receive. This program was geared toward individuals transitioning between jobs. As an individual reached the established income threshold, that individual would no longer be eligible. Funding was federal. Recipient levels had consistently been decreasing, even during the coronavirus (COVID-19) pandemic. Recipient amounts had not been updated since the 1990s.

In response to questions by Representative Frazier Gordon, Ms. Begin stated that maintenance of effort costs for the program were approximately \$70 million. The department used relative caregiver payments to meet that maintenance of effort, and that amount was not expected to change as a result of this package of administrative regulations. Currently, there were approximately 10,000 participating families, consisting of approximately 3,000 adults and 17,000 children. Non-parental caregivers, such as grandparents caring for grandchildren, could be recipients. Mr. Trapp stated that able-bodied recipients in the benefit group were considered work eligible. Non-parental caregivers were not considered work eligible. The department would follow up with the number of individuals in the program who were work eligible. Representative Frazier Gordon stated that, while the program seemed important, she had concerns about the process of establishing policy through these administrative regulations.

In response to questions by Senator Alvarado, Mr. Begin stated that child support cooperation was a requirement for program eligibility. Individuals who were dealers in illegal substances were not eligible.

In response to questions by Co-Chair West, Mr. Trapp stated that recipients who had been deemed work eligible had a monthly activity requirement, such as education, training, or job seeking, which must be met to maintain eligibility. Recipients received, as necessary, transportation and supportive services, such as work attire. Information about the program was available on the department's Web site. Ms. Begin stated that community partners, community action groups, and case managers directed individuals toward the program as appropriate. Work grants were fully consumed, with any small remaining amounts rolled to the next year.

In response to questions by Representative Bridges, Ms. Begin stated that costs for maintenance of effort would not increase. The calculations for increasing recipient amounts varied based on each program. Mr. Trapp stated that work requirements applied to all work-eligible recipients. Representative Bridges stated that he had concerns. He wanted to ensure that these requirements did not conflict with House Bill 7 from the 2022 Regular Session of the General Assembly. These were substantial increases, regardless of if these were state or federal funds. It seemed that the agency waited until the deadline to file administrative regulations set to expire,

which created a transparency issue. These requirements seemed more appropriate for statutes. Ms. Begin stated that the department did not find a conflict with House Bill 7 from the 2022 Regular Session of the General Assembly. No public comments were received during the public comment process; however, the agency was open to further suggestions. The department believed that it had statutory authority for these administrative regulations. The timing of this administrative regulation coming before the subcommittee was related to KRS Chapter 13A process requirements. Representative Bridges stated that this was a good program, but he had ongoing concerns. Agencies should be more current with increases, rather than making such significant increases after thirty years.

In response to a question by Representative Frazier Gordon, Ms. Begin stated that these administrative regulations could go into effect in December or January, but that would be determined by the Co-Chairs of the Interim Joint Committee on Health, Welfare, and Family Services.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, 5, 13, 15, and 16 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

In response to a question by Co-Chair Hale, Ms. Begin stated that the department would agree to defer 921 KAR 002:006, 002:016, 002:500, 002:510, and 002:520. Without objection, and with agreement of the agency, these administrative regulations were deferred to the December 2022 meeting of this subcommittee.

921 KAR 002:016. Standards of need and amount for the Kentucky Transitional Assistance Program (KTAP).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 5, 8, and 12 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 2(1)(d)2.a. to reinsert that the age range for the eligible child shall be sixteen (16) through eighteen (18) years of age. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 002:500. Family Assistance Short Term (FAST).

921 KAR 002:510. Relocation Assistance Program (RAP).

921 KAR 002:520. Work Incentive (WIN).

#### **Child Welfare**

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

922 KAR 001:350. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.

**The subcommittee adjourned at 2 p.m. The next meeting of this subcommittee was tentatively scheduled for December 13, 2022, at 1 p.m.**

OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON AGRICULTURE  
Meeting of November 3, 2022**

The Interim Joint Committee on Agriculture met on November 3, 2022 and a quorum was not present. The following administrative regulations were available for consideration having been referred to the Committee on November 2, 2022, pursuant to KRS 13A.290(6):

302 KAR 029:011  
302 KAR 028:011  
302 KAR 027:011

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 November 3, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND  
ENERGY  
Meeting of November 3, 2022**

The Interim Joint Committee on Natural Resources and Energy met on November 3, 2022 and a quorum was not present. The following administrative regulations were available for consideration having been referred to the Committee on November 2, 2022, pursuant to KRS 13A.290(6):

301 KAR 002:142  
301 KAR 001:410

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:

**INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND  
FAMILY SERVICES  
Meeting of November 15, 2022**

The Interim Joint Committee on Local Government met on November 15, 2022 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on November 1, 2022, pursuant to KRS 13A.290(6):

739 KAR 002:070  
815 KAR 007:120  
815 KAR 010:060

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 November 15, 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 49<sup>th</sup> year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

### Locator Index - Effective Dates

F - 2

Lists all administrative regulations published or continuing through the KRS Chapter 13A review process during this Register year. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other actions that may affect the regulation.

NOTE: Regulations listed with a “47 Ky.R.” or “48 Ky.R.” notation are regulations that were originally published in previous years’ issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the last *Register* year ended.

### KRS Index

F - 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

F - 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

F - 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

F - 22

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

## LOCATOR INDEX - EFFECTIVE DATES

| Regulation<br>Number   | Ky.R.<br>Page No. | Effective<br>Date | Regulation<br>Number | Ky.R.<br>Page No. | Effective<br>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 "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another Register year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior <i>Registers</i> , please visit our online <a href="#">Administrative Registers of Kentucky</a> . |                   |                   |                      |                   |                   |
| <b>SYMBOL KEY:</b>   |                   |                   | 201 KAR 015:030E     | 48 Ky.R. 2689     | 4-7-2022          |
| * Statement of Consideration not filed by deadline   |                   |                   | Replaced             | 2836              | 11-1-2022         |
| ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))   |                   |                   | 201 KAR 015:040E     | 48 Ky.R. 2692     | 4-7-2022          |
| *** Withdrawn before being printed in Register   |                   |                   | Replaced             | 2838              | 11-1-2022         |
| IJC Interim Joint Committee  |                   |                   | 201 KAR 015:050E     | 48 Ky.R. 2693     | 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.  |                   |                   | Replaced             | 49 Ky.R. 322      | 11-1-2022         |
|  |                   |                   | 201 KAR 015:110E     | 48 Ky.R. 2697     | 4-7-2022          |
|  |                   |                   | Replaced             | 2843              | 11-1-2022         |
|  |                   |                   | 201 KAR 015:125E     | 48 Ky.R. 2700     | 4-7-2022          |
|  |                   |                   | Replaced             | 2846              | 11-1-2022         |
|  |                   |                   | 201 KAR 020:070E     | 48 Ky.R. 2702     | 4-6-2022          |
|  |                   |                   | As Amended           | 49 Ky.R. 14       | 6-17-2022         |
|  |                   |                   | Replaced             | 325               | 8-25-2022         |
|  |                   |                   | 201 KAR 020:260E     | 48 Ky.R. 2168     | 1-11-2022         |
|  |                   |                   | Amended              | 2948              | 5-10-2022         |
|  |                   |                   | 201 KAR 020:480E     | 48 Ky.R. 2367     | 2-2-2022          |
|  |                   |                   | Amended              | 2951              | 5-10-2022         |
|  |                   |                   | Replaced             | 2959              | 7-20-2022         |
|  |                   |                   | 201 KAR 023:016E     | 49 Ky.R. 976      | 10-3-2022         |
|  |                   |                   | 201 KAR 023:051E     | 49 Ky.R. 1239     | 11-15-22          |
|  |                   |                   | 201 KAR 026:175E     | 49 Ky.R. 977      | 9-30-2022         |
|  |                   |                   | Withdrawn            |                   | 11-7-2022         |
|  |                   |                   | 201 KAR 026:225E     | 49 Ky.R. 981      | 9-30-2022         |
|  |                   |                   | Withdrawn            |                   | 11-7-2022         |
|  |                   |                   | 201 KAR 046:020E     | 48 Ky.R. 2172     | 12-21-2021        |
|  |                   |                   | 202 KAR 007:545E     | 48 Ky.R. 2704     | 3-30-2022         |
|  |                   |                   | Replaced             | 2851              | 11-1-2022         |
|  |                   |                   | 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         |
| 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         |                      |                   |                   |
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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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| 39A.180     | 201 KAR 023:016E | 61.933        | 200 KAR 001:016  |
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|             | 201 KAR 023:051  | 65.810        | 807 KAR 005:001E |
| 39A.190     | 201 KAR 023:016E | 68.210        | 045 KAR 001:050  |
|             | 201 KAR 023:051E | 72.020        | 501 KAR 006:050  |
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| 117.379     | 031 KAR 002:030E | 150.445     | 301 KAR 001:410  |
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| 131.130     | 103 KAR 043:340E |             | 301 KAR 002:081  |
| 138.210     | 103 KAR 043:340E |             | 301 KAR 002:082  |
| 138.220     | 103 KAR 043:340E |             | 301 KAR 002:142  |
| 138.226     | 103 KAR 043:340E |             | 301 KAR 002:185  |
| 138.228     | 103 KAR 043:340E |             | 301 KAR 002:251  |
| 138.290     | 103 KAR 043:340E |             | 301 KAR 002:300  |
| 142.361     | 907 KAR 001:065E | 150.995     | 301 KAR 002:251  |
|             | 907 KAR 001:065  | 151.601     | 200 KAR 017:111  |
| 142.363     | 907 KAR 001:065  | 150.603     | 301 KAR 002:225  |
| 148.0222    | 603 KAR 005:350  | 151.605     | 200 KAR 017:111  |
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| 148.525     | 300 KAR 001:020  | 156.160     | 704 KAR 003:305  |
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|             | 301 KAR 002:081  | 157.200     | 701 KAR 008:010E |
|             | 301 KAR 002:082  |             | 701 KAR 008:010  |
|             | 301 KAR 002:090  | 157.320     | 702 KAR 007:125  |
|             | 301 KAR 002:185  | 157.350     | 702 KAR 007:125  |
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| 150.015     | 301 KAR 002:015  |             | 701 KAR 008:010  |
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| 150.021     | 301 KAR 002:075  |             | 701 KAR 008:010  |
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| 150.170     | 301 KAR 001:410  |             | 702 KAR 007:125  |
|             | 301 KAR 002:075  | 158.100     | 701 KAR 008:010E |
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| 150.175     | 301 KAR 001:410  | 158.135     | 013 KAR 003:050  |
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|             | 301 KAR 002:300  | 158.142     | 704 KAR 003:305  |
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| 150.183     | 301 KAR 002:075  | 158.281     | 701 KAR 008:010E |
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| 150.186     | 301 KAR 002:082  | 158.4410    | 503 KAR 007:010  |
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| 150.290     | 301 KAR 002:095  |             | 701 KAR 008:020  |
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| 218A.180          | 908 KAR 001:374  | 304.17A.1631             | 806 KAR 017:280 |
| 218A.202          | 908 KAR 001:374  |                          | 806 KAR 017:290 |
| 222.231           | 908 KAR 001:374  | 304.17A.167              | 806 KAR 017:280 |
| 222.462           | 908 KAR 001:374  | 304.17A-168              | 806 KAR 017:280 |
| 224.10-100        | 401 KAR 063:060  |                          | 806 KAR 017:290 |
| 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         |



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| 304.9-320       | 806 KAR 009:025  | 315.191         | 201 KAR 002:030  |
| 304.9-430       | 806 KAR 009:025  |                 | 201 KAR 002:380  |
| 304.9-642       | 806 KAR 009:025  |                 | 201 KAR 002:460  |
| 304.39-110      | 603 KAR 005:350  | 315.205         | 201 KAR 002:413E |
| 304.47-050      | 806 KAR 017:280  | 315.210         | 201 KAR 002:030  |
| 311.530-311.620 | 201 KAR 009:470  | 317A.020        | 201 KAR 012:030  |
| 311.595         | 901 KAR 005:120  |                 | 201 KAR 012:082  |
| 311.5975        | 900 KAR 012:005  |                 | 201 KAR 012:290  |
| 311.621-311.643 | 201 KAR 009:470  | 317A.050        | 201 KAR 012:030  |
| 311.720         | 901 KAR 005:120  |                 | 201 KAR 012:082  |
|                 | 902 KAR 020:365  |                 | 201 KAR 012:260  |
|                 | 922 KAR 001:350  |                 | 201 KAR 012:290  |
| 311.732         | 901 KAR 005:140  | 317A.060        | 201 KAR 012:030  |
| 311.7731        | 902 KAR 020:365  |                 | 201 KAR 012:060  |
| 311.7733        | 902 KAR 020:365  |                 | 201 KAR 012:230  |
| 311.7734        | 902 KAR 020:365  |                 | 201 KAR 012:290  |
| 311.774         | 901 KAR 005:120  | 317A.062        | 201 KAR 012:260  |
| 311.781         | 901 KAR 005:120  | 317A.070        | 201 KAR 012:190  |
| 311.782         | 901 KAR 005:120  | 317A.090        | 201 KAR 012:082  |
| 311.783         | 901 KAR 005:120  | 317A.140        | 201 KAR 012:060  |
| 311.840         | 907 KAR 003:010  |                 | 201 KAR 012:190  |
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| 311.901         | 201 KAR 009:305  |                 | 201 KAR 012:190  |
| 311.905         | 201 KAR 009:305  | 319.032         | 201 KAR 026:175E |
| 311.909         | 201 KAR 009:305  | 319.050         | 201 KAR 026:175E |
| 311.990         | 201 KAR 009:470  | 319.053         | 201 KAR 026:175E |
| 311A.135        | 202 KAR 007:701  | 319.064         | 201 KAR 026:175E |
| 311A.140        | 202 KAR 007:701  | 319.071         | 201 KAR 026:175E |
| 311A.160        | 202 KAR 007:701  |                 | 201 KAR 026:225E |
| 311A.165        | 202 KAR 007:701  | 320.230         | 201 KAR 005:002  |
| 311A.170        | 202 KAR 007:701  | 320.295         | 201 KAR 005:002  |
| 311A.175        | 202 KAR 007:701  | 320.300         | 201 KAR 005:002  |
| 313.021         | 201 KAR 008:016  | 320.310         | 201 KAR 005:002  |
|                 | 201 KAR 008:601  | 320.295         | 201 KAR 005:038  |
| 313.022         | 201 KAR 008:016  | 320.310         | 201 KAR 005:045  |
|                 | 201 KAR 008:601  |                 | 201 KAR 005:105  |
| 313.030         | 201 KAR 008:571  | 321.185         | 301 KAR 002:075  |
| 313.045         | 201 KAR 008:571  | 322.340         | 807 KAR 005:001E |
| 313.050         | 201 KAR 008:571  | 322A.030        | 201 KAR 031:031  |
| 313.080         | 201 KAR 008:571  |                 | 201 KAR 031:040  |
| 313.130         | 201 KAR 008:571  | 322A.040        | 201 KAR 031:040  |
| 313.550         | 201 KAR 008:016  | 322A.045        | 201 KAR 031:040  |
| 314.011         | 201 KAR 020:490  | 322A.050        | 201 KAR 031:010  |
|                 | 907 KAR 003:160E | 322A.060        | 201 KAR 031:010  |
|                 | 907 KAR 003:160  |                 | 201 KAR 031:050  |
|                 | 922 KAR 001:350  | 322A.070        | 201 KAR 031:010  |
|                 | 922 KAR 002:160  |                 | 201 KAR 031:050  |
| 314.041         | 201 KAR 020:260  | 326.060         | 201 KAR 005:002  |
|                 | 201 KAR 020:370  |                 | 201 KAR 005:038  |
| 314.042         | 201 KAR 020:370  | 335.010-335.160 | 201 KAR 023:051E |
| 314.051         | 201 KAR 020:370  |                 | 201 KAR 023:051  |
| 314.071         | 201 KAR 020:370  | 335.080         | 201 KAR 023:016E |
| 314.091         | 201 KAR 020:370  |                 | 201 KAR 023:016  |
| 314.103         | 201 KAR 020:370  | 335.090         | 201 KAR 023:016E |
| 314.111         | 201 KAR 020:260  |                 | 201 KAR 023:016  |
|                 | 201 KAR 020:310  | 335.100         | 201 KAR 023:016E |
| 314.131         | 201 KAR 020:260  |                 | 201 KAR 023:016  |
| 314.400-314.414 | 201 KAR 020:620  | 335.990         | 201 KAR 023:051E |
| 314.404-314.416 | 201 KAR 020:650  |                 | 201 KAR 023:051  |
| 314.475         | 201 KAR 020:310  | 337.275         | 922 KAR 002:160  |
|                 | 201 KAR 020:370  | 337.355         | 201 KAR 002:450  |
| 315.010         | 201 KAR 002:380  | 337.365         | 201 KAR 002:450  |
|                 | 201 KAR 002:413E | 342.0011        | 803 KAR 025:089  |
| 315.020         | 201 KAR 002:413E | 342.019         | 803 KAR 025:089  |
| 315.025         | 201 KAR 002:450  | 342.020         | 803 KAR 025:089  |
| 315.030         | 201 KAR 002:450  | 342.035         | 803 KAR 025:089  |
| 315.0351        | 201 KAR 002:450  | 363.900-363.908 | 302 KAR 079:009  |
|                 | 201 KAR 002:460  | 365.015         | 807 KAR 005:001E |
| 315.050         | 201 KAR 002:030  | 367.93103       | 040 KAR 002:150  |
|                 | 201 KAR 002:413E | 367.93105       | 040 KAR 002:150  |
| 315.065         | 201 KAR 002:413E | 367.93115       | 040 KAR 002:150  |
| 315.121         | 201 KAR 002:450  | 367.93117       | 040 KAR 002:150  |
| 315.131         | 201 KAR 002:450  | 367.97501       | 040 KAR 002:150  |
| 315.135         | 201 KAR 002:413E | 367.97504       | 040 KAR 002:150  |

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| 367.97507         | 040 KAR 002:150  |               | 922 KAR 001:300  |
| 367.97511         | 040 KAR 002:150  |               | 922 KAR 002:160  |
| 367.97514         | 040 KAR 002:150  | 620.030       | 922 KAR 001:300  |
| 367.97517         | 040 KAR 002:150  |               | 922 KAR 001:350  |
| 367.97521         | 040 KAR 002:150  | 620.050       | 907 KAR 003:160E |
| 367.97524         | 040 KAR 002:150  |               | 907 KAR 003:160  |
| 367.97527         | 040 KAR 002:150  |               | 922 KAR 001:350  |
| 369.101-369.120   | 907 KAR 001:044  | 620.090       | 922 KAR 001:300  |
| 369.102           | 807 KAR 005:001E | 620.140       | 922 KAR 001:300  |
| 387.010           | 701 KAR 008:010E |               | 922 KAR 001:350  |
|                   | 701 KAR 008:010  | 620.230       | 922 KAR 001:300  |
| 391.010           | 040 KAR 002:150  | 620.360       | 922 KAR 001:350  |
| 400.203           | 907 KAR 001:044  | 620.363       | 922 KAR 001:350  |
|                   | 907 KAR 003:010  | 625           | 922 KAR 001:350  |
| 403.160           | 921 KAR 001:400  | 654.1-654.5   | 011 KAR 004:080  |
| 403.210-403.240   | 921 KAR 001:400  | 654.30-654.52 | 011 KAR 004:080  |
| 403.211           | 921 KAR 001:380  | 7 C.F.R.      | 302 KAR 040:010  |
| 403.720           | 921 KAR 002:006  |               | 902 KAR 008:160  |
|                   | 921 KAR 002:370  |               | 922 KAR 002:160  |
| 405.430           | 921 KAR 001:380  | 16 C.F.R.     | 302 KAR 079:009  |
|                   | 921 KAR 001:400  |               | 603 KAR 005:350  |
| 405.440           | 921 KAR 001:400  |               | 922 KAR 001:350  |
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| 405.467           | 921 KAR 001:380  | 21 C.F.R.     | 908 KAR 001:374  |
| 405.520           | 921 KAR 001:380  | 26 C.F.R.     | 900 KAR 010:120  |
| 405.991           | 921 KAR 001:400  | 29 C.F.R.     | 900 KAR 010:120  |
| 406.021           | 921 KAR 001:380  | 34 C.F.R.     | 011 KAR 004:080  |
|                   | 921 KAR 001:400  |               | 922 KAR 002:160  |
| 406.025           | 921 KAR 001:380  | 40 C.F.R.     | 302 KAR 026:020  |
|                   | 921 KAR 001:400  |               | 302 KAR 026:150  |
| 407.5101-407.5903 | 921 KAR 001:380  |               | 302 KAR 027:011  |
| 414               | 907 KAR 003:010  |               | 302 KAR 028:011  |
| 415.110           | 907 KAR 003:010  |               | 302 KAR 079:009  |
| 415.208           | 907 KAR 001:044  |               | 401 KAR 063:060  |
| 416.164           | 907 KAR 001:008  | 42 C.F.R.     | 900 KAR 010:120  |
| 416.166           | 907 KAR 001:008  |               | 907 KAR 001:008  |
| 422.317           | 907 KAR 001:044  |               | 907 KAR 001:044  |
| 424               | 922 KAR 001:300  |               | 907 KAR 001:065  |
| 424.300           | 807 KAR 005:001E |               | 907 KAR 003:010  |
| 431.17            | 907 KAR 001:044  |               | 907 KAR 004:020  |
| 431.52            | 907 KAR 001:044  |               | 907 KAR 004:030  |
| 434.840-434.860   | 907 KAR 001:044  |               | 907 KAR 020:020  |
| 438.2             | 907 KAR 003:010  |               | 907 KAR 023:020  |
| 439               | 501 KAR 006:050  |               | 908 KAR 001:374  |
|                   | 501 KAR 006:080  |               | 922 KAR 001:350  |
|                   | 501 KAR 006:050  | 45 C.F.R.     | 807 KAR 005:001E |
| 440.50            | 907 KAR 003:010  |               | 900 KAR 010:120  |
| 440.120           | 907 KAR 023:020  |               | 907 KAR 001:044  |
| 447.10            | 907 KAR 003:010  |               | 921 KAR 001:380  |
| 447.200-447.205   | 907 KAR 003:010  |               | 921 KAR 001:400  |
| 447.271           | 907 KAR 001:008  |               | 921 KAR 002:006  |
| 447.325           | 907 KAR 003:010  |               | 921 KAR 002:016  |
| 447.45            | 907 KAR 023:020  |               | 921 KAR 002:017  |
| 447.500-447.520   | 907 KAR 023:020  |               | 921 KAR 002:035  |
| 454.220           | 921 KAR 001:400  |               | 921 KAR 002:370  |
| 527.100           | 922 KAR 001:350  |               | 921 KAR 002:500  |
| 527.110           | 922 KAR 001:350  |               | 921 KAR 002:510  |
| 600.020           | 921 KAR 002:500  |               | 921 KAR 002:520  |
|                   | 922 KAR 001:300  |               | 922 KAR 001:350  |
|                   | 922 KAR 001:350  |               | 922 KAR 002:160  |
|                   | 922 KAR 002:160  | 47 C.F.R.     | 807 KAR 005:001E |
| 605.080           | 922 KAR 001:300  | 50 C.F.R.     | 301 KAR 002:075  |
| 605.090           | 922 KAR 001:300  | 7 U.S.C.      | 302 KAR 026:010  |
|                   | 922 KAR 001:350  |               | 302 KAR 026:020  |
| 605.120           | 922 KAR 002:160  |               | 302 KAR 026:150  |
| 610.110           | 922 KAR 001:300  |               | 302 KAR 027:011  |
|                   | 922 KAR 001:350  |               | 302 KAR 028:011  |
| 610.170           | 921 KAR 001:380  |               | 302 KAR 029:011  |
| 615.010           | 922 KAR 001:300  |               | 921 KAR 002:006  |
| 615.030           | 922 KAR 001:300  |               | 922 KAR 002:160  |
| 615.040           | 922 KAR 001:300  | 8 U.S.C.      | 921 KAR 002:006  |
| 620.020           | 201 KAR 020:620  |               | 921 KAR 002:016  |
|                   | 907 KAR 003:160E |               | 922 KAR 001:350  |
|                   | 907 KAR 003:160  | 15 U.S.C.     | 908 KAR 001:374  |

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|-------------|--|-------------|------------|
| 20 U.S.C.   | 011 KAR 004:080<br>701 KAR 008:010E<br>701 KAR 008:010<br>807 KAR 005:001E<br>921 KAR 002:016<br>922 KAR 001:300   |             |            |
| 21 U.S.C.   | 921 KAR 002:006  |             |            |
| 22 U.S.C.   | 921 KAR 002:006  |             |            |
| 25 U.S.C.   | 921 KAR 002:016<br>922 KAR 002:160   |             |            |
| 26 U.S.C.   | 105 KAR 001:411<br>900 KAR 010:120<br>921 KAR 002:016  |             |            |
| 29 U.S.C.   | 701 KAR 008:010E<br>701 KAR 008:010<br>921 KAR 002:016<br>922 KAR 002:160<br>900 KAR 012:005<br>921 KAR 002:370<br>922 KAR 002:160   |             |            |
| 31 U.S.C.   | 045 KAR 001:050  |             |            |
| 38 U.S.C.   | 921 KAR 002:006<br>921 KAR 002:016<br>922 KAR 002:160<br>105 KAR 001:415<br>106 KAR 001:141<br>106 KAR 001:171<br>106 KAR 001:181<br>106 KAR 001:191<br>106 KAR 001:201<br>106 KAR 001:221<br>201 KAR 002:413E<br>900 KAR 010:120<br>900 KAR 012:005<br>907 KAR 001:044<br>907 KAR 001:065<br>907 KAR 004:020<br>907 KAR 004:030<br>907 KAR 020:020<br>907 KAR 023:020<br>921 KAR 001:380<br>921 KAR 001:400<br>921 KAR 002:006<br>921 KAR 002:500<br>921 KAR 002:016<br>921 KAR 002:510<br>921 KAR 002:520<br>922 KAR 001:300<br>922 KAR 001:350<br>922 KAR 002:160 |             |            |
| 42 U.S.C.   | 105 KAR 001:411<br>401 KAR 063:060<br>701 KAR 008:010E<br>701 KAR 008:010<br>907 KAR 001:680<br>907 KAR 003:010<br>907 KAR 020:050<br>921 KAR 002:035<br>921 KAR 002:040<br>921 KAR 002:050<br>921 KAR 002:060<br>921 KAR 002:370<br>922 KAR 002:165<br>302 KAR 029:011  |             |            |
| 49 U.S.C.   | 106 KAR 001:141  |             |            |
| 50 U.S.C.   | 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        | 808 KAR 012:020 | 09-16-2022 | Remain in Effect without Amendment        |
| 016 KAR 004:030   | 09-08-2022        | To be amended, filing deadline 03-08-2024 | 907 KAR 001:044 | 06-09-2022 | Remain in Effect without Amendment        |
| 031 KAR 003:040   | 09-02-2022        | To be amended, filing deadline 03-02-2024 | 907 KAR 001:055 | 10-18-2022 | Remain in Effect without Amendment        |
| 031 KAR 004:120   | 09-02-2022        | Remain in Effect without Amendment        | 907 KAR 001:350 | 06-09-2022 | Remain in Effect without Amendment        |
| 031 KAR 004:180   | 09-02-2022        | To be amended, filing deadline 03-02-2024 | 907 KAR 009:005 | 10-18-2022 | Remain in Effect without Amendment        |
| 201 KAR 002:220   | 09-09-2022        | To be amended, filing deadline 03-09-2024 | 907 KAR 009:010 | 10-18-2022 | Remain in Effect without Amendment        |
| 201 KAR 005:030   | 11-10-2022        | Remain in Effect without Amendment        | 907 KAR 009:015 | 10-18-2022 | Remain in Effect without Amendment        |
| 201 KAR 005:110   | 11-10-2022        | Remain in Effect without Amendment        | 907 KAR 009:020 | 10-18-2022 | Remain in Effect without Amendment        |
| 201 KAR 009:305   | 09-08-2022        | To be amended, filed on 07-13-2022        | 907 KAR 010:014 | 08-10-2022 | Remain in Effect without Amendment        |
| 201 KAR 044:010   | 07-01-2022        | Remain in Effect without Amendment        | 907 KAR 010:016 | 08-10-2022 | Remain in Effect without Amendment        |
| 301 KAR 001:122   | 08-04-2022        | To be amended, filing deadline 02-04-2022 | 907 KAR 015:085 | 8/10/2022  | Remain in Effect without Amendment        |
| 301 KAR 001:146   | 08-04-2022        | To be amended, filing deadline 02-04-2024 | 910 KAR 001:170 | 06-09-2022 | To be Amended, Filing deadline 12-09-2023 |
| 500 KAR 013:020   | 08-25-2022        | To be amended, filing deadline 02-24-2024 | 910 KAR 001:270 | 08-11-2022 | To be amended, filing deadline 02-11-2024 |
| 501 KAR 006:050   | 09-14-2022        | To be amended, filing deadline 3-14-2024  | 921 KAR 002:006 | 10-03-2022 | To be amended, filed 8-4-2022             |
| 601 KAR 009:135   | 06-02-2022        | Remain in Effect without Amendment        | 921 KAR 002:016 | 10-03-2022 | To be amended, filed 8-4-2022             |
| 603 KAR 005:155   | 07-26-2022        | Remain in Effect without Amendment        | 921 KAR 002:017 | 10-03-2022 | To be amended, filed 9-12-2022            |
| 702 KAR 001:170   | 08-09-2022        | Remain in Effect without Amendment        | 921 KAR 002:046 | 10-03-2022 | Remain in Effect without Amendment        |
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| 803 KAR 002:402   | 08-26-2022        | To be amended, filing deadline 2-26-2024  | 921 KAR 002:060 | 10-03-2022 | To be amended, filed 9-12-2022            |
| 803 KAR 002:445   | 08-26-2022        | To be amended, filing deadline 02-26-2024 | 921 KAR 002:370 | 10-03-2022 | To be amended, filed 9-12-2022            |
| 804 KAR 004:015   | 09-13-2022        | Remain in Effect without Amendment        | 921 KAR 002:500 | 10-03-2022 | To be amended, filed 8-4-2022             |
| 804 KAR 010:031   | 09-13-2022        | Remain in Effect without Amendment        | 921 KAR 002:510 | 10-03-2022 | To be amended, filed 8-4-2022             |
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## TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 49<sup>th</sup> 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<br>Number | Date<br>Corrected | Regulation<br>Number | Date<br>Corrected |
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