



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon January 13, 2023.

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet February 14, 2023, at 8:00 a.m. in room 149 Capitol Annex.
ARRS Tentative Agenda - [1559](#) [Online agenda updated as needed](#)

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

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Register Year number and Page number.
Example: 49th Year of the Kentucky Register, page 318 (short form: 49 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$120 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

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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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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, February 14, 2023 at 8 a.m.
Annex Room 171**



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

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
Kentucky Higher Education Assistance Authority
011 KAR 004:080. Student aid applications.**

KHEAA Grant Programs
011 KAR 005:001. Definitions pertaining to 011 KAR Chapter 005.
011 KAR 005:037. CAP grant student eligibility.
011 KAR 005:145. CAP grant award determination procedure.

**OFFICE OF THE ATTORNEY GENERAL
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Office of Consumer Protection
040 KAR 002:150. Cremation forms and inspections. (Not Amended After Comments)**

**GENERAL GOVERNMENT CABINET
Personnel Board
101 KAR 001:325. Probationary periods.**

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
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105 KAR 001:411. Hospital and medical insurance for retired members and Kentucky Retirement Systems Insurance Fund Trust.
(Amended After Comments)**

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Board of Pharmacy
201 KAR 002:360. Naloxone dispensing. (Deferred from December)
201 KAR 002:380E. Board authorized protocols. (Filed with Ordinary) ("E" expires 06-04-2023) (Deferred from October)
201 KAR 002:380. Board authorized protocols. (Filed with Emergency) (Amended After Comments) (Deferred from January)
201 KAR 002:450. Unprofessional conduct of a pharmacy permit holder. (Amended After Comments) (Deferred from January)**

Board of Optometric Examiners
201 KAR 005:002. Board administration and optometric practice.

Board of Licensure for Long-Term Care Administrators
201 KAR 006:060. Fees. (Deferred from August)

Board of Dentistry
201 KAR 008:016. Registration of dental laboratories.
201 KAR 008:520. Fees and fines. (Deferred from July)
201 KAR 008:571. Registration of dental assistants.
201 KAR 008:601. Mobile dental facilities and portable dental units. (Not Amended After Comments)

Board of Medical Licensure
201 KAR 009:470. Standardized medical order for scope of treatment form.

Board of Nursing
201 KAR 020:370. Applications for licensure.

Board of Social Work
201 KAR 023:016. Temporary permission to practice. (Filed with Emergency) (Deferred from January)
201 KAR 023:051E. Renewal, termination, reinstatement of license. ("E" expires 08-12-2023) (Filed with Ordinary) (Not Amended After Comments)

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TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

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301 KAR 002:219. Repeal of 301 KAR 002:224 and 301 KAR 002:226.

301 KAR 002:221. Waterfowl seasons and limits.

301 KAR 002:228. Sandhill crane hunting requirements.

JUSTICE AND PUBLIC SAFETY CABINET

Office of the Secretary

500 KAR 016:010. Funds disbursement from the elder and vulnerable victims trust fund.

Department of Corrections

Office of the Secretary

501 KAR 006:040. Kentucky State Penitentiary.

EDUCATION AND LABOR CABINET

Department of Education

Charter Schools

701 KAR 008:030. Charter school appeal process. (Filed with Emergency) (Deferred from January)

Department of Workplace Standards

Labor Standards; Wages and Hours

803 KAR 001:081. Board, lodging, gratuities and other allowances.

PUBLIC PROTECTION CABINET

Department of Insurance

Health Insurance Contracts

806 KAR 017:280. Registration, utilization review, and internal appeal. (Not Amended After Comments)

806 KAR 017:290. Independent External Review Program. (Deferred from January)

Department of Financial Institutions

General Provisions

808 KAR 001:170. Licensing and registration. (Deferred from January)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Health Services and Facilities

902 KAR 020:480. Assisted living communities.

Controlled Substances

902 KAR 055:110. Monitoring system for prescription controlled substances.

Department for Medicaid Services

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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. (Not Amended After Comments)

Payments and Services

907 KAR 003:010. Reimbursement for physicians' services. (Not Amended After Comments)

Medicaid Eligibility

907 KAR 020:050. Presumptive eligibility. (Deferred from January)

Office for Children with Special Health Care Needs

911 KAR 001:060. Medical staff.

911 KAR 001:085. Early Hearing Detection and Intervention Program.

911 KAR 001:090. Appeals.

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

921 KAR 002:006. Technical requirements for the Kentucky Transitional Assistance Program (KTAP). (Deferred from November)

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)

3. REGULATIONS REMOVED FROM FEBRUARY'S AGENDA

BOARDS AND COMMISSIONS

Board of Social Work

201 KAR 023:051. Renewal, termination, reinstatement of license. (Filed with Emergency) (Comments Received; SOC due 02-15-2023)

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EDUCATION AND LABOR CABINET

Department of Education

Charter Schools

701 KAR 008:010. Charter school student application, lottery, and enrollment. (Filed with Emergency) (Comments Received; SOC ext. due 02-15-2023)

701 KAR 008:020. Evaluation of charter school authorizers. (Filed with Emergency) (Comments Received; SOC ext. due 02-15-2023)

701 KAR 008:040. Conversion charter school petition, conversion, and operation. (Filed with Emergency) (Comments Received; SOC ext. due 02-15-2023)

701 KAR 008:050. Charter school funding. (Filed with Emergency) (Comments Received; SOC ext. due 02-15-2023)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Health Services and Facilities

902 KAR 020:470. Kentucky heart attack response and treatment recognition process. (Comments Received; SOC ext. due 02-15-2023)

**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.

VOLUME 49, NUMBER 8– FEBRUARY 1, 2023
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
40 KAR 9:010E

The opioid crisis is the greatest public safety challenge of our time. We see its effects every day in every corner of the Commonwealth. It is reflected in our child abuse and neglect statistics, in our crime numbers and in our human trafficking reports. We see it in the halls of schools, the streets of our communities and in our homes. Yet there is reason for hope. In February 2022, Attorney General Daniel Cameron announced the finalization of an historic \$26 billion settlement with opioid distributors and a manufacturer, which will return nearly \$478 million to the Commonwealth to address the opioid epidemic. To administer the Commonwealth's half of these settlement funds, the General Assembly created the Kentucky Opioid Abatement Advisory Commission within the Office of the Attorney General and charged the Commission with establishing a process for eligible opioid abatement programs to apply for settlement dollars. This emergency regulation, the work of a Commission committed to starting the work of addressing the terrible effects of the opioid crisis, establishes the process for eligible recipients to receive funding for opioid abatement work.

As required by KRS 13.190(7)(a), this emergency regulation is needed pursuant to KRS 13A.190(1)(a)1 to meet an imminent threat to public health, safety, and welfare. On or about November 3, 2022, the Office of the Attorney General received the first settlement payment. Because the Commonwealth's citizens have and continue to experience the effects of the opioid crisis, an ordinary administrative regulation is not sufficient because there is no justifiable reason to delay the distribution of the settlement funds for the many months it would take under the ordinary administrative regulation process. With the Commission having toured the Commonwealth to listen to the many victims of this opioid crisis, and because KRS 15.291 permits the use of such emergency regulations so that "funds may be distributed more quickly and efficiently to combat the opioid epidemic," this emergency regulation is warranted and appropriate. In compliance with KRS 13A.190(8)(b)3, attached are the relevant settlement agreements with Johnson & Johnson, Cardinal Health, McKesson, and AmerisourceBergen, as well as the Kentucky Office of Drug Control Policy's 2021 Overdose Fatality Report. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
DANIEL CAMERON, Attorney General
W. BRYAN HUBBARD, Executive Director

DEPARTMENT OF LAW
Kentucky Opioid Abatement Advisory Commission
(New Emergency Administrative Regulation)

40 KAR 9:010E. General application procedure.

EFFECTIVE: January 6, 2023

RELATES TO: KRS 15.291, 15.293

STATUTORY AUTHORITY: KRS 15.291, 15.293

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.291 and 15.293 require the Kentucky Opioid Abatement Advisory Commission (the "Commission") to promulgate administrative regulations to administer funds received by the Commission. Therefore, this administrative regulation establishes the application procedure for funding requests under KRS 15.291 and 15.293, the duties required of the Commission, the duties required of those that receive Commission funds, and other related issues.

Section 1. Definitions.

(1) "Entity" has the same meaning as its definition in KRS 14A.1-070.

(2) "Governmental agency" has the same meaning as its definition in KRS 65.940.

(3) "Member(s)" refers to any of the Commission members contemplated by KRS 15.291(2), whether voting or non-voting.

Section 2. Eligible Applicants. Any entity or governmental agency that submits an application that conforms with the requirements herein; that meets the criteria in KRS 15.291(5); and that is not debarred or suspended from contracting with the Commonwealth shall be an eligible entity or governmental agency.

Section 3. Application.

(1) To apply for funding, the entity or governmental agency shall submit an application using the "OAAC Grant Portal," available at <https://ag.ky.gov/Priorities/Tackling-the-Drug-Epidemic/Pages/Opioid-Abatement-Advisory-Commission-.aspx>. To apply, an applicant shall be required to become an approved state vendor.

(2) Non-conforming or incomplete applications shall not be considered.

Section 4. Review of Applications.

(1) The Commission shall review applications on a continuous basis.

(2) Should the Commission request supplementation of an application, or otherwise inquire about an application, the point of contact shall acknowledge receipt within seven (7) calendar days and subsequently respond to the Commission in a timely manner. Failure to do so shall result in the application being deemed withdrawn.

(3) Contingent upon available funding, the Commission shall fund an application in whole or in part, provided the funding does not exceed the sum requested in the application.

(4) In awarding funds, the Commission shall consider the following factors:

(a) Compliance with applicable law;

(b) The entity or governmental agency's record and responsibility in utilizing effectively any funds received previously from the Commission or from the counties, consolidated local governments, urban county governments, and cities of the Commonwealth, as described in KRS 15.293(4);

(c) The geographic reach of the application;

(d) Amounts received by an entity or governmental agency from the Commission or from the counties, consolidated local governments, urban county governments, and cities of the Commonwealth, as described in KRS 15.293(4);

(e) The utility and effectiveness of any part of the application;

(f) The extent to which Kentucky residents are served by the application;

(g) The extent to which prior allocations from the Commission have served similar purposes;

(h) The extent to which the application proposes to serve a portion of the population that otherwise would not receive such service;

(i) The extent to which the application proposes to incorporate relevant partnerships that are likely to increase the efficiency and effectiveness of programming;

(j) The extent to which the application proposes, among other things, to educate the public about opioid misuse and opioid use disorder, reduce the occurrence of opioid misuse and opioid use disorder, promote resistance to opioid misuse and opioid use disorder, promote the effective treatment of opioid use disorder, and/or combat the effects of opioid misuse, including co-occurring mental health issues;

- (k) The extent to which the application activities align with accepted evidence-based practices; and/or
- (l) The sufficiency of records to validate the requested amounts.

Section 5. Recipients' Duties.

(1) Entities and governmental agencies that receive funding shall submit quarterly certifications to the Commission due on the following dates of the calendar year:

- (a) March 31;
- (b) June 30;
- (c) September 30; and
- (d) December 31.

(2) Entities and governmental agencies shall submit certifications using the KYOAC Certification Form.

(3) Certifications are required until the recipient exhausts all funds received from the Commission and until the recipient has submitted a certification stating that all such funds have been exhausted.

(4) Separate certifications are required for each funding award.

Section 6. Noncompliance.

(1) Noncompliance shall include:

(a) Materially falsified information in any certifications filed pursuant to or required by KRS 15.291, KRS 15.293, or related regulations;

(b) Failure to meet certification submission deadlines; and

(c) Failure to expend funds in conformity with the enumerated purposes set forth in KRS 15.291, pursuant to KRS 15.293(5).

(2) The Commission shall require entities or governmental agencies to reimburse the Commission for any funds expended in a noncompliant manner.

(3) The Commission shall require noncompliant entities or governmental agencies to forfeit any remaining funds received from the Commission.

(4) The Commission shall bar noncompliant entities or governmental agencies from receiving funds from the Commission.

(5) The Commission shall report noncompliance to the Department of Law for determination as to whether further action is necessary to ensure compliance with opioid-related agreements.

Section 7. Commission Appointments. The terms of members appointed pursuant to KRS 15.291(3)(b) shall begin upon the Commission's first meeting.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "OAC Grant Portal," available at <https://ag.ky.gov/Priorities/Tackling-the-Drug-Epidemic/Pages/Opioid-Abatement-Advisory-Commission-.aspx>; and

(b) KYOAC Certification Form, December 2022.

(2) These materials shall be inspected, copied, or obtained, subject to copyright law, at the Office of the Attorney General Capital Complex East, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DANIEL CAMERON, Attorney General
W. BRYAN HUBBARD, Executive Director

APPROVED BY AGENCY: December 21, 2022

FILED WITH LRC: January 06, 2023 at 10:26 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2023, at 1:00 p.m. Eastern Time at 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall 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. If you do not wish to be heard at the public hearing, you shall submit written comments on the proposed administrative regulation. Written comments shall be accepted through midnight on February 28, 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: Alison Chavies, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-3449, phone 502-696-5638, fax 502-564-2894, email alison.chavies@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alison Chavies

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for administering the settlement funds from certain opioid-related litigation.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 15.291(7) and is necessary to establish a process for administering the settlement funds from certain opioid-related litigation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 15.291 and 15.293, because it establishes a process for administering opioid-related settlement funds, while adhering to the statutory goals of KRS 15.291 and 15.293.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 15.291 and KRS 15.293 by defining the rules and methods used to apply for and distribute the opioid-related settlement funds. The administrative regulation will also further the statutes' goal of providing accountability in the use of such funds.

(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 the administrative regulation: N/A

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all those eligible entities and governmental agencies—as defined by KRS 14A.1-070 and KRS 65.940, respectively—that apply for and are awarded funds by the Commission.

(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: An entity or governmental agency seeking funding from the Commission must comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There shall be minor administrative costs to comply with this administrative regulation. Those costs are difficult to estimate at this juncture. The Commission does not anticipate any other costs for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity or governmental agency that complies with this administrative regulation will be eligible for funding from the Commission for opioid abatement.

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

(a) Initially: The Department of Law shall bear administrative costs in implementing this regulation, which are difficult to estimate at this time. The Commission does not anticipate any other costs for implementation.

(b) On a continuing basis: N/A

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Opioid Abatement Advisory Commission is funded by proceeds from the opioid-related settlements, judgments, and bankruptcies referenced in KRS 15.293.

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(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 need to 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: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all those entities and governmental agencies regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Department of Law because the Department of Law is charged with the administration of the Commission. The regulation will also impact any counties, consolidated local governments, urban county governments, and cities of the Commonwealth that receive any opioid-related monies referenced by KRS 15.291 or 15.293.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.291 and/or 15.293 require and authorize the action taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation facilitates the distribution of certain opioid-related settlement funds; therefore, this regulation does not generate any revenue. However, as a result of the opioid settlements, local governments shall qualify for funds that they shall then expend on opioid abatement. At this time, an estimate for the amounts relevant local governments will receive from these opioid settlement funds cannot be provided.

(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? See 3 above.

(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? See 3 above.

(c) How much will it cost to administer this program for the first year? At this time, an estimate of the cost to the Department of Law to administer this program cannot be provided. However, the Department of Law will make funding requests to the Commission, per KRS 15.291 and 15.293, as appropriate to offset the Department of Law's relevant costs.

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

Revenues (+/-): N/A

Expenditures (+/-): Expenditure amounts will be determined by receipt of settlement funds and the manner in which the Commission expends such funds.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. The administrative regulation facilitates the distribution of certain opioid-related settlement funds; therefore, this regulation does not save entities specific costs. However, as a result of the opioid settlements, eligible entities and governmental agencies shall qualify for funds that they shall use in ways to save on associated costs of opioid and substance abuse. At this time, an estimate for the amounts relevant entities or governmental agencies will receive cannot be provided.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? See 4 above.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? See 4 above.

(c) How much will it cost the regulated entities for the first year? At this time, estimates of the cost to the regulated entities and governmental agencies cannot be provided.

(d) How much will it cost the regulated entities for subsequent

years? See 4(c).

Cost Savings (+/-): N/A

Expenditures (+/-): Expenditure amounts will be determined by receipt of settlement funds and the manner in which the regulated entities expend such funds.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact: This administrative will not have a major impact as it will not incur costs upon state or local government or regulated entities, in aggregate, of more than \$500,000.

STATEMENT OF EMERGENCY 40 KAR 9:020E

The opioid crisis is the greatest public safety challenge of our time. We see its effects every day in every corner of the Commonwealth. It is reflected in our child abuse and neglect statistics, in our crime numbers, and in our human trafficking reports. We see it in the halls of our schools, the streets of our communities, and in our homes. Yet there is reason for hope. In February 2022, Attorney General Daniel Cameron announced the finalization of an historic \$26 billion settlement with certain opioid distributors and a manufacturer, which will return nearly \$478 million to the Commonwealth to address the opioid epidemic. The Commonwealth's counties, consolidated local governments, and urban-county government administrator half of the settlement proceeds. KRS 15.293 requires the counties, consolidated local governments, urban-county governments, and cities of the Commonwealth to submit certifications that any use of these funds is consistent with the criteria in KRS 15.291(5). This emergency regulation establishes the framework for those certifications so that work of healing from the opioid crisis may begin.

As required by KRS 13.190(7)(a), this emergency regulation is needed, pursuant to KRS 13A.190(1)(a)1, to meet an imminent threat to public health, safety, and welfare. On or about November 3, 2022, the Office of the Attorney General received the first settlement payment. Because the Commonwealth's citizens have and continue to experience the effects of the opioid crisis, an ordinary administrative regulation is not sufficient because there is no justifiable reason to delay the distribution of the settlement funds for the many months it would take under the ordinary administrative regulation process. With the Kentucky Opioid Abatement Advisory Commission having toured the Commonwealth to listen to the many victims of this opioid crisis, and because KRS 15.291 permits the use of such emergency regulations so that "funds may be distributed more quickly and efficiently to combat the opioid epidemic," this emergency regulation is warranted and appropriate. In compliance with KRS 13A.190(8)(b)3, attached are the relevant settlement agreements with Johnson & Johnson, Cardinal Health, McKesson, and AmerisourceBergen, as well as the Kentucky Office of Drug Control Policy's 2021 Overdose Fatality Report. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
DANIEL CAMERON, Attorney General
W. BRYAN HUBBARD, Executive Director

DEPARTMENT OF LAW Kentucky Opioid Abatement Advisory Commission (New Emergency Administrative Regulation)

40 KAR 9:020E. Local government application procedure.

EFFECTIVE: January 6, 2023

RELATES TO: KRS 15.291, 15.293

STATUTORY AUTHORITY: KRS 15.291, 15.293

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.291 and 15.293 permit the Kentucky Opioid Abatement Advisory Commission (the "Commission") to promulgate administrative regulations to administer funds received by the Commission and to oversee the use of funds received under KRS 15.293(4). KRS

15.293 requires each recipient of funds under KRS 15.293(4) to submit certifications that the use of such funds is consistent with the criteria in KRS 15.291(5), a description of the use of such funds, and other information as the Commission requests through the promulgation of administrative regulations. Therefore, this administrative regulation establishes the procedure for a county, consolidated local government, urban-county government, or city of the Commonwealth that receives funds under KRS 15.293(4) to certify use consistent with KRS 15.293.

Section 1. Covered Governmental Bodies. Any county, consolidated local government, urban-county government, or city in the Commonwealth that received or will receive opioid funds under KRS 15.293(4) shall be a covered governmental body.

Section 2. Duties of Covered Governmental Bodies.

(1) Consistent with KRS 15.293(4)(c)(2), covered governmental bodies shall submit quarterly certifications to the Commission due on the following dates of the calendar year:

- (a) March 31;
- (b) June 30;
- (c) September 30; and
- (d) December 31.

(2) Covered governmental bodies shall submit certifications using the KYOAC Certification Form, which is incorporated by reference in 40 KAR 9:010.

(3) Certifications are required until the recipient exhausts all funds received pursuant to KRS 15.291 or 15.293 and until the recipient has submitted a certification stating that all such funds have been exhausted.

Section 3. Noncompliance.

(1) Noncompliance shall include:

(a) Materially falsified information in any certifications filed pursuant to or required by KRS 15.291, KRS 15.293, or related regulations;

(b) Failure to meet certification submission deadlines; or

(c) Failure to expend funds in conformity with the enumerated purposes set forth in KRS 15.291, pursuant to KRS 15.293(5).

(2) The Commission shall require covered governmental bodies to reimburse the Commission for any funds expended in a noncompliant manner.

(3) The Commission shall report noncompliance to the Department of Law for determination as to whether further action is necessary to ensure compliance with opioid-related agreements.

DANIEL CAMERON, Attorney General

W. BRYAN HUBBARD, Executive Director

APPROVED BY AGENCY: December 21, 2022

FILED WITH LRC: January 06, 2023 at 10:26 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2023, at 1:00 p.m. Eastern Time at 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall 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. If you do not wish to be heard at the public hearing, you shall submit written comments on the proposed administrative regulation. Written comments shall be accepted through midnight of February 28, 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: Alison Chavies, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-3449, phone 502-696-5638, fax 502-564-2894, email alison.chavies@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alison Chavies

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for covered governmental bodies that receive settlement funds from certain opioid-related litigation to submit certifications on the use of such funds.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a process for ensuring compliance by covered governmental bodies that receive settlement funds from certain opioid-related litigation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 15.291 and 15.293, because it establishes a process for covered governmental bodies to certify that funds were used consistent with KRS 15.291.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 15.291 and KRS 15.293 by defining the rules and methods used to certify use and compliance with statutes in the use of opioid-related settlement funds. The administrative regulation will also further the statutes' goal of providing accountability in the use of such funds.

(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 the administrative regulation: N/A

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all covered governmental bodies that receive settlement funds from certain opioid-related litigation.

(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: Covered governmental bodies will have to submit the required certifications and maintain the required records in accordance with the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There shall be minor administrative costs, which are difficult to estimate at this juncture, to comply with this administrative regulation; the Commission does not anticipate any other costs for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A covered governmental body that complies with the administrative regulation will avoid the potential consequences of noncompliance.

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

(a) Initially: The Department of Law shall bear administrative costs, which are difficult to estimate at this time, in implementing this regulation; other costs for implementation are not anticipated.

(b) On a continuing basis: N/A.

(6) What is the source of funding to be used to the implementation and enforcement of this administrative regulation: The Commission is funded by proceeds from the opioid-related settlements, judgements, and bankruptcies referenced in KRS 15.293.

(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 need to 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: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering is not appropriate because

the administrative regulation applies equally to all those entities and governmental agencies regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Department of Law because the Department of Law is charged with the administration of the Commission. The regulation will also impact any covered governmental bodies that receive any opioid-related monies referenced by KRS 15.291 or 15.293.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.291 and 15.293 require and authorize the action taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation facilitates certification of the use of certain opioid-related settlement funds; therefore, this regulation does not generate any revenue. However, as a result of the opioid settlements, local governments shall qualify for funds that they shall then expend on opioid abatement. At this time, an estimate for the amounts relevant local governments will receive from these opioid settlement funds cannot be provided.

(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? See 3 above.

(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? See 3 above.

(c) How much will it cost to administer this program for the first year? At this time, an estimate of the cost to the Department of Law to administer this program cannot be provided. However, the Department of Law will make funding requests to the Commission, per KRS 15.291 and 15.293, as appropriate to offset the Department of Law's related costs.

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

Revenues (+/-): N/A.

Expenditures (+/-): Expenditure amounts will be determined by receipt of settlement funds and the manner in which the Commission expends such funds.

Other Explanation: N/A.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. As a result of the opioid settlements, covered governmental bodies shall qualify for funds that they shall use in ways to save on associated costs of opioid and substance abuse. At this time, the Department of Law is unable to provide an estimate for the amounts that will be received from these opioid settlement funds.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? See 4 above.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? See 4 above.

(c) How much will it cost the regulated entities for the first year? At this time, the Commission is unable to estimate the cost to the regulated entities during the first year or subsequent years.

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

Cost Savings (+/-): N/A.

Expenditures (+/-): Expenditure amounts will be determined by receipt of settlement funds and the manner in which the regulated entities expend such funds.

Other Explanation: N/A.

(5) Explain whether this administrative regulation will have a major economic impact: This administrative will not have a major impact as it will not incur costs upon state or local government or regulated entities, in aggregate, of more than \$500,000.

STATEMENT OF EMERGENCY 505 KAR 1:120E

An emergency regulation, pursuant to KRS 13A.190(1)(a)(1), is necessary to meet an imminent threat to public health, safety, and welfare posed by increasingly violent youth housed in Department of Juvenile Justice (DJJ) detention centers and post-adjudication facilities. Recent violent events by youth at DJJ facilities necessitate immediate action to change options available to the department for control of the facilities and the youths contained within them. An ordinary administrative regulation is not sufficient because of recent violent events by youth at DJJ facilities that put other youths in custody as well as DJJ staff at risk of harm. This administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. No emergency administrative regulation governing the same subject matter has been filed within the previous nine months.

ANDY BESHEAR, Governor
VICKI REED, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Emergency Amendment)

505 KAR 1:120E. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.

EFFECTIVE: January 13, 2023

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference policies and procedures concerning health and safety for [into regulatory form materials used by] the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference.

(1) The "Department of Juvenile Justice Policy and Procedures Manual: Health and Safety Services", January 13, 2023 [July 13, 2020], is incorporated by reference and includes the following:

400	Health Services Definitions (Amended 01/13/23[07/13/20])
400.1	Health Services (Amended 04/15/20)
401	Health Services Administration and Personnel (Amended 03/30/18)
402	Access to Treatment and Continuity of Care (Amended 04/15/20)
402.1	Continuity of Care and Medical Discharge (Amended 04/15/20)
403	Medical Records (Amended 04/15/20)
404.1	Admission Screening for Physical and Behavioral Health Challenges (Amended 07/13/20)
404.2	Ectoparasite Control (Amended 03/30/18)
404.3	Health Assessment and Physical Examination (Amended 03/30/18)
404.4	Sick Call (Amended 03/30/18)
404.5	Access to Diagnostic Services (Amended 03/30/18)
404.6	Emergency Medical Services (Amended 03/30/18)
404.7	First Aid, AED, and First Aid Kits (Amended 03/30/18)
404.8	Hospital Care (Amended 03/30/18)
404.10	Special Needs Treatment Plans (Amended 03/30/18)
404.11	Perinatal Care (Amended 03/30/18)
404.12	Oral Screening and Oral Care (Amended 03/30/18)

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404.13	Preventative Health Care (Amended 03/30/18)
404.14	Family Planning Services (Amended 03/30/18)
405	Behavioral Health Services Administration and Personnel (Amended 07/13/20)
405.1	Behavioral Health Screening and Evaluation (Amended 04/15/20)
405.2	Forced Psychotropic Medications (Amended 07/10/18)
405.3	Referral for Behavioral Health Services (Amended 07/13/20)
405.4	Suicide Prevention and Intervention (Amended 07/13/20)
405.5	Behavioral Health Emergencies (Amended 04/15/20)
405.6	Psychiatric Hospitalization (Amended 07/13/20)
406	Therapeutic Restraints (Amended 01/13/23[03/30/18])
407	Pharmaceuticals (Amended 03/30/18)
408.1	Forensic Information (Amended 03/30/18)
409	Substance Abuse and Chemical Dependency (Amended 03/30/18)
410	Orthoses, Prostheses, and Other Aids to Reduce the Effects of Impairment (Amended 08/14/18)
411	Notification in Emergencies (Amended 03/30/18)
414	Environmental Health and Safety (Amended 03/30/18)
415	Occupational Exposure to Bloodborne Pathogens (Amended 03/30/18)
416	HIV/AIDS/STI (Amended 03/30/18)
416.1	Infectious Communicable Disease (Amended 03/30/18)
424	Emergency Plans (Amended 03/30/18)
424.1	Emergency Plans for Central Office (Amended 03/30/18)
426	Dietary Services (Amended 03/30/18)
427	Maintenance (Amended 03/30/18)
427.1	Control and Use of Tools and Sharps (Amended 03/30/18)
428	Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials (Amended 03/30/18)
428.1	Control of Hazardous Materials in Central Office (Amended 03/30/18)
430	Pets and Domestic Animals (Amended 03/30/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Juvenile Justice Web site at <https://djj.ky.gov/About%20DJJ/Pages/ircfilings.aspx>.

VICKI REED, Commissioner

APPROVED BY AGENCY: January 12, 2023

FILED WITH LRC: January 13, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 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 February 28, 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-

6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures concerning health and safety governing the operations of the Department of Juvenile Justice (DJJ).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the cabinet and the department to implement practices or procedures to ensure the safe and efficient operation of the department and its juvenile facilities.

(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 DJJ employees, juveniles, and their families concerning policies and procedures that govern operation of the department.

(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 allows the staff to use additional safety measures to protect themselves and control unruly juveniles.

(b) The necessity of the amendment to this administrative regulation: The amendment meets the requirements of authorizing statutes and updates practices for the department regarding disruptive and dangerous behavior of juveniles.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the cabinet and the department to implement or amend practices or procedures to ensure the safe and efficient operation of the department.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff with additional means to control juveniles before they injure themselves, other juveniles, or staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 301 employees of DJJ, 200 juveniles, and their families.

(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, juveniles, and their families 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. Staff will be trained on the use of chemical agents and energy conductive devices as well.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

(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 department.

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

(a) Initially: An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets,

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camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

(b) On a continuing basis: An exact cost is unknown, but devices like pepper spray will be reacquired as they are used or expire. Training costs will continue to be incurred for new staff authorized to use pepper spray or tasers. The tasers, cars with camera equipped security partitions, and other equipment will need to be replaced on an intermittent basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: DJJ budgeted funds 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 funding is anticipated as estimated above.

(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? Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

(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? An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

(d) How much will it cost to administer this program for subsequent years? An exact cost is unknown, but devices like pepper spray will be reacquired as they are used or expire. Training costs will continue to be incurred for new staff authorized to use pepper spray or tasers. The tasers, cars with camera equipped security partitions, and other equipment will need to be replaced on an intermittent basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? 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? An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

(d) How much will it cost the regulated entities for subsequent years? An exact cost is unknown, but devices like pepper spray will be reacquired as they are used or expire. Training costs will continue to be incurred for new staff authorized to use pepper spray or tasers. The tasers, cars with camera equipped security partitions, and other equipment will need to be replaced on an intermittent basis.

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 anticipated.

STATEMENT OF EMERGENCY 505 KAR 1:140E

An emergency regulation, pursuant to KRS 13A.190(1)(a)(1), is necessary to meet an imminent threat to public health, safety, and welfare posed by increasingly violent youth housed in Department of Juvenile Justice (DJJ) detention centers and post-adjudication facilities. Recent violent events by youth at DJJ facilities necessitate immediate action to change options available to the department for control of the facilities and the youths contained within them. An ordinary administrative regulation is not sufficient because of recent violent events by youth at DJJ facilities that put other youths in custody as well as DJJ staff at risk of harm. This administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. No emergency administrative regulation governing the same subject matter has been filed within the previous nine months.

ANDY BESHEAR, Governor
VICKI REED, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Emergency Amendment)

505 KAR 1:140E. Department of Juvenile Justice Policies and Procedures Manual: detention services.

EFFECTIVE: January 13, 2023

RELATES TO: KRS 15A.065, 15A.067, 15A.200-245, 15A.305, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS

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15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference policies and procedures concerning detention services for [into regulatory form materials used by] the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference.

(1) The "Department of Juvenile Justice Policy and Procedures Manual: Detention Services", January 13, 2023~~[July 10, 2018]~~, is incorporated by reference and includes the following:

700	Definitions (Amended 01/13/23 03/30/18)
700.1	Detention Services Delivery System (Amended 01/13/23 Added 03/30/18)
701	Criteria for Admissions (Amended 03/30/18)
702	Intake, Reception and Orientation (Amended 07/10/18)
703	Detention Risk Assessment (Amended 03/30/18)
704	Alternatives to Secure Detention (Amended 01/13/23 07/10/18)
704.1	Supervision of Juveniles in Alternative to Secure Detention Programs (Amended 03/30/18)
704.2	Revocation of Juveniles in Alternative to Secure Detention Programs (Amended 03/30/18)
704.3	Juvenile Justice and Delinquency Prevention Act (Added 03/30/18)
705	Individual Client Records (Amended 03/30/18)
705.2	Progress Notes (Amended 03/30/18)
706	Grievance Procedure (Amended 03/30/18)
707	Bed Capacities and Staffing of Juvenile Detention Centers (Amended 01/13/23 03/30/18)
708	Classification of Juveniles for Housing and Program Assignment (Amended 01/13/23 03/30/18)
709	Security and Control (Amended 03/30/18)
710	Shift and Log Reports (Amended 03/30/18)
711	Transportation of Juveniles (Amended 01/13/23 03/30/18)
712	Escape/AWOL (Amended 01/13/23 03/30/18)
713	Restraints (Amended 01/13/23 07/10/18)
714	Searches (Amended 03/30/18)
715	Incident Reports (Amended 03/30/18)
716	Behavior Management (Amended 03/30/18)
717	Discipline and Special Behavior Management (Amended 01/13/23 03/30/18)
718	Disciplinary Review (Amended 07/10/18)
720	Programs and Services (Amended 03/30/18)
720.1	Library Services (Amended 01/13/23 03/30/18)
720.2	Recreation and Structured Activities (Amended 01/13/23 03/30/18)
720.3	Religious Programs (Amended 03/30/18)
720.4	Juveniles Work Details (Amended 03/30/18)
720.5	Social Services (Amended 07/10/18)
720.6	Family and Community Contact (Amended 07/10/18)
725	Educational Programming and Assessment (Amended 07/10/18)
725.1	Instructional Staffing (Amended 03/30/18)
725.2	Education Records (Amended 07/10/18)
726	Leaves (Amended 03/30/18)
729	Release From Detention (Amended 03/30/18)
730	Inspections of Secure Juvenile Detention Facilities (Amended 01/13/23 03/30/18)
731	Complaint Investigations of Secure Juvenile Detention Centers and Juvenile Holding Facilities (Amended 03/30/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Juvenile Justice Web site at

<https://djj.ky.gov/About%20DJJ/Pages/Ircfilings.aspx>.

VICKI REED, Commissioner

APPROVED BY AGENCY: January 12, 2023

FILED WITH LRC: January 13, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 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 February 28, 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) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures concerning health and safety governing the operations of the Department of Juvenile Justice (DJJ).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the cabinet and the department to implement practices or procedures to ensure the safe and efficient operation of the department and its juvenile facilities.

(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 DJJ employees, juveniles, and their families concerning policies and procedures that govern operation of the department.

(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 allows the staff to use additional safety measures to protect themselves and control unruly juveniles.

(b) The necessity of the amendment to this administrative regulation: The amendment meets the requirements of authorizing statutes and updates practices for the department regarding disruptive and dangerous behavior of juveniles.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the cabinet and the department to implement or amend practices or procedures to ensure the safe and efficient operation of the department.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff with additional means to control juveniles before they injure themselves, other juveniles, or staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 301 employees of DJJ, 200 juveniles, and their families.

(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, juveniles, and their families 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. Staff will be trained on the use of chemical agents and energy conductive devices as well.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

(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 department.

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

(a) Initially: An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

(b) On a continuing basis: An exact cost is unknown, but devices like pepper spray will be reacquired as they are used or expire. Training costs will continue to be incurred for new staff authorized to use pepper spray or tasers. The tasers, cars with camera equipped security partitions, and other equipment will need to be replaced on an intermittent basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: DJJ budgeted funds 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 anticipated, but is not yet fully calculated.

(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? Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

(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? An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

(d) How much will it cost to administer this program for subsequent years? An exact cost is unknown, but devices like pepper spray will be reacquired as they are used or expire. Training costs will continue to be incurred for new staff authorized to use pepper spray or tasers. The tasers, cars with camera equipped security partitions, and other equipment will need to be replaced on an intermittent basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? 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? An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

(d) How much will it cost the regulated entities for subsequent years? An exact cost is unknown, but devices like pepper spray will be reacquired as they are used or expire. Training costs will continue to be incurred for new staff authorized to use pepper spray or tasers. The tasers, cars with camera equipped security partitions, and other equipment will need to be replaced on an intermittent basis.

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 anticipated.

STATEMENT OF EMERGENCY 787 KAR 1:090E

This emergency amended administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. KRS 341.350(11), effective January 1, 2023, requires the secretary of the Education and Labor Cabinet to promulgate administrative regulations related to the verification of unemployment insurance claimants' work search activities that are required for benefit eligibility. 787 KAR 1:090 establishes the registration and reporting requirements that an unemployed worker is required to meet to draw unemployment insurance benefits and

includes a requirement for random audits. This amendment to 787 KAR 1:090 is being filed on an emergency basis so that the regulation timely addresses verified work search activities as part of the reporting requirements for unemployment insurance claimants. This emergency amended administrative regulation will be replaced by an ordinary amended administrative regulation, which is being filed contemporaneously herewith, in order to conform with KRS 341.350(11), effective January 1, 2023. The companion ordinary amended administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
JAMES W. LINK, Secretary
BUDDY HOSKINSON, Executive Director

**EDUCATION AND LABOR CABINET
Office of Unemployment Insurance
(Emergency Amendment)**

787 KAR 1:090E. Unemployed worker's reporting requirements.

EFFECTIVE: December 22, 2022

RELATES TO: KRS 341.350, 341.360, 341.370, 341.380

STATUTORY AUTHORITY: KRS 336.015, 336.050, 341.115(1), 341.350(11)[2021 Ky Acts ch. 169 Part 1(1)(7)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.350(11) requires the secretary to promulgate administrative regulations related to work search activities required for benefit eligibility. This administrative regulation establishes the registration and reporting requirements that an unemployed worker is required to meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, the procedures for electronic, telephone, and mail claims, and the requirement for random audits.

Section 1. Registration for Work.

(1) An unemployed worker shall be registered for work with a state employment service before he or she is eligible to receive benefits. A registration shall be considered filed if the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens a claim, he or she shall be assigned a group classification code A or B based upon his or her reemployment prospects. The classification codes described below are solely related to reemployment prospects and not to any classification codes used to identify a claimant's duration of benefits, as detailed in KRS 341.385.

(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of sixteen (16)[twelve (12)] weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:

1. Unemployed and has definite return prospects with his or her last employer within a period of sixteen (16)[twelve (12)] weeks from the date of filing of the initial or reopened claim;

2. Unemployed because of a labor dispute in the establishment where he or she has been employed; or

3. A member of a union which shall be responsible for securing future employment.

(3) During any benefit year, an unemployed worker shall be assigned a different group classification code if review of his or her reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits.

(1) In order for an unemployed worker to file an initial or reopened claim for benefits, he or she shall complete the Initial Claim process by using:

(a) An internet claim registration through the Web site provided by the agency for that purpose at uicclaimsportal.ky.gov;

(b) A telephone claim registration through the call center provided by the agency for that purpose; or

(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) If any issues regarding the unemployed worker's eligibility as provided by KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall:

(a) Provide picture identification and valid proof of the worker's Social Security number from the Social Security Administration; and

(b) Present all facts in support of the application.

(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary shall backdate the initial or reopened claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later. Examples of good cause may include illness, availability issues beyond the claimant's control, or lack of access to internet or phone necessary for claim filing.

(5) An unemployed worker whose unemployment insurance benefit check has been lost or stolen shall notify the office in writing.

Section 3. Claiming Weeks of Benefits.

(1) Once an unemployed worker has filed an initial claim and established a benefit year, the unemployed worker shall claim his or her benefits on a biweekly basis by one (1) of the methods and within the time frames established in subsection (2) of this section.

(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits.

(b) Except as provided in paragraph (e)[(e)] of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his or her benefits during the calendar week following the second week of the period.

(c) For each week an unemployed worker claims benefits, the worker shall certify under penalty of perjury that he or she engaged in at least five (5) work search activities, at least three (3) of which shall consist of submitting an application for employment, or interviewing for employment. "Work search activities" include any of the following:

1. Formally submitting an application for employment online or in person;

2. Interviewing for employment virtually, in person, or online;

3. Job shadowing;

4. Attending a job fair or networking event hosted by state or local government or a business organization;

5. Participating in a job search skills workshop or seminar; and

6. Participating in official Kentucky Career Center or partner programs related to employment or the search for employment.

(d) For each claimed work search activity, the unemployed worker must have documentation verifying he or she engaged in the work search activity and shall preserve that documentation for one (1) full year after each weekly claim for benefits was submitted for auditing purposes. All claimed work search activities are subject to random audit by the Office of Unemployment Insurance.

(e) An otherwise eligible worker shall not be denied benefits under KRS 341.350(5), or because of a failure to actively seek work under paragraph (c) of this subsection, or disqualified under KRS 341.370(1)(a) under the following circumstances:

1. For any week a claimant provides verifiable enrollment in an approved job training or certification program listed on the current eligible training provider list, which can be found on the Kentucky Career Center Web site under the "Training – Providers" tab, and certifies making satisfactory progress in the program; or

2. If a claimant provides verifiable definite return-to-work or recall-to-work prospects from his or her employer, either by an employer filed mass electronic claim or by submitting a written notice from the employer within a period of sixteen (16) weeks from the date of filing of the initial or reopened claim.

(f)(e) Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his or her benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his or her benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late. Examples of good cause may include illness, availability issues beyond the claimant's control, lack of access to internet or phone necessary for claim filing, or unemployment insurance system outages.

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

(a) Through the Web site provided by the agency for that purpose at uicclaimsportal.ky.gov, with the claim completed before 7 p.m. Eastern Time on the Friday of the calendar week following the second week of the period claimed; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose, with the claim completed between the hours of 10 a.m. and 9 p.m. Eastern Time on the Sunday, or between the hours of 7 a.m. and 7 p.m. Eastern Time on the Monday through the Friday of the calendar week following the second week of the period claimed.

(3)(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:

1. Unavailability of those options for the type of benefits claimed;
2. Unavailability of those options due to technical problems; or
3. A physical or mental condition preventing the worker from using those options.

(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.

(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

(d) The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail, and unless the claim is filed within the prescribed time, it shall not be allowed.

Section 4. Employer Filed Claims.

(1) An employer may file a claim on behalf of an unemployed worker if:

(a) The worker has definite recall rights within four (4) calendar weeks;

(b) The employer has a workforce of at least 100 workers at the time of the layoff;

(c) The employer submits the claim information in the required electronic format using the Directions for Submitting an Employer Mass Electronic Claim (E-claim) File and the E-claim – Template; and

(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the Office of Unemployment Insurance that the information is in the required format prior to the date the period of unemployment will begin.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:

(1) The worker's classification as established in Section 1(2) of this administrative regulation;

(2) The worker's individual employment and earning history; and

(3) The local labor market.

Section 6.

(1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:

(a) The employer's failure to comply with 787 KAR Chapter 1;

(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim; or

(c) Failure by the Office of Unemployment Insurance personnel to discharge necessary responsibilities.

(2)(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

Section 7. The secretary shall conduct random audits of claims. Each random audit shall include one (1) or more of the eligibility requirements provided by KRS 341.350.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Directions for Submitting an Employer Mass Electronic Claim (E-claim) File, 03/20;

(b) E-Claim – Template, 03/20; and

(c) "Continued Claim Form", Rev. 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Office of Unemployment Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available on the office's Web site at <https://kcc.ky.gov/Pages/Reports-and-forms.aspx>.

BUDDY HOSKINSON, Executive Director

APPROVED BY AGENCY: December 22, 2022

FILED WITH LRC: December 22, 2022 at 1:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency amended administrative regulation shall be held on February 28, 2023, at 1:00 p.m. Eastern Time at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on February 28, 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 below.

CONTACT PERSON: Matthew P. Lynch, Staff Attorney, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone 502-564-2776, email matt.lynch@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Matthew P. Lynch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides updates to reporting requirements of unemployment claimants seeking unemployment insurance benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out KRS 341.350(11).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.350(11) requires the secretary to promulgate regulations related to work search activity reporting and verification.

(d) How this administrative regulation currently assists or will

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assist in the effective administration of the statutes: This administrative regulation provides procedures for unemployment claimants to report and certify work search activities in compliance with KRS 341.350(11).

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

(a) How the amendment will change this existing administrative regulation: In compliance with KRS 341.350(11), the amendment includes the requirement that unemployment claimants must report work search activities each week for which a claim for benefits has been made, specifies the type of activities that qualify as work search activities, and requires the unemployment claimant to certify his or her work search activities under the penalty of perjury as verification.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to comply with KRS 341.350(11).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment specifies the requirement for reporting work search activities as part of making a claim for benefits, specifies the type of work search activities that qualify under KRS 341.350, and requires certification of work search activities as the verification required under KRS 341.350.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the secretary, Office of Unemployment Insurance staff, and unemployment claimants seeking benefits with the necessary information and procedures for reporting and certifying verifiable work search activities in accordance with KRS 341.350(11).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects unemployment insurance benefit recipients in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Unemployment claimants seeking benefits will have to report and certify to conducting no less than five (5) work search activities per week of claimed benefits as part of the weekly claims process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Unemployment claimants seeking benefits that comply with the work search requirements of KRS 341.350 and this regulation will not be deemed ineligible for benefits for failure to report work search activities.

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

(a) Initially: \$200,000.

(b) On a continuing basis: \$300,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current federal funding will be used for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All unemployment insurance benefit overpayment recipients are treated equally.

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Office of Unemployment Insurance within the Kentucky 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 341.350(11).

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

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

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

(c) How much will it cost to administer this program for the first year? Estimate: \$300,000.

(d) How much will it cost to administer this program for subsequent years? Estimate: \$300,000.

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

Revenues (+/-): None.

Expenditures (+/-): See above.

Other Explanation: This amendment will require additional workforce verification tasks to be completed by Office of Unemployment Insurance staff. It is estimated that it will take one staff person 1-hour per week to verify one claimant that has five (5) work search contacts or activities for any given claimed week.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation. This amendment does not impose any additional expenditures on employers.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no additional cost savings to the unemployment insurance benefit recipients to comply with this administrative regulation. This amendment does not confer cost savings to employers.

(c) How much will it cost the regulated entities for the first year? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

(d) How much will it cost the regulated entities for subsequent years? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

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

Cost Savings (+/-): See above.

Expenditures (+/-): No increase.

Other Explanation:

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government

**STATEMENT OF EMERGENCY
787 KAR 1:100E**

This emergency amended administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. KRS 341.080(3), effective January 1, 2023, provides the definition for “week of unemployment” and includes an exception for any week in which an unemployment insurance claimant receives shared work benefits pursuant to KRS 341.4161 to 341.4173. 787 KAR 1:100 establishes the definition for a “week of unemployment”. This amendment to 787 KAR 1:100 is being filed on an emergency basis so that the definition of a “week of unemployment” in the regulation timely incorporates the exception contained in KRS 341.080(3), effective January 1, 2023. This emergency amended administrative regulation will be replaced by an ordinary amended administrative regulation, which is being filed contemporaneously herewith, in order to conform with the definition in KRS 341.350(3). The companion ordinary amended administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
JAMES W. LINK, Secretary
BUDDY HOSKINSON, Executive Director

**EDUCATION AND LABOR CABINET
Office of Unemployment Insurance
(Emergency Amendment)**

787 KAR 1:100E. Week of unemployment defined.

EFFECTIVE: December 22, 2022

RELATES TO: KRS 341.080

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.080(3) provides that the cabinet shall prescribe by administrative regulation the period of time which shall constitute a week of unemployment for the purpose of administering the Unemployment Insurance Program in accordance with KRS Chapter 341. The purpose of this administrative regulation is to satisfy the statutory requirement.

Section 1. A “week of unemployment” shall be a calendar week of seven (7) consecutive calendar days, beginning 12:01 a.m., Sunday and ending 12 midnight the following Saturday except for any week he or she received shared work benefits in accordance with KRS 341.4161 to 341.4173. A week of unemployment beginning in a benefit year shall be deemed to be wholly in that benefit year.

BUDDY HOSKINSON, Executive Director

APPROVED BY AGENCY: December 22, 2022

FILED WITH LRC: December 22, 2022 at 1:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency amended administrative regulation shall be held on February 28, 2023, at 1:00 p.m. Eastern Time at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on February 28, 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 below.

CONTACT PERSON: Matthew P. Lynch, Staff Attorney, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone 502-564-2776, email matt.lynch@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Matthew P. Lynch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides an exception to the definition of a “week of unemployment.”

(b) The necessity of this administrative regulation: This administrative regulation is necessary to reflect the exception to the definition of a “week of unemployment” included in amended KRS 341.080(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.080(3) was amended to include an exception to the definition of “week of unemployment” for any week in which a claimant receives shared work benefits pursuant to KRS 341.4161 to 341.4173.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation specifies the time period constituting a “week of unemployment” in compliance with KRS 341.080(3).

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

(a) How the amendment will change this existing administrative regulation: The amendment to the regulation includes the statutory exception to the definition of “week of unemployment” for any week in which a claimant receives shared work benefits in compliance with amended KRS 341.080(3).

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to comply with KRS 341.080(3).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment specifies that a “week of unemployment” does not include any week in which a claimant receives shared work benefits pursuant to KRS 341.4161 to 341.4173 in compliance with KRS 341.080(3).

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the secretary, Office of Unemployment Insurance staff, and unemployment claimants seeking benefits with the necessary information about the difference between a “week of unemployment” under the regular unemployment insurance program and the shared work benefits program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects unemployment insurance benefit recipients and employers participating in the shared work program in the Commonwealth and Office of Unemployment Insurance staff.

(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 comply with this administrative regulation or amendment: The Office of Unemployment Insurance staff will need to distinguish between claims for benefits under the regular unemployment insurance program and claims for benefits under the shared work program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the unemployment insurance benefit recipients or employers to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Unemployment claimants receiving benefits under the shared work program will not be deemed to have had a “week of unemployment.”

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

(a) Initially: This amendment only includes a statutory exception to the definition of “week of unemployment” and is not expected to have any additional cost.

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(b) On a continuing basis: This amendment only includes a statutory exception to the definition of “week of unemployment” and is not expected to have any additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current federal funding will be used for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All unemployment insurance benefit recipients are treated equally depending on if the benefits derive from the regular unemployment insurance program or the shared work benefits program.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Office of Unemployment Insurance within the Kentucky 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 341.080(3).

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment includes an exception to the definition of “week of unemployment” and is not expected to have any additional cost.

(d) How much will it cost to administer this program for subsequent years? The amendment includes an exception to the definition of “week of unemployment” and is not expected to have any additional cost.

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

Revenues (+/-): None.

Expenditures (+/-): See above.

Other Explanation: This amendment only includes a statutory exception to the definition of “week of unemployment” and is not expected to have any additional cost.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation. This amendment does not impose any additional expenditures on employers.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no additional cost savings to the unemployment insurance benefit recipients to comply with this administrative regulation. This amendment does not confer cost savings to employers.

(c) How much will it cost the regulated entities for the first year? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this

amendment does not impose any additional expenditures to employers.

(d) How much will it cost the regulated entities for subsequent years? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

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

Cost Savings (+/-): See above.

Expenditures (+/-): See above.

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.

STATEMENT OF EMERGENCY 902 KAR 20:490E

This emergency administrative regulation is necessary to establish the minimum requirements for licensure as a rural emergency hospital (REH). The REH designation, created by the Consolidated Appropriations Act of 2021, is in response to the loss of essential health care services in rural areas due to hospital closures. Facilities that convert to an REH will help support continued access to health care, particularly emergency services and outpatient services. This emergency administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)3. in order to meet an imminent deadline for promulgation of an administrative regulation by establishing licensure requirements for small rural hospitals that wish to convert to an REH. The Centers for Medicare and Medicaid Services will implement the new REH provider type effective January 1, 2023 in accordance with the Consolidated Appropriations Act of 2021 to promote equality in health care for those living in rural communities by facilitating access to needed services. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (New Emergency Administrative Regulation)

902 KAR 20:490E. Rural emergency hospitals.

EFFECTIVE: December 29, 2022

RELATES TO: KRS 2.015, 42 C.F.R. 485.500—485.546, 42 C.F.R. 485.618, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2 – 1320d-8

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the minimum requirements for licensure as a rural emergency hospital.

Section 1. Definition. “Rural emergency hospital (REH)” is defined by 42 C.F.R. 485.502 as an entity that:

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(1) Operates for the purpose of providing emergency department services, observation care, and other outpatient medical and health services specified by the secretary of the U.S. Department of Health and Human Services in which the annual per patient average length of stay does not exceed twenty-four (24) hours; and

(2) Shall not provide inpatient services, except those furnished in a unit that is a distinct part licensed as a skilled nursing facility to furnish post-REH or post-hospital extended care services.

Section 2. Licensure. (1) A facility shall be eligible to apply for a license as an REH if the facility is certified as an REH by the Centers for Medicare and Medicaid Services and was, as of December 27, 2020:

(a) Licensed as a critical access hospital pursuant to 906 KAR 1:110; or

(b) 1. Licensed as a general acute care hospital pursuant to 902 KAR 20:016;

2. Had fifty (50) or fewer beds; and

3. Was considered rural or treated as being located in a rural area in accordance with 42 C.F.R. 485.506(b) or (c).

(2) Except for beds the REH maintains in a distinct part unit licensed as a skilled nursing facility, the facility's inpatient beds shall be delicensed.

(3) A facility that converts to an REH shall not be relicensed to operate as a critical access hospital or acute care hospital without first obtaining certificate of need.

Section 3. Application and Fees. (1) A facility that applies for initial licensure or annual renewal as an REH shall submit to the Office of Inspector General:

(a) A completed Application for Licensure to Operate a Rural Emergency Hospital; and

(b) An accompanying fee in the amount of \$1,000, made payable to the Kentucky State Treasurer.

(2) As a condition of annual renewal, the application required by subsection (1) of this section shall be submitted to the cabinet at least sixty (60) days prior to the date of expiration of the REH's licensure.

Section 4. Change of Status. (1) An REH shall report a change of:

(a) Name or location in accordance with the requirements of 902 KAR 20:008, Section 3(3); or

(b) Ownership in accordance with the requirements of 902 KAR 20:008, Section 2(16).

(2) Failure to renew a license by the annual renewal date shall result in a late penalty pursuant to 902 KAR 20:008, Section 3(4).

Section 5. Services and Basic Requirements. (1) An REH shall comply with applicable federal, state, and local laws and regulations pertaining to the operation of the facility, including compliance with 42 C.F.R. 485.506 – 485.546.

(2) An REH shall:

(a) Provide emergency department services and observation care, including compliance with the requirements of:

1. 42 C.F.R. 485.516; and

2. 42 C.F.R. 485.618 with respect to:

a. Twenty-four (24) hour availability of emergency services;

b. Equipment, supplies, and medication;

c. Blood and blood products;

d. Personnel; and

e. Coordination with emergency response systems;

(b) Provide basic laboratory services in accordance with 42 C.F.R. 485.518;

(c) Maintain, or have available, diagnostic radiologic services in accordance with 42 C.F.R. 485.520;

(d) Have pharmaceutical services that meet the needs of its patients in accordance with 42 C.F.R. 485.522; and

(e) In accordance with 42 C.F.R. 485.538, have in effect a transfer agreement with at least one (1) hospital that is a level I or level II trauma center for the referral and transfer of patients requiring emergency medical care beyond the capabilities of the REH.

(3) In accordance with 42 C.F.R. 485.524(a), an REH may provide outpatient and medical health diagnostic and therapeutic items and services that are commonly furnished in a physician's office or at another entry point into the health care delivery system, including:

(a) Therapeutic radiologic services;

(b) Laboratory services;

(c) Outpatient rehabilitation;

(d) Surgical services;

(e) Maternal health services; or

(f) Behavioral health services.

(4) An REH may provide skilled nursing facility services in a distinct part unit in accordance with 42 C.F.R. 485.546.

Section 6. Personnel. An REH shall assure that licensed personnel meet the applicable standards required by the appropriate professional licensing board and provide services within the applicable scope of practice.

Section 7. Patient Records.

(1) Ownership.

(a) Medical records shall be the property of the REH.

(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.

(2) Confidentiality and Security: Use and Disclosure.

(a) The REH shall maintain the confidentiality and security of patient 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 REH may use and disclose patient 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 REH 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.

(d) Retention of records. After a patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for at least:

1. Six (6) years; or

2. Three (3) years after the patient reaches the age of majority in accordance with KRS 2.015, whichever is longer.

(3) The REH shall:

(a) Designate a specific location for the maintenance and storage of the agency's medical records;

(b) Have provisions for storage of medical records in the event the agency ceases to operate; and

(c) Safeguard the record and its content against loss, defacement, or tampering.

Section 8. Incorporation by Reference. (1) The form, OIG-20:490, "Application for Licensure to Operate a Rural Emergency Hospital", December 2022 edition, is incorporated by reference.

(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/litapplications.aspx>.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 16, 2022

FILED WITH LRC: December 29, 2022 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 27, 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 February 20, 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 February 28, 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: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the minimum requirements for licensure as a rural emergency hospital (REH). REHs are a new provider type established by the Consolidated Appropriations Act of 2021. The REH designation provides an opportunity for critical access hospitals (CAHs) and certain rural hospitals to avert potential closure and continue to provide essential services for the communities they serve. Conversion to an REH allows for the provision of emergency services, observation care, and additional outpatient services, if elected by the REH, that do not exceed an annual per patient average of twenty-four (24) hours. Although REHs are prohibited from providing inpatient services, except those furnished in a unit that is a distinct part licensed as a skilled nursing facility to furnish post-REH or post-hospital extended care services, this level of care is intended to promote equity in health care for those living in rural communities by facilitating access to needed services.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to comply with KRS 216B.042, and as a condition of licensure, this new administrative regulation is necessary to require REHs to comply with the new federal Conditions of Participation established by 42 C.F.R. 485.500—485.546.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation conforms to the content of KRS 216B.042 by establishing the minimum requirements for licensure as an REH.

(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 the minimum requirements for licensure as an REH.

(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 facilities certified by the Centers for Medicare and Medicaid Services (CMS) as an REH in accordance with 42 C.F.R. 485.506. It is not known how many CAHs or rural hospitals will convert to an REH.

(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 this administrative regulation, entities seeking licensure as an REH will be required to submit an initial and annual application to the cabinet with accompanying documentation. REHs will have to comply with the federal requirements established by 42 C.F.R. 485.500—485.546 as a condition of state licensure.

(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 establishes an initial and annual renewal fee of \$1,000. However, CAHs and other rural hospitals that convert to an REH already pay a higher licensure fee in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): CAHs and rural hospitals that convert to an REH may avert potential closure and continue to provide essential services for the communities they serve.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal funds and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes an initial and annual renewal fee of \$1,000. However, CAHs and other rural hospitals that convert to an REH already pay a higher licensure fee in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively.

(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 renewal fee of \$1,000.

(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 rural emergency hospitals (REH) 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.042 and 42 C.F.R. 485.500—485.546

(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 establishes an initial and annual renewal fee of \$1,000. Because critical access hospitals (CAHs) and other rural hospitals that convert to an REH already pay licensure fees in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively, there is no increase in 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 establishes an initial and annual renewal fee of \$1,000. Because CAHs and other rural hospitals that convert to an

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REH already pay licensure fees in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively, there is no increase in revenue.

(c) How much will it cost to administer this program for the first year? There are no additional costs to the Office of Inspector General for implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to the Office of Inspector General for implementation of this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? By shuttering infrequently used inpatient beds, this administrative regulation will generate cost savings for CAHs and rural hospitals that convert to an REH.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? By shuttering infrequently used inpatient beds, this administrative regulation will generate cost savings for CAHs and rural hospitals that convert to an REH.

(c) How much will it cost the regulated entities for the first year? This administrative regulation establishes an initial and annual renewal fee of \$1,000. However, CAHs and other rural hospitals that convert to an REH already pay a higher licensure fee in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation establishes an initial and annual renewal fee of \$1,000. However, CAHs and other rural hospitals that convert to an REH already pay a higher licensure fee in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively.

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

Cost Savings(+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] It is not known how many entities will convert to an REH. However, CAHs and rural hospitals that shutter infrequently used inpatient beds and convert to an REH may avert potential closure and continue to provide essential services for the communities they serve

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 485.500—485.546, 42 C.F.R. 485.618, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2 – 1320d-8

(2) State compliance standards. KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 485.500—485.546 establish the federal conditions of participation for the certification of rural emergency hospitals. In accordance with 42 C.F.R. 485.516, rural emergency hospitals must meet the critical access hospital requirements of 42 C.F.R. 485.618 for emergency services. 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does

not impose requirements that are more strict than federal laws or regulations.

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

STATEMENT OF EMERGENCY 907 KAR 1:026E

This emergency administrative regulation is being promulgated to incorporate and fully implement a received federal approval that extends coverage of audiology, dental, and vision coverage to all Medicaid recipients. Specifically, this emergency administrative regulation is being promulgated to expand dental services to adults throughout the Medicaid program. This administrative regulation is needed to be in effect prior to January 1, 2023 in order to ensure coverage of audiology, dental, and vision services for the upcoming calendar year. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding. Failure to implement the received federal approval and provide coverage for eligible recipients within a timely fashion could result in a loss of federal funds. In addition, the Department for Medicaid Services (DMS) needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients. Over 900,000 Medicaid recipients could immediately benefit from the availability of audiology, dental, and vision coverage. This emergency administrative regulation shall be a by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Health Care Policy (Emergency Amendment)

907 KAR 1:026E. Dental services' coverage provisions and requirements.

EFFECTIVE: December 29, 2022

RELATES TO: KRS 205.520, 205.622, 205.8451, 313.010, 313.040, 369.102(8), 369.101 to 369.120, 415.152, 42 C.F.R. 400.203, 415.170, 415.172, 415.174, 438.2, 45 C.F.R. Parts 160 and 164, 42 U.S.C. 1320d, 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[~~42 U.S.C. 1396a-d~~]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Kentucky Medicaid Program provisions and requirements regarding the coverage of dental services.

Section 1. Definitions.

(1) "Comprehensive orthodontic" means a medically necessary dental service for treatment of a dentofacial malocclusion which requires the application of braces for correction.

(2) "Current Dental Terminology" or "CDT" means a publication by the American Dental Association of codes used to report dental procedures or services.

(3) "Debridement" means a preliminary procedure that:

(a) Entails the gross removal of plaque and calculus that interfere with the ability of a dentist to perform a comprehensive oral evaluation;

(b) Does not preclude the need for further procedures; and

(c) Is separate from a regular cleaning and is usually a preliminary or first treatment when an individual has developed very heavy plaque or calculus.

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

(5) "Direct practitioner ~~interaction~~[~~contact~~]" means the billing dentist or oral surgeon is physically present with and evaluates, examines, treats, or diagnoses the recipient, unless the service can be appropriately performed via telehealth pursuant to 907 KAR 3:170.

(6) "Disabling malocclusion" means a condition that meets the criteria established in Section 13(7) of this administrative regulation.

(7) "Electronic signature" is defined by KRS 369.102(8).

(8) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(9) "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b) 1. Requires little additional practitioner resources; or

2. Is clinically integral to the performance of the primary procedure.

(10) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(11) [~~"Locum tenens dentist"~~] means a substitute dentist:

(a) ~~Who temporarily assumes responsibility for the professional practice of a dentist participating in the Kentucky Medicaid Program; and~~

(b) ~~Whose services are paid under the participating dentist's provider number.~~

(12) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(12) [(13)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(13) [(14)] "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one (1) another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CDT codes; or

(d) Are described in CDT as inappropriate coding of procedure combinations.

(14) [(15)] "Other licensed medical professional" or "OLMP" means a health care provider other than a dentist who has been approved to practice a medical specialty by the appropriate licensure board.

(15) [(16)] "Prepayment review" or "PPR" means a departmental review of a claim regarding a recipient who is not enrolled with a managed care organization to determine if the requirements of this administrative regulation have been met prior to authorizing payment.

(16) [(17)] "Prior authorization" or "PA" means approval that a provider shall obtain from the department before being reimbursed for a covered service.

(17) [(18)] "Provider" is defined by KRS 205.8451(7).

(18) [(19)] "Public health hygienist" means an individual who:

(a) Is a dental hygienist as defined by KRS 313.010(6);

(b) Meets the public health hygienist requirements established in KRS 313.040(8);

(c) Meets the requirements for a public health registered dental hygienist established in 201 KAR 8:562; and

(d) Is employed by or through:

1. The Department for Public Health; or

2. A governing board of health.

(19) [(20)] "Recipient" is defined by KRS 205.8451(9).

(20) [(21)] "Resident" is defined by 42 C.F.R. 415.152.

(21) [(22)] "Timely filing" means receipt of a claim by Medicaid:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

Section 2. Conditions of Participation.

(1) A participating provider shall:

(a) Be licensed as a provider in the state in which the practice is located;

(b) Comply with the terms and conditions established in the following administrative regulations:

1. 907 KAR 1:005;

2. 907 KAR 1:671; and

3. 907 KAR 1:672;

(c) Comply with the requirements to maintain the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164; ~~and~~

(d) Comply with all applicable state and federal laws; and

(e) Meet all applicable medical and dental standards of practice.

(2)(a) A participating provider shall:

1. Have the freedom to choose whether to accept an eligible Medicaid recipient; and

2. Notify the recipient of the decision prior to the delivery of service.

(b) If the provider accepts the recipient, the provider:

1. Shall bill Medicaid rather than the recipient for a covered service;

2. May bill the recipient for a service not covered by Kentucky Medicaid, if the provider informed the recipient of noncoverage prior to providing the service; and

3. Shall not bill the recipient for a service that is denied by the department for:

a. Being:

(i) Incidental;

(ii) Integral; or

(iii) Mutually exclusive;

b. Incorrect billing procedures, including incorrect bundling of procedures;

c. Failure to obtain prior authorization for the service; or

d. Failure to meet timely filing requirements.

(3)(a) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid program.

(b) A provider of a service to an enrollee shall be enrolled in the Medicaid program.

(4)(a) If a provider receives any duplicate or overpayment from the department or managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization.

(b) Failure to return a payment to the department or managed care organization in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d) A provider shall comply with KRS 205.622.

Section 3. Record Maintenance. (1)(a) A provider shall maintain comprehensive legible medical records that substantiate the services billed.

(b) A dental record shall be considered a medical record.

(2) A medical record shall be signed on the date of service by the:

(a) Provider; or

(b) Other practitioner authorized to provide the service in accordance with:

1. KRS 313.040; and

2. 201 KAR 8:562.

(3) An X-ray shall be:

(a) Of diagnostic quality; and

(b) Maintained in a manner that identifies the:

1. Recipient's name;

2. Service date; and

3. Provider's name.

(4) A treatment regimen shall be documented to include:

(a) Diagnosis;

(b) Treatment plan;

(c) Treatment and follow-up; and

(d) Medical necessity.

(5) Medical records, including X-rays, shall be maintained in accordance with 907 KAR 1:672.

Section 4. General and Certain Service Coverage Requirements.

(1) A covered service shall be:

(a) Medically necessary; and

(b) Except as provided in subsection (2)(3) of this section, furnished to a recipient through direct practitioner interaction[contact].

(2) ~~Dental visits shall be limited to twelve (12) visits per year per provider for a recipient who is at least twenty-one (21) years of age.~~

(3) A covered service provided by an other licensed medical professional (OLMP) shall be covered if the:

(a) OLMP is employed by the supervising oral surgeon, dentist, or dental group;

(b) OLMP is licensed in the state of practice; and

(c) Supervising provider has direct practitioner interaction[contact] with the recipient, except for a service provided by a dental hygienist if the dental hygienist provides the service under general supervision of a practitioner in accordance with KRS 313.040.

(3)(4)(a) A medical resident may provide and the department shall cover services if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.170, 415.172, and 415.174.

(b) A dental resident, student, or dental hygiene student may provide and the department shall cover services under the direction or supervision of a program participating provider in or affiliated with an American Dental Association accredited institution.

(4)(5) ~~Services provided by a locum tenens dentist shall be covered:~~

(a) If the locum tenens dentist:

1. ~~Has a national provider identifier (NPI) and provides the NPI to the department;~~

2. ~~Does not have a pending criminal or civil investigation regarding the provision of services;~~

3. ~~Is not subject to a formal disciplinary sanction from the Kentucky Board of Dentistry; and~~

4. ~~Is not subject to any federal or state sanction or penalty that would bar the dentist from Medicare or Medicaid participation; and~~

(b) ~~For no more than sixty (60) continuous days.~~

(6) Preventative services provided by a public health hygienist shall be covered.

(5)(7) The department shall cover the oral pathology procedures listed on the DMS Dental Fee Schedule if provided by an oral pathologist who meets the condition of participation requirements established in Section 2 of this administrative regulation.

(6)(8) Coverage shall be limited to the procedures or services:

(a) Identified and established on the DMS Dental Fee Schedule; or

(b) Established in this administrative regulation.

(7)(9) The department shall not cover a service provided by a provider or practitioner that exceeds the scope of services established for the provider or practitioner in:

(a) Kentucky Revised Statutes; or

(b) Kentucky administrative regulations.

Section 5. Diagnostic Service Coverage Limitations.

(1)(a) Except as provided in paragraph (b) of this subsection, coverage for a comprehensive oral evaluation shall be limited to one (1) per twelve (12) month period, per recipient, per provider.

(b) The department shall cover a second comprehensive oral evaluation if the evaluation is provided in conjunction with a prophylaxis ~~to an individual under twenty-one (21) years of age~~.

(c) A comprehensive oral evaluation shall not be covered in conjunction with the following:

1. A limited oral evaluation for trauma related injuries;

2. A space maintainer;

3. Denture relining;

4. A transitional appliance;

5. A prosthodontic service;

6. Temporomandibular joint therapy;

7. An orthodontic service;

8. Palliative treatment;

9. An extended care facility call;

10. A house call; or

11. A hospital call.

(2)(a) Coverage for a limited oral evaluation shall:

1. Be limited to a trauma related injury or acute infection; and

2. Be limited to one (1) per date of service, per recipient, per provider.

(b) A limited oral evaluation shall not be covered in conjunction with another service except for:

1. A periapical X-ray;

2. A bitewing X-ray;

3. A panoramic X-ray;

4. Resin, anterior;

5. A simple or surgical extraction;

6. Surgical removal of a residual tooth root;

7. Removal of a foreign body;

8. Suture of a recent small wound;

9. Intravenous sedation; or

10. Incision and drainage of infection.

(3)(a) Except as provided in paragraph (b) of this subsection, the following limitations shall apply to coverage of a radiograph service:

1. Bitewing X-rays shall be limited to four (4) per twelve (12) month period, per recipient, per provider;

2. Periapical X-rays shall be limited to fourteen (14) per twelve (12) month period, per recipient, per provider;

3. An intraoral complete X-ray series shall be limited to one (1) per twenty-four (24) month period, per recipient, per provider;

4. Periapical and bitewing X-rays shall not be covered in the same twelve (12) month period as an intraoral complete X-ray series per recipient, per provider;

5. A panoramic film shall:

a. Be limited to one (1) per twenty-four (24) month period, per recipient, per provider; and

b. Require prior authorization in accordance with Section 15(1), (2), and (3) of this administrative regulation for a recipient under the age of six (6) years;

6. A cephalometric film shall be limited to one (1) per twenty-four (24) month period, per recipient, per provider; or

7. A cephalometric and panoramic X-ray shall not be covered separately in conjunction with a comprehensive orthodontic consultation.

(b) The limits established in paragraph (a) of this subsection shall not apply to:

1. An X-ray necessary for a root canal or oral surgical procedure; or

2. An X-ray that:

a. Exceeds the established service limitations; and

b. Is determined by the department to be medically necessary.

Section 6. Preventive Service Coverage Limitations.

(1)(a) Coverage of a prophylaxis shall be limited to[:

1. ~~For an individual who is at least twenty-one (21) years of age, one (1) per twelve (12) month period, per recipient; and~~

2. ~~For an individual under twenty-one (21) years of age,] one (1) per six (6) month period, per recipient.~~

(b) A prophylaxis shall not be covered in conjunction with periodontal scaling or root planing.

(2)(a) Coverage of a sealant shall be limited to:

1. ~~[A recipient of the age five (5) through twenty (20) years;~~

2. ~~] Each six (6) and twelve (12) year molar once every four (4) years with a lifetime limit of three (3) sealants per tooth, per recipient; and~~

2. ~~3.] An occlusal surface that is noncavitated.~~

(b) A sealant shall not be covered in conjunction with a restorative procedure for the same tooth on the same surface on the same date of service.

(3)(a) Coverage of a space maintainer shall[:

1. ~~Be limited to a recipient under the age of twenty-one (21) years; and~~

2. ~~] require the following:~~

1. ~~a.] Fabrication;~~

- 2.[b.] Insertion;
- 3.[e.] Follow-up visits;
- 4.[d.] Adjustments; and
- 5.[e.] Documentation in the recipient's medical record to:
- a.[(i)] Substantiate the use for maintenance of existing interdental space; and
- b.[(ii)] Support the diagnosis and a plan of treatment that includes follow-up visits.

(b) The date of service for a space maintainer shall be considered to be the date the appliance is placed on the recipient.

(c) Coverage of a space maintainer, an appliance therapy specified in the CDT orthodontic category, or a combination of the two (2) shall not exceed two (2) per twelve (12) month period, per recipient.

Section 7. Restorative Service Coverage Limitations.

(1) A four (4) or more surface resin-based anterior composite procedure shall not be covered if performed for the purpose of cosmetic bonding or veneering.

(2) Coverage of a prefabricated crown shall:

~~(a) Be limited to a recipient under the age of twenty-one (21) years; and~~

(b) include any procedure performed for restoration of the same tooth.

(3) Coverage of a pin retention procedure shall be limited to:

- (a) A permanent molar;
- (b) One (1) per tooth, per date of service, per recipient; and
- (c) Two (2) per permanent molar, per recipient.

(4) Coverage of a restorative procedure performed in conjunction with a pin retention procedure shall be limited to one (1) of the following:

- (a) An appropriate medically necessary restorative material encompassing three (3) or more surfaces;
- (b) A permanent prefabricated resin crown; or
- (c) A prefabricated stainless steel crown.

Section 8. Endodontic Service Coverage Limitations.

~~(1) [Coverage of the following endodontic procedures shall be limited to a recipient under the age of twenty-one (21) years:~~

- ~~(a) A pulp cap direct;~~
- ~~(b) Therapeutic pulpotomy; or~~
- ~~(c) Root canal therapy.~~

(2) A therapeutic pulpotomy shall not be covered if performed in conjunction with root canal therapy.

~~(2)[(3)](a) Coverage of root canal therapy shall require:~~

- 1. Treatment of the entire tooth;
- 2. Completion of the therapy; and
- 3. An X-ray taken before and after completion of the therapy.

(b) The following root canal therapy shall not be covered:

- 1. The Sargenti method of root canal treatment; or
- 2. A root canal that does not treat all root canals on a multi-rooted tooth.

Section 9. Periodontic Service Coverage Limitations.

(1) Coverage of a gingivectomy or gingivoplasty procedure shall require prepayment review and shall be limited to:

- (a) A recipient with gingival overgrowth due to a:
 - 1. Congenital condition;
 - 2. Hereditary condition; or
 - 3. Drug-induced condition; and
- (b) One (1) per tooth or per quadrant, per provider, per recipient per twelve (12) month period.

~~[1. Coverage of a quadrant procedure shall require a minimum of a four (4) tooth area within the same quadrant.~~

~~2. Coverage of a per-tooth procedure shall be limited to no more than three (3) teeth within the same quadrant.]~~

(2) Coverage of a gingivectomy or gingivoplasty procedure shall require documentation in the recipient's medical record that includes:

- (a) Pocket-depth measurements;
- (b) A history of nonsurgical services; and
- (c) A prognosis.

(3) Coverage for a periodontal scaling and root planing procedure shall:

- (a) Not exceed one (1) per quadrant, per twelve (12) months, per recipient, per provider;
- (b) Require prior authorization in accordance with Section 15(1), (2), and (4) of this administrative regulation; and
- (c) Require documentation to include:

- 1. A periapical film or bitewing X-ray;
- 2. Periodontal charting of preoperative pocket depths; and
- 3. A photograph, if applicable.

~~(4)[(a) Coverage of a quadrant procedure shall require a minimum of a four (4) tooth area within the same quadrant.~~

~~(b) Coverage of a per-tooth procedure shall be limited to no more than three (3) teeth.~~

~~(5) Periodontal scaling and root planing shall not be covered if performed in conjunction with dental prophylaxis.~~

~~[(6)(a) A full mouth debridement shall only be covered for a pregnant woman.~~

~~(b) More than one (1) full mouth debridement per pregnancy shall not be covered.]~~

Section 10. Prosthodontic Service Coverage Limitations. (1) [A removable prosthodontic or denture repair shall be limited to a recipient under the age of twenty-one (21) years.

(2) A denture repair in the following categories shall not exceed three (3) repairs per twelve (12) month period, per recipient:

- (a) Repair resin denture base; or
- (b) Repair cast framework.

~~(2)[(3)]~~ Coverage for the following services shall not exceed one (1) per twelve (12) month period, per recipient:

- (a) Replacement of a broken tooth on a denture;
- (b) Laboratory relining of:
 - 1. Maxillary dentures; or
 - 2. Mandibular dentures;
- (c) An interim maxillary partial denture; or
- (d) An interim mandibular partial denture.

~~(3)[(4)]~~ An interim maxillary or mandibular partial denture shall be limited to use:

- (a) During a transition period from a primary dentition to a permanent dentition;
- (b) For space maintenance or space management; or
- (c) As interceptive or preventive orthodontics.

Section 11. Maxillofacial Prosthetic Service Coverage Limitations. The following services shall be covered if provided by a board eligible or board certified prosthodontist:

- (1) A nasal prosthesis;
- (2) An auricular prosthesis;
- (3) A facial prosthesis;
- (4) A mandibular resection prosthesis;
- (5) A pediatric speech aid;
- (6) An adult speech aid;
- (7) A palatal augmentation prosthesis;
- (8) A palatal lift prosthesis;
- (9) An oral surgical splint; or
- (10) An unspecified maxillofacial prosthetic.

Section 12. Oral and Maxillofacial Service Coverage Limitations.

(1) The simple use of a dental elevator shall not constitute a surgical extraction.

(2) Root removal shall not be covered on the same date of service as the extraction of the same tooth.

(3) Coverage of surgical access of an unerupted tooth shall:

(a) Be limited to exposure of the tooth for orthodontic treatment; and

(b) Require prepayment review.

(4) Coverage of alveoplasty shall:

(a) Be limited to one (1) per quadrant, per lifetime, per recipient; and

(b) Require a minimum of a four (4) tooth area within the same quadrant.

(5) An occlusal orthotic device shall:

- (a) Be covered for temporomandibular joint therapy;
- (b) Require prior authorization in accordance with Section 15(1), (2), and (5) of this administrative regulation; and

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- (c) ~~Be limited to a recipient under the age of twenty-one (21) years; and~~
(d) Be limited to one (1) per lifetime, per recipient.
(6) Frenulectomy shall be limited to two (2) per date of service.
(7) Coverage shall be limited to one (1) per lifetime, per recipient, for removal of the following:
(a) Torus palatinus (maxillary arch);
(b) Torus mandibularis (lower left quadrant); or
(c) Torus mandibularis (lower right quadrant).

Section 13. Orthodontic Service Coverage Limitations. (1) Coverage of an orthodontic service shall:

~~(a) Be limited to a recipient under the age of twenty-one (21) years; and~~

~~(b) require prior authorization except as established in Section 15(1)(b) of this administrative regulation.~~

(2) The combination of space maintainers and appliance therapy shall be limited to two (2) per twelve (12) month period, per recipient.

(3) Space maintainers and appliance therapy shall not be covered in conjunction with comprehensive orthodontics.

(4) Orthodontic braces shall be limited to recipients under the age of twenty-one (21) years.

(5) Space maintainers shall be allowed for adults when:

(a) There has been an extraction or lost tooth;

(b) A permanent tooth is waiting for a partial;

(c) In preparation for an implant, if an implant is medically necessary and approved;

(d) A third molar is partially erupted; or

(e) There is a congenitally missing tooth.

(6) The department shall only cover new orthodontic brackets or appliances.

~~(7)(5)~~ An appliance for minor tooth guidance shall not be covered for the control of harmful habits.

~~(8)(6)~~ In addition to the limitations specified in subsection (1) of this section, a comprehensive orthodontic service shall:

(a) Require a referral by a dentist; and

(b) Be limited to the correction of a disabling malocclusion for transitional, full permanent dentition, or treatment of a cleft palate or severe facial anomaly.

~~(9)(7)~~ A disabling malocclusion shall:

(a) Exist if a patient:

1. Exhibits a severe overbite encompassing one (1) or more teeth in palatal impingement diagnosed by a lingual view of orthodontic models (stone or digital) showing palatal soft tissue contact;

2. Exhibits a true anterior open bite:

a. Either skeletal or habitual in nature that if left untreated will result in:

(i) The open bite persisting; or

(ii) A medically documented speech impediment; and

b. That does not include:

(i) One (1) or two (2) teeth slightly out of occlusion; or

(ii) Where the incisors have not fully erupted;

3. Demonstrates a significant antero-posterior discrepancy (Class II or III malocclusion that is comparable to at least one (1) full tooth Class II or III):

a. Dental or skeletal; and

b. If skeletal, requires a traced cephalometric radiograph supporting significant skeletal malocclusion;

4. Has an anterior crossbite that involves:

a. More than two (2) teeth within the same arch; or

b. A single tooth crossbite if there is evident detrimental changes in supporting tissues including:

(i) Obvious gingival stripping; or

(ii) A functional shift of the mandible or severe dental attrition for an individual under the age of twelve (12) years; or

c. An edge to edge crossbite if there is severe dental attrition due to a traumatic occlusion;

5. Demonstrates a handicapping posterior transverse discrepancy that:

a. May include several teeth, one (1) of which shall be a molar; and

b. Is handicapping in a function fashion as follows:

(i) Functional shift;

(ii) Facial asymmetry; or

(iii) A complete buccal or lingual crossbite;

6. Demonstrates a medically documented speech pathology resulting from the malocclusion;

7. Demonstrates a significant posterior open bite that does not involve:

a. Partially erupted teeth; or

b. One (1) or two (2) teeth slightly out of occlusion;

8. Except for third molars, demonstrates an impacted tooth that:

a. Will not erupt into the arch without orthodontic or surgical intervention; and

b.(i) Shows a documented pathology; or

(ii) Poses a significant threat to the integrity of the remaining dentition or to the health of the patient;

9. Has an extreme overjet in excess of eight (8) millimeters and one (1) of the skeletal conditions specified in subparagraphs 1 through 8 of this paragraph;

10. Has trauma or injury resulting in severe misalignment of the teeth or alveolar structures and does not include simple loss of teeth with no other affects;

11. Has a congenital or developmental disorder giving rise to a handicapping malocclusion;

12. Has a significant facial discrepancy requiring a combined orthodontic and orthognathic surgery treatment approach; or

13. Has developmental anodontia in which several congenitally missing teeth result in a handicapping malocclusion or arch deformation; and

(b) Not include:

1. One (1) or two (2) teeth being slightly out of occlusion;

2. Incisors not having fully erupted; or

3. A bimaxillary protrusion.

~~(10)(8)~~ Coverage of comprehensive orthodontic treatment shall not include orthognathic surgery.

~~(11)(9)~~ If comprehensive orthodontic treatment is discontinued prior to completion, the provider shall submit to the department:

(a) Documentation of the referral referenced in subsection ~~(8)(6)~~ of this section; and

(b) A letter detailing:

1. Treatment provided, including dates of service;

2. Current treatment status of the patient; and

3. Charges for the treatment provided.

~~(12)(40)~~ Remaining portions of comprehensive orthodontic treatment may be authorized for prorated coverage upon compliance with the prior authorization requirements specified in Section 15(1), (2), and (7) of this administrative regulation if treatment:

(a) Is transferred to another provider; or

(b) Began prior to Medicaid eligibility.

Section 14. Adjunctive General Service Coverage Limitations.

(1)(a) Coverage of palliative treatment for dental pain shall be limited to one (1) per date of service, per recipient, per provider.

(b) Palliative treatment for dental pain shall not be covered in conjunction with another service except for a radiograph.

(2)(a) Coverage of a hospital or ambulatory surgical center call or extended care facility call shall be limited to one (1) per date of service, per recipient, per provider.

(b) A hospital call, ambulatory surgical center call, or extended care facility call shall not be covered in conjunction with:

1. Limited oral evaluation; or

2. Comprehensive oral evaluation; or

3. ~~Treatment of dental pain~~.

(3) Intravenous sedation shall not be covered for local anesthesia or nitrous oxide.

Section 15. Prior Authorization. (1)(a) The prior authorization requirements established in this administrative regulation shall apply to services for a recipient who is not enrolled with a managed care organization.

(b) A managed care organization shall not be required to apply the prior authorization requirements established in this administrative regulation for a recipient who is enrolled with the managed care organization.

(c) Prior authorization shall be required for the following:

1. A panoramic film for a recipient under the age of six (6) years;
2. Periodontal scaling and root planing;
3. An occlusal orthotic device;
4. A preorthodontic treatment visit;
5. Removable appliance therapy;
6. Fixed appliance therapy; or
7. A comprehensive orthodontic service.

(2) A provider shall request prior authorization by submitting the following information to the department:

- (a) A MAP[-]9, Prior Authorization for Health Services;

(b) Additional forms or information as specified in subsections (3) through (8) of this section; and

(c) Additional information required to establish medical necessity if requested by the department.

(3) A request for prior authorization of a panoramic film shall include a letter of medical necessity.

(4) A request for prior authorization of periodontal scaling and root planing shall include periodontal charting of preoperative pocket depths.

(5) A request for prior authorization of an occlusal orthotic device shall include a MAP 306, Temporomandibular Joint (TMJ) Assessment Form.

(6) A request for prior authorization of removable and fixed appliance therapy shall include:

(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;

(b) Panoramic film or intraoral complete series; and

(c) Dental models or the digital equivalent of dental models.

(7) A request for prior authorization for comprehensive orthodontic services shall include:

(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;

(b) A MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement;

(c) A cephalometric X-ray with tracing;

(d) A panoramic X-ray;

(e) Intraoral and extraoral facial frontal and profile pictures;

(f) An occluded and trimmed dental model or the digital equivalent of a model; and

(g) An oral surgeon's pretreatment work up notes if orthognathic surgery is required.

(8) If prior authorization for comprehensive orthodontic services is given following a request submitted pursuant to subsection (7) of this section, additional information shall be submitted as required in this subsection.

(a) After six (6) monthly visits are completed, but not later than twelve (12) months after the banding date of service, the provider shall submit:

1. A MAP 559, Six (6) Month Orthodontic Progress Report; and
2. An additional MAP 9, Prior Authorization for Health Services.

(b) Within three (3) months following completion of the comprehensive orthodontic treatment, the provider shall submit:

1. Beginning and final records; and

2. A MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission.

(9) Upon receipt and review of the materials required in subsection (7)(a) through (g) of this section, the department may request a second opinion from another provider regarding the proposed comprehensive orthodontic treatment.

(10) If a service that requires prior authorization is provided before the prior authorization is received, the provider shall assume the financial risk that the prior authorization may not be subsequently approved.

(11)(a) Prior authorization shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the provider.

(12) Upon review and determination by the department that removing a prior authorization requirement shall be in the best interest of a Medicaid recipient, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization, as necessary, an age limit related prior authorization may continue to be enforced.

Section 16. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A dental service provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 17. Auditing Authority. (1) The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(a) Claim;

(b) Medical record; or

(c) Documentation associated with any claim or medical record.

(2) A dental record shall be considered a medical record.

Section 18. Federal Approval and Federal Financial Participation. The coverage provisions and requirements established in 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 of the coverage.

Section 19. Appeal Rights. An appeal of a department decision regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP 9, Prior Authorization for Health Services", December 1995;

(b) "MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement", December 1995;

(c) "MAP 306, Temporomandibular Joint (TMJ) Assessment Form", December 1995;

(d) "MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form", March 2001;

(e) "MAP 559, Six (6) Month Orthodontic Progress Report", December 1995;

(f) "MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission", December 1995; and

(g) "DMS Dental Fee Schedule", December 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site located at <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/dental.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

VOLUME 49, NUMBER 8– FEBRUARY 1, 2023

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 19, 2022

FILED WITH LRC: December 29, 2022 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 27, 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 February 20, 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 February 28, 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Medicaid program provisions and requirements regarding the coverage of dental services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky Medicaid program provisions and requirements regarding the coverage of dental services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Kentucky Medicaid program provisions and requirements regarding the coverage of dental services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Kentucky Medicaid program provisions and requirements regarding the coverage of dental services.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation by removing age limits throughout the administrative regulation. Previously, nearly all services in the administrative regulation were limited to individuals under the age of twenty-one (21). In addition, the term "direct provider contact" has been changed to "direct provider interaction" to better synchronize with the fuller introduction of telehealth required by 2018's SB 112 and 2021's HB 140. In addition, the usage of the term "locum tenens dentist" is removed because federal law limits the use of locum tenens professionals to physicians. Additional restrictions have also been included around the use of orthodontic braces and space maintainers. Finally, a hospital call, ambulatory surgical center call, or extended care facility call based on dental pain may now be subject to coverage. The department is also going to continue to enforce some age limited prior authorizations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with a new state plan amendment (SPA) to extend coverage to adult Medicaid recipients.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing a state plan amendment.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by effectively implementing a state plan amendment.

(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 all adult recipients in the Medicaid program. DMS anticipates that this could be as many as 900,000 individuals. In addition, Medicaid participating dental service providers will be affected by the amendments. Currently, there are 1,078 individual dentists, 158 group dental practices, sixty-nine (69) individual physicians who perform oral surgery, and nine (9) group physician practices that perform oral surgery enrolled in Kentucky's Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Dental providers will need to ensure that they provide services within the limits established in the administrative regulation if they wish to be reimbursed for services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individual beneficiaries will benefit from the additional dental services and visits. Dental providers will benefit from the opportunity to provide services to an additional population of Medicaid beneficiaries.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates an increase of about \$1.00 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this amount should be about \$3.8 million. This expenditure should be balanced against expected savings that will be generated within the Medicaid adult population. A lack of dental care for the adult population is a driver of increased emergency department utilization, opioid prescribing, and later – and more expensive – medical interventions such as oral surgery. DMS anticipates savings and decreased utilization in these more expensive care settings. For example, Medicaid enrollees with preventive care may have 43% lower costs and can be as much as eight times less likely to have an emergency department visit for dental care. In addition, up to 1 million work hours could be saved in the Commonwealth if emergency dental care is avoided for Medicaid recipients. Finally, consistent with national trends, DMS expects additional job-seeking opportunities to be available to the adult population as a result of enhanced dental care and this could result in a movement out of the Medicaid program for some adult beneficiaries.

(b) On a continuing basis: DMS anticipates that additional actuarial analysis of preventive dental utilization could reduce the annual PMPM for dental costs. Furthermore, additional savings could be generated from reduced emergency department use, oral surgery and opioid prescriptions. In addition, some movement out of the Medicaid program could be expected for adult beneficiaries able to access adequate dental care. Absent additional information, DMS will continue to anticipate a \$1.00 PMPM and an approximately \$3.8 million annual expenditure in state funds.

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

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

(9) TIERING: Is tiering applied? Tiering is no longer applied within this administrative regulation as dental services are now available to all Medicaid recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

- (1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396d(r)(3)
- (2) State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs." KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."
- (3) Minimum or uniform standards contained in the federal mandate. Coverage of dental services is mandated only for certain children within the early and periodic screening, diagnosis and treatment (EPSDT) program for individuals under age twenty-one (21.)
- (4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.
- (5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE

- (1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.520(3), 42 U.S.C. 1396d(r)(3).
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.
 - (c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates an increase of about \$1.00 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this amount should be about \$3,857,900. This expenditure should be balanced against expected savings that will be generated within the Medicaid adult population. A lack of dental care for the adult population is a driver of increased emergency department utilization, opioid prescribing, and later – and more expensive – medical interventions such as oral surgery. DMS anticipates savings and decreased utilization in these more expensive care settings. For example, Medicaid enrollees with preventive care may have 43% lower costs and can be as much as eight times less likely to have an emergency department visit for dental care. In addition, up to 1 million work hours could be saved in the Commonwealth if emergency dental care is avoided for Medicaid

recipients. Finally, consistent with national trends, DMS expects additional job-seeking opportunities to be available to the adult population as a result of enhanced dental care and this could result in a movement out of the Medicaid program for some adult beneficiaries.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that additional actuarial analysis of preventive dental utilization could reduce the annual PMPM for dental costs. Furthermore, additional savings could be generated from reduced emergency department use, oral surgery and opioid prescriptions. In addition, some movement out of the Medicaid program could be expected for adult beneficiaries able to access adequate dental care. Absent additional information, DMS will continue to anticipate a \$1.00 PMPM and an approximately \$3.8 million annual expenditure in state funds.

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

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

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

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

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

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

Cost Savings(+/-):

Expenditures (+/-):

Other Explanation:

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

STATEMENT OF EMERGENCY 907 KAR 1:038E

This emergency administrative regulation is being promulgated to incorporate and fully implement a received federal approval that extends coverage of audiology, dental, and vision coverage to all Medicaid recipients. Specifically, this emergency administrative regulation is being promulgated to expand hearing services to adults throughout the Medicaid program. This administrative regulation is needed to be in effect prior to January 1, 2023 in order to ensure coverage of audiology, dental, and vision services for the upcoming calendar year. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding. Failure to implement the received federal approval and provide coverage for eligible recipients within a timely fashion could result in a loss of federal funds. In addition, the Department for Medicaid Services (DMS) needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients. Over 900,000 Medicaid recipients could immediately benefit from the availability of audiology, dental, and vision coverage. This emergency administrative regulation shall be

replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(Emergency Amendment)

907 KAR 1:038E. Hearing Program coverage provisions and requirements.

EFFECTIVE: December 29, 2022

RELATES TO: KRS 205.520, 205.622, 205.8451(9), 334.010(4), (9), 334A.020(5), 334A.030, 42 C.F.R. 400.203, 438.20, [—] 457.310, 42 U.S.C. 1396a, b, d, 1396r-6

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program provisions and requirements regarding the coverage of audiology services and hearing instruments.

Section 1. Definitions.

(1) "Audiologist" is defined by KRS 334A.020(5).

(2) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

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

(4) "Enrollee" means a recipient who is enrolled with a managed care organization.

(5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Healthcare Common Procedure Coding System" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(7) "Hearing instrument" is defined by KRS 334.010(4).

(8) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(9) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(10) "Recipient" is defined by KRS 205.8451(9).

(11) "Specialist in hearing instruments" is defined by KRS 334.010(9).

Section 2. General Requirements.

(1)(a) For the department to reimburse for a service or item, the service or item shall:

1. Be provided:

a. To a recipient[;]

~~(i) Under the age of twenty-one (21) years, including the month in which the recipient becomes twenty-one (21); or~~

~~(ii) For evaluation and testing services, not limited by age, by an audiologist, only if the recipient has received a referral from a physician[;] and~~

b. By a provider who is:

(i) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(ii) Except as provided by paragraph (b) of this subsection, currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(iii) Authorized to provide the service in accordance with this

administrative regulation;

2. Be covered in accordance with this administrative regulation;

3. Be medically necessary; and

4. Have a CPT code or HCPCS code that is listed on the most current Department for Medicaid Services Hearing Program Fee Schedule, posted on the department Web site at: <https://chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>. Any fee schedule posted shall comply with all relevant existing rate methodologies utilized by the department and established by state and federal law. As appropriate and relevant, the department shall utilize the Medicaid Physician Fee Schedule established in 907 KAR 3:010 to inform and populate the Hearing Program Fee Schedule.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2)(a) If a procedure is part of a comprehensive service, the department shall:

1. Not reimburse separately for the procedure; and

2. Reimburse one (1) payment representing reimbursement for the entire comprehensive service.

(b) A provider shall not bill the department multiple procedures or procedural codes if one (1) CPT code or HCPCS code is available to appropriately identify the comprehensive service provided.

(3) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(4)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d) A provider shall comply with KRS 205.622.

(5)(a) An in-state audiologist shall:

1. Maintain a current, unrevoked, and unsuspended license in accordance with KRS Chapter 334A;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1. of this paragraph to the department; and

3. Annually submit proof of the license referenced in subparagraph 1. of this paragraph to the department.

(b) An out-of-state audiologist shall:

1. Maintain a current, unrevoked, and unsuspended license to practice audiology in the state in which the audiologist is licensed;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1. of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1. of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the audiologist by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the audiologist by the American Speech-Language-Hearing Association.

(c) If an audiologist fails to comply with paragraph (a) or (b) of this subsection, as applicable based on if the audiologist is in-state or out-of-state, the:

1. Audiologist shall be ineligible to be a Kentucky Medicaid Program provider; and

2. Department shall not reimburse for any service or item provided by the audiologist effective with the date the audiologist fails or failed to comply.

(6)(a) An in-state specialist in hearing instruments shall:

1. Maintain a current, unrevoked, and unsuspended license issued by the Kentucky Licensing Board for Specialists in Hearing Instruments;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1. of this

paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1. of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association.

(b) An out-of-state specialist in hearing instruments shall:

1. Maintain a current, unrevoked, and unsuspended license issued by the licensing board with jurisdiction over specialists in hearing instruments in the state in which the license is held;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1. of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1 of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association.

(c) If a specialist in hearing instruments fails to comply with paragraph (a) or (b) of this subsection, as applicable based on if the specialist in hearing instruments is in-state or out-of-state, the:

1. Specialist in hearing instruments shall be ineligible to be a Kentucky Medicaid Program provider; and

2. Department shall not reimburse for any service or item provided by the specialist in hearing instruments effective with the date the specialist in hearing instruments fails or failed to comply.

Section 3. Audiology Services.

(1) Audiology service coverage shall be limited to one (1) complete hearing evaluation per calendar year.

(2) Unless a recipient's health care provider demonstrates, and the department agrees, that an additional hearing instrument evaluation is medically necessary, a hearing instrument evaluation shall:

(a) Include three (3) follow-up visits, which shall be:

1. Within the six (6) month period immediately following the fitting of a hearing instrument; and

2. Related to the proper fit and adjustment of the hearing instrument; and

(b) Include one (1) additional follow-up visit, which shall be:

1. At least six (6) months following the fitting of the hearing instrument; and

2. Related to the proper fit and adjustment of the hearing instrument.

(3)(a) A referral by a physician to an audiologist shall be required for an audiology service.

(b) The department shall not cover an audiology service if a referral from a physician to the audiologist was not made.

(c) An office visit with a physician shall not be required prior to the referral to the audiologist for the audiology service.

Section 4. Hearing Instrument Coverage. Hearing instrument benefit coverage shall:

(1) If the benefit is a hearing instrument model, be for a hearing instrument model that is:

(a) Recommended by an audiologist licensed pursuant to KRS 334A.030; and

(b) Available through a Medicaid-participating specialist in hearing instruments; and

(2) Except as provided by Section 5(3) of this administrative regulation, not exceed \$800 per ear every thirty-six (36) months.

Section 5. Replacement of a Hearing Instrument.

(1) The department shall reimburse for the replacement of a hearing instrument if:

(a) A loss of the hearing instrument necessitates replacement;

(b) Extensive damage has occurred necessitating replacement; or

(c) A medical condition necessitates the replacement of the previously prescribed hearing instrument in order to accommodate a change in hearing loss.

(2) If replacement of a hearing instrument is necessary within twelve (12) months of the original fitting, the replacement hearing instrument shall be fitted upon the signed and dated recommendation from an audiologist.

(3) If replacement of a hearing instrument becomes necessary beyond twelve (12) months from the original fitting:

(a) The recipient shall be examined by a physician with a referral to an audiologist; and

(b) The recipient's hearing loss shall be re-evaluated by an audiologist.

Section 6. Noncovered Services. The department shall not reimburse for:

(1) A routine screening of an individual or group of individuals for identification of a hearing problem;

(2) Hearing therapy except as covered through the six (6) month adjustment counseling following the fitting of a hearing instrument;

(3) Lip reading instructions except as covered through the six (6) month adjustment counseling following the fitting of a hearing instrument;

(4) A service for which the recipient has no obligation to pay and for which no other person has a legal obligation to provide or to make payment;

(5) A telephone call;

(6) A service associated with investigational research; or

(7) A replacement of a hearing instrument for the purpose of incorporating a recent improvement or innovation unless the replacement results in appreciable improvement in the recipient's hearing ability as determined by an audiologist.

Section 7. Equipment.

(1) Equipment used in the performance of a test shall meet the current standards and specifications established by the American National Standards Institute.

(2)(a) A provider shall ensure that any audiometer used by the provider or provider's staff shall:

1. Be checked at least once per year to ensure proper functioning; and

2. Function properly.

(b) A provider shall:

1. Maintain proof of calibration and any repair, if any repair occurs; and

2. Make the proof of calibration and repair, if any repair occurs, available for departmental review upon the department's request.

Section 8. 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 9. Appeal Rights. An appeal of a negative action regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 19, 2022

FILED WITH LRC: December 29, 2022 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 27, 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 February 20, 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 February 28, 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Medicaid Hearing Program's service and coverage provisions and requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Kentucky Medicaid Hearing Program's service and coverage provisions and requirements.

(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 Kentucky Medicaid Hearing Program's service and coverage provisions and 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 establishing Kentucky Medicaid Hearing Program's service and coverage provisions and requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation by removing an age limit of 21 on receiving vision services. This will allow adults to receive vision services within the Medicaid program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the approval of a state plan amendment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing a state plan amendment.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by effectively implementing a state plan amendment.

(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 all adult recipients in the Medicaid program. DMS anticipates that this could be as many as 900,000 individuals. In addition, there are approximately 177 audiologists enrolled with the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Regulated entities will be required to take no new actions. However, adult hearing testing and referral requirements have been clarified.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Additional adult hearing testing may be provided, and some referral practices have been clarified.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates an increase of about \$0.25 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this additional benefit should be about \$150,000. This expenditure should be balanced against expected savings that could be generated within the Medicaid adult population. Consistent with national trends, DMS expects that Medicaid hearing coverage will decrease the likelihood of dementia, depression, anxiety, and even myocardial infarctions. DMS furthermore expects that up to 16% of Kentucky adults have some degree of hearing loss, and that quality of life and employment opportunities could increase as a result of this additional benefit. This could result in individuals leaving the Medicaid program as a result of receiving full-time employment.

(b) On a continuing basis: DMS anticipates that additional actuarial analysis of hearing services utilization could reduce the annual PMPM for hearing services or even the overall PMPM. The availability of additional hearing services should be beneficial for the adult population, as this is the third most common chronic condition in the United States. DMS does expect some movement out of the Medicaid program could be expected for adult beneficiaries able to access adequate hearing services. Absent additional information, DMS will continue to anticipate a \$0.25 PMPM and an approximately \$150,000 annual expenditure in state funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching state funds appropriated in the biennium budget.

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

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

(9) TIERING: Is tiering applied? Tiering is no longer applied within this administrative regulation as audiology services are now available to all Medicaid recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396d(r)(4), 42 U.S.C. 1396a(a)(30)(A), 42 C.F.R. 441.56, and 45 C.F.R. 147.126.

(2) State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. EPDST hearing coverage must include at least testing and diagnosis and treatment for hearing defects, including hearing aids. Hearing services must also be, "provided—

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition."

Additionally, state Medicaid programs are required to take measures to monitor that services are appropriate. States are required to establish a plan for review of the appropriateness and quality of care and services furnished to Medicaid recipients by appropriate health care professionals. The plan helps protect against overutilization or unnecessary care and to assure that reimbursement is consistent with efficiency, economy and quality of care.

42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to:

"... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services. ..."

45 C.F.R. 147.126 prohibits the application of annual dollar limits on essential health benefits. Medicaid program benefits are included in the scope of essential health benefits.

(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. The requirements are not stricter than federal requirements.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 441.56; KRS 205.520.

(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 will generate no revenue for DMS.

(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 will generate no revenue for DMS.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates an increase of about \$0.25 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this additional benefit should be about \$150,000. This expenditure should be balanced against expected savings that could be generated within the Medicaid adult population. Consistent with national trends, DMS expects that Medicaid hearing coverage will decrease the likelihood of dementia, depression, anxiety, and even myocardial infarctions. DMS furthermore expects that up to 16% of Kentucky adults have some degree of hearing loss, and that quality of life and employment opportunities could increase as a result of this additional benefit. This could result in individuals leaving the Medicaid program as a result of receiving full-time employment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that additional actuarial analysis of hearing services utilization could reduce the annual PMPM for hearing services or even the overall PMPM. The availability of additional hearing services should be beneficial for the adult population, as this is the third most common chronic condition in the United States. DMS does expect some movement out of the Medicaid program could be expected for adult beneficiaries able to access adequate hearing services. Absent additional information, DMS will continue to anticipate a \$0.25 PMPM and an approximately \$150,000 annual expenditure in state funds.

(4) Estimate the effect of this administrative regulation on the

expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

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

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

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

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

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

Cost Savings(+/-):

Expenditures (+/-):

Other Explanation:

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

STATEMENT OF EMERGENCY 907 KAR 1:632E

This emergency administrative regulation is being promulgated to incorporate and fully implement a received federal approval that extends coverage of audiology, dental, and vision coverage to all Medicaid recipients. Specifically, this emergency administrative regulation is being promulgated to expand vision services to adults throughout the Medicaid program. This administrative regulation is needed to be in effect prior to January 1, 2023 in order to ensure coverage of audiology, dental, and vision services for the upcoming calendar year. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding. Failure to implement the received federal approval and provide coverage for eligible recipients within a timely fashion could result in a loss of federal funds. In addition, the Department for Medicaid Services (DMS) needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients. Over 900,000 Medicaid recipients could immediately benefit from the availability of audiology, dental, and vision coverage. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

VOLUME 49, NUMBER 8– FEBRUARY 1, 2023

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Health Care Policy (Emergency Amendment)

907 KAR 1:632E. Vision program coverage provisions and requirements.

EFFECTIVE: December 29, 2022

RELATES TO: KRS 205.520, 205.622, 205.8451(7), (9), Chapter 320, Chapter 326, 326.030, 326.040, 369.101 to 369.120, 42 C.F.R. 400.203, 431.17, 438.2, 440.40, 440.60, 447 Subpart B, [42 U.S.C. 1396a-d,]45 C.F.R. 147.126, Parts 160 and 164, 164.306, 164.316, 42 U.S.C. 1320d to 1320d-8, 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.30, 42 C.F.R. 441.56(c)(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Kentucky Medicaid Program provisions and requirements regarding the coverage of vision services.

Section 1. Definitions.

(1) "Current procedural terminology code" or "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(2) "Department" means the Department for Medicaid Services[~~Services~~] or its designee.

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Healthcare Common Procedure Coding System" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(6) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(7) "Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient as a Medicaid-participating provider in accordance with:

1. 907 KAR 1:671; and

2. 907 KAR 1:672;

(b) The Medicaid Program is the payer for the service; and

(c) The recipient is not liable for payment to the provider for the service other than any cost sharing obligation owed by the recipient to the provider.

(8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Ophthalmic dispenser" means an individual who is qualified to engage in the practice of ophthalmic dispensing in accordance with KRS 326.030 or 326.040.

(10) "Optometrist" means an individual who is licensed as an optometrist in accordance with KRS Chapter 320.

(11) "Provider" is defined by KRS 205.8451(7).

(12) "Recipient" is defined by KRS 205.8451(9).

Section 2. General Requirements and Conditions of Participation.

(1)(a) For the department to reimburse for a vision service or item, the service or item shall be:

1. Provided:

a. To a recipient; and

b. By a provider who is:

(i) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(ii) Except as provided in paragraph (b) of this subsection, currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(iii) Authorized by this administrative regulation to provide the given service or item;

2. Covered in accordance with this administrative regulation;

3. Medically necessary;

4. A service or item authorized within the scope of the provider's licensure; and

5. A service or item listed on the Department for Medicaid Services Vision Program Fee Schedule.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2)(a) To be recognized as an authorized provider of vision services, an optometrist shall:

1. Be licensed by the:

a. Kentucky Board of Optometric Examiners; or

b. Optometric examiner board in the state in which the optometrist practices if the optometrist practices in a state other than Kentucky;

2. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and

3. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.

(b)1. To be recognized as an authorized provider of vision services, an in-state optician shall:

a. Hold a current license in Kentucky as an ophthalmic dispenser;

b. Comply with the requirements established in KRS Chapter 326;

c. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and

d. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.

2. To be recognized as an authorized provider of vision services, an out-of-state optician shall:

a. Hold a current license in the state in which the optician practices as an ophthalmic dispenser;

b. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and

c. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.

(c) A physician shall be an authorized provider of vision services.

(3) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672;

(c) All applicable state and federal laws; and

(d) The confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164.

(4)(a) A provider shall:

1. Have the freedom to choose whether to provide services to a recipient; and

2. Notify the recipient referenced in paragraph (b) of this subsection of the provider's decision to accept or not accept the recipient on a Medicaid basis prior to providing any services to the recipient.

(b) A provider may provide a service to a recipient on a non-Medicaid basis:

1. If the recipient agrees to receive the service on a non-Medicaid basis; and

2. Whether or not the:

a. Provider is a Medicaid-participating provider; or

b. Service is a Medicaid-covered service.

Section 3. Vision Service Coverage.

(1) Vision service coverage shall be limited to a service listed with a CPT code or item with an HCPCS code on the Department for Medicaid Services Vision Program Fee Schedule.

(2) Vision service limits shall be as established on the Department for Medicaid Services Vision Program Fee Schedule.

Section 4. Coverage of Eyeglasses and Frames.

(1) To be eligible for eyeglasses covered by the department, a recipient shall:

~~(a) Be under the age of twenty-one (21) years, including the month in which the recipient becomes twenty-one (21) years of age; and~~

~~(b)] have a diagnosed visual condition that:~~

~~(a)[4.] Requires the use of eyeglasses;~~

~~(b)[2.] Is within one (1) of the following categories:~~

~~1.[a.] Amblyopia;~~

~~2.[b.] Post surgical eye condition;~~

~~3.[c.] Diminished or subnormal vision; or~~

~~4.[d.] Other diagnosis which indicates the need for eyeglasses; and~~

~~(c)[3.] Requires a prescription correction in the stronger lens no weaker than:~~

~~1.[a.] +0.50, 0.50 sphere +0.50, or 0.50 cylinder;~~

~~2.[b.] 0.50 diopter of vertical prism; or~~

~~3.[c.] A total of two (2) diopter of lateral prism.~~

(2) Provisions regarding any limit on the number of eyeglasses covered shall be as established in 907 KAR 1:631.

(3) For the department to cover:

(a) A frame, the frame shall be:

1. First quality;

2. Free of defects; and

3. Have a warranty of at least one (1) year; or

(b) A lens, the lens shall be:

1. First quality;

2. Free of defects;

3. Meet the United States Food and Drug Administration's impact resistance standards; and

4. Polycarbonate and scratch coated.

(4) The dispensing of eyeglasses shall include:

(a) Single vision prescriptions;

(b) Bi-focal vision prescriptions;

(c) Multi-focal vision prescriptions;

(d) Services to frames; or

(e) Delivery of the completed eyeglasses which shall include:

1. Instructions in the use and care of the eyeglasses; and

2. Any adjustment, minor or otherwise, for a period of one (1) year.

(5) A provider shall be responsible, at no additional cost to the department or the recipient, for:

(a) An inaccurately filled prescription;

(b) Defective material; or

(c) An improperly fitted frame.

Section 5. Contact Lenses, Tint, and Plano Safety Glasses.

(1) The department shall not reimburse for contact lenses substituted for eyeglasses unless:

(a) The corrected acuity in a recipient's stronger eye is twenty (20)/fifty (50) and shall be improved with the use of contact lenses;

(b) The visual prescription is of + 8.00 diopter or greater; or

(c) The recipient's diagnosis is 4.00 diopter anisometropia.

(2) The department shall not reimburse for tint unless the prescription specifically indicates a diagnosis of photophobia.

(3) The department shall not reimburse for plano safety glasses unless the glasses are medically indicated for the recipient.

Section 6. Noncovered Services or Items. The department shall not reimburse for:

(1) Tinting if not medically necessary;

(2) Photochromics if not medically necessary;

(3) Anti-reflective coatings if not medically necessary;

(4) Other lens options which are not medically necessary;

(5) Low vision services;

(6) A press-on prism; or

(7) A service with a CPT code or item with an HCPCS code that is not listed on the Department for Medicaid Services Vision Program Fee Schedule.

Section 7. Required Provider Documentation. (1)(a) In accordance with 42 C.F.R. 431.17, a provider shall maintain medical

records of a service provided to a recipient for the period of time currently required by the United States Health and Human Services Secretary unless the department requires a retention period, pursuant to 907 KAR 1:671, longer than the period required by the United States Health and Human Services Secretary.

(b) If, pursuant to 907 KAR 1:671, the department requires a medical record retention period longer than the period required by the United States Health and Human Services Secretary, the medical record retention period established in 907 KAR 1:671 shall be the minimum record retention period.

(c) A provider shall maintain medical records of a service provided to a recipient in accordance with:

1. 45 C.F.R. 164.316; and

2. 45 C.F.R. 164.306.

(2) A provider shall maintain the following documentation in a recipient's medical record:

(a) Any covered service or covered item provided to the recipient;

(b) For each covered service or covered item provided to the recipient:

1. A signature by the individual who provided the service or item signed on the date the service or item was provided;

2. The date that the service or item was provided; and

3. Demonstration that the covered service or covered item was provided to the recipient;

(c) The diagnostic condition necessitating the service or item; and

(d) The medical necessity as substantiated by an appropriate medical order.

Section 8. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for the same service provided to the same recipient during the same time period via the physician services program.

Section 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with the claim or medical record.

Section 11. Use of Electronic Signatures.

(1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 12. 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 13. Appeal Rights. An appeal of a department decision regarding a Medicaid recipient who is:

- (1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or
- (2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

Section 14. Incorporation by Reference.

(1) "Department for Medicaid Services Vision Program Fee Schedule", May 13, 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 19, 2022

FILED WITH LRC: December 29, 2022 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 27, 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 February 20, 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 February 28, 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid program coverage policies and requirements regarding vision services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program coverage provisions and requirements regarding vision services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid program coverage provisions and requirements regarding vision services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid program coverage provisions and requirements regarding vision services; by complying with a federal mandate; and by protecting Kentucky

taxpayer monies from being spent if federal matching funds are not provided.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation by removing an age limit of 21 on receiving vision services. This will allow adults to receive vision services within the Medicaid program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the approval of a state plan amendment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing a state plan amendment.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by effectively implementing a state plan amendment.

(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 all adult recipients in the Medicaid program. DMS anticipates that this could be as many as 900,000 individuals. In addition, this administrative regulation will affect vision service providers participating in the Kentucky Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No action is required of the regulated entities other than to properly bill for services and adhere to program integrity requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individual beneficiaries will benefit from the additional dental services and visits. Vision services providers will benefit from the opportunity to provide services to an additional population of Medicaid beneficiaries.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates an increase of about \$0.75 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this additional benefit should be about \$2.1 million. This expenditure should be balanced against expected savings that could be generated within the Medicaid adult population. Consistent with national trends, DMS expects that Medicaid vision coverage will increase the likelihood of working full-time for adult beneficiaries. This could result in individuals leaving the Medicaid program as a result of receiving full-time employment.

(b) On a continuing basis: DMS anticipates that additional actuarial analysis of vision services utilization could reduce the annual PMPM for vision services or even the overall PMPM. The availability of additional vision services should be beneficial for the adult population, as this removes a significant cost barrier to eyewear. As a result, DMS does expect some movement out of the Medicaid program could be expected for adult beneficiaries able to access adequate vision services. Absent additional information, DMS will continue to anticipate a \$0.75 PMPM and approximately \$2.1 million annual expenditure in state funds.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering is no longer applied within this administrative regulation as vision services are now available to all Medicaid recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)(A), 42 U.S.C. 1396a(a)(33), 42 C.F.R. 441.56(c)(1), 42 C.F.R. 441.30, Section 2711 of the Affordable Care Act, and 45 C.F.R. 147.126.

(2) State compliance standards. Vision services for Medicaid recipients are not mandated by Kentucky law; however, the Department for Medicaid Services is required by KRS 205.8453 to "institute other measures necessary or useful in controlling fraud and abuse." KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Coverage of vision services is mandated only for certain children within the early and periodic screening, diagnosis and treatment (EPSDT) program for individuals under age twenty-one (21). 42 C.F.R. 441.30 states, "The plan must provide for payment of optometric services as physician services, whether furnished by an optometrist or a physician, if—

(a) The plan does not provide for payment for services provided by an optometrist, except for eligibility determinations under §§435.531 and 436.531 of this subchapter, but did provide for those services at an earlier period; and

(b) The plan specifically provides that physicians' services include services an optometrist is legally authorized to perform." Additionally, state Medicaid programs are required to take measures to monitor that services are appropriate. States are required to establish a plan for review of the appropriateness and quality of care and services furnished to Medicaid recipients by appropriate health care professionals. The plan helps protect against overutilization or unnecessary care and to assure that reimbursement is consistent with efficiency, economy and quality of care. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services. ..." 45 C.F.R. 147.126 prohibits the application of annual dollar limits on essential health benefits. Medicaid program benefits are included in the scope of essential health benefits.

(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. Stricter requirements are not imposed.

FISCAL NOTE

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

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

194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.30, 42 C.F.R. 441.56(c)(1), and 45 C.F.R. 147.126.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates an increase of about \$0.75 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this additional benefit should be about \$2.1 million. This expenditure should be balanced against expected savings that could be generated within the Medicaid adult population. Consistent with national trends, DMS expects that Medicaid vision coverage will increase the likelihood of working full-time for adult beneficiaries. This could result in individuals leaving the Medicaid program as a result of receiving full-time employment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that additional actuarial analysis of vision services utilization could reduce the annual PMPM for vision services or even the overall PMPM. The availability of additional vision services should be beneficial for the adult population, as this removes a significant cost barrier to eyewear. As a result, DMS does expect some movement out of the Medicaid program could be expected for adult beneficiaries able to access adequate vision services. Absent additional information, DMS will continue to anticipate a \$0.75 PMPM and an approximately \$2.1 million annual expenditure in state funds.

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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KRS 13A.010 – on regulated entities. DMS anticipates that this amendment may result in additional reimbursement for ophthalmologists and optometrists.

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AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

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

NONE

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ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

SECRETARY OF STATE
(As Amended at ARRS, January 10, 2023)

30 KAR 9:010. Lieutenant governor designation form[Forms].

RELATES TO: KRS 14.025, 118.126

STATUTORY AUTHORITY: KRS 118.126(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.025(4) requires the Department of State, Office of Elections to be responsible for candidate filings and assisting the Secretary of State in his or her duties as the chief election official of Kentucky. KRS 118.126(1) requires Secretary of State to accept the designation of Lieutenant Governor from each candidate for Governor. This administrative regulation establishes the form for the designation[such filing].

Section 1. ~~[The following reporting forms shall be filed in accordance with the referenced statutes:]~~To designate a candidate for Lieutenant Governor as required by[Pursuant to] KRS 118.126(1), a candidate for Governor shall timely[will] file the "Designation of Candidate for Lieutenant Governor" with the Secretary of State ~~[no later than 4 p.m. on the second Tuesday in August preceding the regular election for the office of Governor].~~

Section 2. Incorporation by Reference.

(1) ~~[The following material is incorporated by reference:]~~Designation of Candidate for Lieutenant Governor[""] SOS 01, October 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at <http://www.sos.ky.gov>.

CONTACT PERSON: Jennifer Scutchfield, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

AUDITOR OF PUBLIC ACCOUNTS
(As Amended at ARRS, January 10, 2023)

45 KAR 1:050. Audits of fiscal courts.

RELATES TO: KRS 43.070, 43.075, 64.810, 68.210, 31 U.S.C. 7501-~~7506~~[7507]

STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075(1) requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of the funds contained in county budgets (fiscal courts). This administrative regulation establishes the auditing standards, procedures, and formats for fiscal court audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures, and Formats. The financial and compliance audit of the funds contained in each county's budget shall be conducted in accordance with:

(1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:290[201 KAR 1:300, Section 3];

(2) Generally accepted government auditing standards, referenced in 201 KAR 1:290[201 KAR 1:300, Section 3]; and

(3) Fiscal Court Audit Guide, issued by the Auditor of Public Accounts, October 14, 2022[August 14, 2020].

Section 3. Auditor's Independent Judgement. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective.

(1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statements of a fiscal court are presented fairly, in all material respects, in accordance with a basis of accounting prescribed or permitted by the Department for Local Government, which is the regulatory basis of accounting or Generally Accepted Accounting Principles (GAAP).

(2) Any audit report of a fiscal court that is required to comply with the requirements of the Single Audit Act Amendments of 1996, 31 U.S.C. 7501-7506, and Title 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), shall include a statement concerning whether:

(a) The Schedule of Expenditure of Federal Awards is fairly stated, in all material respects, in relation to the financial statements taken as a whole; and

(b) The fiscal court has complied, in all material respects, with the requirements applicable to each of its major federal programs.

(3) An auditor shall make tests sufficient to determine whether:

(a) The fiscal court has complied with the requirements of the uniform system of accounts adopted under KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The county has complied with all other legal requirements relating to the management of public funds.

Section 5. Allowance of Audit Fees; Acceptance of Report.

(1) Fees for county fiscal court audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A county shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fiscal court audit.

(3) Failure by an independent certified public accountant to comply with the Fiscal Court Audit Guide and this administrative regulation shall disqualify him from conducting fiscal court audits.

Section 6. Incorporation by Reference.

(1) The "Fiscal Court Audit Guide," Auditor of Public Accounts, October 14, 2022[August 14, 2020] is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 209 Saint Clair Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m., or may be obtained at <https://www.auditor.ky.gov/cpatools/Pages/APACountyAuditGuides.aspx>.

CONTACT PERSON: Graham Gray, General Counsel, Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601; phone 502-209-2868; fax 502-564-2912; email Graham.Gray@ky.gov.

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FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(As Amended at ARRS, January 10, 2023)

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

RELATES TO: KRS 161.661(19)

STATUTORY AUTHORITY: KRS 161.310, 161.661(19)

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

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

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

Section 3. Administrative Provisions. (1) An application for duty-related injury disability benefits shall be filed on the TRS 4 Disability Retirement Application – Less Than Five Years of Service (application) and shall include:

- (a) A photocopy of the member's certified birth certificate;
 - (b) A photocopy of the member's signed Social Security card;
 - (c) A voided or cancelled check from the institution where monthly disbursements shall be electronically transmitted;
 - (d) The Physician's Disability Evaluation Report and supporting documentation regarding the member's duty-related injury;
 - (e) The Applicant's Disability Statement; and
 - (f) If the duty-related injury was the result of external violence, a copy of any incident or police report filed at the time of the incident.
- (2) TRS shall submit the application and supporting documentation to the medical review committee for evaluation and written disposition as required by KRS 161.661(14).
- (3) If the application is approved, payment of these disability benefits shall be effective on the applicable date set forth in KRS 161.661(11).

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

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

- (a) "TRS 4 Disability Retirement Application-Less Than Five Years of Service", September 2022;
 - (b) "Physician's Disability Evaluation Report", September 2022; and
 - (c) "Applicant's Disability Statement", September 2022.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

BRENDA MCGOWN, Chair

APPROVED BY AGENCY: September 14, 2022

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, 21 December 2022, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, Frankfort,

Kentucky. Individuals interested in being heard at this hearing shall notify this

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, or email Beau.Barnes@trs.ky.gov.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, January 10, 2023)

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 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. This administrative regulation establishes quasi-governmental employer reports on independent contractors and leased employees.

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.

(2) (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.

(3) (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.

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

(5) "Employee" is defined by KRS 61.510(5).

(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) "Fiscal year" is defined by KRS 61.510(19).

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

(9) "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.

(10) "Non-core services independent contractor" is defined by KRS 61.5991(9).

(11) (8) "Other employment arrangement":

(a) Means any written agreement between a quasi-governmental employer and a third party (including ~~to,~~ 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; ~~and~~.]

~~(b) ["Other employment arrangement"] Does not mean[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.~~

~~(12)(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).~~

~~(13)(10)] "Quasi-governmental employer":~~

~~(a) 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; and~~.]

~~(b) [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.~~

~~(14) "Regular full-time position" is defined by KRS 61.510(21).~~

~~(14)(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 of this administrative regulation 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 subsection [Section 2](1)(b) of this section[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 established[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 61.5991(2)(a)2., 61.675, and 61.685, ~~and 61.5991(2)(a)2.~~,¹

(a) ~~If~~^{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, if/when combined, constitute a "regular full-time position" as defined in KRS 61.510(5), 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 Forms 6756~~[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 Forms 6756~~[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 Forms 6756~~[Form 6756s]~~, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer ~~[pursuant to KRS 61.510(5)]~~ for 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 61.543, 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 61.543, 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) ~~For~~^{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 the 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.

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(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. ~~These~~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 ~~Forms 6756~~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 ~~material is~~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; ~~and~~

(c) Form 4225, "Verification of Past Employment", April 2021.

(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.

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.

BOARDS AND COMMISSIONS

Real Estate Commission

(As Amended at ARRS, January 10, 2023)

201 KAR 11:121. Standards of professional conduct.

RELATES TO: KRS 324.010(3), 324.111, 324.112, 324.121, 324.160, 324.281(5), 324.310, 324.360, 381.9203(1), (3), 383.580, 24 C.F.R. 3500, 44 C.F.R. 64.3(b), 12 U.S.C. 2601-2617

STATUTORY AUTHORITY: KRS 324.121, 324.160(4)(e), 324.281(5), 324.282, 324.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 require the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller or lessor, buyer or lessee, or prospective buyer to the exclusion of all other licensees associated with the principal broker. KRS 324.360(2) requires the commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form with content as set forth by KRS 324.360(3). KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. This administrative regulation establishes requirements for designated agency; the required Seller's Disclosure of Property Condition form; a specific process and form for disclosing prior relationships between parties in a residential transaction; standards and requirements, to inform and set certain standards for licensees and to protect the public, regarding delivery of signed documents, broker supervision, broker record retention, sales associate affiliation and termination, and written agreements between licensees and consumers to provide real estate brokerage services, including standards for listing and purchase contracts; and behavior considered improper conduct.

Section 1. Improper Conduct.

(1) In addition to the obligations and prohibitions set forth in KRS 324.160, a licensee shall not:

(a) Accept or agree to accept, or offer or agree to offer, anything of value to another person in violation of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601 through 2617 ("RESPA").[-] This provision shall not affect paying or receiving referral fees between principal brokers for brokerage services;

(b) Refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the real estate brokerage company with which the licensee is affiliated, without the written and signed direction of the listing or leasing client. This provision shall not be construed to permit otherwise unlawful discrimination;

(c) Offer real estate for sale or lease without written consent from the person or persons, or entity or entities authorized to sell or lease the subject real estate;

(d) Fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client:

1. Loyalty;
2. Obedience to lawful instructions;
3. Disclosure;
4. Confidentiality;
5. Reasonable care and diligence; and
6. Accounting;

(e) Fail to satisfy one (1) or more of the following duties owed to the licensee's prospective client:

1. Good faith;
2. Fair dealing; and
3. The duty of confidentiality;

(f) Fail to satisfy one (1) or more of the following duties owed to a consumer or to any other party in a transaction:

1. Good faith; and
2. Fair dealing;

(g) Enter an ongoing team or group relationship with any other licensee at the same brokerage company without the written consent of the principal broker;

(h) Induce any party to a contract for sale or lease to break the contract for the purpose of substituting in lieu thereof a new contract for sale or lease with another principal broker[client];

(i) If advertising real property at an absolute auction, sell the advertised property to anyone other than the highest bona fide bidder on the day of the auction; and

(j) If dually licensed as an auctioneer and real estate licensee, before a real estate licensee commences an auction, the licensee shall disclose his or her status as a real estate licensee to potential purchasers and whether he or she intends to bid during the auction.

(2) The fiduciary duty of confidentiality, if owed, shall survive the termination of the Agency Consent Agreement contemplated in Section 6 of this administrative regulation.

(3) It shall not be considered improper conduct for a licensee to advertise the fee or other compensation the principal broker agrees to charge for his or her services.

(4) It shall not be considered improper conduct for a licensee to offer rebates, discounts, or other inducements to consumers, prospective clients, or clients to use the licensee's services or truthfully advertise the same.

(5) It shall not be considered improper conduct for a licensee to use his or her registered nickname in place of the licensee's first name anytime the licensee shall identify himself or herself on an official document or to the commission.

Section 2. Submission of Written Offers.

(1) If a principal broker has entered into a written listing agreement, or any other written agreement, under the terms of which the principal broker agrees to provide real estate brokerage services for a fee, compensation, or other valuable consideration for the client, the principal broker shall provide, unless specifically waived or modified by the client in writing, for real estate that is the subject of the written agreement, the following services:

(a) Accept delivery and submit to the client, without delay, all written offers to lease or purchase;

(b) Accept all earnest money deposits that are presented to the principal broker or an affiliated licensee of the principal broker;

(c) Until the completion of the transaction, assist the client in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to offers and counteroffers; and

(d) Answer the client's questions relating to offers, counteroffers, notices, and contingencies involved in the lease or purchase.

(2)

(a) Each principal broker, or an affiliated licensee of the principal broker, who represents a client shall, without delay, submit all written offers to lease or purchase real estate from the principal broker's client to the person or legal entity authorized to sell or lease the property or to the principal broker, or an affiliated licensee of the principal broker, who has entered into a written agreement according to subsection (1) of this section. A licensee representing a seller shall submit a notice in writing through electronic, text, or other media to the licensee representing a buyer of the date and time when the offer was presented to the seller.

(b) If the principal broker is acting as a transactional broker, the principal broker shall follow the lawful instructions of the parties and provide the brokerage services as outlined in the transactional brokerage agreement.

(3) Failure to comply with this section shall constitute gross negligence in violation of KRS 324.160(4)(v).

Section 3. Listing and Purchase Contracts.

(1) A listing contract completed by or at the direction of a licensee shall include the:

(a) Listing price of the property, unless the sale is to be by auction;

(b) Date and time of the signing of the listing contract for all parties who sign;

(c) First and last name of the principal broker and the full name of the real estate brokerage company;

(d) Effective date and time of listing and advertising, if different;

(e) Date of expiration of the listing contract;

(f) Fee, compensation, or other valuable consideration agreed upon between the principal broker and the client;

(g) Address or a general description of the real estate sufficient to identify the parcel or parcels;

(h) Signatures and printed names of all parties necessary to affect a sale of the property, including any dower or curtesy[courtesy] considerations or the official representative of a legal entity, that is the subject of the listing agreement;

(i) Special directions of the client concerning limitations or restrictions on showings; and

(j) Date, time, and initials for all changes on the contract prior to acceptance.

(2) An offer to purchase completed by, or at the direction of, a licensee shall include the:

(a) Purchase price or a valid escalation clause with the maximum purchase price;

(b) Amount of contract deposit, if given, who is to hold the deposit, and the time period to deliver the deposit;

(c) Date and time of signing of the offer for all parties who sign;

(d) Date and time when the offer expires;

(e) Address or a general description of the real estate sufficient to identify the parcel or parcels;

(f) Signatures of all parties making the offer and the printed first and last name of the licensee who completed or directed the completion of the offer;

(g) Date, time, and initials for all changes on the contract prior to acceptance;

(h) Provision setting forth the date by which, or the date range within, the closing shall occur and when possession shall be given to the buyer; and

(i) Proposed payment terms.

(3) A counteroffer completed by, or at the direction of, a licensee shall include any amendments to any term required by subsection (1) and (2) of this section and:

(a) Date and time of signing of the counteroffer for all parties who sign;

(b) Date and time when the counteroffer expires;

(c) Signatures of all parties making the counteroffer;

(d) The first and last name of the licensee who completed or directed the completion of the offer, if not found on the original offer or a previous counteroffer; and

(e) Date, time, and initials for all changes on the contract prior to acceptance.

(4)

(a) If a licensee presents an offer to purchase real estate for which an executory contract to sell the property is already in existence, the offer shall include language that indicates in writing that the offer is contingent upon the nonperformance of the existing executory contract.

(b) The contingency language required by paragraph (a) of this subsection shall indicate the disposition of any contract deposit and be:

1. Inserted by the licensee who completes or prepares the offer to purchase, if licensee is aware of the existing contract; or
2. Made by the listing licensee as a counteroffer.

(5) If financing is involved, a contract providing for the purchase of property shall specifically state:

- (a) The manner in which the purchase shall be financed; and
- (b) The amount of any encumbrance and whether it is to be underwritten by the seller or a commercial institution or otherwise.

(6) Any agreement for compensation, including rebates and inducements, from a licensee to his or her client shall be in writing.

(7)

(a) Prior to the expiration of a current listing agreement, another licensee shall not contact the seller to obtain a subsequent listing agreement.

(b) Notwithstanding paragraph (a) of this subsection, a licensee may discuss newly listing the seller's property that is currently listed if:

1. The seller initiates contact with the new licensee to obtain a new listing contract;
2. The proposed listing contract states that it shall not take effect until the expiration of the seller's current listing contract with the original licensee; and

3. The licensee and seller properly complete and sign the Seller-Initiated Listing Form. Nothing in this subsection shall prohibit a licensee from approaching a seller to list the seller's property following the seller's cancellation of their current listing contract or expiration of the current listing contract.

(8) If a licensee fails to comply with the requirements in this section, the licensee's conduct and dealings shall be considered improper in violation of KRS 324.160(4)(u).

Section 4. Required Disclosures.

(1) A licensee shall direct the seller-client of a single family residential real estate dwelling, duplex, triplex, fourplex, condominium, or townhouse to accurately complete and sign the Seller's Disclosure of Property Condition form required by KRS 324.360, including all necessary initials and signatures, unless the seller-client refuses and documents his or her refusal, or the licensee documents the seller-client refusal, on the Seller's Disclosure of Property Condition form.

(2) A licensee who is involved in the brokerage of a condominium transaction shall advise the client in writing of the client's right to receive the Condominium Seller's Certificate required by KRS 381.9203(1) and the purchasing client's right to void the sales contract consistent with KRS 381.9203(3).

Section 5. Prospective Client Disclosures.

(1) A licensee shall complete, time and date, and deliver to the appropriate prospective client the commission's Guide To Agency Relationships at the earliest of the following times:

(a) Prior to entering into a contemplated written agreement to provide real estate brokerage services for compensation with a prospective client;

(b) Prior to entering into a contemplated oral agreement to provide real estate brokerage services with a prospective client; or

(c) Prior to signing an agency consent agreement.

(2) The licensee shall solicit the signature of the prospective client on the Guide to Agency Relationships as acknowledgement by the prospective client of his or her receipt. The licensee shall maintain a record that the prospective client signed the Guide to Agency Relationships. If the prospective client refuses to, or does not, sign the Guide to Agency Relationships upon receipt, the licensee shall document the delivery, or attempted delivery, including a date and time, to the appropriate prospective ~~client~~^{client}.

(3) The completed Guide to Agency Relationships shall provide or include:

(a) The agency relationships available between the licensee and client or party in Kentucky;

(b) The first and last name of the licensee completing the form, the first and last name of the principal broker of the licensee, and the full name of the licensee's real estate company;

(c) The name of the prospective client; and

(d) The signature, time, and date of signing by the prospective client.

(4) The provisions of this section shall not apply to:

(a) The sale of real estate at auction; or

(b) A commercial transaction.

Section 6. Agency Consent Agreement.

(1) Prior to entering into a written agreement to provide real estate brokerage services or completing, or directing the completion of, a contract, offer, or lease for a real estate transaction:

(a) The licensee shall complete and deliver the Agency Consent Agreement to the prospective client; and

(b) Seek and obtain written consent to the Agency Consent Agreement from the prospective client.

(2) The commission's Agency Consent Agreement shall provide:

(a) The first and last name of the client, the first and last name of the licensee or licensee's and principal broker, and the full name of the real estate brokerage company;

(b) The specific agency relationship proposed between the principal broker of the real estate brokerage company, and any affiliated licensee of the real estate brokerage company, and the prospective client;

(c) If applicable, any known business, family, or personal relationship the licensee has with another party to the contemplated transaction who is not a party to the Agency Consent Agreement and an explanation of the nature of the relationship or relationships; ~~and~~

(d) Whether the transaction involves an unrepresented party; ~~and~~

~~[(e)] [Disclosure of prior contact with a former prospective client who is involved in the presently contemplated real estate transaction.]~~

(3) The Agency Consent Agreement shall be updated, and written consent obtained, if the agency relationship initially established later changes.

(4) The provisions of this section shall not apply to a:

(a) Sale of real estate at auction; or

(b) Commercial transaction.

(5) The form of agency identified in the most recent Agency Consent Agreement shall terminate upon either:

(a) The provision of the agreed upon services; or

(b) At the closing of the contemplated real estate transaction.

Section 7. Affiliation.

(1) The principal broker shall be the owner of all written contracts for provision of real estate brokerage services, including items such as listing contracts, purchase contracts, and exclusive agency agreements.

(2) When a principal broker, or a licensee acting on behalf of the principal broker, enters into a written agreement with a client, an agency relationship is formed, and the client is the principal.

(3) Absent operating as a designated agency company, each licensee affiliated with the real estate brokerage company shall have the same agency relationship with respect to a client, prospective client, or party as the principal broker in an in-house transaction.

(4) If only one (1) broker is affiliated with a company, he or she shall be the principal broker.

(5) If one (1) or more additional licensees is affiliated with the company, one (1) broker shall be the principal broker registered with the commission.

(6)

(a) Unless there is a written contract stipulating otherwise, a licensee shall, upon termination of his or her affiliation with his or her principal broker, immediately turn over to the principal broker all records described in Section 9(1)(a)-(h) of this administrative regulation obtained during his or her affiliation regardless of whether

the information was originally received from his or her principal broker, copied from the records of the principal broker, or acquired by the licensee during his or her affiliation.

(b) Nothing in paragraph (a) of this subsection shall require an affiliated licensee to deliver to the principal broker records which the principal broker is not under an obligation to retain consistent with this administrative regulation or records which are already in the principal broker's possession.

(7)

(a) A principal broker may be principal broker of more than one (1) real estate brokerage company.

(b) A principal broker shall not also be an affiliate broker at another real estate brokerage company, except for as provided in KRS 324.112(5).

(8) A sales associate or broker affiliated with a principal broker shall only be affiliated with one principal broker at one office, or branch office, location.

(9) A real estate brokerage company may have more than one (1) physical office location, including branch offices.

Section 8. Facsimile and Digital Transmissions.

(1) A licensee may use facsimile (FAX) devices and digital transmissions to transmit and receive documents according to the provisions of KRS Chapter 369 and 201 KAR Chapter 11.

(2) A document received by facsimile devices or digital transmissions shall be immediately placed in the licensee's file and retained as required by this administrative regulation.

Section 9. Principal Broker Duties and Prohibitions.

(1) A principal broker shall confidentially preserve, either in hard copy or digital format, for five (5) years following its consummation or failure, records in one (1) file relating to any real estate transaction, which shall include:

- (a) Any written offers to lease or purchase the real estate;
- (b) The acquisition and disbursement of any monies;
- (c) Listing and sales contracts or leases;
- (d) Closing sheets;

(e) Seller's Disclosure of Property Condition and Condominium Seller's Certificate forms;

- (f) Agency Consent Agreement forms;
- (g) Guide to Agency Relationships forms; and
- (h) Timeshare records.

(2) A principal broker who engages in property management shall also confidentially preserve, either in hard copy or digital format, for five (5) years:

- (a) Property management agreements;
- (b) Leases;
- (c) Monthly owner statements and reports;
- (d) Owner and unit ledgers; and
- (e) Bank statements relating to property management.

(3) If the death or incapacity of the principal broker occurs, records required to be maintained pursuant to this section shall be maintained by:

(a) A new principal broker or a designated manager, so designated previous to the time of the death or incapacity of the principal broker to maintain the records;

(b) The real estate brokerage company of the principal broker at the time of the death or incapacity of the principal broker, if the company continues to be an active company;

(c) A licensee designated by the commission to maintain the records and serve as the principal custodian of the records, without any liability or obligation, other than to confidentially maintain the records and to provide the records to a party as required by law or by demand of the commission; or

(d) Any appointee of the commission who will agree to maintain the records and serve as the principal custodian of the records, without any liability or obligation, other than to confidentially maintain the records and to provide the records to a party as required by law or by demand of the commission.

(4) At the time of signing all documents, the principal broker, or an affiliated licensee of the principal broker, shall ensure that a copy of all documents are delivered to all parties executing the documents if the document has been provided, prepared by, or at the direction of the principal broker or an affiliated licensee of the principal broker.

(5) The principal broker, or an affiliated licensee of the principal broker, shall ensure that a debit and credit type closing statement is furnished to a client upon closing a real estate transaction unless the financial institution, title agency, the attorney involved, or other authorized individuals, has prepared the closing statement.

(6) A principal broker shall not be a party to an exclusive listing contract which contains an automatic continuation of the period of the listing beyond the fixed termination date set forth therein.

(7) If a principal broker permits teams, a principal broker shall notify the commission in writing of the alternate or assumed name used by the team and the name of the team leader before permitting team advertising.

(8) If a principal broker authorizes team, group, or other business arrangements between affiliated licensees, the principal broker shall:

(a) Offer, at a minimum, company procedures for advertising, agency relationships and handling confidential information, management and operations specific to team, group, or other business arrangements between affiliated licensees;

(b) Designate a licensee who shall be responsible, along with the principal broker and designated manager, for the operations of the team, group, or other business arrangement. The designated licensee shall be referred to as the "team leader" regardless of how the team, group, or other business arrangement labels itself;

(c) Maintain a current list of all affiliated licensees, employees, office personnel, and clerical staff who are a part of each individual team, group, or other business arrangement; and

(d) Notify the commission in writing of the first and last name and license number of the team leader.

(9) A principal broker shall ensure any employee or unlicensed personal assistant, salaried or independently contracted, employed by, retained by, or under the direction of the principal broker or any affiliated licensee, are in compliance with the applicable provisions of KRS Chapter 324 and 201 KAR Chapter 11.

(10) A principal broker shall implement and maintain an appropriate information security system that shall:

(a)

1. Notify licensees, management, employees, officer personnel, and clerical staff of company policy and procedures related to confidential information, including in-person interactions or discussions in the office environment;

2. Prohibit the disclosure of confidential information by licensees, management, employees, office personnel and clerical staff;

3. Require notification to each client involved in a transaction, if the principal broker becomes aware of an unauthorized or inadvertent disclosure of confidential information relating to that transaction; and

4. Prohibit an employee from assisting more than one (1) designated agent in the same transaction if the designated agents represent different clients in that transaction.

(b) Nothing in this provision shall prohibit a licensee who is party to an Agency Consent Agreement from maintaining a separate individual client file containing confidential information.

(11) A principal broker of a real estate brokerage company that practices designated agency shall require that all documents that contain confidential information relating to a client be kept in an individual file maintained by the principal broker and accessed only by the principal broker, designated manager, or designated agent appointed by the principal broker to represent the individual.

(12) A principal broker who appoints a designated manager of the real estate brokerage company, a registered company branch, team, group, or other business arrangement shall notify the commission in writing of the name of the designated manager within ten (10) days of the appointment.

Section 10. Property Management.

(1) A principal broker, or an affiliated licensee, shall not engage in property management without a current written property management agreement.

(2) A property management agreement shall contain, at a minimum:

(a) The full name and address of the principal broker's real estate brokerage company as registered with the commission;

(b) The name and address of the client for whom the property is being managed;

(c) The address of the real estate being managed and the number of units;

(d) The effective dates of the agreement, and a provision stating whether the client agrees to automatic annual renewal;

(e) A provision stating the method for early termination;

(f) The amount of, or the method for computing, the amount of compensation to the principal broker;

(g) The amount of, or the method of determining, the minimum security deposit to be collected from tenants for each unit managed;

(h) The name and address of the bank where the principal broker's escrow or management account is held, and, consistent with KRS 383.580(1), the account number. This information shall also be contained in the lease;

(i) A provision which is in accord with KRS 383.580 setting forth the procedures governing returning or retaining the security deposit. This provision shall also be contained in the lease;

(j) A provision setting forth the conditions under which the principal broker may pay expenses related to the real estate being managed;

(k) A statement setting forth the date when the principal broker shall send the client an accounting of the transactions related to the real estate being managed;

(l) A copy of the form of the lease document which the principal broker shall have the tenant sign shall be attached to the agreement;

(m) A provision whereby the client certifies that he or she has received a duplicate copy of the agreement and the attached lease form; and

(n) The signature and date of signature of the client and the principal broker.

(3) A principal broker shall maintain, in electronic or written form:

(a) An owner ledger for each client of real estate being managed;

(b) A unit ledger for each unit in the real estate being managed; and

(c) Upon the written request of the client of the property being managed, the principal broker shall provide a unit ledger by tenant.

(4) Money received shall be deposited into an escrow or management account of the principal broker within three (3) business days of receipt.

(5) The amount of money received shall be entered into the owner and unit ledgers.

(6) A receipt shall be given for money received.

(7) Expenses paid by the principal broker shall be documented by invoice or receipt, by unit, and retained with a principal broker's records.

(8) Adjustments to a security deposit shall be made in accordance with KRS 383.580. Adjustments shall also be entered on the owner and unit ledgers.

(9) On the date determined by the parties, a principal broker shall send a monthly accounting to a client of transactions related to the real estate being managed, by unit.

(10) Within sixty (60) days of the termination of a management agreement, a principal broker shall send the client a final accounting that contains any transaction that occurred after the last monthly accounting.

(11) A principal broker who has an ownership interest in the real estate being managed shall:

(a) Maintain a unit ledger for each unit in the real estate being managed; and

(b) Comply with KRS 383.580 relating to receipt, deposit, and adjustment of tenant security deposits.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Seller-Initiated Listing Form", KREC Form 403, 10/2019;

(b) "Seller's Disclosure of Property Condition", KREC Form 402, 12/2022[08/2022][04/2022][12/2019];

(c) "Condominium Seller's Certificate", KREC Form 404, 10/2019;

(d) "Guide to Agency Relationships", KREC Form 400, 12/2022[08/2022][04/2022][12/2019];

(e) "Agency Consent Agreement - Buyer", KREC Form 401B, 12/2022[08/2022][04/2022][12/2019];

(f) "Agency Consent Agreement - Seller", KREC Form 401S, 12/2022[08/2022][04/2022][12/2019].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 500 Mero Street[656 Chamberlin Avenue, Suite B], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available from the commission's Web site: www.krec.ky.gov.

CONTACT PERSON: August L. Pozgay, Kentucky Real Estate Authority, 500 Mero Street, 2 NE 09, Frankfort, Kentucky 40601, phone 502-782-0714, email August.Pozgay@ky.gov.

PUBLIC PROTECTION CABINET Department of Professional Licensing Board of Registration for Professional Geologists (As Amended at ARRS, January 10, 2023)

201 KAR 31:040. Applications and examinations.

RELATES TO: KRS 322A.030(3), (4), 322A.040(1)(c), 322A.045

STATUTORY AUTHORITY: KRS 322A.030(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.040(1)(c) requires administrative regulations governing the examination of applicants for registration. KRS 322A.045 requires the board to promulgate an administrative regulation governing the examination for an applicant for certification as a geologist-in-training. KRS 322A.030(5) authorizes the board to promulgate administrative regulations required to perform its duties. This administrative regulation establishes requirements concerning examinations.

Section 1. General Requirements.

(1) The board shall furnish to applicants pertinent instructions [and establish the examination schedule] which shall include:

(a) Arranging to take the required examination or examinations; and [examination(s)].

(b) The place, the time, and the final date by which the board shall have received the applicant's materials.

(2) An applicant for examination shall submit a complete and notarized Application for Registration as a Professional Geologist and pay the application [and examination] fees required by 201 KAR 31:010 [to the board when filing the application]. Once the application has been approved by the board, the applicant shall [arrange] [be scheduled] to take the examination at the next regularly scheduled date.

(3) An applicant for registration shall submit with the notarized Application for Registration as a Professional Geologist:

(a) The fee as established in 201 KAR 31:010;

(b) A copy of passing examination results from the National Association of State Boards of Geology (ASBOG®) exam composed of the Fundamentals of Geology (FG) and the Practice of Geology (PG), if applicable;

(c) A copy of an official transcript;

(d) A copy of a job description for each position listed under employment history with a letter from the supervisor verifying the time, dates, and nature of the experience;

(e) A copy of each state certification, license, or registration ever held to practice geology, if applicable;

(f) Any supplemental sheets with details as to the state, agency, or organization's certificate, license, or registration number, date, and reason for action, if:

1. Ever refused certification, licensure, or registration or renewal; or

2. Ever had a certification, licensure, or registration to practice geology or any other profession revoked, suspended, or otherwise acted against in a disciplinary proceeding; and

(g) Any required documentation relating to:

1. A conviction of a crime in any jurisdiction that directly relates to the practice of geology or the ability to practice geology;

2. Indictment for, or the conviction of, a felony in any jurisdiction;

3. Being a subject of an investigation, injunction, fine or penalty concerning any alleged consumer, investor, or securities fraud in any jurisdiction; or

4. Being a defendant in any jurisdiction in a civil action arising out of the practice of geology.

~~[(4)] If an applicant fails to appear for the scheduled examination and presents a valid reason in writing no later than thirty (30) days after the missed examination date for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date upon payment of a twenty-five (25) dollar fee.]~~

~~[(4)] If an applicant fails to appear for or to complete the examination without a valid reason, the applicant shall forfeit all examination fees paid.]~~

~~[(5)] If an applicant fails to appear for a second scheduled examination, without presenting a valid reason in writing such as illness or death in the immediate family, the application shall be terminated on the date of the examination, and the applicant shall be denied registration on the basis of failure of the examination by default. The applicant shall not engage in the public practice of geology or otherwise violate KRS 322A.090(2).]~~

~~[(6)] An applicant who fails to complete the application and examination process within one (1) year of the date of filing of the application shall file a new application and pay the fees required by 201 KAR 31:010 in order to be eligible for registration or certification unless the applicant has obtained a deferral under subsection (3) of this section].~~

Section 2. Examination for Registration.

(1) An applicant for registration shall submit to an examination composed of the Fundamentals of Geology (FG) and the Practice of Geology (PG) developed and owned by the National Association of State Boards of Geology (ASBOG®). The applicant shall obtain a scaled score equal to passage of seventy (70) percent on both the Fundamentals of Geology (FG) and the Practice of Geology (PG) examinations.

~~(2) [An applicant shall provide a current, government-issued, photographic identification when taking the examination.]~~

~~[(3)] If an applicant for registration fails one (1) or both of the examinations, the applicant may, with payment of the required fee, be rescheduled to take the examination at the next regularly scheduled examination date. An applicant who fails one (1) of the examinations shall be required to retake only the examination on which the applicant failed to achieve a passing scaled score.~~

~~[(4)] If the applicant is practicing under a temporary permit, the applicant may continue to practice under the supervision of a registered geologist until achieving a passing score on the examination or until sixty (60) days after the second examination offered after the applicant has been approved for registration.]~~

Section 3. Examination for Certification as a Geologist-in-Training. An applicant for certification as a Geologist-in-Training shall:

(1) Submit to an examination composed of the Fundamentals of Geology (FG) developed and owned by the National Association of State Boards of Geology (ASBOG®);

(2) Obtain a scaled score equal to passage of seventy (70) percent; and

(3) Not take this examination prior to the applicant's final semester or quarter from an accredited college or university.

Section 4. Release of Information. A registered geologist or certified geologist-in-training shall complete and submit the Authorization for Release of Records form to the board to release a copy of his or her licensing or examination records to a third party.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Registration as a Professional Geologist", 10-10-2022; and [7-10-2013, is incorporated by reference.]

(b) "Authorization for Release of Records", 10-10-2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law[laws], at the Kentucky Board of Registration for Professional Geologists, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601[911 Leawood Drive, Frankfort, Kentucky 40601], (502) 892-4261[564-3296], Monday through Friday, 8 a.m. to 5:00 p.m. This material is also available on the board's Web site at <https://bpq.ky.gov/>.

CONTACT PERSON: Zachary M. Zimmerer, Assistant Attorney General, Kentucky Office of the Attorney General, Office of Civil and Environmental Law, 700 Capital Avenue, Suite 118, 502-696-5300, 502-564-2894, email Zachary.Zimmerer@ky.gov.

PUBLIC PROTECTION CABINET Department of Professional Licensing Board of Registration for Professional Geologists (As Amended at ARRS, January 10, 2023)

201 KAR 31:050. Renewals.

RELATES TO: KRS 322A.060, 322A.070

STATUTORY AUTHORITY: KRS 322A.030(5), 322A.060, 322A.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.060 establishes conditions for the renewal, suspension, and revocation of certificates of registration. KRS 322A.070 authorizes the board to determine the initial and expiration dates for certificates of certification. KRS 322A.030(5) authorizes the board to promulgate administrative regulations required to perform its duties. This administrative regulation establishes procedures for the renewal of certificates of registration and certification.

Section 1. Registration and Certification Renewals.

(1) A registered professional geologist or certified geologist-in-training shall before October 1 of each odd numbered year:

(a) Complete and file the Registration and Certification Renewal and Reinstatement form along with the following required documentation, if applicable:

1. Any required documentation for a felony conviction since the last application renewal; and

2. Any supplemental sheets with details relating to:
a. Denial of registration, certification, or licensure in another state; or

b. Disciplinary action in another state; [File a completed renewal application using the:]

[1.] [Application for Renewal as a Professional Geologist; or]

[2.] [Application for Renewal as a Geologist-in-Training;] and

(b) Pay to the board the renewal fee established by 201 KAR 31:010, Section 3[(1)].

(2)

(a) A certificate of registration that is not renewed before October 1 of each odd numbered year shall expire as provided by KRS 322A.060(1).

(b) A certificate for a geologist-in-training that is not renewed before October 1 of each odd numbered year shall expire as provided by KRS 322A.070.

Section 2. Late Renewals. A ninety (90) day grace period shall be allowed beginning October 1 of each odd numbered year, during which a registered professional geologist or certified geologist-in-training may:

(1) Continue to practice; and

(2) Renew his or her certificate of registration or certification by filing a completed Registration and Certification Renewal and Reinstatement form[renewal application] and by paying the renewal fee as provided by 201 KAR 31:010, Section 3[(1)].

Section 3. Suspension for Non-renewal.

(1) A certificate of registration or certification that is not renewed on or before December 29 of each odd numbered year shall be suspended for non-renewal.

(2) Upon suspension, the registered professional geologist or certified geologist-in-training shall:

- (a) Not practice geology in Kentucky;
- (b) Be notified by the board at the last known address available to the board of the suspension; and
- (c) Be instructed to cease and desist the public practice of geology in Kentucky.

Section 4. Reinstatement. After the ninety (90) day grace period and before the end of two (2) years, a professional geologist or geologist-in-training suspended for failure to renew may have his or her certificate of registration or certification reinstated upon:

- (1) Payment of the reinstatement fee as provided by 201 KAR 31:010, Section 3[(3)];
- (2) Completion of the Registration and Certification Renewal and Reinstatement form[:]
- or
- [(a)] [Application for Reinstatement as a Professional Geologist;
- or
- [(b)] [Application for Reinstatement as a Geologist-in-Training];
- and
- (3) Documentation of employment and description of job duties from the time of suspension until the date of the renewal application.

Section 5. Inactive Renewals and Reactivation.

- (1) A person who renews his or her registration or certification as inactive shall complete and submit Registration and Certification Renewal and Reinstatement form and remit the fee in 201 KAR 31:060, Section 3.
- (2) A person may maintain an inactive registration or certification indefinitely if he or she pays the required biennial inactive renewal fees when due.
- (3) A person with a registration or certification that is inactive shall not engage in the practice of geology and shall at all times be bound by the board's code of **professional** conduct in 201 KAR 31:060, the provisions of KRS Chapter 322A, and any other administrative regulation promulgated by the board.
- (4) To reactivate a registration or certification, an inactive registrant or certificate holder shall complete and submit the Registration and Certification Renewal and Reinstatement form and remit the fee in 201 KAR 31:010, Section 3.

Section 6. Incorporation by Reference.

- (1) The "Registration and Certification Renewal and Reinstatement form", 10-10-2022, is incorporated by reference.[The following material is incorporated by reference:]
- [(a)] ["Application for Renewal as a Professional Geologist", July 10, 2013;]
- [(b)] ["Application for Renewal as a Geologist-in-Training", July 10, 2013;]
- [(c)] ["Application for Reinstatement as a Professional Geologist", July 10, 2013; and]
- [(d)] ["Application for Reinstatement as a Geologist-in-Training", July 10, 2013.]
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Registration for Professional Geologists, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601[911 Leewood Drive, Frankfort, Kentucky 40601], (502) 892-4261[564-3296], Monday through Friday, 8 a.m. to 5:00 p.m. **This material is also available on the board's Web site at <https://bpg.ky.gov/>.**

CONTACT PERSON: Zachary M. Zimmerer, Assistant Attorney General, Kentucky Office of the Attorney General, Office of Civil and Environmental Law, 700 Capital Avenue, Suite 118, 502-696-5300, 502-564-2894, email Zachary.Zimmerer@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, January 10, 2023)

301 KAR 2:075. Wildlife rehabilitation permit.

RELATES TO: KRS 150.010, 150.015, 150.021, 150.170, 150.183, 150.195, 150.330, 150.990, 321.185, 50 C.F.R 17, 21, 22, 16 U.S.C. 668, 703 – 712

STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.280
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(h) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.280 requires the department to promulgate administrative regulations regarding the holding of protected wildlife. This administrative regulation establishes the permitting and operating requirements for wildlife rehabilitators.

Section 1. Definitions.

- (1) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof[a member of the family Cervidae].
- (2) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy found in cervids.
- (3) "CWD Surveillance Zone" means an area, designated **and listed on the department's Web site at fw.ky.gov, as being under/subject to** special cervid **requirements, as established in 301 KAR 2:172, [regulations]** due to a CWD positive cervid detection.
- (4)[(2)] "Enhanced Rabies Surveillance Zone[area]" means Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Perry, Robertson, and Whitley counties.
- (5) "**Federally protected**[~~Federally-protected~~] wildlife" means any wildlife species listed by the U.S. Fish and Wildlife Service as threatened or endangered, and any birds protected under the Migratory Bird Treaty Act, **16 U.S.C. 703 – 712**, or the Bald and Golden Eagle Protection Act, **16 U.S.C. 668**.
- (6)[(3)] "Permit holder" means a wildlife rehabilitation permit holder.
- (7)[(4)] "Rabies vector species" means a:
 - (a) Coyote (*Canis latrans*);
 - (b) Gray fox (*Urocyon cinereoargenteus*);
 - (c) Raccoon (*Procyon lotor*);
 - (d) Red fox (*Vulpes vulpes*);
 - (e) Spotted skunk (*Spilogale putorius*); ~~or~~
 - (f) Striped skunk (*Mephitis mephitis*); **or**
 - (g) Any hybrid of **paragraphs** (a) through (f) **this subsection**.
- (8)[(5)] "Wildlife rehabilitation" means the process of obtaining, rescuing, raising, providing supportive care, regularly transporting, and arranging for veterinary medical care of orphaned, sick, displaced, or injured wildlife with the goal of releasing the wildlife back into its natural habitat.

Section 2. Permitting Requirements[~~Wildlife Rehabilitation Permits~~].

- (1) A permit **shall authorize**[~~authorizes~~] a person to rehabilitate wildlife **as defined as "wildlife rehabilitation" by/according to** Section 1(8) of this administrative regulation.
- (2) An applicant for a wildlife rehabilitation permit shall:
 - (a) Be at least eighteen (18) years of age;
 - (b) Submit a completed Wildlife Rehabilitation Permit[~~Complete an~~] Application;
 - (c) Provide the department with a valid email address;[~~Submit the application to the Director of Wildlife at #1 Sportsman's Lane, Frankfort, Kentucky 40601;~~]
 - (d) Submit:
 - 1. Certificate of completion off[~~proof of successful completion of~~] the course entitled "Basic Wildlife Rehabilitation" offered by the International Wildlife Rehabilitation Council; or[~~and~~]

2. Proof of a doctorate of veterinary medicine degree from an American Veterinary Medical Association (AVMA) accredited school; and;]

(e) Submit the annual permit fee as established in 301 KAR 3:022.

[(2)] [An applicant;]

[(a)] [May obtain a course-pending status for up to one (1) year upon the issuance of the initial permit; and]

[(b)] [Shall submit proof of course completion to the department before the permit shall be renewed;]

[(3)] [An applicant's or permit holder's facility shall be inspected by a conservation officer to document compliance with Section 4 of this administrative regulation before a permit is obtained or renewed;]

[(4)] [A permit shall be revoked and wildlife confiscated if:]

[(a)] [An applicant falsifies information on the application;]

[(b)] [The permit holder fails to comply with the provisions of this administrative regulation; or]

[(c)] [The permit holder is convicted of a violation of KRS Chapter 150;]

[(5)] [An individual whose request for a permit has been denied or whose status has been revoked or suspended may request an administrative hearing pursuant to KRS Chapter 13B;]

Section 3. Reporting Requirements.

(1) A permit holder shall:

(a) Keep records of all wildlife received or rehabilitated on the Wildlife Rehabilitation Annual Report;]

(b) Submit a Wildlife Rehabilitation Annual Report to the department within thirty (30) days after expiration of a permit and before a permit is renewed; and;]

(c) Submit a Wildlife Rehabilitation Non-Releasable Wildlife Report, if applicable, to the department within thirty (30) days after expiration of a permit and before a permit is renewed.

(2) The annual activity report shall contain the information regarding the activity for the period from December 1 of the previous year to November 30 of the current year.

(3) The department shall not renew the permit of a wildlife rehabilitator who does not submit:

(a) A completed Wildlife Rehabilitation[Submit the] Annual[activity] Report;

(b) [as required by this section;

(b) Provide the information required by the annual activity report form; or];-

[(c) Submit]The Wildlife Rehabilitation Non-releasable Wildlife Report, if applicable; and

[(c)](d) Provide]Report documents and all records of wildlife rehabilitation activity, including veterinary medical records, from the current and previous years' activity upon request to department staff.

[(1)] [A permit holder shall:]

[(a)] [Only keep wildlife in a rehabilitation facility for a maximum of 180 days unless specifically exempted by the U.S. Fish and Wildlife Service; and]

[(b)] [Submit to the department a completed Kentucky Department of Fish and Wildlife Resources Wildlife Rehabilitation Annual Report Form;]

[(2)] [If an animal is not releasable, as established in subsection (4) of this section, and is held for educational purposes, then the annual report shall document each educational program's:]

[(a)] [Date;]

[(b)] [Time; and]

[(c)] [Location;]

[(3)] [A permit holder shall not simultaneously hold captive wildlife under the auspices of a captive wildlife permit as established in 301 KAR 2:081 or 301 KAR 2:083;]

[(4)] [A permit holder may retain wildlife for educational purposes if the animal:]

[(a)] [Is a mammal with an amputated leg;]

[(b)] [Lacks adequate vision to function in the wild;]

[(c)] [Lacks locomotive skills necessary for survival in the wild; or]

[(d)] [Has another permanent injury that is reasonably expected to inhibit survival in the wild;]

[(5)] [An animal retained for educational purposes pursuant to subsection (4) of this section shall be exhibited in an educational program a minimum of six (6) times per year;]

[(6)] [Except as established in 50 C.F.R. 17 and 21, a permit holder shall not propagate threatened and endangered wildlife;]

[(7)] [A permit holder shall immediately notify the department, in writing, of any federally-threatened or endangered wildlife species delivered, recovered, or retained for rehabilitation;]

[(8)] [A permit holder shall not rehabilitate or attempt to rehabilitate any species of terrestrial wildlife not native to Kentucky;]

[(9)] [A permit holder shall not rehabilitate or attempt to rehabilitate a:]

[(a)] [Cougar (Felis concolor);]

[(b)] [Wolf (Canis lupus or Canis rufus);]

[(c)] [Elk (Cervus elaphus); or]

[(d)] [Bear (Ursus americanus);]

[(10)] [A permit holder shall not transport wildlife across state lines for rehabilitation, release, or for any other purpose, unless authorized by the commissioner;]

[(11)] [A permit holder shall release rehabilitated wildlife into the appropriate habitat for that species;]

[(12)] [A permit holder shall obtain landowner permission before releasing rehabilitated wildlife;]

[(13)] [A permit holder shall not keep a cervid in a rehabilitation facility for more than 180 days;]

[(14)] [A wild-born cervid held in captivity for rehabilitation purposes shall not be housed in:]

[(a)] [The same pen as another captive cervid or housed in direct physical contact with a cervid that originated in captivity; or]

[(b)] [A pen that has previously housed cervids that originated in captivity;]

[(15)] [A permit holder shall not simultaneously hold a captive cervid permit;]

[(16)] [A licensed wildlife rehabilitator shall not:]

[(a)] [Accept, obtain, or possess a rabies vector species originating from the enhanced rabies surveillance area; or]

[(b)] [Transport a rehabilitated rabies vector species into or out of the enhanced rabies surveillance area;]

Section 4. Receiving and Rehabilitating Wildlife.

(1) A permit holder shall not rehabilitate or attempt to rehabilitate:

(a) Cougar (Felis concolor);

(b) Wolf (Canis lupus or Canis rufus);

(c) Elk (Cervus elaphus);

(d) Bear (Ursus americanus);

(e) Any species of terrestrial wildlife not native to Kentucky; or

(f) Prohibited species listed in 301 KAR 2:082 Section 4.

(2) A permit holder shall not:

(a) Propagate non-releasable wildlife or wildlife undergoing rehabilitation;];]

(b) Except as established in Section 10(1) of this administrative regulation, allow a non-permitted person[persons] to rehabilitate, assist in wildlife rehabilitation, access, or have direct contact with wildlife undergoing rehabilitation;]; except for Section 10(1).]

(c) Allow a non-permitted person[persons] to rehabilitate, assist in wildlife rehabilitation, access, or have direct contact with rabies vector species;];]

(d) Remove wildlife undergoing rehabilitation from the permitted facility except for release, veterinary care, or transfer to another permitted wildlife rehabilitation facility;];]

(e) Habituate wildlife to humans;];]

(f) Exhibit or display wildlife undergoing rehabilitation;];]

(g) Transport wildlife across state lines for rehabilitation, release, or for any purpose, unless authorized by the commissioner because[upon the department's determination that] rehabilitation services are not feasibly available within Kentucky and the[such] activities pose minimal disease risk. Authorization shall not be granted for rabies vector species;];]

(h) Simultaneously hold captive wildlife under a captive wildlife permit, as established in 301 KAR 2:081, while holding wildlife under a wildlife rehabilitation permit; or];]

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(i) Simultaneously hold captive cervids under a captive cervid permit as established in 301 KAR 2:083, while holding wildlife under a wildlife rehabilitation permit.

(3) A permit holder shall only provide necessary supportive care to wildlife undergoing rehabilitation, which shall[does] not permanently diminish their ability to survive and reproduce naturally in the wild.

(4) Cervids.

(a) Except as established in paragraphs (c) and (d) of this subsection/allowed in subsection (4)(c) and (d) of this section, a permit holder shall not rehabilitate or attempt to rehabilitate any cervid:

1. Within a CWD Surveillance Zone;
2. Originating from a CWD Surveillance Zone; or
3. From a distance greater than 100 miles from the rehabilitation facility.

(b) A permit holder shall not transport a cervid into or out of a CWD Surveillance Zone.

(c) A permit holder shall not keep a cervid[cervids] as non-releasable wildlife within a CWD Surveillance Zone, except that a non-releasable cervid[cervids] legally obtained before the establishment of a CWD Surveillance Zone may be kept for the life of the animal.

(d) A permit holder in possession of a cervid prior to the establishment of a CWD Surveillance Zone shall only keep the cervid up to 180 days or upon recovery from injury or illness and of suitable age to survive in the wild, whichever comes first, and shall release the cervid within the county of rehabilitation, unless the animal is euthanized or meets the criteria to be kept as non-releasable wildlife.

(e) A wild-born cervid held in captivity for rehabilitation purposes shall not be housed in:

1. The same pen as another captive cervid or housed in direct physical contact with a cervid that originated in captivity; or
2. A pen that has previously housed cervids that originated in captivity.

(5) Rabies vector species.

(a) A permit holder shall not possess, rehabilitate, or attempt to rehabilitate a rabies vector species:

1. [A rabies vector species] Originating from the Enhanced Rabies Surveillance Zone;

2. [A rabies vector species] Inside the Enhanced Rabies Surveillance Zone that originated from outside the Enhanced Rabies Surveillance Zone; or

3. [A rabies vector species] If collected at a distance greater than 100 miles from the rehabilitation facility.

(b) A permit holder shall not transport a rabies vector species into or out of the Enhanced Rabies Surveillance Zone.

(c) A permit holder shall not possess a rabies vector species as non-releasable wildlife, except for those animals legally held outside the Enhanced Rabies Surveillance Zone prior to April 4, 2023.

(d) Except as established in/infor Section 5(5) of this administrative regulation[§(1)(e)], rabies vector species shall be maintained within an enclosure sufficient to prevent:

1. Escape; and
2. Direct contact with a non-permitted person[persons].

[Section 4.] [Facilities and Operating Standards.]

[(1)] [A facility shall comply with Minimum Standards for Wildlife Rehabilitation as adopted by the National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council.]

[(2)] [A permit holder shall allow a conservation officer to inspect the facilities at any reasonable time.]

[(3)] [The conservation officer shall immediately notify the permit holder and the commissioner if the inspection reveals that the facility is not in compliance with this administrative regulation.]

[(4)] [The conservation officer shall make a second inspection after ten (10) days, and the permit shall be revoked and all captive wildlife confiscated immediately if the unsatisfactory conditions have not been corrected.]

Section 5. Wildlife Release. A permit holder shall:

(1) Release wildlife immediately upon recovery from injury or illness and when of a suitable age to reasonably survive in the wild;

(2) Only keep wildlife in a rehabilitation facility for a maximum of 180 days, unless written documentation from the U.S. Fish and Wildlife Service is provided;

(3) Only release wildlife into appropriate habitat for that species;

(4) Obtain landowner permission before releasing wildlife;

(5) Release rabies vector species back into the original county of capture;

(6) Release reptiles and amphibians at the original point of capture or within the vicinity if point of capture is not suitable habitat; and

(7) Release cervids in the county in which they were rehabilitated.

[Section 5.] [Incorporation by Reference.]

[(1)] [The following material is incorporated by reference:]

[(a)] [The National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council publication "Minimum Standards for Wildlife Rehabilitation", third edition, 2000;]

[(b)] ["Kentucky Department of Fish and Wildlife Resources Wildlife Rehabilitation Annual Report Form", 2002 edition; and]

[(c)] ["Application for Wildlife Rehabilitation Permit", 2006 edition.]

[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.]

Section 6. Non-releasable Wildlife.

(1) Except as prohibited by Section 4 of this administrative regulation, wildlife may be considered non-releasable and may be retained by a permit holder if a licensed Kentucky veterinarian certifies in writing that it: meets one (1) of the following criteria, except as prohibited under Section 4.

(a) Is a mammal with an amputated leg;

(b) Lacks adequate vision to function in the wild;

(c) Lacks locomotive skills necessary for survival in the wild; or

(d) Has another permanent injury that is reasonably expected to inhibit survival in the wild, not including habituation to humans.

(2) Rabies vector species that meet the criteria for non-releasable wildlife and legally held prior to April 4, 2023 may be allowed to remain in possession of a valid permit holder through the life of the animal by submitting a ["Wildlife Rehabilitation Non-Releasable Wildlife Report"] form by April 4, 2023.

(3) Rabies vector species legally held as non-releasable, shall not leave the wildlife rehabilitation facility except for veterinary care or transfer to another permitted rehabilitation facility and shall be included on the Wildlife Rehabilitation Annual Report.

(4) A person who legally possesses non-releasable rabies vector species shall not replace that wildlife after its death.

(5) Except as established in Section 5(5) of this administrative regulationfor Section 5(1)(e)], non-releasable rabies vector species shall be maintained within an enclosure sufficient to prevent:

(a) Escape; and

(b) Direct contact with non-permitted persons.

(6) Only non-releasable wildlife may be displayed, except that non-releasable rabies vector species shall not be displayed. [Such Displays shall only be for conservation education purposes.

(7) Non-releasable migratory birds may be transferred with prior approval from the issuing federal Migratory Bird Permit Office [by providing the department with a completed Migratory Bird and Eagle Acquisition and Transfer Request Form].

(8) All non-releasable wildlife shall be housed and maintained at a permitted wildlife rehabilitation facility.

Section 7. Facilities and Operating Standards.

(1) All wildlife rehabilitation facilities shall pass a facility inspection.

(2) An applicant's or permit holder's facility and property on which the facility is located that is under the department's jurisdiction and used for the purpose of wildlife rehabilitation, shall be inspected by a conservation officer using a Wildlife Rehabilitation Facility Inspection Checklist to document compliance

with this administrative regulation before a permit is obtained or renewed.

(3) A permit holder shall allow any conservation officer, and all department staff accompanying a conservation officer, to access the wildlife rehabilitation facility and the property on which the wildlife rehabilitation facility is located **that is under the department's jurisdiction and used for the purpose of wildlife rehabilitation**, at any reasonable time and frequency to carry out the purposes of this administrative regulation.

(4) A facility, and all methods of confinement, shall comply with the Minimum Standards for Wildlife Rehabilitation ~~[, as adopted by the National Wildlife Rehabilitation Association and the International Wildlife Rehabilitation Council]~~.

(5) A permit holder shall:

(a) Only rehabilitate wildlife at a facility that has passed an annual facility inspection; and ~~[shall]~~

(b) List the addresses of all facilities on the Wildlife Rehabilitation Permit Application.

(6) A permit holder shall allow a conservation officer to inspect the holding facilities and property **on which the facilities are located that is under the department's jurisdiction and used for the purpose of wildlife rehabilitation**, at any reasonable time and frequency.

(7) The conservation officer shall immediately notify the applicant or permit holder and the Wildlife Division director if the inspection reveals that the facility is not in compliance with this administrative regulation and shall provide a completed **Wildlife Rehabilitation Facility Inspection Checklist** to the appropriate Wildlife Division personnel within three (3) business days.

(8) If an inspection determines that a facility is not in compliance with a **KRS Chapter 150 and KAR Title 301[statute or administrative regulation]**, the conservation officer shall make a second inspection after ten (10) calendar days, and the permit application shall be denied~~[,]~~ or the permit **shall be** revoked and all wildlife confiscated immediately if the unsatisfactory conditions have not been corrected.

(9) If an applicant or permit holder refuses to allow a conservation officer to fully conduct an inspection, the permit application shall be denied~~[,]~~ or the permit **shall be** revoked and all wildlife confiscated immediately. [Failure to allow a conservation officer to conduct an initial inspection shall be deemed a violation subjecting the permit to denial or revocation proceedings.]

Section 8. Rabies Exposure.

(1) If a mammal bites a person, or a mammal shows symptoms of a rabies infection, the animal shall be dispatched in a manner so as to preserve the brain intact and the animal's head shall be submitted for testing immediately to a laboratory approved by the Secretary for Health and Family Services to be tested for rabies, as established in 902 KAR 2:070, Section 5 and KRS 258.085(1)(c)~~[Section 1(c)]~~.

(2) Department staff shall confiscate and dispatch any wild mammal that bites a person or shows symptoms of a rabies infection.

Section 9. Veterinarians.

(1) A veterinarian is not required to obtain a wildlife rehabilitation permit to temporarily possess, stabilize, or euthanize sick and injured wildlife, only for the purpose of providing immediate critical care.

(2) A veterinarian **who[that]** does not possess a valid wildlife rehabilitation permit shall transfer wildlife to a permitted wildlife rehabilitator according to the requirements of this regulation, within **twenty-four (24)[24]** hours after the animal's condition is stabilized and no longer requires critical care, unless wildlife is euthanized.

(3) A veterinarian **who[that]** rehabilitates wildlife shall possess a valid wildlife rehabilitation permit.

(4) A permit holder shall follow veterinarian's medical instructions per KRS 321.185.

(5) A veterinarian shall keep medical records of all wildlife treated, in accordance with KRS Chapter 321 and 201 KAR Chapter 16 and provide records to department staff upon request.

(6) Only a licensed veterinarian or licensed veterinarian technician shall perform euthanasia using AVMA approved non-inhaled chemical methods under KRS Chapter 321.

Section 10. Wildlife Possession.

(1) Any person who finds sick, injured, displaced, or orphaned wildlife may, without a permit, **take possession of the animal in order to immediately transport it to a permitted wildlife rehabilitator, except a person who:**

(a) **Regularly transports wildlife for rehabilitation purposes shall possess a valid wildlife rehabilitation permit; and**

(b) **Finds sick, injured, displaced, or orphaned federally protected migratory birds within a nest shall not, without a state and federal permit, take possession of the animal as established in 50 C.F.R. 21.12(d)(10)[except for federally protected migratory birds within a nest per 50 C.F.R. 21.12 (d) (10), take possession of the animal in order to immediately transport it to a permitted wildlife rehabilitator except that persons who regularly transport wildlife for rehabilitation purposes shall possess a valid wildlife rehabilitation permit].**

(2) A wildlife rehabilitation permit **shall[does]** not confer ownership of any wildlife species held under a wildlife rehabilitation permit, including non-releasable wildlife.

(3) All wildlife held under a **permit shall[this permit]** remain under the stewardship of the Department of Fish and Wildlife Resources, except that federally-protected wildlife remain under the stewardship of both the Department of Fish and Wildlife and the U.S. Fish and Wildlife Service.

(4) Wildlife shall be surrendered to the department, for processing and disposition pursuant to **KAR Title 301 [regulation]**, upon being presented with a written order by the commissioner **for failure to comply with KRS Chapter 150 or KAR Title 301.**

Section 11. Federally-Protected Species. A person rehabilitating federally protected species shall possess valid **Kentucky[state]** and federal wildlife rehabilitation permits, except that a person may be authorized as a sub-permittee on a federal migratory bird rehabilitation permit, under a federal permit holder, per 50 C.F.R. 21.31.

(1) Sub-permitted persons conducting wildlife rehabilitation activities shall possess a valid state wildlife rehabilitation permit.

(2) A permit holder shall immediately notify the department in writing or by email to fwpermits@ky.gov, of any federally threatened or endangered wildlife species, delivered, received, recovered, or retained for rehabilitation.

(3) A general or master class falconry permit holder may condition raptors for subsequent release into the wild for a permitted wildlife rehabilitator, as established in 301 KAR 2:195, only for the species the falconry permit holder is allowed to possess.

(4) Falconers that rehabilitate wildlife, except for conditioning raptors per this section, shall possess a valid wildlife rehabilitation permit.

Section 12. Revocation and Denial of Permits and Appeal Procedure.

(1) Denial and revocation.

(a) The department shall revoke the permit, deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit, and confiscate wildlife of a person who is convicted of a violation of any provisions of:

1. KRS Chapter 150;
2. 301 KAR Chapters 1 through 5; or
3. Any federal statute or regulation related to hunting, fishing, or wildlife.

(b) The department shall revoke the permit, deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit, and confiscate wildlife from a person who:

1. Provides false information on a Wildlife Rehabilitation Permit Application, federal permit, **Wildlife Rehabilitation Annual Report, Wildlife Rehabilitation Non-Releasable Wildlife Report, Wildlife Rehabilitation Facility Inspection Checklist**, or records~~[,]~~
2. Acquires wildlife prior to receiving an approved wildlife rehabilitation permit~~[,]~~

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3. Fails a facility inspection, as established in Section 7 of this administrative regulation;[~~or~~]

4. Fails to comply with any provision of this administrative regulation, 301 KAR 3:120, 301 KAR 2:081, 301 KAR 2:082, 301 KAR 2:083, 301 KAR 2:195, or 301 KAR 2:251;[~~;~~]

5. Allows a non-permitted person[~~persons~~] to rehabilitate, assist in wildlife rehabilitation, access, or have direct contact with wildlife undergoing rehabilitation or non-releasable rabies vector species;[~~;~~]

6. Fails to contain wildlife in enclosures that meet Minimum Standards for Wildlife Rehabilitation except during treatment, release, or transfer as established in[~~per~~] Section 6 of this administrative regulation;

7. Keeps wildlife over 180 days;

8. Accepts rabies vector species within the enhanced Rabies Surveillance Zone;[~~;~~]

9. Accepts rabies vector species that originated from the Enhanced Rabies Surveillance Zone;[~~;~~]

10. Transports rabies vector species into or out of the Enhanced Rabies Surveillance Zone;

11. Fails to possess a valid federal permit or be listed as a sub-permittee on a federal permit to rehabilitate federally protected wildlife;[~~;~~]

12. Accepts cervids within a CWD Surveillance Zone;[~~;~~]

13. Accepts cervids that originated within a CWD Surveillance Zone; or;~~;~~

14. Transports cervids into or out of a CWD Surveillance Zone.

(c) A fee shall not be refunded for a permit that is revoked.

(2) Confiscated wildlife.

(a) All wildlife shall be confiscated if a wildlife rehabilitation permit is revoked or denied, a person possesses native wildlife for the purpose of wildlife rehabilitation without a valid wildlife rehabilitation permit, or a facility fails a facility inspection per Section 7 of this administrative regulation.

(b) Confiscated wildlife shall be released;[~~;~~] transferred with the approval of the Wildlife Division Director based on the animal's health, survivability, probability of placement, rabies vector species designation, and federal protection status;[~~;~~] or dispatched, except that rabies vector species shall be dispatched immediately.

(c) Wildlife shall not be returned to the permit holder or facility from which they were confiscated.

(3) Denial period.

(a) An applicant whose permit has been revoked or denied for the grounds established in this section shall be ineligible to reapply, and all applications shall be denied for the period established in subparagraphs 1. through 3. of this paragraph.~~[below:]~~

1. The initial denial period shall be one (1) year;[~~;~~]

2. A second denial period shall be three (3) years;[~~;~~]

3. A third or subsequent denial period shall be five (5) years;[~~;~~]

(b) During the denial period, a person whose wildlife rehabilitation permit has been denied or revoked shall not rehabilitate wildlife or assist in the rehabilitation of wildlife.

(4) Administrative hearings.

(a) An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(b) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or the revocation.

(c) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(d) The hearing officer's recommended order shall be considered by the commissioner, and the commissioner shall issue a final order, pursuant to KRS Chapter 13B.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) [The National Wildlife Rehabilitator's Association and the International Wildlife Rehabilitation Council publication] "Minimum Standards for Wildlife Rehabilitation" ["Fourth Edition" 2012][Third Edition", 2000].

(b) [Kentucky Department of Fish and Wildlife Resources] "Wildlife Rehabilitation Annual Report", 2022;[~~edition~~, <https://fw.ky.gov/Wildlife/Documents/rehabannreport.pdf>]; and

(c) "Wildlife Rehabilitation Permit Application", 2022;[~~edition~~, <https://fw.ky.gov/Wildlife/Documents/rehabapp.pdf>].

(d) "Wildlife Rehabilitation Non-Releasable Wildlife Report", 2022; and;
https://fw.ky.gov/Documents/NON_RELEASABLE_WILDLIFE_REPORT.pdf

(e) "Wildlife Rehabilitation Facility Inspection Checklist", 2022.
[<https://fw.ky.gov/Wildlife/Documents/RehabFacInspectionChecklist.pdf>]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

(3) This material may also be found on the department's Web site at fw.ky.gov.

CONTACT PERSON: CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, January 10, 2023)

301 KAR 2:081. Transportation and holding of live native wildlife.

RELATES TO: KRS 150.010, 150.015, [150.290, 150.305, 150.320, 150.330, 150.360, 150.370, 150.990, 150.183, 150.190, 150.195, 150.235, 258.065, 258.085]

STATUTORY AUTHORITY: KRS 65.877, 150.025(1)[~~(e)~~], 150.105, 150.180, 150.280, 50 C.F.R. 21.29

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the Department of Fish and Wildlife Resources and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1)[~~(e)~~] authorizes the department to promulgate administrative regulations for the buying, selling, or transporting of wildlife. KRS 150.105 authorizes the department to dispatch or bring under control any wildlife causing damage to persons, property, or other animals spreading disease and that[which] should be eliminated to prevent further damage. KRS 150.180 authorizes the department to regulate the buying, selling, or transporting of protected wildlife. KRS 150.280 requires the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. 50 C.F.R. 21.29 establishes the federal standards for holding raptors for falconry purposes. This administrative regulation establishes requirements for the buying, selling, holding, and transportation of live native wildlife.

Section 1. Definitions. (1) "Enhanced Rabies Surveillance Zone[area]" means Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Perry, Robertson, and Whitley counties.

(2) "Native wildlife" means wildlife species that have:

(a) Historically existed or currently exist in the wild in Kentucky without introduction by humans; or ~~have~~

(b) Naturally expanded their range into Kentucky without introduction by humans; ~~man~~, except for introduced species which have become naturalized;]

(3) "Rabies vector species" means a:

(a) Coyote (*Canis latrans*);

(b) Gray fox (*Urocyon cinereoargenteus*);

(c) Raccoon (*Procyon lotor*);

(d) Red fox (*Vulpes vulpes*);

(e) Spotted skunk (*Spilogale putorius*);[~~or~~]

(f) Striped skunk (*Mephitis mephitis*); or

(g) Any hybrid of paragraphs (a) through (f) of this subsection.

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Section 2. Taking and Possessing Native Wildlife. (1) A person shall not possess native wildlife that was not legally acquired.

(2) ~~For native wildlife obtained from the wild, a person shall not participate in any of the activities established in paragraphs (a) through (e) of this subsection.]~~ with native wildlife obtained from the wild]:

- (a) Buy;
- (b) Sell;
- (c) Offer to buy;
- (d) Offer to sell; or
- (e) Trade or barter.

(3) Except as established in Sections 5(9)(5)] and [Section] 7(1) of this administrative regulation and subsections (4), ~~and (5), (6), and (9)~~ of this section, a person holding native wildlife in captivity shall apply for and obtain the appropriate permit prior to acquiring wildlife.

(4) Northern bobwhite.

(a) A person may possess 100 or fewer northern bobwhite without a captive wildlife permit, if the:

1. Birds are not propagated or sold; and

2. Person[He] retains and possesses a receipt or proof of purchase.

(b) A person possessing northern bobwhite for dog training areas, shooting areas, or a shoot-to-train season shall comply with all applicable requirements of 301 KAR 2:041.

(c) Any confining facility shall comply with Sections 8 ~~through], 9, 10, and]~~ 11 of this administrative regulation.

(5) Amphibians and reptiles.

(a) Five (5) or fewer individuals of each species of native reptile or amphibian may be taken year round or possessed for personal use without a permit, except there shall be:

1. No limit on common snapping or softshell turtles, as established in 301 KAR 1:058;

2. A limit of fifteen (15) bullfrogs per night, during the bullfrog season, as established in 301 KAR 1:082; and

3. A limit of twenty-five (25) dusky salamanders ~~or spring lizards]~~ of the genus Desmognathus, as established in 301 KAR 1:130.

(b) There shall be no limit on the number of individuals of each species possessed by a commercial or noncommercial captive wildlife permit holder, if the permit holder does not possess more than five (5) wild-caught individuals of each species of amphibian or reptile.

(c) A captive wildlife permit shall not be required to hold reptiles with a color morphology that is distinctly different from the wild type of the same species of reptile.

(6) A person with a valid falconry permit, as established in 301 KAR 2:195, shall not be required to possess a noncommercial captive wildlife permit or transportation permit for those raptors held under the falconry permit.

(7) A rabies vector species that is trapped in accordance with 301 KAR 2:251[within the enhanced rabies surveillance area] shall be dispatched[ethanized] before being moved, unless immediately released at capture site, except that foxes and coyotes trapped during the trapping season, as established in[pursuant to] 301 KAR 2:251, may be;

(a) Held for up to forty-eight (48) hours with a valid captive wildlife permit only for the purpose of being transferred to a permitted commercial foxhound training enclosure; and

(b) Transferred to a permitted commercial foxhound training enclosure if the enclosure is located within the county of capture.

~~[(7)] [A fox or coyote trapped within the enhanced rabies surveillance area during the trapping season may be held for up to forty-eight (48) hours with a valid captive wildlife][permit before being transferred to a permitted commercial foxhound training][enclosure.]~~

(8) A person shall not transport a living rabies vector species into or out of the Enhanced Rabies Surveillance Zone[area].

(9) Except for foxes and coyotes, a captive wildlife permit shall[is] not be required for captive-bred native wildlife legally imported or held in a temporary facility for ten (10) days or less.

(10) A permit holder shall report all bites and exposure events, as established in KRS 258.065, to the local county health department within twelve (12) hours.

(11) If a native mammal in a permit holder's possession bites a person[,] or a mammal shows symptoms of a rabies infection, the

animal shall be dispatched immediately, as established in KRS 258.085(1)(c)[Section 1(c)], and the permit holder shall submit its head for testing immediately to a laboratory approved by the Secretary for Health and Family Services to be tested for rabies, as established in 902 KAR 2:070, Section 5.

(12) Department staff shall confiscate and dispatch any wild mammal that bites a person or shows symptoms of a rabies infection if the animal[that] is not otherwise immediately dispatched pursuant to subsection (11) of this section.

Section 3. Captive Wildlife Permits and Record Keeping. (1) Commercial captive wildlife permit.

(a) A commercial captive wildlife permit shall be required for a person to:

1. Sell;
2. Offer to sell;
3. Trade; ~~or]~~
4. Barter; or native wildlife.]

5. Profit in any way from captive native wildlife, except as authorized by Section 2(9) of this administrative regulation.

(b) A commercial captive wildlife permit shall be renewable annually from the date of issue.

(c) A commercial captive wildlife permit shall be valid for one (1) specific captive wildlife facility.

(2) Noncommercial captive wildlife permit.

(a) A noncommercial captive wildlife permit shall be required for a person possessing native wildlife, but not selling, offering to sell, trading, ~~or]~~bartering, or profiting in any way from captive native wildlife[animals].

(b) A noncommercial captive wildlife permit shall be renewable three (3) years from the date of issue.

(c) A noncommercial captive wildlife permit shall be valid for one (1) specific captive wildlife facility.

(3) A captive wildlife permit holder shall maintain accurate records for all captive-bred and wild-captured wildlife and include the information established in paragraphs (a) and (b) of this subsection.

(a) For each captive-bred animal, a person shall:

1. Record the common and scientific name;
2. Keep evidence of legal acquisition, which shall be a:
 - a. Bill of sale;
 - b. Receipted invoice; or
 - c. Certificate of origin;
3. Record and maintain each animal's date of birth;
4. Record and maintain each transaction date related to:
 - a. Sale;
 - b. Purchase;
 - c. Trade;
 - d. Barter; or
 - e. Gifting; and
5. Record and maintain information of the person either

receiving or transferring captive wildlife, which shall include the person's:

- a. Name;
- b. Address;
- c. Phone number; and
- d. Captive wildlife permit number.

(b) For each wild-captured animal, a person shall record and maintain the:

1. Common and scientific name;
2. Date of capture or date when received;
3. Location of capture;
4. Trapping license or hunting license number, if applicable, of the individual obtaining the wildlife; and
5. Information of the person to whom the animal was given or received, which shall include the person's:
 - a. Name;
 - b. Address;
 - c. Phone number; and
 - d. Captive wildlife permit number.

(4) A captive wildlife permit holder shall:

- (a) Maintain all records for at least five (5) years; and
- (b) Allow records to be inspected by a department representative upon request.

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Section 4. Transportation Permits and Certificates of Veterinary Inspection. (1) A person shall apply for and obtain a valid transportation permit or permit authorization number from the department for all shipments of native wildlife, ~~[native or exotic]~~; unless otherwise exempted by this or another administrative regulation, prior to:

(a) Receiving a shipment of native wildlife from outside of Kentucky;

(b) Importing native wildlife into Kentucky; or

(c) Transporting native wildlife into and through the state to a destination outside Kentucky.

(2) A copy of a valid transportation permit or permit authorization number shall accompany all shipments of native wildlife into and through Kentucky.

(3) An individual transportation permit shall be valid for one (1) shipment of native wildlife.

(4) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue.

(5) All shipments of wildlife, except for amphibians and reptiles, shall be accompanied by a:

(a) [A-]Certificate of veterinary inspection stating that the wildlife is free from symptoms of disease; or

(b) [A-]Federal quarantine certificate.

Section 5. Applying for Permits. (1) A permit shall authorize[authorizes] a person to hold native wildlife according to this administrative regulation.

(2) An applicant for a captive wildlife or transportation permit shall:

(a) Submit a completed **Captive Wildlife Permit Application and Checklist**

(b) Provide the department with a valid email address;

(c) Submit the annual permit fee as established in 301 KAR 3:022, except for government agencies that meet the requirements in subsection (12) of this section; and

(d) Be at least eighteen (18) years of age.

(3) For a commercial or noncommercial captive wildlife permit, an applicant shall submit a completed **["Captive Wildlife Permit Application and Checklist]**

(4) For an individual transportation permit, an applicant shall submit a completed **["Individual Transportation Permit Application"]**; or

(5) For an annual transportation permit, an applicant shall submit a completed **["Annual Transportation Permit Application"]**.["A person shall complete an application for a captive wildlife permit or a transportation permit on a form supplied by the Department.]

(6)[(2)] An applicant for a captive wildlife permit shall only obtain wildlife from~~[one (1) of the legal sources established in paragraphs (a) through (d) of this subsection.]~~

(a) A legal purchase or transfer of captive-bred animals from a commercial captive wildlife permit holder;

(b) A gift from a commercial or noncommercial captive wildlife permit holder;

(c) Wildlife trapped by the applicant during a legal season for the species with a valid trapping license, if applicable; or

(d) A legal out-of-state source if the applicant provides a valid transportation permit.

(7)[(3)] Following permit issuance, the permit holder shall retain records as established in Section 3(3) and (4) of this administrative regulation.

(8)[(4)] An applicant shall construct holding facilities that meet or exceed the enclosure specifications established in Sections 8 and 9 of this administrative regulation for each listed species to be acquired before submitting the Captive Wildlife **Permit Application and Checklist**.

(9) A person in legal possession of native wildlife ~~who[that]~~ moves to Kentucky shall have thirty (30) days to pass a facility inspection and apply for a captive wildlife permit, if the ~~person[provided they]~~ possessed a valid transportation permit to import the wildlife.

(10) A captive wildlife permit holder shall not simultaneously hold a wildlife rehabilitation permit.

(11) An applicant shall submit a completed **Captive Wildlife Permit Application and Checklist** and the correct fee, as established in 301 KAR 3:022 or 301 KAR 3:061, except if the permit holder is a government agency engaged in ~~[legitimate] conservation activities [approved by the department]~~, the fee shall be waived.

(12) An applicant importing into Kentucky, transporting through Kentucky, or possessing within Kentucky, ~~federally protected[federally-protected]~~ migratory bird species shall possess, and provide to the department, a valid United States Fish and Wildlife Service permit, except for persons or entities that possess a valid falconry permit or meet the conditions listed in 50 C.F.R. 21.12 (a) and (b), 50 C.F.R. 21.13, and 50 C.F.R. 21.14.

(13) Federally endangered native species shall not be imported into Kentucky, transported through Kentucky, or possessed in Kentucky, except by:

(a) A facility accredited by the Association of Zoos and Aquariums, as established in Section 7 of this administrative regulation;

(b) An individual who possesses[individuals possessing] a United States Fish and Wildlife Service permit pursuant to KRS 150.183 and 301 KAR 3:061;[.] or

(c) A facility listed as a cooperator in an Association of Zoos and Aquariums species survival plan.

(5) [The department shall deny a captive wildlife or transportation permit to an applicant that:]

[(a)] [Is less than eighteen (18) years of age;]

[(b)] [Has been convicted within the last year of a violation of;]

[1-] [This administrative regulation; or]

[2-] [301 KAR 2:082;]

[(c)] [Does not submit a completed application; or]

[(d)] [Does not remit the correct fee pursuant to 301 KAR 3:022-]

[(6)] [The department shall deny a captive wildlife permit to an applicant that:]

[(a)] [Has acquired wildlife prior to receiving an approved captive wildlife permit, except as allowed in Sections 2(4) and (5) of this administrative regulation; or]

[(b)] [Holds a wildlife rehabilitation permit as established in 301 KAR 2:075].

(14)[(7)] An annual transportation permit holder shall submit a revised Annual Transportation Permit Application to the department via mail to the address listed on the annual transportation permit application or via email at FWpermits@ky.gov for any amendments to the original application and shall not ship wildlife ~~until[unless the amendments are approved and]~~ a revised permit is issued by the department.[notify the department of any amendments to the original application at least forty-eight (48) hours prior to any wildlife shipment by calling the department at 800-858-1549, Monday through Friday, between 8 a.m. and 4:30 p.m. Eastern time.]

(15)[(8)] A person importing or[and] possessing native wildlife shall be responsible for following all applicable federal laws, state laws, and[complying with any] local ordinances[ordinance] regarding [captive-]wildlife.

Section 6. Prohibited Species. [(4)] Except as established[specified] in Sections 2(7) and[Section] 7 of this administrative regulation, 301 KAR 2:075, and 301 KAR 3:120, a person shall not import, transport into Kentucky, or possess[-a]:

(1)[(a)] Alligator snapping turtle (*Macrochelys temminckii*);

(2)[(b)] Bats of any species that are native to Kentucky, including:

(a) Big Brown Bat (*Eptesicus fuscus*);

(b) Eastern Red Bat (*Lasiurus borealis*);

(c) Eastern Small-footed Myotis (*Myotis leibii*);

(d) Evening Bat (*Nycticeius humeralis*);

(e) Gray Bat (*Myotis grisescens*);

(f) Hoary Bat (*Lasiurus cinereus*);

(g) Indiana Bat (*Myotis sodalis*);

(h) Little Brown Bat (*Myotis lucifugus*);

(i) Northern Long-eared Bat (*Myotis septentrionalis*);

(j) Rafinesque's Big-eared Bat (*Corynorhinus rafinesquii*);

(k) Seminole Bat (*Lasiurus seminolus*);

(l) Silver-haired Bat (*Lasionycteris noctivagans*);

(m) Southeastern Myotis (*Myotis austroriparius*);

(n) Tricolored Bat (Perimyotis subflavus); and
 (o) Virginia Big-eared Bat (Corynorhinus townsendii virginianus);
 (3) Black bear (Ursus americanus);
 (4) Bobcat (Lynx rufus);
 (5) ~~(e)~~ Copperbelly water snake (Nerodia erythrogaster neglecta);
 (6) ~~(d)~~ Cougar or mountain lion (Felis concolor);
 (7) Hellbender (Cryptobranchus alleganiensis);
 (8) Kirtland's Snake (Clonophis kirtlandii);
 (9) Otter (Lontra canadensis);
 (10) Rabies Vector Species;
 (a) ~~(f)~~ Coyote (Canis latrans);
 (b) Gray fox (Urocyon cinereoargenteus);
 (c) Raccoon (Procyon lotor);
 (d) Red fox (Vulpes vulpes);
 (e) Spotted skunk (Spilogale putorius);
 (f) Striped skunk (Mephitis mephitis); or
 (g) Any hybrid of rabies vector species;
 (11) Wild rabbits (All species of the Order Lagomorpha);
 (12) ~~(e)~~ Wild turkey (Meleagris gallopavo); or
 (13) ~~(f)~~ Wolf (Canis lupus).
 [(2)] [The species established in paragraphs (a) through (d) of this subsection shall not be imported into or transported through Kentucky, except as specified in Section 7 of this administrative regulation.]
 [(a)] [Coyote (Canis latrans);]
 [(b)] [Fox (Vulpes spp.; Alopex lagopus; Urocyon cinereoargenteus);]
 [(c)] [Raccoon (Procyon lotor); or]
 [(d)] [Skunk (Mephitis spp.; Spilogale putorius; Conepatus leucyonotus);]

Section 7. Exemptions. (1) Accredited facilities. A facility that is accredited by the Association of Zoos and Aquariums [American Zoo and Aquarium Association] shall:

(a) Not be required to obtain a transportation or captive wildlife permit for native wildlife; [and]
 (b) Be allowed to import, transport, and possess federally endangered species and the prohibited species established in Section 6[(1) and (2)] of this administrative regulation for official zoo activities; and
 (c) Maintain prohibited species in an enclosure sufficient to prevent escape and direct contact with the public.

(2) Commissioner's exemption.

(a) Upon written request, the commissioner [department] shall consider [grant] an exemption for the importation or possession of the prohibited species listed in Section 6 [Sections 6(1) and (2)] for [legitimate] scientific or educational purposes, [by the following entities;]
 (b) The commissioner shall [exercise his or her discretion and] only grant exemptions that [are determined to] promote and further the purposes of KRS Chapter 150.
 (c) Only the following entities shall be eligible for consideration for an exemption by the commissioner:

1. [(a)] A facility that is designated as the official zoo of a municipality;
 2. [(b)] A government agency conducting research or education at a permanent wildlife center; or
 3. [(c)] A college or university conducting research or education that fulfills a classroom requirement; or]
 [(d)] [A licensed or accredited institution of:]
 [1.] [Research; or]
 [2.] [Education].

(3) Legally possessed prohibited species.

(a) A permit holder with a prohibited species legally possessed in Kentucky prior to April 4, 2023 may [be allowed to] remain in possession of the animal [a valid permit holder] through the life of the animal by microchipping any rabies vector species, bobcats, or otters and reporting the microchip number to the department by submitting a [Native Prohibited Wildlife Report] form [found on the department's Web site at fw.ky.gov,] by June 4, 2023.

(b) Prohibited species shall not be transferred to other persons, except if the permit holder predeceases the animal, in which case the animal may be transferred to another valid permit holder.

(c) Prohibited species shall not be allowed to reproduce.

(d) A person who legally possesses prohibited wildlife shall not replace that wildlife after its death.

(e) Prohibited species possessed or imported into Kentucky shall be maintained within an enclosure sufficient to prevent:

1. Escape; and
2. Direct contact with the public.

Section 8. Confining Facilities. (1) Except as established in 301 KAR 2:041, a cage, pen, or other enclosure for confining native wildlife shall be of sufficient structural strength to:

- (a) Prevent the escape of the captive animal;
- (b) Protect the caged animal from injury and predators; and
- (c) Prevent the entrance of free individuals of the same species.

(2) A wing-clipped and pinioned bird may be kept in a suitable unroofed enclosure, even [if/though] wild birds of the same species may enter the enclosure.

(3) A person shall not maintain any native wildlife in captivity in an unsanitary or unsafe condition or in a manner that results in the maltreatment or neglect of that wildlife.

(4) Native wildlife shall not be confined in any cage or enclosure that does not meet the minimum cage specifications in Section 9 of this administrative regulation.

(5) A cage or enclosure shall be maintained as established in paragraphs (a) through (n) of this subsection.

(a) Clean drinking water shall be provided daily in clean containers.

(b) Swimming or wading pools shall be cleaned as needed to ensure good water quality.

(c) Any cage or enclosure shall provide adequate drainage of surface water.

(d) A captive mammal or bird shall be fed daily.

(e) Food shall be:

1. Of a type and quantity that meets the nutritional requirements for the particular species; and

2. Provided in an unspoiled and uncontaminated condition.

(f) Any feeding container shall be kept clean, and uneaten food shall be removed within a reasonable time.

(g) A shelter shall be provided for security and protection from inclement weather.

(h) Shade or an overhead structure shall be provided in warm seasons.

(i) Fecal and food waste shall be:

1. Removed from cage daily; and

2. Stored or disposed of in a manner that prevents noxious odors and insect pests.

(j) Any cage or enclosure shall be ventilated to prevent noxious odors.

(k) A hard floor within a cage or enclosure shall be cleaned a minimum of once per week.

(l) A cage or enclosure with a dirt floor shall be raked a minimum of once every three (3) days with the waste removed.

(m) Animals that are compatible may be held in the same enclosure. Each enclosure with compatible animals held in the same enclosure shall comply with [if] the required floor space established in Section 9 of this administrative regulation, [is provided; and]

(n) A common wall shall be constructed between animals that are not compatible so that the animals cannot interact.

Section 9. Minimum Enclosure Sizes and Associated Requirements for Stationary Facilities.

(1) Birds.

(a) A northern bobwhite older than fourteen (14) weeks shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. An enclosure for a single northern bobwhite shall be a minimum of 100 square feet.

2. There shall be an increase of at least [in] one (1) square foot per additional northern bobwhite.

3. A northern bobwhite may be held in a smaller breeding ~~pen~~pens during the breeding season.

(b) A duck shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. No more than two (2) pairs or one (1) pair and their offspring prior to first molt shall be confined to an area smaller than 100 square feet; and

2. There shall be at least two (2) square feet of additional land space for each additional adult duck.

(c) A goose shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. No more than two (2) pair or one (1) pair and their offspring prior to first molt shall be confined to an area smaller than 500 square feet.;

2. There shall be a minimum of fifty (50) square feet of water that is two (2) feet or greater in depth.; ~~and~~

3. There shall be at least 100 square feet of land and twenty-five (25) square feet of water surface for each additional adult goose.

(d) A ruffed grouse shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. There shall be 200 square feet of floor space ~~and an enclosure height of at least six (6) feet~~ for five (5) or fewer birds.; ~~with a height of at least six (6) feet; and~~

2. There shall be an additional twenty (20) square feet of floor space for each additional bird.

(e) A raptor shall be held in an enclosure meeting the federal falconry standards described in 50 C.F.R. Part 21.29.

(2) Mammals.

(a) A bat shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. A little brown bat, long-eared bat, and pipistrelle shall be held in an enclosure that is at least 6 ft. x 6 ft. x 6 ft.

2. An evening or red bat shall be held in an enclosure that is at least 8 ft. x 12 ft. x 8 ft.

3. A big brown or hoary bat shall be held in an enclosure that is at least 10 ft. x 20 ft. x 8 ft.

(b) ~~Except as established in 301 KAR 2:041,~~ a fox, bobcat, or raccoon shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. A single animal enclosure shall be at least 8 ft. x 8 ft. x 6 ft.; ~~and~~

2. There shall be at least thirty (30) square feet floor space for each additional animal.

(c) A coyote shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. A single animal enclosure shall be at least 8 ft. x 8 ft. x 6 ft.; ~~and~~

2. There shall be at least twenty-five (25) square feet floor space for each additional animal.

(d) A beaver or otter shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 4. of this paragraph.

1. A single animal enclosure shall be at least 8 ft. x 12 ft. x 6 ft. with a 4 ft. x 6 ft. pool that is at least three (3) feet deep at one (1) end.;

2. There shall be an increase in horizontal cage size and pool size by at least eight (8) square feet for each additional animal.;

3. An otter shall have a slide and a dry place for sleeping and retreat.; ~~and~~

4. A beaver shall be supplied with gnawing logs and a dry place for sleeping and retreat.

(e) A muskrat or mink shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. A single animal enclosure shall be at least 6 ft. x 4 ft. x 3 ft. with a 2 ft. x 4 ft. pool ~~that~~which is at least two (2) feet deep at one (1) end.;

2. There shall be an increase in horizontal cage size by at least eight (8) square feet and a pool size of at least two (2) square feet.; ~~and~~

3. A muskrat shall have gnawing material.

(f) A gray squirrel, fox squirrel, or flying squirrel shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. A single animal enclosure shall be 4 ft. x 4 ft. x 8 ft.; and

2. There shall be an increase in floor space by two (2) square feet for each additional animal.

(g) A skunk, opossum, rabbit, or woodchuck shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. A single animal enclosure shall be at least 6 ft. x 8 ft. x 8 ft.;

2. There shall be an increase in floor space by at least four (4) square feet for each additional animal.; ~~and~~

3. A woodchuck shall have several gnawing logs approximately six (6) inches in diameter.

(h) A weasel shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. A single animal enclosure shall be at least 3 ft. x 3 ft. x 3 ft.; ~~and~~

2. There shall be an increase in floor space by three (3) square feet for each additional animal.

Section 10. Mobile Facility. A mobile facility used in transporting native wildlife shall meet the requirements established in subsections (1) through (5) of this section.

(1) The mobile facility shall be equipped to provide fresh air and adequate protection from the elements, without injurious drafts.

(2) The animal housing area shall be free of engine exhaust fumes.

(3) A cage shall be large enough to ensure that each animal has sufficient room to stand erect and lielay naturally.

(4) The structural strength of the enclosure shall be sufficient to contain the live animals and to withstand the normal rigors of transportation.

(5) Native wildlife housed in a mobile facility for more than ten (10) days shall be housed in a cage that meets the minimum cage specifications established~~provided~~ in Section 8 of this administrative regulation~~Wildlife transported in the same cage area shall be in compatible groups~~.

Section 11. Temporary Facility. Native wildlife housed in a temporary facility or exhibit shall be housed in a cage that meets the minimum cage specifications established~~provided~~ in Section 8 of this administrative regulation if present in any geographical location for more than ten (10) days.

Section 12. Inspections and Access~~and Permit Revocation~~. (1) A permit holder shall allow a conservation officer to inspect the holding facilities; ~~and the property on which the holding facilities are located~~; at any reasonable time.

(2) A conservation officer shall immediately notify the permit holder if the inspection reveals a violation of any provision of this administrative regulation.

(3) A facility shall fail inspection if any deficiencies are found during the inspection; ~~or if the permit holder denies entry to the conservation officer at a reasonable time.~~

(4) An applicant ~~who~~that ~~fails a facility inspection shall correct any deficiencies within ten (10) days of the failed inspection.~~

(5) A permit holder shall allow any department employee~~approved representative~~, accompanied by a conservation officer, to access the wildlife holding facilities and the property on which the holding facilities are located at any reasonable time to carry out the purposes of this administrative regulation.

Section 13. Permit Denial and Revocation. (1) Denial. The department shall deny the issuance of a new permit, ~~for~~ ~~deny~~ a renewal of an existing or lapsed permit, and confiscate wildlife of a person who:

(a) Is convicted of a violation of any provisions of:

1. KRS Chapter 150;

2. Any department regulation; or
3. Any federal statute or regulation related to hunting, fishing, or wildlife;

(b) Provides false information on a captive wildlife permit application, transportation permit application, certificate of veterinary inspection, federal quarantine certificate, request for commissioner's exemption, federal permits, reports, facility inspection, or records;

(c) Acquires wildlife prior to receiving an approved captive wildlife permit, transportation permit, or commissioner's exemption, except as established in Section 2(4) through, ~~(5), and~~ (6);

(d) Fails a facility inspection, as established in Section 12 of this administrative regulation; or

(e) Fails to comply with any provision of this regulation, 301 KAR 2:041, 301 KAR 2:082, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230, or 301 KAR 2:251.

(2) Revocations.

(a) The department shall revoke the permit ~~for~~ and confiscate wildlife, of a person who:

1. Is convicted of a violation of any provisions of:

a. KRS Chapter 150;

b. KAR Title 301~~[Any department regulation]~~; or

c. Any federal statute or regulation related to hunting, fishing, or wildlife;

2. Provides false information on a Captive Wildlife Permit Application, Transportation Permit Application, Certificate of Veterinary Inspection, federal Quarantine Certificate, request for commissioner's exemption, federal permits, reports, facility inspection, or records;

3. Acquires wildlife prior to receiving an approved captive wildlife permit, transportation permit, or commissioner's exemption, except as established in Section 2(4) through, ~~(5), and~~ (6);

4. Fails a facility inspection, as established in Section 12 of this administrative regulation; or

5. Fails to comply with any provision of this administrative regulation, 301 KAR 2:041, 301 KAR 2:082, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230, or 301 KAR 2:251.

(b) If a person's captive wildlife permit is revoked for one (1) facility, permits for all other facilities in their name shall be revoked.

(c) A fee shall not be refunded for a permit that is revoked.

(3) Denial period.

(a) An applicant for a captive wildlife permit, ~~for~~ transportation permit, or commissioner's exemption whose permit or commissioner's exemption has been revoked or denied for the grounds established in this section shall be ineligible to reapply, and all applications denied ~~for the period established below~~;

1. The initial denial period, ~~for~~shall be one (1) year;

2. A second denial period, ~~for~~shall be three (3) years; and

3. A third or subsequent denial period, ~~for~~shall be five (5) years;

(b) The department shall deny all Captive Wildlife Permit Applications for any facility in which a permit was denied or revoked, for the same period of time as the denial period, as established in paragraph (a) of this subsection~~[this section]~~.

(4) Commissioner's exemption.

(a) A commissioner's exemption shall be revoked ~~for~~ and future exemptions may be denied for:

1. Failure to maintain wildlife in an enclosure sufficient to prevent escape and direct contact with the public;

2. Failure to comply with the requirements established in~~abide by the provisions set forth in an exemption letter or~~ this administrative regulation; or

3. Any other reason necessary to protect public health, public safety, native ecosystems, or native wildlife.

(b) If an exemption is terminated, all prohibited species shall be immediately placed in an enclosure sufficient to prevent escape and direct contact with the public and removed from the state within forty-eight (48) hours.

(5) Confiscated wildlife.

(a) All captive wildlife shall be confiscated if a captive wildlife permit, transportation permit, or commissioner's exemption is revoked or denied ~~for~~ or if a person possesses native wildlife without a valid captive wildlife permit, transportation permit, or commissioner's exemption, except as established in Section 2(4),

(5), or (6) or in subsection (4)(b) of this section~~[Section 13, subsection 4(3)(b)]~~.

(b) Confiscated wildlife shall be released, transferred ~~with the approval of the Wildlife Division~~, or dispatched, except that rabies vector species shall be dispatched immediately.

(c) Wildlife shall not be returned to the person, entity, or facility from which they were confiscated.

(d) Wildlife shall be surrendered to the department, for processing and disposition pursuant to this administrative regulation, upon being presented with a written order by the commissioner. ~~[A captive wildlife permit shall be revoked for a period of one (1) year and all captive wildlife confiscated if a violation is not corrected within ten (10) days of the]~~[initial inspection.]

[(4)] [A fee shall not be refunded for a permit that is revoked].

(6) Administrative hearings.

[(a)] [(5)] An individual whose permit has been denied or revoked may request an administrative hearing, which shall be conducted pursuant to KRS Chapter 13B.

[(b)] A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or the revocation.

[(c)] Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

[(d)] The hearing officer's recommended order shall be considered by the commissioner, and the commissioner shall issue a final order, pursuant to KRS Chapter 13B.

Section 14.~~[Section 13.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Captive Wildlife Permit Application and Checklist", 2022[2012] edition;

(b) "Annual Transportation Permit Application", 2022[2012] edition;~~[and]~~

(c) "Individual Transportation Permit Application", 2022[2012] edition;

(d) "Native Prohibited Wildlife Report", 2022 edition; and

(e) "Facility Inspection Checklist", 2022 edition.

(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, Monday through Friday, 8 a.m. to 4:30 p.m. or online at:

(a) <https://fw.ky.gov/Wildlife/Documents/captivewildapp.pdf> for the "Captive Wildlife Permit Application";

(b) <https://fw.ky.gov/Wildlife/Documents/annualtransportapp.pdf> for the "Annual Transportation Permit Application";

(c) <https://fw.ky.gov/Wildlife/Documents/indtransportapp.pdf> for the "Individual Transportation Permit Application";

(d) <https://fw.ky.gov/Wildlife/Documents/nativeprohibitedreport.pdf> for the "Native Prohibited Wildlife Report"; and

(e) <https://fw.ky.gov/Wildlife/Documents/RehabLEInspectionChecklist.pdf> for the "Facility Inspection Checklist".

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.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, January 10, 2023)

301 KAR 2:082. Transportation and holding of live exotic wildlife.

RELATES TO: KRS 13B, 150.010, 150.015, 150.186, 150.320, 150.330, 150.990, 150.183, 150.195, 150.235, 258.065, 258.085

STATUTORY AUTHORITY: KRS 65.877, 150.025(1), 150.090, 150.105, 150.180, 150.280, 50 C.F.R. 17, [50 C.F.R. 21, 16 U.S.C. 3371 – 3378, 18 U.S.C. 42 – 43, 16 U.S.C. 3371-3378]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the Department of Fish and Wildlife Resources and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1) authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.090 authorizes the department to appoint conservation officers charged with the enforcement of this chapter. KRS 150.105 authorizes the department to destroy or bring under control any wildlife causing damage to persons, property, or other animals spreading disease and that should be eliminated to prevent further damage. KRS 150.180 authorizes the department to regulate the transportation and importation of wildlife into Kentucky. KRS 150.280 requires the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. 50 C.F.R. 21 ~~requires[establishes the]~~ federal standards for holding migratory birds, including raptors. 50 C.F.R. 17 ~~requires[establishes the]~~ federal standards for endangered and threatened wildlife. This administrative regulation establishes the procedures for obtaining a transportation permit for exotic wildlife, prohibits the importation and possession of exotic species with the potential to damage native ecosystems, and places restrictions on importing, transporting, and holding species that are potentially dangerous to human health and safety.

Section 1. Definition. "Exotic wildlife" means wildlife species that have never naturally existed in the wild in Kentucky, including species introduced by man that have become naturalized.

Section 2. Transportation Permits and Certificates of Veterinary Inspection.

(1) A person shall apply for and obtain a valid transportation permit or permit authorization number from the department for all shipments of exotic wildlife, unless otherwise exempted or prohibited by this or another administrative regulation, prior to:

- (a) Receiving a shipment of wildlife from outside of Kentucky;
- (b) Importing exotic wildlife into Kentucky; or
- (c) Transporting exotic wildlife into Kentucky.

(2) A copy of a valid transportation permit or permit authorization number shall accompany all shipments of wildlife into Kentucky.

(3) An individual transportation permit shall be valid for one (1) shipment of wildlife.

(4) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue.

(5) All shipments of wildlife, except for amphibians and reptiles, shall be accompanied by a:

- (a) Certificate of veterinary inspection stating that the wildlife is free from symptoms of disease; or
- (b) Federal quarantine certificate.

Section 3. Applying for Permits.

(1) A person shall apply for a transportation permit by completing the online application process ~~[when available]~~ at fw.ky.gov, or by submitting the necessary forms ~~[as identified below, found on the department's Web site at fw.ky.gov]~~:

(a) For an individual transportation permit, an applicant shall submit a completed ~~[""]~~Individual Transportation Permit Application~~[""]~~ form; or

(b) For an annual transportation permit, an applicant shall submit a completed ~~[""]~~Annual Transportation Permit Application~~[""]~~ form.

~~(2) [An applicant for a transportation permit shall only obtain wildlife from a legal source.]~~

~~(3)]~~ A permit holder shall be at least eighteen (18) years of age.

~~(3)](4)]~~ An applicant shall submit a completed application established in subsection (1)(a) or (b) of this section and remit the correct fee, as established in 301 KAR 3:022 or 301 KAR 3:061.

~~(4)](5)]~~ An annual transportation permit holder shall submit a revised Annual Transportation Permit Application to the department via mail to the address listed on the Annual Transportation Permit Application or via email at FWpermits@ky.gov for any amendments to the original application and shall not ship wildlife until[unless the amendments are approved, and] a revised permit is issued by the department.

(6) A person importing, transporting, or possessing exotic wildlife shall be responsible for following all applicable federal and state laws and local ordinances regarding wildlife.

(7) A person with a valid falconry permit, as established in 301 KAR 2:195, shall not be required to possess a transportation permit for those raptors held under the falconry permit.

(8) An applicant possessing, importing, or transporting into Kentucky from outside the state federally protected migratory bird species, shall possess, and provide to the department, a valid United States Fish and Wildlife Service permit, except for persons or entities that meet the conditions listed in 50 C.F.R. 21.12 (a) and (b), 50 C.F.R. 21.13, and 50 C.F.R. 21.14.

(9) Federally endangered exotic species shall not be imported, transported into Kentucky, or possessed, except the Department of Fish and Wildlife Resources may allow importation, transportation, or possession of any exotic endangered species of wildlife pursuant to KRS 150.183 and 301 KAR 3:061.

Section 4. Prohibited Species.

(1) Except as established[specified] in Section 5 of this administrative regulation, a person shall not import, transport into Kentucky, or possess the following exotic wildlife that are considered potentially injurious to native ecosystems:

- (a) Baya weaver (Ploceus philippinus);
- (b) Blackbirds (Genus Agelaius), except native species;
- (c) Cape sparrow (Passer melanurus);
- (d) Cowbirds (Genus Molothrus), except native species;
- (e) Cuckoo (Family Cuculidae), except native species;
- (f) Dioch or red-billed quelea (Quelea quelea);
- (g) European blackbird (Turdus merula);
- (h) Fieldfare (Turdus pilaris);
- (i) Flying fox or fruit bat (Genus Pteropus);
- (j) Fox (Genus Cerdocyon, Genus Lycalopex, Genus Otocyon, Genus Urocyon, and Genus Vulpes);
- (k) Gambian giant pouched rat (Cricetomys gambianus);
- (l) Giant, marine, or cane toad (Bufo marinus);
- (m) Hawaiian rice bird or spotted munia (Lonchura punctulata);
- (n) Java sparrow (Padda oryzivora);
- (o) Madagascar weaver (Foudia madagascariensis);
- (p) Mistle thrush (Turdus viscivorus);
- (q) Monk or Quaker parakeet (Myiopsitta monachus);
- (r) Multimammate rat (Genus Mastomys);
- (s) Mute swan (Cygnus olor);
- (t) Nutria (Myocastor coypus);
- (u) Prairie dog (Cynomys spp.);
- (v) Raccoon dog (Nyctereutes procyonoides);
- (w) Sky lark (Alauda arvensis);
- (x) Song thrush (Turdus philomelos);
- (y) Starling (Family Sturnidae), including pink starlings or rosy pastors (Sturnus roseus), except for Indian Hill mynahs (Gracula religiosa);
- (z) Suricate or slender-tailed meerkat (Genus Suricata);
- (aa) Tongueless or African clawed frog (Xenopus laevis);
- (bb) Weaver finch (Genus Passer), except Passer domesticus;
- (cc) White eyes (Genus Zosterops);
- (dd) Wild rabbits, hares, and pikas (Order Lagomorpha);
- (ee) Yellowhammer (Emberiza citrinella); or
- (ff) A member of the following families:
 - 1. Suidae (pigs or hogs), except for domestic swine;
 - 2. Viverridae (civets, genets, lingsangs, mongooses and fossas); or
 - 3. Tayassuidae (peccaries and javelinas).

(2) Except as established[specified] in Sections[Section] 5 and 6 of this administrative regulation, a person shall not import, transport, or possess the following inherently dangerous exotic wildlife:

- (a) Alligators or caimans (Family Alligatoridae);
- (b) African buffalo (Syncerus caffer);
- (c) Bears (Family Ursidae);
- (d) Cheetah (Acinonyx jubatus);
- (e) Clouded leopard (Neofelis nebulosa);
- (f) Crocodiles (Family Crocodylidae);
- (g) Elephants (Family Elephantidae);
- (h) Gavials (Family Gavialidae);

- (i) Gila monsters or beaded lizards (Family Helodermatidae);
- (j) Hippopotamus (Hippopotamus amphibius);
- (k) Honey badger or ratel (Mellivora capensis);
- (l) Hyenas (Family Hyaenidae), including all species except aardwolves (Proteles cristatus);
- (m) Komodo dragon (Varanus komodoensis);
- (n) Lions, jaguars, leopards, or tigers (Genus Panthera);
- (o) Lynx (Genus Lynx);
- (p) Old world badger (Meles meles);
- (q) Primates, nonhuman (Order Primates);
- (r) Rhinoceroses (Family Rhinocerotidae);
- (s) Snow leopard (Uncia uncia);
- (t) Venomous exotic snakes of the families Viperidae, Atractaspididae, Elapidae, Hydrophidae, and Colubridae, except for hognose snakes (Genus Heterodon);
- (u) Wolverine (Gulo gulo); or
- (v) Hybrids of all species listed in this subsection[contained in this list].

Section 5. Exemptions.

(1) A facility that is accredited by the Association of Zoos and Aquariums shall:

- (a) Not be required to obtain a transportation permit for exotic wildlife;
- (b) Be allowed to import, possess, and transport into Kentucky federally endangered species and the prohibited exotic species listed in Section 4 of this administrative regulation for official zoo activities; and
- (c) Maintain prohibited exotic species in an enclosure sufficient to prevent escape and direct contact with the public.

(2) Commissioner's exemption.

(a) Upon written request, the commissioner shall consider an exemption for importation, transportation into Kentucky, or possession[may grant a written exemption for the possession or transportation into Kentucky] of the prohibited species listed in Section 4 of this administrative regulation.

(b) The commissioner shall [exercise his or her discretion and] only grant exemptions that [are determined to] promote and further the purposes of KRS Chapter 150.

(c)[(b)] Only the following entities shall be eligible for an exemption by the commissioner:

- 1. A facility that is designated as the official zoo of a municipality;
- 2. A college or university conducting research or education that fulfills a classroom requirement;
- 3. A lawfully operated circus only importing~~ing~~ into Kentucky, or possessing inherently dangerous exotic wildlife species that are not federally endangered, as listed in the current Endangered and Threatened Species Act list, 50 C.F.R. 17.11;
- 4. A facility previously granted an exemption by the commissioner for the purpose of housing confiscated wildlife and serving as an animal holding facility as a service to the department; and

5. A facility previously granted a commissioner's exemption, as a licensed or accredited institute of education or research, that houses prohibited species at a permanent wildlife facility for educational or research purposes.

Section 6. Prohibited Species Requirements.

(1) Prohibited exotic species imported, transported into Kentucky, or possessed shall be maintained within an enclosure sufficient to prevent:

- (a) Escape; and
- (b) Direct contact with the public.

(2) A person shall obtain a valid[apply for a] transportation permit to temporarily transport into Kentucky[the state] a prohibited animal listed in Section 4(2) of this administrative regulation and shall not:

- (a) Remain in Kentucky[the state] in excess of forty-eight (48) hours;
 - (b) Stop in Kentucky for exhibition purposes; or
 - (c) Sell, trade, gift, barter, offer for sale, trade, gift, barter, or profit in any way from a prohibited animal while in Kentucky.
- (3) Except for Lynx, a person who legally possessed wildlife listed in Section 4(2) of this administrative regulation prior to July 13,

2005, may continue to possess the animal through the life of the animal and shall maintain:

- (a) Veterinary records;
- (b) Acquisition papers for the animal; or
- (c) Any other evidence that establishes that the person possessed the animal in Kentucky prior to July 13, 2005.

(4) Lynx legally held in Kentucky prior to December 1, 2021, may be allowed to remain in possession of the owner through the life of the animal. The owner shall maintain:

- (a) Veterinary records;
- (b) Acquisition papers for the animal; or
- (c) Any other evidence that establishes that the person legally possessed the animal in Kentucky prior to December 1, 2021.

(5) A person who legally possesses wildlife pursuant to subsection (3) or (4) of this section shall not, without an exemption pursuant to Section 5 of this administrative regulation:

- (a) Replace the wildlife after its death;
- (b) Allow the wildlife to reproduce; or
- (c) Transfer wildlife to other persons, except if the owner predeceases the animal, the animal may be transferred to another person with the approval of the department's Wildlife Division Director.

(6) If exotic wildlife listed in Section 4 of this administrative regulation escapes, the owner shall immediately contact local emergency services and the department at 800-252-5378 to report the escape.

(7) All bites, as established in KRS 258.065, or contact with applicable exotic animals that results in possible exposure to disease or zoonotic infection, shall be reported to the local county health department within twelve (12) hours.

(8) If an exotic mammal bites a person~~;~~ or a mammal shows symptoms of a rabies infection, the owner of the animal shall arrange for the animal to be killed in a manner as to preserve the brain intact, and the animal's head shall be submitted for testing immediately to a laboratory approved by the Secretary of the Cabinet for Health and Family Services to be tested for rabies, as established in 902 KAR 2:070, Section 5 and KRS 258.085(1)(c).

Section 7. Permit-exempt Animals. The following exotic animals shall not require permits from the department for importation, transportation into Kentucky, or possession:

- (1) Alpaca (Vicugna pacos);
- (2) American bison (Bison bison);
- (3) Breeds and varieties of goats derived from the wild goat or bezoar (Capra hircus);
- (4) Camel (Camelus bactrianus and Camelus dromedarius);
- (5) Canary (Serinus canaria);
- (6) Chinchilla (Chinchilla laniger);
- (7) Cockatoo and cockatiel (family Cacatuidae);
- (8) Domesticated races of ducks and geese (family Anatidae) morphologically distinguishable from wild ducks or geese;
- (9) Domesticated races of the European rabbit (Oryctolagus cuniculus) morphologically distinguishable from wild rabbits;
- (10) Domesticated races of mink (Mustela vison), if:
 - (a) Adults are heavier than 1.15 kilograms; or
 - (b) The fur color can be distinguished from wild mink;
- (11) Domesticated races of rats (Rattus norvegicus or Rattus rattus) or mice (Mus musculus);
- (12) Domesticated races of turkeys (Meleagris gallopavo) recognized by the American Poultry Association and the U.S. Department of Agriculture, but shall not include captive held or bred wild turkeys;
- (13) Domestic yak (Bos grunniens);
- (14) Gerbil (Meriones unguiculatus);
- (15) Guinea fowl (Numida meleagris);
- (16) Guinea pig (Cavia porcellus);
- (17) Hamster (Mesocricetus spp.);
- (18) Indian Hill mynah (Gracula religiosa);
- (19) Llama (Lama glama);
- (20) Parrot, lovebird, budgerigar, macaw, parakeet (except monk parakeet, M. monachus) (families Psittacidae, Psittaculidae, and Psittichasiidae);
- (21) Peafowl (Pavo cristatus);

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- (22) Pigeon (*Columba domestica* or *Columba livia*) or domesticated races of pigeons;
- (23) Ratite, as defined by KRS 247.870; and
- (24) Toucan (family Rhamphastidae).

Section 8. Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.

Section 9. Inspections and Access.

(1) A person in possession of exotic wildlife, pursuant to a transportation permit or commissioner's exemption, shall allow a conservation officer to inspect the holding facilities ~~[and the property on which the holding facilities are located]~~ at any reasonable time to carry out the purposes of this administrative regulation.

(2) A transportation permit or commissioner's exemption holder shall allow any department ~~employee~~approved representative, accompanied by a conservation officer, to access the holding facilities ~~[and the property on which the holding facilities are located]~~ at any reasonable time to carry out the purposes of this administrative regulation.

Section 10. Permit Denial and Revocation.

(1) Denial. The department shall deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit, and may confiscate wildlife from a person who:

(a) Is convicted of a violation of any provisions of:

- 1. KRS Chapter 150;
- 2. 301 KAR Chapters 1 through 5; or
- 3. Any federal statute or regulation related to hunting, fishing, or wildlife;

(b) Provides false information on a transportation permit application, certificate of veterinary inspection, federal quarantine certificate, request for commissioner's exemption, federal permits, reports, or records;

(c) Acquires wildlife prior to receiving a transportation permit, commissioner's exemption, or certificate of veterinary inspection, except as established in Sections~~[Section]~~ 2(5), ~~[Section]~~ 3(7), ~~[Section]~~ 5(1), and ~~[Section]~~ 7; or

(d) Fails to comply with any provision of this administrative regulation, 301 KAR 2:041, 301 KAR 2:081, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230, 301 KAR 2:251, 301 KAR 3:061, 302 KAR 20:020, 302 KAR 20:040, 50 C.F.R. 17, 50 C.F.R. 21, 18 U.S.C. 42 - 43, or 16 U.S.C. 3371 - 3378.

(2) Revocations.

(a) The department shall revoke a transportation permit or commissioner's exemption, and may confiscate wildlife, of a person who:

- 1. Is convicted of a violation of any provisions of:
 - a. KRS Chapter 150;
 - b. 301 KAR Chapters 1 through 5; or
 - c. Any federal statute or regulation related to hunting, fishing, or wildlife;
- 2. Provides false information on a transportation permit application, certificate of veterinary inspection, federal quarantine certificate, request for commissioner's exemption, federal permits, reports, or records;
- 3. Acquires wildlife prior to receiving a transportation permit or commissioner's exemption, except as established in Sections 3(7) and 5(1); or
- 4. Fails to comply with any provision of this administrative regulation, 301 KAR 2:041, 301 KAR 2:081, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230, 301 KAR 2:251, 301 KAR 3:061, 302 KAR 20:020, 302 KAR 20:040, 50 C.F.R. 17, 50 C.F.R. 21, 18 U.S.C. 42-43, or 16 U.S.C. 3371-3378.

(b) A fee shall not be refunded for a permit that is revoked.

(3) Denial period. An applicant for a transportation permit or commissioner's exemption whose permit or commissioner's exemption has been revoked or denied for the grounds established in this section shall be ineligible to reapply, and all applications and commissioner's exemption requests shall be denied for ~~[the period established below]~~:

- (a) The initial denial period, for[shall be] one (1) year;
- (b) A second denial period, for[shall be] three (3) years; and

(c) A third or subsequent denial period, for[shall be] five (5) years.

(4) Commissioner's exemption.

(a) A commissioner's exemption shall be revoked ~~[and future exemptions may be denied]~~ for:

1. Failure to maintain wildlife in an enclosure sufficient to prevent escape and direct contact with the public;

2. Failure to abide by the provisions established~~[set forth]~~ in an exemption letter or this administrative regulation; or

3. Any other reason necessary to protect public health, public safety, native ecosystems, or native wildlife.

(b) If an exemption is terminated, all prohibited species shall be immediately placed in an enclosure sufficient to prevent escape and direct contact with the public and removed from the state within forty-eight (48) hours.

(5) Confiscated wildlife.

(a) All captive wildlife may be confiscated if a transportation permit or commissioner's exemption is revoked or denied, or a person imports, transports into Kentucky, or possesses exotic wildlife without a valid transportation permit, commissioner's exemption, or certificate of veterinary inspection, except as established in Sections~~[Section]~~ 2(5), ~~[Section]~~ 3(7), ~~[Section]~~ 5(1), and ~~[Section]~~ 7.

(b) Wildlife that is confiscated, as established in this section, shall not be returned to the person, entity, or facility from which the wildlife was~~[they were]~~ confiscated.

(c) Confiscated wildlife shall be euthanized if:

1. It is necessary to protect public safety, property, or wild or domesticated animals;

2. It is necessary to protect native ecosystems;

3. The wildlife is suffering from injury or illness; or

4. A facility legally capable and properly equipped to hold the wildlife is not readily available or economically feasible], and shall be transferred or euthanized with the approval of the Wildlife Division Director].

Section 11. Administrative Hearings.

(1) An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(2) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or the revocation.

(3) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(4) The hearing officer's recommended order shall be considered by the commissioner, and the commissioner shall issue a final order, pursuant to KRS Chapter 13B.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Annual Transportation Permit Application", 2022~~[2021]~~ ~~[edition]~~;

(b) "Individual Transportation Permit Application", 2022~~[2021]~~ ~~[edition]~~ ~~[; and]~~

~~[(c)] ["Captive Wildlife Prohibited Species report form, 2021 edition.]~~

(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, Monday through Friday, 8 a.m. to 4:30 p.m. or online at:

(a) <https://fw.ky.gov/Wildlife/Documents/annualtransportapp.pdf> for the "Annual Transportation Permit Application";

(b) <https://fw.ky.gov/Wildlife/Documents/indtransportapp.pdf> for the "Individual Transportation Permit Application" ~~[; and]~~

~~[(c)]~~

~~[https://fw.ky.gov/Wildlife/Documents/caprohibitedreport.pdf for the "Captive Wildlife Prohibited Species Report" form.]~~

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, email fwpubliccomments@ky.gov.

DEPARTMENT OF AGRICULTURE
Office of Agricultural Marketing
(As Amended at ARRS, January 10, 2023)

302 KAR 40:010. Certification of organic production, processing, or handling operations.

RELATES TO: KRS 260.020, 260.030, 260.038, 7 C.F.R. 205
STATUTORY AUTHORITY: KRS 260.020(3), 260.030(1)(k), 7 C.F.R. 205

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.020(3) authorizes the commissioner of the Kentucky Department of Agriculture to promulgate administrative regulations to carry out any programs established under the Office for Agricultural Marketing [and Product Promotion] and to establish fees for the administration of those programs. KRS 260.030(1)(k) requires the Office of Agricultural Marketing [and Product Promotion] to establish an Organic Agricultural Product Certification Program. This administrative regulation establishes the procedures for certification of organically-produced agricultural products.

Section 1.

(1) A producer, processor, or handler of organic agricultural products shall comply with:

- (a) 7 C.F.R. Part 205, the National Organic Program;
- (b) The [KDA-]Organic Certification Program Quality Manual; and
- (c) The standards established in the Organic[contained in the] Certification Application required by Section 2(1) of this administrative regulation.

(2) The department shall administer the Organic Certification Program in accordance with the [KDA-]Organic Certification Program Quality Manual.

Section 2. Certification.

(1) To receive or maintain organic certification, a completed Organic Certification Application[application] form shall be submitted to the department annually.

[(a) [A producer shall submit an Organic Farm Certification Application;]

[(b) [A processor or handler shall submit:]

[1- [An Organic Processing/Handling Certification Application; and]

[2- [An Organic Product Profile for each product to be certified;]

[(c) [A producer requesting certification of livestock shall also submit an Organic Livestock Certification Application;]

[(d) Relevant supporting documentation required by the[an] Organic Certification Application shall be submitted with the application.

(2) The production, processing, or handling operation shall be inspected by the department.

(a) The inspector shall be trained as required by the [KDA] Organic Certification Program Quality Manual.

(b) The applicant shall be present during an unannounced[the] inspection.

(c) The inspector shall complete the appropriate field inspection report:

- 1. The [KDA Organic-]Crop Inspection Report;
- 2. The [KDA Organic-]Livestock Inspection Report; or
- 3. The KDA Organic Processing/Handler [Organic] Inspection Report.

(d) An exit interview shall be conducted using the Organic Inspection Exit Interview form.

(e) Upon receipt of a field inspection report, the department shall make a determination of certification and notify the applicant in writing of the department's[its] decision. If the written application and the field inspection report demonstrate compliance with this administrative regulation and 7 C.F.R. 205, the department shall grant certification.

(3) The department shall conduct an annual inspection of every certified organic entity.

(4) Except as established[provided] by subsection (5) of this section[and Section 3 of this administrative regulation], a producer, processor, or handler shall pay a certification fee of

\$500[\$250] for the initial certification scope and each year thereafter at renewal[when renewed]. Subsequent scopes beyond the initial shall be charged at \$250[\$125] and each year thereafter at renewal[when renewed]. Except as established[provided] by subsection (5) of this section[and Section 3 of this administrative regulation], processors and handlers shall pay an additional fee of \$200[\$100] per each \$100,000 increment of gross receipts that exceed \$100,000. Fees [including additional fees] shall be calculated in accordance with the Organic Certification Application and the Organic Certification Program Quality Manual[Organic Program Fee Schedule].

(5) A production, processing, or handling operation with gross agricultural income from organic sales of less than \$5,000 annually shall register with the department by submitting a complete and notarized[using the] Exempt Organic Operation Registration form. There shall not be a fee to register.

(6) To withdraw an Organic[a] Certification Application, a Voluntary Withdrawal Form[Withdrawal of USDA National Organic Program Certification Application form] shall be submitted to the department. The withdrawal procedures listed on the form shall be followed.

(7) To voluntarily surrender an organic certification, a Voluntary Surrender Form[of USDA National Organic Program Certification form] shall be submitted to the department. The surrendering procedures listed on the form shall be followed.

[Section 3- [Nonprofit, Educational, or Charitable Organization-]

[(1) [If a nonprofit, educational, or charitable organization, as defined by the Internal Revenue Code, 26 U.S.C. 501(c)(3), has at least \$5,000 gross sales of organic products, it shall be certified and pay the required fees in accordance with Section 2 of this administrative regulation;]

[(2) [If a nonprofit, educational, or charitable organization, as defined by the Internal Revenue Code, 26 U.S.C. 501(c)(3), has less than \$5,000 gross sales of organic products, it shall be registered for production, processing, or handling organic products by using the Exempt Organic Operation Registration form. There shall not be a fee to register;]

Section 3[Section 4-] Organic Agriculture Advisory Committee.

(1) The Organic Agriculture Advisory Committee shall consist of seven (7) members. At least three (3) of the members shall be farmers who produce organic products. The other four (4) members shall[may] include consumers, advocates, handlers, or processors of organic products.

(2) The committee shall be appointed by the commissioner and serve a term of two (2) years. Members may be reappointed to additional two (2) year terms.

(3) The committee shall develop recommendations to promote and expand the organic agricultural products industry in Kentucky.

(4) Members shall receive reimbursement for mileage only for meetings of the full committee.

Section 4[Section 5-] Exports. If export documentation is requested, the applicant shall:

(1) Comply with the procedures established in the [KDA] Organic Certification Program Quality Manual; and [shall be followed. The applicant shall]

(2) Pay an additional fee of fifty (50) dollars[in accordance with the Organic Program Fee Schedule].

Section 5[Section 6-] Material Incorporated[Incorporation] by Reference.

(1) The following material is incorporated by reference:

(a) "Organic Certification Application", September 2021;

(b) "Processing and Handling Organic System Plan"; August 2022;

(c) "Livestock & Poultry Organic System Plan", November 2021;

(d) "2022 Crop Organic System Plan", November 2021;

(e) "Single Ingredient Product List", October 2022;

(f) "Multiple Ingredient Product List", October 2022;

(g) "Voluntary Withdrawal Form", January 2020;

(h) "Voluntary Surrender Form", January 2020;

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(i) "Organic Certification Program Quality Manual", November 2021;
 (j) "Exempt Organic Operation Registration", January 2018~~October 2022~~;
 (k) "Organic Inspection Exit Interview", November 2019;
 (l) "Crop Inspection Report", October 2022;
 (m) "Livestock Inspection Report", October 2022;
 (n) "KDA Organic Processing/Handler ~~(Organic-)~~ Inspection Report", 2017.
 [(a)] ["Organic Farm Certification Application", December 2013;]
 [(b)] ["Organic Processing/Handling Certification Application", December 2013;]
 [(c)] ["Organic Livestock Certification Application", December 2013;]
 [(d)] ["Organic Certification Program Fee Schedule", October 2013;]
 [(e)] ["Organic Product Profile", December 2013;]
 [(f)] ["Withdrawal of USDA National Organic Program Certification Application", October 2013;]
 [(g)] ["Voluntary Surrender of USDA National Organic Program Certification", October 2013;]
 [(h)] ["KDA Organic Certification Program Quality Manual", December 2013;]
 [(i)] ["Exempt Organic Operation Registration", December 2013;]
 [(j)] ["Organic Inspection Exit Interview", May 2002;]
 [(k)] ["KDA Organic Crop Inspection Report", December 2013;]
 [(l)] ["KDA Organic Livestock Inspection Report", December 2013; and]
 [(m)] ["Processing/Handler Organic Inspection Report", December 2013;]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing~~and Product Promotion~~, 109 Corporate Drive~~100 Fair Oaks~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the department Web site at www.kyagr.com.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, January 10, 2023)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS 72.020, 72.025(5), Chapters 196, 197, 439
 STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice 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 Luther Luckett Correctional Complex.

Section 1. Incorporation by Reference.

(1) "Luther Luckett Correctional Complex policies and procedures", January 10, 2023~~December~~~~September~~~~14, 2022~~ [November 10, 2015], are incorporated by reference. Luther Luckett Correctional Complex Policies and Procedures include:

LLCC 02-05-03 Inmate Canteen Committee (Amended 9/14/22[5/15/42])
 LLCC 02-05-05 Inmate Canteen (Amended 9/14/22[5/15/42])
 LLCC 02-06-01 Inmate Control of Personal Funds (Amended 9/14/22[5/15/42])
 LLCC 02-06-02 Storage and Disposition of Monies Received on Weekends, Holidays and between 4 p.m.

and 8 a.m. Weekdays (Amended 9/14/22[5/15/42])
 LLCC 05-02-02 Outside Consultation and Research (Amended 1/10/23[9/14/22][5/15/42])
 LLCC 06-01-01 Offender Information (Amended 9/14/22[10/14/45])
 LLCC 06-02-01 Open Records (Amended 9/14/22[5/15/42])
 LLCC 08-04-01 Fire Safety (Amended 9/14/22[7/10/42])
 LLCC 09-14-02 Procedures[Guidelines] for Contractors (Amended 1/10/23[9/14/22][7/10/42])
 LLCC 09-18-01 Search Plan (Amended 1/10/23[9/14/22][5/15/42])
 LLCC 09-18-03 Contraband Control: Collection, Preservation, Disposition of Contraband, and Identification of Physical Evidence (Amended 9/14/22[5/15/42])
 LLCC 09-25-01 Procedure for Maintaining Current Inmate Photographs (Amended 9/14/22[11/14/44])
 LLCC 09-29-01 Inmate Death (Amended 9/14/22[7/10/42])
 LLCC 10-01-01 Special Management Housing[Inmates] (Amended 12/14/2022[9/14/22][11/10/45])
 LLCC 11-01-01 Dining Room Rules[Guidelines] (Amended 9/14/22[8/7/15])
 LLCC 11-02-01 Food Services: Security (Amended 9/14/22[5/15/42])
 LLCC 11-03-01 Food Services: General Requirements[Guidelines] (Amended 9/14/22[5/15/42])
 LLCC 11-04-01 Food Services:[Service-]Meals (Amended 9/14/22[5/15/42])
 LLCC 11-04-02 Food Services[Service]: Menu, Purchasing, Storage, Nutrition, and Special Diets and Farm Products (Amended 9/14/22[5/15/42])
 LLCC 11-05-02 Health Requirements of Food Handlers (Amended 9/14/22[5/15/42])
 LLCC 11-06-01 Food Services: Inspections and Sanitation (Amended 9/14/22[11/10/45])
 [LLCC 11-07-01] Food Services: Purchasing, Storage and Farm Products (Amended 5/15/42)
 LLCC 12-01-01 Sanitation, Living Condition Standards and Clothing Issues (Amended 9/14/22[11/14/44])
 LLCC 12-02-01 Laundry Services (Amended 9/14/22[7/10/42])
 LLCC 12-03-01 Vermin and Insect Control (Amended 9/14/22[5/15/42])
 LLCC 12-04-01 Personal Hygiene Items: Issuance and Replacement Schedule (Amended 1/10/23[9/14/22][5/15/42])
 LLCC 13-02-01 Access to Healthcare (Amended 9/14/22[8/7/15])
 LLCC 13-02-02 Specialized Health Services (Amended 9/14/22[8/7/15])
 LLCC 13-02-03 Vision Care, Prostheses and Orthodontic Devices (Amended 9/14/22[8/7/15])
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[LLCC—13-09-04] [Substance Abuse and Chemical Dependency Program (Amended 5/15/12)]

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[LLCC—18-02-02] [Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Added 10/14/15)]

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LLCC 26-02-02 Student and Volunteer Identification Badges (Amended 9/14/22[5/15/12])

LLCC 26-03-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, Students, and Volunteers (Amended 9/14/22[5/15/12])

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CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (As Amended at ARRS, January 10, 2023)

907 KAR 3:160. Specialized children's services clinics.

RELATES TO: KRS 205.557(1)(c), 205.560, 205.557(1)(c), 314.011(14), 620.020(4), 620.050

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.557(5), EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the requirements for providers and reimbursement by the Medicaid program for services provided by a specialized children's services clinic.

Section 1. Definitions. (1) "Affiliation agreement" means a written agreement between a provider and a children's advocacy center to perform a child [sexual—abuse—]medical evaluation[examination].

(2) "Approved behavioral health practitioner" means an independently licensed practitioner who is:

- (a) A physician;
 - (b) A psychiatrist;
 - (c) An advanced practice registered nurse;
 - (d) A physician assistant;
 - (e) A licensed psychologist;
 - (f) A licensed psychological practitioner;
 - (g) A certified psychologist with autonomous functioning;
 - (h) A licensed clinical social worker;
 - (i) A licensed professional clinical counselor;
 - (j) A licensed marriage and family therapist;
 - (k) A licensed professional art therapist;
 - (l) A licensed clinical alcohol and drug counselor; or
 - (m) A licensed behavior analyst."
- "Child sexual abuse medical examination" means an examination to determine child sexual abuse that includes:

- (a) A medical history taken from the child and a nonimplicated parent, guardian or primary caretaker;
- (b) A physical examination with detailed attention to the anogenital area;
- (c) If clinically indicated, a colposcopic examination; and
- (d) A mental health screening, provided on the same day and at the same location as the physical examination, to determine the

impact of the alleged abuse on the mental health status of the child and the need for mental health services.]

(3) "Approved behavioral health practitioner under supervision" means an individual under billing supervision of an approved behavioral health practitioner who is:

(a)1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

2. A certified psychologist working under the supervision of a board-approved licensed psychologist;

3. A marriage and family therapy associate;

4. A certified social worker;

5. A licensed professional counselor associate;

6. A licensed professional art therapist associate;

7. A licensed clinical alcohol and drug counselor associate;

8. A certified alcohol and drug counselor; or

9. A licensed assistant behavior analyst; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(4) "Child medical evaluation" is defined by KRS 205.557(1)(c).

(5)[(3)] "Children's advocacy center" is defined in KRS 620.020(4).

(6)[(4)] "Department" means the Department for Medicaid Services or its designated agent.

(7)[(5)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(8) "Sexual assault nurse examiner" or "SANE" is defined in KRS 314.011(14).

[(6)] "Mental health professional" means:

(a) A psychologist as defined in KRS 319.010(8);

(b) A licensed clinical social worker in accordance with KRS 335.100;

(c) An advanced registered nurse practitioner as defined in KRS 314.011(7);

(d) A licensed marriage and family therapist as defined in KRS 335.300(2);

(e) A certified professional counselor as defined in KRS 335.500(2); or

(f) A certified professional art therapist as defined in KRS 309.130(2);

(9)[(7)] "Specialized children's services clinic" means a clinic enrolled with the Kentucky Medicaid program that provides child [sexual abuse] medical evaluations[examinations] and that meets the requirements of Section 3 of this administrative regulation.

[(8)] "Usual and customary charge" means the amount a provider bills to the general public.]

Section 2. Covered Services. (1) A child medical evaluation[~~child sexual abuse medical examination~~] provided as a clinic service by a specialized children's services clinic shall be covered if medically necessary and provided to a recipient who is under the age of eighteen (18) years.

(2) **[Consistent with KRS 205.557(1)(c),]** A child medical evaluation **includes[is]** any combination of one (1) or more of the **[following] services as established in KRS 205.557(1)(c) or:**

(a) A medical history taken from the child and a nonimplicated parent, guardian, or primary caretaker;

(b) A comprehensive physical examination;

(c) Laboratory services;

(d) Photo documentation;

(e) Follow-up evaluation;

(f) A mental health screening to determine the impact of the alleged abuse on the mental health status of the child and the need for mental health services; or

(g)] an evidence-based trauma screening approved by the Children's Advocacy Centers of Kentucky, or its successor agency.

(3) A child medical evaluation[~~child sexual abuse medical examination~~] shall be performed by:

(a) A licensed physician, **an** advance practice registered nurse, a physician assistant, or **a** sexual assault nurse examiner who:

1. Completes the medical history and physical examination;

2. Is employed by, under contract with, or has an affiliation agreement with a specialized children's services clinic;

3. Has received specialized training in the medical examination of sexually-abused children; and

4. ~~[Has received specialized training in the use of a colposcope and has access to a colposcope in the specialized children's services clinic; and~~

5.] Shall make reports resulting from child medical evaluations[~~child sexual abuse medical examinations~~] available for peer review and maintain confidentiality in accordance with Section 7[6] of this administrative regulation; and

(b) As necessary, an approved behavioral health practitioner or an approved behavioral health practitioner under supervision[a mental health professional] who:

1. Performs a mental health screening **or evidence-based trauma screening** to determine the mental health status of the child and the need for further mental health services;

2. Is ~~[directly]~~supervised by the physician, physician assistant, or advanced practice registered nurse who performs the medical examination and evaluation;

3. Is employed by, under contract with, or has an affiliation agreement with a specialized children's services clinic; and

4. Has received specialized training in the mental health screening **or evidence-based trauma screening** and assessment of sexually-abused children.

(4) [The following] Mental health treatment services, limited to those as established in paragraphs (a) through (i) of this subsection, may be offered by a specialized children's services clinic to a person who is involved with or impacted by the subject matter of a child medical evaluation, and services shall meet the requirements as established in this subsection.[:]

(a) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder, a substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder;

3. Establish the need for an in-depth assessment; **and**

4. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:

a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan;

4. Not include a psychological or psychiatric evaluation or assessment; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(c) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for an individual with a behavioral health disorder;

3. Shall be provided:

a. On-site at a specialized children's clinic;

b. As an immediate relief to the presenting problem or threat; and

c. In a one-on-one encounter between the provider and the recipient, which is delivered either in-person or via telehealth if appropriate pursuant to 907 KAR 3:170;

4. May include:

or

- a. Verbal de-escalation, risk assessment, or cognitive therapy;
- b. Further service planning including:
 - (i) Lethal means reduction for suicide; or
 - (ii) Substance use disorder or relapse prevention;
- 5. Shall be followed by a referral to non-crisis services if applicable; and
- 6. Shall be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision.
- (d)1. Intensive outpatient program services shall:
 - a. Be an alternative to or transition from a higher level of care for a mental health disorder;
 - b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;
 - c. Be provided at least three (3) hours per day at least three (3) days per week for adults;
 - d. Be provided at least six (6) hours per week for adolescents;
 - e. Include:
 - (i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;
 - (ii) Crisis intervention; or
 - (iii) Psycho-education related to identified goals in the recipient's treatment plan; and
 - f. Be provided in-person.
- 2. During psycho-education, the recipient or recipient's family member shall be:
 - a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and
 - b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.
- 3. An intensive outpatient program services treatment plan shall:
 - a. Be individualized; and
 - b. Focus on stabilization and transition to a lesser level of care.
- 4. To provide intensive outpatient program services, a specialized services clinic shall have:
 - a. Access to a board-certified or board-eligible psychiatrist for consultation;
 - b. Access to a psychiatrist, a physician, or an advanced practiced registered nurse for medication prescribing and monitoring;
 - c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;
 - d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and
 - e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.
- 5. Intensive outpatient program services shall be provided by:
 - a. An approved behavioral health practitioner, except for a licensed behavior analyst; or
 - b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.
- (e) Individual outpatient therapy shall:
 - 1. Be provided to promote the:
 - a. Health and wellbeing of the individual; and
 - b. Restoration of a recipient to the recipient's best possible functional level from a mental health disorder;
 - 2. Consist of:
 - a. **A[An in-person or via telehealth as appropriate pursuant to 907 KAR 3:170,] one-on-one encounter between the provider and recipient conducted in-person or via telehealth as appropriate pursuant to 907 KAR 3:170; and**
 - b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;
 - 3. Be aimed at:
 - a. Reducing adverse symptoms;
 - b. Reducing or eliminating the presenting problem of the recipient; and
 - c. Improving functionality;

- 4. Not exceed three (3) hours per day; and
- 5. Be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision.
- (f)1. Family outpatient therapy shall consist of an in-person, or via telehealth as appropriate pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided:
 - a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and
 - b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.
- 2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals, including multiple members from one (1) family, who participate in the session.
- 3. Family outpatient therapy shall:
 - a. Be provided to promote the:
 - (i) Health and wellbeing of the individual; or
 - (ii) Restoration of a recipient to **the recipient's[their]** best possible functional level from a mental health disorder; and
 - b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.
- 4. Family outpatient therapy shall be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision.
- (g)1. Group outpatient therapy shall:
 - a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;
 - b. Be provided to promote the:
 - (i) Health and wellbeing of the individual; and
 - (ii) Restoration of a recipient to **the recipient's[their]** best possible functional level from a mental health disorder;
 - c. Consist of an in-person, or via telehealth as appropriate pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;
 - d. Be provided to a recipient in a group setting:
 - (i) Of nonrelated individuals; and
 - (ii) Not to exceed twelve (12) individuals in size;
 - e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;
 - f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
 - g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and
 - h. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.
- 2. A family outpatient therapy group shall have a:
 - a. Deliberate focus; and
 - b. Defined course of treatment.
- 3. The subject of a group receiving group outpatient therapy shall be related to each recipient participating in the group.
- 4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.
- 5. Family outpatient therapy shall be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision.
- (h)1. Collateral outpatient therapy shall:
 - a. Consist of an in-person or appropriate telehealth, provided pursuant to 907 KAR 3:170, behavioral health consultation:
 - (i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and
 - (ii) That is provided in accordance with the recipient's treatment plan; and
 - b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(i) 1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder to a recipient by sharing a similar mental health disorder in order to bring about a desired social or personal change;

(ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a mental health disorder to a parent or family member of a child sharing a similar mental health disorder in order to bring about a desired social or personal change; or

(iii) An individual, who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing as a child or youth an emotional, social, or behavioral disorder that is defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care;

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care; and

h. Be provided face-to-face or via telehealth, as established pursuant to 907 KAR 3:170.

2. To provide peer support services, a specialized children's services clinic shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

c. Use an approved behavioral health practitioner to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members;

e. Have the capacity to provide ongoing continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients to provide no more than thirty (30) hours per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting not exceeding eight (8) individuals within any group at a time.

(5) Ongoing mental health treatment services shall be provided by:

(a) 1. An approved behavioral health practitioner; or

2. An approved behavioral health practitioner under supervision;

and

(b) 1. A provider who is an employee of the specialized children's services clinic; or

2. A provider who has a contractual relationship with the specialized children's services clinic and who does not duplicate the provided behavioral health services to the recipient for another Medicaid provider.

Section 3. Provider Requirements. (1) A provider shall be enrolled with the department as a specialized children's services clinic.

(2) A specialized children's services clinic shall be a children's advocacy center whose providers are employed by, under contract with, or have a signed affiliation agreement with the clinic.

(3) A SANE who is a registered nurse, but not an APRN, shall be under the supervision of a physician, **an** APRN, or **a** physician assistant who is employed or contractually associated with the specialized children's services clinic for billing purposes.

Section 4. Billing for Services. (1) A child medical evaluation[~~child sexual abuse medical examination~~] shall be billed by a specialized children's services clinic as a comprehensive clinic service which shall include:

(a) The services of the;

1. Physician;

2. Advanced practice registered nurse;

3. Physician assistant; or

4. SANE.

(b) Mental health screening services provided by an approved behavioral health practitioner or an approved behavioral health practitioner under supervision[~~a mental health professional~~];

(c) Services and supplies furnished as an incidental part of the [physician's] professional services performed by a provider listed in paragraph (a) of this subsection in the course of diagnosis and treatment; ~~for~~ and]

(d) Medical services provided by other clinic employees under the direct supervision of the physician, advanced practice registered nurse, physician assistant, or SANE; or

(e) Follow-up services provided by the physician, advanced practice registered nurse, physician assistant, SANE, approved behavioral health practitioner, or approved behavioral health practitioner under supervision.

(2) Child medical evaluation services provided by a physician, **an** advanced practice registered nurse, **a** physician assistant, **a** SANE, or an approved behavioral health practitioner or an approved behavioral health practitioner under supervision[~~mental health professional~~] employed by, under contract with, or having a signed affiliation agreement with a specialized children's services clinic shall be billed under the clinic's provider number using a single reimbursement code designated by the department.

(3) Mental health treatment by an approved behavioral health practitioner or approved behavioral health practitioner under supervision shall be billed per encounter by the specialized children's services clinic as consistent with:

(a) The Outpatient Behavioral Health Fee Schedule, or its successor fee schedule, **available at** <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>; and

(b) Section 2 of this administrative regulation.

(4)(a) A specialized children's services clinic may provide laboratory services directly if:

1. The clinic has the appropriate **Clinical Laboratory Improvement Amendments (CLIA)** certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, **an** advanced practice registered nurse, **a** physician assistant, or **a** SANE who has a contractual relationship with the clinic.

(b) If a specialized children's services clinic does not have the appropriate CLIA certificate to perform necessary laboratory testing, it shall establish a contractual relationship with a laboratory or facility with the appropriate CLIA certificate in order to perform any laboratory service required pursuant to this administrative regulation. The contracted laboratory shall not separately bill for any services provided for a specialized children's services clinic that are also submitted for reimbursement pursuant to this administrative regulation.

(c) Laboratory services may be administered, as appropriate, by:

1. A physician;

2. An APRN;

3. A physician assistant;

4. A SANE;

5. An approved behavioral health practitioner; or

6. An approved behavioral health practitioner under supervision.

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Section 5. Reimbursement. (1) The department shall establish a prospective payment rate or rates for each specialized children's services clinic based on an annual cost report or survey [a review of cost data and a consideration of rates paid to providers for similar services].

(a) The prospective payment rate shall reflect a true and actual cost for a specialized children's services clinic as established by expenses from the previous year.

(b) The prospective reimbursement rate shall incorporate additional expected expenses for the next year, including expected inflation for the next year.

(2)(a) A managed care organization shall accept the surveys submitted by the department and the department's determination of a prospective reimbursement rate for each and any specialized children's services clinic.

(b) A managed care organization shall not require separate submission of a cost report by a specialized children's services clinic to the managed care organization. [The initial rate of reimbursement for a child sexual abuse medical examination shall be the lesser of:

(a) An all-inclusive statewide rate of \$538 per examination; or

(b) The provider's usual and customary charge for the service.

(3) The department shall determine the statewide rate using updated cost data submitted on an annual cost report from the center.]

(3)(a) The department shall utilize the rates established pursuant to subsection (1) of this section to inform the prospective reimbursement rate.

(b)1. A cost report shall be submitted by each center annually or upon request by the department.

2. A specialized children's clinic may submit a cost report to the department at any time that there is an increase of five (5) percent in cost during the year.

(4)(a) An ongoing mental health treatment service shall be billed consistent with Section 4(3) of this administrative regulation.

(b) The department and each managed care organization shall reimburse at least at the minimum of the rates published on the Outpatient Behavioral Health Fee Schedule, or its successor fee schedule, for services related to ongoing mental health treatment.

Section 6. Reimbursement Prior to Implementation of a Prospective Payment Rate. The department and each managed care organization (MCO) shall reimburse pursuant to this subsection until a prospective payment rate is established pursuant to Section 5 of this administrative regulation. At that time, this section shall become nonoperational.

(1)(a) The department and each managed care organization shall reimburse at least twenty-five (25) percent greater than the Physician's Fee Schedule established pursuant to 907 KAR 3:010 for each service related to a child medical evaluation.

(b) 1. The department may establish and publish a [Specialized Children's Clinic Fee Schedule] for use by specialized children's clinics.

2. If established and published the fee schedule shall be located at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

(c) The department shall establish any additional procedure codes needed to perform services pursuant to this administrative regulation.

(2) The department and each managed care organization shall reimburse at least at the minimum of the rate for a specialized children's services clinic established pursuant to subsections (1) or (3) of this section.

(3) In the alternative, a specialized children's services clinic may bill a comprehensive rate for services rendered during the time that this section is operational, not including a follow-up evaluation:

(a) The initial rate shall be no less than \$894, and shall be updated, if necessary, for inflation.

(b) The department may collaborate with designated representatives of the children's advocacy centers to establish a comprehensive rate that is based on any increases in fees or rates established pursuant to subsection (1) of this section.

(c) A separate bill may be submitted by a specialized children's clinic for a follow-up evaluation.

(4)(a) An ongoing mental health treatment service shall be billed consistent with Section 4(3) of this administrative regulation.

(b) The department and each managed care organization shall reimburse at least at the minimum of the rates published on the Outpatient Behavioral Health Fee Schedule, or its successor fee schedule, for services related to ongoing mental health treatment.

Section 7. [Section 6.] Medical Records and Confidentiality. (1) Except to the department, duly authorized representatives of federal or state agencies, multidisciplinary team members acting pursuant to KRS 620.050 or a physician, a physician assistant, an APRN, a SANE, or an approved behavioral health practitioner participating in a peer review of a specific child sexual or physical abuse or neglect case, a specialized children's services clinic shall not disclose any information concerning an eligible recipient without:

(a) Written consent of:

1. The recipient; or

2. If the recipient is a minor, the recipient's parent, legal guardian, or attorney; or

(b) A subpoena from a court of appropriate jurisdiction.

(2) A specialized children's services clinic shall:

(a) Maintain a recipient's medical records in accordance with 907 KAR 1:672;

(b) Maintain up-to-date recipient medical records at the site where the medical services are provided;

(c) Ensure that a recipient's medical record shall be readily retrievable, complete, organized, and legible and shall reflect sound medical recordkeeping practices; and

(d) Safeguard medical records against loss, destruction, and unauthorized use.

Section 8. [Section 7.] Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 9. The department may administer any benefits or services related to a specialized children's services clinic outside of the managed care benefit.

Section 10. Federal Approval and Federal Financial Participation. The cabinet's coverage and reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as relevant.

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 Aging and Independent Living
Division of Aging and Disability Services
(As Amended at a joint meeting of the Senate and House
Standing Committees on Health Services,
Meeting of January 12, 2023)

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)[(14)] "Prescreening" means a process that assesses whether or not an applicant appears to meet the basic requirements for eligibility.

(16)[(15)] "Qualified agency or organization" is defined by KRS 205.900(4).

(17)[(16)] "Reassessment" means reevaluation of the situation and functioning of a client.

(18)[(17)] "Service area" means those counties listed in an approved plan of the qualified agency or organization.

(19)[(18)] "Severely physically disabled adult" is defined by KRS 205.900(6).

(20)[(19)] "Subsidy" means a financial reimbursement paid by the cabinet to an adult who qualifies to receive personal care assistance services in accordance with KRS 205.905(1).

(21)[(20)] "Work agreement" means an agreement of time and tasks developed by the participant as the employer for the attendant as the employee.

Section 2. Eligibility. (1) To be eligible for participation in the personal care attendant program, an applicant shall:

(a) Be a severely physically disabled adult who:

1. Meets the qualifications required by KRS 205.905(1); and

2. Has the ability to be responsible for performing the functions required by KRS 205.905(2) to receive a subsidy;

(b) Agree to obtain an initial assessment for eligibility and a reassessment[re-assessment] at least 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:

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- (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;]~~
 - ~~[(f)][(g)] Participant fails to hire an attendant;~~
 - ~~[(g)][(h)] Participant dies;~~
 - ~~[(h)][(i)] Participant chooses to:~~
 - 1. Give up personal care assistance services; and
 - 2. Be admitted to a long-term care facility; or
 - ~~[(i)][(j)] Participant requests suspension of services.~~
- (2) Services may be suspended if there is[either of the following occurs]:
- (a) A non-return of an overpayment of services; or
 - (b) An intentional deception to obtain services.
- (3) Suspension of services shall occur if there are any substantiated deceptive practices of paying for services that are:
- (a) Not actually provided; or
 - (b) Duplicative services obtained through another program or agency at the same time.

Section 7. Participant Responsibilities. A participant shall:

- (1) Meet the eligibility requirements to receive a subsidy 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

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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[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[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 evaluation team's[team] findings and recommendations to a contract agency as 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.

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

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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.

(c) By submitting a written request for appeal to the Office of Ombudsman and Administrative Review, Quality Advancement Branch, 275 E. Main St, 2 E-O, Frankfort, KY 40621.

Section 17. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "PCAP-01 Application for Services", edition 4/2018;
- (b) "PCAP-02 Authorization for Release of Confidential Information", edition 4/2018;
- (c) "PCAP-03 Employer Tax Agreement", edition 4/2018;
- (d) "PCAP-04 Evaluation Team Findings and Recommendations", edition 4/2018;
- (e) "PCAP-05 Income Eligibility", edition 4/2018; and
- (f) "PCAP-06 Plan of Care", edition 4/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dail/Pages/default.aspx>.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (As Amended at ARRS, January 13, 2023)

922 KAR 2:165. Employee Child Care Assistance Partnership.

RELATES TO: KRS 199.881-888, 199.8943, 42 U.S.C. 2000d
STATUTORY AUTHORITY: KRS 194A.050(1), 199.884, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and

its programs. KRS 199.884 requires the cabinet to promulgate administrative regulations to effectuate the provisions of KRS 199.881 to 199.888. KRS 199.8994 requires the cabinet to administer all child care funds in a manner that is in the best interest of the clients to be served. This administrative regulation establishes eligibility requirements and procedures for the implementation of the Employee Child Care Assistance Partnership to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means an employer applying for the Employee Child Care Assistance Partnership (ECCAP) program with the intention of entering into a contract with an employee and a child care provider to support an employee by contributing to his or her child care costs.

(2) "Cabinet" is defined by KRS 199.882(1).

(3) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent or guardian's responsibility for the child's protection, development, and supervision.

(4) "Child care desert" means a census tract with more than fifty (50) children under the age of five (5) that contains either no child care providers or so few that there are more than three (3) times as many children as licensed child care slots.

(5) "Contribution" is defined by KRS 199.882(3).

(6) "Eligible child care costs" is defined by KRS 199.882(4).

(7) "Employee" is defined by KRS 199.882(5).

(8) "Employer" is defined by KRS 199.882(6).

(9) "Family" means a parent, child, or other responsible adult residing in the same home as a child.

(10) "Fund" is defined by KRS 199.882(7).

(11) "Program" means the Employee Child Care Assistance Partnership and is defined by KRS 199.882(8).

(12) "Responsible adult" means an individual who is:

(a) The natural parent, adoptive parent, or stepparent;

(b) The legal guardian of a child; or

(c) The spouse of an individual caring for a child in loco parentis.

(13) "Small business" is defined by KRS 199.882(9).

(14) "State match" is defined by KRS 199.882(10).

(15) "State median household income" is defined by KRS 199.882(11).

Section 2. Application and Contract Requirements and Timeframes. (1) An employer may apply for the Employee Child Care Assistance Partnership (ECCAP).

(2) An application shall have been made on the date a signed and completed form "DCC-600, Employee Child Care Assistance Partnership Application and Contract", is received by the cabinet.

(3) An application shall not be received by the cabinet prior to April 2, 2023, in accordance with KRS 199.883(9)(b).

(4) The cabinet shall review and consider an application received on or after April 2, 2023, pursuant to KRS 199.883(3) through (5).

(5) The cabinet shall not disburse a state match pursuant to this program prior to July 1, 2023, in accordance with KRS 199.883(9)(c).

(6) If necessary, the cabinet shall maintain a waitlist pursuant to KRS 199.883(6).

(7) Pursuant to KRS 199.883(10), if funding is available, beginning in 2024, the cabinet shall accept an application for the next fiscal year on:

(a) April 2 of each year for an employer already participating in the program.

(b) May 17 of each year for an employer not already participating in the program.

(8)(a) In accordance with the procedures established in 920 KAR 1:070, interpreter or speech impaired services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

(b) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

(9) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex or gender, sexual orientation, disability, religion, national origin or ancestry, political

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beliefs, or reprisal or retaliation for prior civil rights activity.

(10)(a) The employer shall be the primary source of information and shall:

1. Provide verification of:
 - a. Employment;
 - b. The employee's income; and
 - c. Technical eligibility required pursuant to Section 3 of this administrative regulation; and
2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information, failure of an employer to respond within ten (10) business days shall be considered a failure to present adequate proof of eligibility.

(11) The cabinet shall verify that the employer, employee, and child care provider are eligible to participate in the program pursuant to the requirements established in this administrative regulation.

(12) The cabinet shall:

- (a) Render a decision on each application; and
- (b) Within thirty (30) calendar days of receipt of the application submitted in accordance with KRS 199.884(4), send notice of approval or denial to all parties on the "DCC-605, Employee Child Care Assistance Partnership Notice of Action".

Section 3. Technical Eligibility. (1) An employee shall not be eligible to participate in the program if child care is provided by:

- (a) A parent or stepparent;
- (b) A legal guardian;
- (c) A person living in the same residence as the child in need of care; or

(d) A provider not:

- 1.a. Licensed pursuant to 922 KAR 2:090; or
- b. Certified pursuant to 922 KAR 2:100; and
2. Rated pursuant to the quality-based graduated early care and education program established in KRS 199.8943 and 922 KAR 2:270.

(2) An employee whose family meets the eligibility requirements for the Child Care Assistance Program pursuant to 922 KAR 2:160 shall be referred to that program by the cabinet.

(3) An employee shall not be eligible to participate in the Employee Child Care Assistance Partnership program if a member of his or her family is eligible for the Child Care Assistance Program pursuant to 922 KAR 2:160.

(4) An employee shall be a member of the family of the child for whom child care is being provided and paid for. ***[f]***

(5) A licensed or certified child care provider shall be eligible to apply for this program as an employer.

(6) The owner of a child care facility shall not be eligible to participate as an employee.

(7) An individual shall not be eligible to apply as more than one (1) party to a contract.

Section 4. Priority Determinations. (1) The cabinet shall review and consider applications in the order in which they are received.

(2) In each fiscal year, twenty-five (25) percent of the total fund shall be set aside to fund applications in which the employer is a small business.

(3) The cabinet shall prioritize approving applications in which:

- (a) The employer is located in a child care desert; or
- (b) The employer shall contribute at least thirty-three (33) percent of the eligible child care costs.

Section 5. Continuing Participation. (1) Each approved contract shall remain in place for the approved fiscal year unless the contract is terminated pursuant to Section 7 of this administrative regulation.

(2) An employer with an approved contract in place shall reapply to continue participation each year pursuant to KRS 199.883(10)(a).

Section 6. Payments Rates. (1) To the extent funds are available, the cabinet shall make payments to the child care provider based on the enrollment of each child identified in the DCC-600.

(2) Except as provided in subsection (3) of this section, the state match to the contribution provided by the employer shall be in accordance with the following tiered table of an employee's household income pursuant to KRS 199.885(7):

Employee Household Income Compared to State Median Household Income	State Match Percentage
Equal to or less than 100%	100%
Above 100% through 120%	90%
Above 120% through 140%	80%
Above 140% through 160%	70%
Above 160% through 180%	60%
Above 180%	50%

(3) The state match provided shall not exceed the balance necessary to pay for child care in full.

(4) The state match provided shall remain unchanged for the approved fiscal year unless the contract is terminated pursuant to Section 7 of this administrative regulation.

(5) A child care provider shall not charge a rate for a program participant that is different from that charged to the general public.

Section 7. Termination of Contract. (1) The contract shall be terminated if:

(a) Employment is terminated pursuant KRS 199.887(1)(a);

(b) An employer fails to make the agreed upon contribution towards child care pursuant KRS 199.887(1)(b);

(c) An employee fails to pay remaining child care costs and the child care provider requests the cabinet terminate the contract;

(d) A child care provider ceases participating in the program;

(e) A child care provider no longer participates in the quality rating system established in KRS 199.8943 and 922 KAR 2:270; or

(f) An employer or employee requests the contract be terminated by the cabinet at any time for any reason pursuant KRS 199.887(2)(c).

(2) If employment is terminated, the employer shall notify the child care provider and cabinet within three (3) business days.

(3) If an employer fails to make the agreed upon contribution, the child care provider shall notify the cabinet within five (5) business days.

(4) If a child care provider ceases participation in the program or no longer participates in the quality rating system, the provider shall notify all parties to the agreement immediately.

(5) If an employer or employee requests a contract be terminated by the cabinet, he or she shall notify all parties to the contract and specify the desired termination date that shall occur no less than two (2) weeks from the date of notice.

(6) If a party to the contract fails to meet the notice requirements of this section, reimbursement shall be made in accordance with KRS 199.887.

(7) All parties to a contract shall be financially obligated up to the date of termination of the contract.

(8) The cabinet shall notify all parties of a termination of contract on the DCC-605.

Section 8. Appeals. An employer, employee, or child care provider may request an administrative hearing regarding an eligibility or payment determination ***within thirty (30) days of adverse action from the Office of the Ombudsman and Administrative Review, Quality Advancement Branch, 275 East Main Street, 2 E-O, Frankfort, KY 40621[in accordance with 921 KAR 2:055 or 922 KAR 2:260].***

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-600, Employee Child Care Assistance Partnership Application and Contract", 09/22; and

(b) "DCC-605, Employee Child Care Assistance Partnership Notice of Action", ***01/23[09/22].***

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

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

105 KAR 1:411. Hospital and medical insurance for retired members and Kentucky Retirement Systems Insurance Fund Trust.

RELATES TO: KRS 16.505, 16.576(4), 61.505(1)(g), 61.510, 61.701, 61.702, 78.510, 78.5536, 26 U.S.C. 105(b), 115, 213(d), 42 U.S.C. 1395y(b), Pub.L. 111-148

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.702, 78.5536
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer hospital and medical insurance coverage to recipients (including retired members and some beneficiaries of deceased members), their spouses, and their disabled or dependent children, and require the promulgation of administrative regulations concerning requirements for medical insurance reimbursement programs. This administrative regulation establishes procedures for the administration of the hospital and medical insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement, and forms.

Section 1. Definitions.

(1) "Agency" means:

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

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

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

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

(4) "Dependent child" is defined in KRS 16.505(17) and 78.510(49).

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

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

(7) "MEM" means:

(a) A Medicare eligible member who is retired and reemployed with a participating employer which offers the member a hospital and medical insurance benefit, or by a participating employer which is prevented from offering a hospital and medical benefit to the member as a condition of reemployment under KRS 70.293, 95.022, or 164.952; and

(b) A Medicare eligible member who is retired and whose spouse meets the following criteria:

1. The spouse is also a [retired] member;
2. The spouse is reemployed with a participating employer

which offers the spouse a hospital and medical insurance benefit, or by a participating employer which is prevented from offering a hospital and medical benefit to the spouse as a condition of reemployment under KRS 70.293, 95.022, or 164.952; and

3. The ~~spouse's~~[premium required to provide the spouse with] hospital and medical insurance plan coverage is provided by the[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) "Member" is defined in KRS 16.505(21), 61.510(8), and 78.510(8).

(9) "Monthly contribution rate" means:

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

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

(10) "Premium" means the monthly dollar cost required to provide hospital and medical insurance plan coverage for a recipient, a recipient's spouse, or a disabled or dependent child.

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

(12) "Qualifying event" means a change in life circumstances that meet the agency's requirement for a member to alter an existing hospital and medical insurance plan, or sign up for a new one outside of new or open enrollment when the alteration is consistent with the change; the agency shall provide a list of qualifying events annually to the members.

(13) "Recipient" is defined in KRS 16.505(26), 61.510(27), and 78.510(26).

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

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

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

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

Section 2. Trust Fund. (1) Pursuant to KRS 61.701, fund assets shall be dedicated for use toward health benefits, as provided in KRS 61.702 and 78.5536, and as permitted under 26 U.S.C. 105 and 106 of the United States Internal Revenue Code, to retired recipients and employees of employers participating in the systems. Certain dependents or beneficiaries shall be included, such as qualified beneficiaries as described in 42 U.S.C. 300bb-8(3) of the United States Public Health Service Act.

(2) The boards may adopt a trust agreement and take all action authorized by KRS 61.701(6).

Section 3. Contribution Rates. (1)(a) The boards shall adopt monthly contribution rates as follows:

1. Medicare eligible coverage;
2. Non-Medicare eligible coverage; and
3. MEM coverage.

(b) The boards may choose to adopt a monthly contribution rate for MEM coverage that is separate from the monthly contribution rate the Boards adopts for Medicare and non-Medicare eligible coverage, or may choose to adopt a monthly contribution rate that is the same for Non-Medicare eligible coverage and MEM coverage.

(2) The boards shall adopt a contribution plan for each monthly contribution rate in subsection (1) of this section.

(3) The boards may adopt separate contribution rates for:

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- (a) Tobacco and non-tobacco users, and
- (b) Wellness or wellbeing promise completion and incompleteness.

Section 4. Payments by the Boards. (1) The monthly contribution rate paid by the boards towards premiums for a recipient or eligible spouse or dependent child shall not exceed the monthly contribution rate to which the recipient is entitled under KRS 61.702 and 78.5536.

(2) For a retired member who retired based on reciprocity with any other state-administered retirement system, the boards shall not pay more than a portion of the single monthly contribution rate for the hospital and medical insurance plan chosen by the retired member based on the retired member's service credit with the systems.

(3)(a) A retired member who is not Medicare eligible or is a MEM may cross-reference health insurance coverage with a spouse enrolled in the same hospital and medical insurance plan.

(b) A retired member identified in paragraph (a) of this subsection who has hazardous service and a membership date prior to July 1, 2003 may be able to use any unused portion of the monthly contribution rate the retired member is entitled to receive toward the premium cost attributable to the spouse, if the spouse's portion of the premium is not fully paid by the boards pursuant to KRS 61.702 and 78.5536.

(4) Pursuant to KRS 61.702(4)(d), 61.702(4)(e)5., 78.5536(4)(d), and 78.5536(4)(e)5., funds from the insurance trust fund or the 401(h) accounts provided for in KRS 61.702(3)(b) and 78.5536(3)(b) shall be used to pay a percentage of the monthly contribution rate for family coverage for eligible spouses and dependent children as defined in KRS 16.505(17) and 78.510(49).

(5)(a) Members not eligible for Medicare who began participation in the system on or after July 1, 2003 and have accrued an additional full year of service as a participating employee beyond his or her career threshold may receive an additional five ~~(5)~~ dollar ~~[(5\$)-]~~ contribution toward monthly hospital and medical insurance premiums in accordance with KRS 61.702(4)(e)6.b. and 78.5536(4)(e)6.b.

(b)1. If a member who is eligible for an additional five ~~(5)~~ dollar ~~[(5\$)-]~~ contribution pursuant to paragraph (a) of this subsection has service in multiple systems operated by the agency, each system in which the member participates that meets the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii shall pay a portion of the additional five (5) dollar contribution based on the percentage of the member's service in each system.

2. If a member who is eligible for an additional five (5) dollar contribution pursuant to paragraph (a) of this subsection has service in multiple systems operated by the agency, and not all of the systems in which the member participates meet the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii, only those systems that meet the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii shall pay a portion of the additional five (5) dollar contribution based on the percentage of the member's service in each system.

Section 5. Premiums Paid by Recipient. (1) Any premium amount that is not paid or payable by the insurance trust fund established under KRS 61.701 or a 401(h) account in accordance KRS 61.702 and 78.5536 shall be deducted from the monthly retirement allowance of the recipient.

(2)(a) If the amount of a premium is not fully paid by the insurance trust fund established under KRS 61.701, a 401(h) account, and the recipient's monthly retirement allowance, then the recipient shall pay the balance of the premium monthly by electronic transfer of funds by filing a complete Form 6131, Bank Draft Authorization for Direct Pay Accounts, at the retirement office.

(b) If a complete Form 6131, Bank Draft Authorization for Direct Pay Accounts, is required and is not filed at the retirement office, then the recipient, their spouse, and any disabled or dependent children shall not be enrolled in a hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(c)1. If the electronic transfer of funds based on a complete Form 6131, Bank Draft Authorization for Direct Pay Accounts, on file at the retirement office fails, then the agency shall provide an invoice to the recipient.

2. If a recipient fails to remit the balance of the premium by the date provided on the invoice, then the enrollment of the recipient, their spouse, and any disabled or dependent children in the hospital and medical insurance plan shall be cancelled the month after the last month the recipient paid the premium.

(d) If the hospital and medical insurance plan coverage of a recipient, their spouse, or any disabled or dependent children is cancelled pursuant to this subsection, the recipient shall not be eligible to enroll in a hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536 until the next open enrollment period for hospital and medical insurance plan coverage.

Section 6. Eligibility to Participate in Hospital and Medical Insurance Plans. (1) A person shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 until the person is a recipient of a monthly retirement allowance, except as provided in KRS 16.576(4).

(2) A person who retires under disability retirement shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 until the month the person receives his or her first monthly retirement allowance payment.

(3) A recipient's spouse, disabled child, or dependent child shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 unless the recipient is participating in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536.

(4) An alternate payee shall not be eligible for participation in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536.

Section 7. Participation in a Hospital and Medical Insurance Plan. (1) A recipient, spouse, or disabled or dependent child who is Medicare eligible, except individuals identified in subsection (2) of this section, shall participate in the hospital and medical insurance plan established for Medicare eligible recipients pursuant to KRS 61.702 and 78.5536.

(2) MEMs, and spouses of MEMs and disabled or dependent children of MEMs who are Medicare eligible, shall participate in the group hospital and medical insurance plan established for MEMs pursuant to KRS 61.702(2)(b)3.b. and 78.5536(2)(b)3.b..

(3) A recipient, spouse, or disabled or dependent child who is not Medicare eligible shall participate in a non-Medicare eligible group hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(4) If a recipient, spouse, or disabled or dependent child is eligible for Medicare but the other persons enrolled in a group hospital and medical insurance plan are not, then the recipient, spouse, or disabled or dependent child who is not eligible for Medicare may continue to participate in the non-Medicare eligible group hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(5) Members identified in subsections (1) through (4) of this section may waive enrollment in the hospital and medical insurance plan by filing:

(a) A completed form 6200, KPPA Health Plans for Medicare Eligible Persons, for Medicare eligible recipients, or

(b) A completed form 6200, Retiree Health Insurance Enrollment/Change Form, for MEMs and non-Medicare eligible recipients.

(6) Members identified in subsections (1) through (4) of this section who do not enroll in or waive the hospital and medical insurance plan shall be automatically enrolled in an appropriate default plan in accordance with Section 9 of this administrative regulation.

Section 8. Required Forms. (1) If the Boards use the group hospital and medical insurance provided by the Kentucky Department of Employee Insurance to provide health insurance coverage for its non-Medicare eligible recipients, spouses, disabled or dependent children, and MEMs, then the agency shall provide these recipients and MEMs with the Form 6200, Retiree Health Insurance Enrollment/Change Form, required for enrollment, waiver, or changes to the group hospital and medical insurance plan.

(2) On behalf of the Boards, the agency shall arrange hospital and medical insurance coverage for Medicare eligible recipients, spouses, and disabled or dependent children, except MEMs. The agency shall provide these recipients with the Form 6200, KPPA Health Plans for Medicare Eligible Persons, required for enrollment, waiver, or changes to the hospital and medical insurance plans.

(3) The agency shall provide the Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, for recipients to complete to receive health insurance contributions toward an eligible spouse and dependent children who are between the ages of eighteen (18) and twenty-two (22).

Section 9. Default Plans. (1) The boards shall adopt a default plan for new retired members upon initial enrollment, and for recipients who do not file a complete insurance enrollment form during annual open enrollment, when required.

(2) The Boards shall adopt a default plan for retired members and recipients who are Medicare eligible, and a default plan for retired members and recipients who are non-Medicare eligible and recipients who are subject to 42 U.S.C. 1395y.

Section 10. Initial and Annual Enrollment and Qualifying Events.

(1)(a) The recipient shall file complete insurance enrollment forms as described in Section 8 of this administrative regulation at the retirement office by the last day of the month the initial retirement allowance is paid.

(b) If the recipient fails to file the complete insurance enrollment forms as described in Section 8 of this administrative regulation at the retirement office by the last day of the month prior to the month the initial retirement allowance is paid, the retired member shall be automatically enrolled in the appropriate default plan adopted by the Boards as described in Section 9 of this administrative regulation.

(c) If the recipient identified in paragraph (a) of this subsection files the completed insurance enrollment forms as described in Section 8 of this administrative regulation by the last day of the month in which he or she receives his or her initial retirement allowance payment, the retired member will be enrolled in the selection indicated on the form effective the first day of the following month.

(2) If a recipient has a qualifying event, the recipient shall file the complete insurance enrollment forms as described in subsections (1) or (2) of Section 8 of this administrative regulation at the retirement office within the time period prescribed by state and federal law and the health insurance plan documents.

(3)(a) The recipient shall file the complete insurance enrollment forms as described in Section 8 of this administrative regulation at the retirement office by the last day of the month of the annual open enrollment period when enrollment is mandatory.

(b) If the recipient fails to file the complete insurance enrollment forms as described in Section 8 of this administrative regulation at the retirement office by the last day of the month of the annual open enrollment period when enrollment is mandatory, the recipient shall be automatically enrolled in the default plan adopted by the boards as described in Section 9 of this administrative regulation.[-]

(c) When enrollment is not mandatory, the recipient, and the recipient's spouse and disabled or dependent children as applicable, will remain in the same plan with the same level of coverage as the previous plan year.

(4)(a)1. In order to receive health insurance contributions toward an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22), the recipient shall file a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, by November 30th of the calendar year prior to the calendar year in which coverage is effective, regardless of whether enrollment is mandatory or not mandatory.

2. If a qualifying event results in a new eligible spouse or dependent child, in order to receive health insurance contributions toward the eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22), the recipient shall file a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions.

(b)1. If the recipient does not file a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, in accordance with paragraph (a) of this subsection,

health insurance contributions shall not be paid toward the premiums for an eligible spouse or dependent children unless a complete Form 6256 is filed at the retirement office in the calendar year in which coverage is in effect.

2. If the recipient files a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, between December 1 and December 31 of the calendar year prior to the calendar year in which coverage is effective, then health insurance contributions may be paid for an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22) as of January of the calendar year in which coverage is effective. If the health insurance contributions are not paid for an eligible spouse or a dependent child as of January of the calendar year in which coverage is effective, then health insurance contributions shall be paid starting in February of the calendar year in which coverage is effective and the recipient shall also be reimbursed for the January health insurance contributions for the eligible spouse or dependent child.

3. If the recipient files a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, prior to December 31 of the calendar year in which coverage is in effect, health insurance contributions shall be paid toward premiums for an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22) in any month in the calendar year in which coverage is effective after the Form 6256 is filed at the retirement office. If a complete Form 6256 is filed at the retirement office prior to December 31 of the calendar year in which coverage is in effect, the recipient shall also be reimbursed for up to three (3) months of health insurance contributions for the eligible spouse and dependent children.

Section 11. Changes in Spouse and Disabled or Dependent Child Eligibility. (1) Recipients, spouses, and disabled or dependent children shall notify the agency of any change that may affect the eligibility of the spouse, disabled child, or dependent child to enroll in a hospital and medical insurance plan offered by the agency or the eligibility of the spouse or dependent child to have all or a portion of their premiums paid for by the boards in accordance with KRS 61.702 and 78.5536.

(2)(a) The recipient shall be required to repay any premiums that were paid by the boards after the spouse or dependent child ceased to be eligible to have all or portion of their premiums paid in accordance with KRS 61.702 and 78.5536.

(b) If the agency is unable to recover from the recipient the full amount of premiums paid in accordance with paragraph (a) of this subsection, the agency may withhold any remaining amount from the recipient's monthly retirement allowance payment.

(c) If the agency is not able to recover the full amount of the premiums paid in accordance with paragraphs (a) and (b) of this subsection, the agency may recover any remaining amount from the spouse or dependent child.

Section 12. Medical Insurance Reimbursement Plan for Recipients Living Outside of Kentucky. (1) A recipient may participate in the medical insurance reimbursement plan pursuant to KRS 61.702(6) and 78.5536(6) if the recipient lives in an area outside of the coverage of the group hospital and medical insurance plans offered by the agency.

(2) The medical insurance reimbursement plan shall be available in any month the recipient:

(a) Resides outside of Kentucky,

(b) Is not eligible for the same level of hospital and medical benefits as recipients who resided inside of Kentucky with the same Medicare status, and

(c) Has paid hospital and medical insurance plan premiums capable of being reimbursed.

(3) Recipients eligible to participate in the medical insurance reimbursement plan shall be reimbursed up to the applicable monthly contribution rate for premiums paid for hospital and medical coverage less any premiums paid by the recipient's employer.

(4)(a) In order to receive the applicable reimbursement, an eligible recipient shall file a Form 6240, Application for Out of State Reimbursement for Medical Insurance, and as applicable Form 6256, Designation of Spouse and/or Dependent Child for Health

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Insurance Contributions, at the retirement office with one (1) or more of the following as proof of coverage and payment of premiums for hospital and medical insurance that covers the entire time period for the requested reimbursement:

1. Form 6241, Employer Certification of Health Insurance for Health Insurance Reimbursement Plan, completed by the employer;

2. Form 6242, Insurance Agency/Company Certification of Health Insurance for Health Insurance Reimbursement Plan, completed by the insurance agency or company;

3. A signed statement from the employer listing individual(s) covered, dates of hospital and medical insurance coverage, amount of premiums deducted from wages, and the cost of the single coverage; or

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

- (b)1. If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

2. The agency may verify the recipient's eligibility for reimbursement for hospital and medical insurance by requesting verification of coverage and payments directly from the insurance company indicated on the Form 6240, Application for Out of State Reimbursement for Medical Insurance.

- (5) An eligible recipient may file for reimbursement quarterly each calendar year in accordance with subsection (4) of this section.

- (6) If the eligible recipient files for reimbursement in accordance with subsection (4) of this section, the eligible recipient shall be reimbursed on the following schedule:

- (a) In February, when all documentation is filed at the retirement office by January 20;

- (b) In May, when all documentation is filed at the retirement office by April 20;

- (c) In August, when all documentation is filed at the retirement office by July 20; or

- (d) In November, when all documentation is filed at the retirement office by October 20.

- (7) The agency shall not reimburse an eligible recipient for premiums for a calendar year in which the eligible recipient failed to file a request for reimbursement in accordance with subsection (4) of this section by March 20 of the following calendar year.

- (8)(a) If a recipient receives a payment from the agency that does not qualify as a premium reimbursement, the recipient shall return the payment to the agency at the retirement office.

- (b) If the recipient fails to return the payment, the agency may withhold the payment from the recipient's monthly retirement allowance payment.

Section 13. Dollar Contribution Medical Insurance Reimbursement Plan for Recipients Hired on or after July 1, 2003.

- (1) Beginning January 1, 2023, a recipient with a hire date on or after July 1, 2003 may participate in the hospital and medical insurance dollar contribution reimbursement plan pursuant to KRS 61.702(6) and 78.5536(6), if the recipient chooses to purchase a hospital and medical insurance plan not provided by the systems.

- (2) Recipients eligible to participate in the dollar contribution medical insurance reimbursement plan shall be reimbursed up to the applicable monthly contribution rate for premiums paid for hospital and medical coverage less any premiums paid by the recipient's employer.

- (3)(a) In order to receive the applicable reimbursement, an eligible recipient shall file a Form 6280, Application for Dollar Contribution Reimbursement for Medical Insurance, at the retirement office with one (1) or more of the following as proof of payment of premiums for hospital and medical insurance coverage that covers the entire time period for the requested reimbursement:

1. Form 6281, Employer Certification of Health Insurance for Dollar Contribution Reimbursement Plan, completed by the employer;

2. Form 6282, Insurance Agency/Company Certification of Health Insurance for Dollar Contribution Reimbursement Plan, completed by the insurance agency or company;

3. A signed statement from the employer listing individual(s) covered, dates of hospital and medical insurance coverage, amount of premiums deducted from wages, and the cost of the single coverage; or

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

- (b)1. If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

2. The agency may verify the recipient's eligibility for reimbursement for hospital and medical insurance by requesting verification of coverage and payments directly from the insurance company indicated on the Form 6280, Application for Dollar Contribution Reimbursement for Medical Insurance.

- (4) An eligible recipient may file for reimbursement in accordance with subsection (3) of this section, quarterly each calendar year.

- (5) If the eligible recipient files a request for reimbursement in accordance with subsection (3) of this section, the eligible recipient shall be reimbursed on the following schedule:

- (a) In February, when all documentation is filed at the retirement office by January 20;

- (b) In May, when all documentation is filed at the retirement office by April 20;

- (c) In August, when all documentation is filed at the retirement office by July 20; or

- (d) In November, when all documentation is filed at the retirement office by October 20.

- (6) The agency shall not reimburse an eligible recipient for premiums for a calendar year in which the eligible recipient failed to file a request for reimbursement in accordance with subsection (3) of this section by March 20 of the following calendar year.

- (7)(a) If a recipient receives a payment from the agency that does not qualify as a premium reimbursement, the recipient shall return the payment to the agency at the retirement office.

- (b) If the recipient fails to return the payment, the agency may withhold the payment from the recipient's monthly retirement allowance payment.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form 6131, "Bank Draft Authorization for Direct Pay Accounts", April 2021;

- (b) Form 6200, "KPPA Health Plans for Medicare Eligible Persons", September 2022;

- (c) Form 6200 "Retiree Health Insurance Enrollment/Change Form", September 2022;

- (d) Form 6256, "[]Designation of Spouse and/or Dependent Child for Health Insurance Contributions", September 2022;

- (e) Form 6240, "Application for Out of State Reimbursement for Medical Insurance," September 2022;

- (f) Form 6241, "Employer Certification of Health Insurance for Health Insurance Reimbursement Plan", September 2022;

- (g) Form 6242, "Insurance Agency/Company Certification of Health Insurance for Health Insurance Reimbursement Plan", September 2022;

- (h) Form 6280, "Application for Dollar Contribution Reimbursement for Medical Insurance", September 2022;

- (i) Form 6281, "Employer Certification of Health Insurance for Dollar Contribution Reimbursement Plan", September 2022;

- (j) Form 6282, "Insurance Agency/Company Certification of Health Insurance for Dollar Contribution Reimbursement Plan", September 2022;

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

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DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: January 4, 2023

FILED WITH LRC: January 5, 2023 at 12:50 p.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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the administration of the health and hospital insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement, and forms.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for the administration of the health and hospital insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, and forms. In addition, this administrative regulation satisfies the requirements in KRS 61.702(6) and 78.5536(6) to promulgate an administrative regulation to establish medical insurance reimbursement programs for members who began participating in the system on or after July 1, 2003 and purchase their own hospital and medical insurance, and for retirees who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer hospital and medical insurance coverage to recipients (including retired members and some beneficiaries of deceased members), their spouses, and their disabled or dependent children, this administrative regulation conforms to the authorizing statute by establishing procedures for the administration of the health and hospital insurance benefits by the systems. Additionally, this administrative regulation satisfies the requirements in KRS 61.702(6) and 78.5536(6) to promulgate an administrative regulation to establish medical insurance reimbursement programs for members who began participating in the system on or after July 1, 2003 and purchase their own hospital and medical insurance, and for retirees who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures for the administration of the health and hospital insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement, and forms in accordance with KRS 61.702 and 78.5536.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation, not an amendment to an existing regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation, not an amendment to an existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation, not an amendment to an existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation, not an amendment to an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for three (3) public pensions systems: Kentucky Public Pensions Authority (the public pension systems are the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System). Potentially, as many as 401,043 individuals who are members of the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, and the spouses, disabled or dependent children, and beneficiaries of these members.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires the Boards of Trustees responsible for the governance of the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System to adopt monthly contribution rates that comply with KRS 61.702 and 78.5536. The Kentucky Public Pensions Authority must administer the health and hospital insurance plans as well as the reimbursement programs required by KRS 61.702 and 78.5536.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation for the Kentucky Public Pensions Authority and the systems for which it provides day-to-day operations should be negligible, as this administrative regulation is already being administered as written.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Public Pensions Authority and the systems for which it provides day-to-day operations will have greater assurance that the statutory requirements for administering the health and hospital insurance benefits and reimbursement programs are met.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All regulated entities are subject to the same processes and procedures.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Public Pensions Authority and the three systems for which it provides day-to-day operations (the County Employees Retirement System, the Kentucky Employees Retirement System, and the State Police Retirement System).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g), 61.702, 78.5536.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not significantly affect revenues of a state or local government agency.

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

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

(c) How much will it cost to administer this program for the first year? The cost to Kentucky Public Pensions Authority to administer this administrative regulation should be negligible because this administrative regulation is already being administered as written.

(d) How much will it cost to administer this program for subsequent years? The cost to Kentucky Public Pensions Authority to administer this administrative regulation should be negligible because this administrative regulation is already being administered as written.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: The fiscal impact of this administrative regulation should be negligible because this administrative regulation is already being administered as written.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

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

(c) How much will it cost the regulated entities for the first year? Unknown.

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

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

Cost Savings (+/-): None.

Expenditures (+/-): Unknown.

Other Explanation: The fiscal impact of this administrative regulation should be negligible because this administrative regulation is already being administered as written.

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

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](#).

**GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(Amendment)**

201 KAR 1:190. Examination sections, applications, and procedures.

RELATES TO: KRS 325.270, 325.261

STATUTORY AUTHORITY: KRS 325.240(2), 325.270(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the board to promulgate administrative regulations to administer KRS Chapter 325. KRS 325.270(1) and (2) require the board to authorize examinations for individuals seeking to become certified public accountants and authorize the board to, by administrative regulation, promulgate standards and fees governing all examination policies and procedures. KRS 325.261(4) requires passage of an examination prior to a person becoming licensed as a certified public accountant and for the board to determine the subjects to be included on the examination. This administrative regulation establishes the subjects, also referred to as sections, to be included on the examination, and the procedures and fees associated with the administration of the examination.

Section 1. Definitions.

(1) "Accounting course" means the subject matter contained in the course description or catalog issued by a college or university includes auditing, tax, accounting standards, principles, or processes.

(2) "AICPA" means the American Institute of Certified Public Accountants, the entity that prepares and grades the Uniform CPA Examination.

(3) "Business-related subjects" means courses that contain in the course prefix or title, an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.

(4) "CLEP credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the College Level Examination Program.

(5) "DSST credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the Dantes Subject Standardized Testing program.

(6) "Life assessment course" means a course in which a student earns credit at a university or college based upon the student's personal life and work experiences.

(7) "Major or concentration in accounting" means a minimum of thirty-nine (39) semester hours in business-related subjects, of which twenty-seven (27) semester hours consist of accounting courses.

(8) "NASBA" means the National Association of State Boards of Accountancy, which operates a nationwide computer data bank for candidates applying to sit for the Uniform CPA Examination.

(9) "Official transcript" means an official document issued by a college or university that:

(a) States the college course work completed, degrees awarded, and the date the degree was awarded; and

(b) Contains an authorizing signature or seal.

(10) "Prometric or its successor" means the testing service in charge of administering the Uniform CPA Examination.

(11) "Quarter hour" means 66/100ths of a semester hour.

(12) "Uniform CPA Examination" means the computer-based version of the licensure examination administered by the AICPA.

Section 2. Examination. The board shall use the Uniform CPA Examination prepared by the AICPA as the examination every candidate seeking to receive a license shall sit for and obtain a passing grade for licensure.

Section 3. Grading Procedures and Acquiring Credit for Obtaining a Passing Score.

(1) An exam candidate shall receive a passing score on all sections of the examination to be eligible to receive a license.

(2) The passing score shall be seventy-five (75) on each section.

(3) An exam candidate shall not sit for the same section of the examination until after the candidate receives a score for that section.

(4) If an exam candidate initially receives a passing score on a section of the Uniform CPA Examination, the candidate shall have an eighteen (18) month[s] period in which to obtain a passing score on the remaining sections of the examination. The eighteen (18) month period shall begin on the date that the first passing score is released by NASBA and concludes on the date the candidate sits for the final test section passed, regardless of when the score for that final test section is released~~following the last day of the month of the administration of that examination section to obtain a passing score on the remaining sections of the examination~~.

(a) Failure to receive a passing score on the remaining sections of the examination within the eighteen (18) months shall result in the expiration of the initial passing score, but not other sections passed during that eighteen (18) month period.

(b) All sections of the examination shall be passed during an eighteen (18) month time period for the candidate to be considered to have passed the examination.

(5) One (1) request to extend the time to retain passing scores beyond the time restrictions contained in this section shall be granted to a candidate. The extension shall expire the last day of the calendar quarter from the date the candidate sat for the exam section. Additional extensions may be granted by the board, for good cause, upon a showing of circumstances beyond the candidate's control.

Section 4. Initial Examination Applicants.

(1) Initial examination application process.

(a) An initial examination applicant shall submit a complete, notarized Application for the Uniform CPA Examination.

(b) The applicant shall:

1. Indicate if the applicant has been convicted, plead guilty, entered an Alford plea, or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation, and if so, submit with the application:

a. A copy of the judgment or sentence of conviction;

b. A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application, or a similar document from the out-of-state agency where the conviction was entered; and

c. A letter of explanation;

2. Indicate if the applicant has been denied admission to the Uniform CPA Examination, and if so, attach to the application a letter explaining the reason, date, and jurisdiction of the denial;

3. Indicate if the applicant has had disciplinary action taken against any professional license, and if so, attach to the application:

a. A letter indicating the jurisdiction and date of action;

b. A copy of all records associated with the action; and

c. An explanation of the circumstances; and

4. Submit an official transcript from each college or university that evidences completion of the educational requirements established in KRS 325.261, which includes a major or concentration in accounting. Course credit hours that are based upon a quarter hour system shall be converted to semester hours.

(c) An applicant requesting reasonable accommodations in testing due to a disability shall complete an Exam Applicant Special Accommodations Request Form supported by documentation no more than three (3) years old from a qualified examiner that shall include:

1. A diagnosis of the disability; and

2. Recommendation for the specific accommodations.

(d) The board shall not be responsible for the costs associated with obtaining the required documentation, but shall be responsible for the costs of reasonable accommodations that are provided to the applicant.

(e) The applicant shall submit a fee with the Application for the Uniform CPA Examination in the amount of:

1. Thirty (30) dollars for the application; and

2. Thirty (30) dollars for each section of the examination the applicant intends to take.

(f) Fees shall be nonrefundable and payment shall be in the form of a check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be incomplete and returned.

(2) Educational requirements.

(a) Educational requirements shall be completed at:

1. A college or university within the United States that was accredited by one (1) of the following accrediting associations when the degree was granted:

a. Middle States Association of Colleges and Schools;

b. North Central Association of Colleges and Schools;

c. New England Association of Schools and Colleges;

d. Northwest Association of Schools, Colleges and Universities;

e. Southern Association of Colleges and Schools;

f. Western Association of Schools and Colleges; or

2. The board shall accept course credit hours awarded by a college or university after January 1, 2020 that is not accredited by one (1) of the associations listed in paragraph (a) 1. of this subsection, if those course credit hours receive credit from a college or university accredited by one (1) of the associations specified in paragraph (a) 1. of this subsection following the enrollment of the student in the accredited college or university. This exception does not apply to the course credits listed in subsection (3) of this section; or

3. A postsecondary educational institution outside the United States with course credits certified by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc., or NASBA.

(b) The certification required by paragraph (a)3. of this subsection shall indicate:

1. That the foreign degree is equivalent to a baccalaureate or master's degree earned in an accredited United States college or university as established in KRS 325.261 and this administrative regulation;

2. That the applicant had a major or concentration in accounting;

3. The title of all courses completed by the applicant outside of the United States; and

4. The amount of credit awarded to the applicant for each course.

(c) The board may consult with a Kentucky state-funded, four (4) year institution of higher education for assistance in evaluating the hours earned and the accreditation of an educational institution under this subsection.

(3)(a) An applicant shall not receive credit toward satisfying the education requirements in KRS 325.261 and this administrative regulation for any credit hours awarded through a life assessment course or for DSST credit.

(b) An applicant who received CLEP credit, or credit hours from a college or university for completing an internship or co-op program may use a maximum of six (6) of those hours from each program for a total of twelve (12) hours solely toward satisfying the 150 hour requirement in KRS 325.261(5).

Section 5.(1)(a) The executive director of the board shall review all applications.

(b) If the executive director determines the application satisfies the requirements of this administrative regulation, the application shall be approved.

(c) If the executive director refuses to approve the application, it shall be submitted to the board for the board's review and consideration at its next regularly scheduled meeting.

(2) Applications approved by the executive director or the board shall be entered into the data bank operated by NASBA. NASBA

shall then issue a payment coupon to the applicant that specifies the fees to be paid to NASBA, the AICPA, and Prometric to sit for the exam.

(3) Following payment of the required fees, NASBA shall issue a notice to schedule to the candidate, which states the candidate is eligible to contact Prometric or its successor to schedule a date and time to sit for the examination.

(4)(a) A candidate shall have six (6) months from the date of issuance by NASBA of a notice to schedule to sit for the sections of the examination approved by the executive director or the board.

(b) The notice to schedule shall expire when the candidate has sat for the sections approved by the executive director or the board, or at the conclusion of the six (6) month period, whichever comes first.

(c) A notice to schedule that is not expired may be extended if a candidate describes in writing that the extension is necessary due to an emergency or a serious illness that will prohibit the candidate from sitting for a section of the exam prior to the conclusion of the six (6) month time period.

(d) To obtain approval to sit for additional sections of the examination, a candidate shall submit a reexam application as established in Section 9[40] of this administrative regulation.

(5)(a) The exam candidate shall pay all costs associated with sitting for the Uniform CPA Examination charged by NASBA, Prometric or its successor, and the AICPA.

(b) The costs shall be paid no later than ninety (90) days following the date of issuance of the payment coupon from NASBA.

(c) Failure to pay these fees prior to the end of the ninety (90) day time period shall result in the cancellation of the payment coupon and require the candidate to submit a reexam application accompanied by the appropriate fees.

Section 6. Examination Rules of Conduct.

(1) An examination candidate shall present two (2) forms of current and valid identification at the Prometric or its successor examination center. One (1) of these forms of identification shall be a state driver's license, a picture identification card issued by a state motor vehicle licensing agency, or a passport.

(2) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(3) Failure to bring this identification to the examination center shall result in the candidate being prohibited from sitting for the examination.

(4) An examination candidate shall comply with all directives of the staff at the Prometric or its successor testing center and the rules of conduct in effect at the testing center.

(5) An examination candidate shall not:

(a) Use written materials or mechanical aids inside or outside the examination room during the course of the examination;

(b) Communicate with any person, other than the testing center staff, inside or outside the examination room, during the course of the examination;

(c) Copy answers or allows his or her answers to be copied;

(d) Substitute an individual in his or her place;

(e) Disclose in any manner any information concerning the examination questions or content;

(f) Falsify or misrepresent educational credentials or other information required for admission to the examination; or

(g) Fail to follow written or announced examination administration procedures.

Section 7. Examination Misconduct Penalties. An examination candidate who violates any of the provisions of this administrative regulation may be prohibited from:

(1) Further participation in that particular examination section;

(2) Receiving grades after sitting for any examination; or

(3) Sitting for subsequent examinations.

Section 8. An exam applicant shall immediately notify the board of a change in his or her mailing address.

Section 9. Reexam Applicants.

(1) Upon request, the board shall mail a Reexam Application for the Uniform CPA Exam to every candidate who fails to pass the

Uniform CPA Examination.

(2) The reexam application shall be mailed to the most recent address provided by the candidate.

(3) The board shall not be responsible if the reexam application is not delivered by the United States Postal Service.

(4)(a) The applicant shall:

1. Indicate since the approval of the applicant's initial application if the applicant has been convicted, plead guilty, entered an Alford plea, or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation, and if so, submit with the reexam application:

a. A copy of the judgment or sentence of conviction;

b. A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application, or a similar document from the out of state agency where the conviction was entered; and

c. A letter of explanation; and

2. If not previously submitted, and if the applicant is requesting reasonable accommodations in testing due to a disability, complete an Exam Applicant Special Accommodations Request Form supported by documentation no more than three (3) years old from a qualified examiner that shall include:

a. A diagnosis of the disability; and

b. Recommendation for the specific accommodations.

(b) The reexam application shall be received in the board's office prior to the reexam candidate being considered eligible to sit for any section of the exam.

(5)(a) The candidate shall return the completed reexam application with the reexam fee.

(b) The reexam fee shall be thirty (30) dollars per section. The reexam fee shall be nonrefundable and paid by check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be incomplete and returned.

(6) A reexam candidate who fails to comply with the requirements of this section shall not be allowed to sit for reexam.

(7) The procedures and policies in Section 5 of this administrative regulation shall be applicable to a reexam application.

(8) The reexam candidate shall comply with the requirements of Sections 6 through 8 of this administrative regulation.

Section 10. Examination Grades. Kentucky exam candidates will receive their scores via the NASBA Web site: Nasba.org.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for the Uniform CPA Examination", October 2014;

(b) "Reexam Application for the Uniform CPA Examination", 2014; and

(c) "Exam Applicant Special Accommodations Request Form", October 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID R. PRICE, President

APPROVED BY AGENCY: January 5, 2023

FILED WITH LRC: January 12, 2023 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2023 at 1:00 p.m., EST at the office of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed

administrative regulation. Written comments shall be accepted until the end of the day (11:59 p.m.) March 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: Joseph P. Donohue, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281, email joep.donohue@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes the elements and procedures related to the uniform examination required for licensure as a certified public accountant ("CPA").

(b) The necessity of this administrative regulation: To insure that CPA candidates are aware of important information related to the content, procedures, and administration of the Uniform CPA Examination ("Exam").

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.270(1) and (2) require the board to authorize examinations for individuals seeking to become certified public accountants, and permit the board to, by administrative regulation, adopt examination policies and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation notifies the public, CPA candidates, and potential CPA candidates of the content, procedures, and administration of the uniform examination required for licensure as a CPA.

(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 light of changes coming to the Uniform CPA Exam in January 2024, the amendment addresses the running of the time frame in which the four sections of the Exam must be successfully passed by CPA candidates. Once a candidate has successfully passed one section of the Exam, all jurisdictions provide candidates with a rolling eighteen (18) month period in which to successfully pass the remaining three sections. In Kentucky, the beginning of this time period is linked to the date the first passed Exam section was taken by the candidate, rather than the date the passing score on that section was released. In an effort to prevent candidates from being unduly harmed by score delays and a decrease in testing availability that will accompany the administration of the revised Exam in 2024, this amendment will push back the start of the eighteen (18) month credit period to the date the first passing score is released to the candidate.

(b) The necessity of the amendment to this administrative regulation: The amendment is required to limit the additional burden imposed upon Kentucky CPA candidates by delays in score releases a decrease in testing availability, which will accompany the administration of the revised Exam in 2024.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authority provided to the board by KRS 325.270(1) and (2) to adopt regulations governing the administration of the Uniform CPA Examination.

(d) How the amendment will assist in the effective administration of the statutes: The update provided by the amendment improves the statutes' administration by limiting unintended burdens to Kentucky CPA candidates that will accompany upcoming changes to the Uniform CPA Exam.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the Kentucky candidates taking the Uniform CPA Exam. The number of candidates taking the Exam through the Kentucky Board has averaged approximately 750 people per year over the last four years.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The candidate will avoid expiration of an initially passed section of the Uniform CPA Exam by passing the three remaining sections within the required eighteen (18) month period.

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

(a) Initially: No increase in current expenses.

(b) On a continuing basis: No increase in expenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be needed.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no additional fee imposed by this proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applied since the standards set forth in this regulation govern all Kentucky CPA candidates.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Accountancy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.240(2), KRS 325.270(1) and (2), and KRS 325.261(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.

(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 increase in current costs is expected.

(d) How much will it cost to administer this program for subsequent years? No increase in expenses for future years is anticipated.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: No financial impact is expected to occur as a result of the proposed amendments to this 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 cost savings are anticipated.

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

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

(d) How much will it cost the regulated entities for subsequent

years? No additional costs are anticipated.

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: No financial impact is expected to occur as a result of the proposed amendments to this 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.010 (13)] The proposed amendment will not have a major economic impact.

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 216B.400(2), (4), 314.011(14), 314.103, 314.142, 314.475, 403.707, 421.500-421.575, 431.600-431.660

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(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 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definitions. (1) "Adolescent" means a child who has reached the onset of physiologically normal puberty.

(2) "Pediatric" means a child who has not reached the age of eighteen (18).

(3) "SANE-A/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of an adult or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.

(4) "SANE course" means the SANE-A/A course and the SANE-P/A course.

(5) "SANE-P/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a pediatric or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application.

(1) On the form Application for Initial or Continued SANE Course Approval, the applicant for approval of a SANE-A/A course or a SANE-P/A course shall submit evidence to the board of completion of the requirements for course approval that consists of the following documentation:

(a) Position description and qualifications of the nurse administrator of the SANE course;

(b) Qualifications and description of the faculty;

(c) Course syllabus;

(d) Course completion requirements;

(e) Tentative course presentation dates;

(f) Records maintenance policy; and

(g) Copy of certificate of course completion form.

(2) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.475, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning,

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development, implementation, and evaluation of the SANE course.

(3) Faculty qualifications. Faculty qualifications shall be consistent with the instructor qualifications set out in Sexual Assault Nurse Examiner (SANE) Education Guidelines. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided as part of the application.

(4) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements, and fees;

(b) Course outcomes, which shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner;

(c) Unit objectives for an individual, which shall be stated in operational or behavioral terms with supportive content identified;

(d) Content as specified in subsection (6) of this section, which shall be described in detailed outline format with corresponding lesson plans and time frame, and which shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes;

(e) Teaching methods with the activities of both instructor and learner specified in relation to the content outline, and which shall be congruent with stated course objectives and content, and reflect the application of adult learning principles;

(f) Evaluation methods, which shall be clearly defined for evaluating the learner's achievement of course outcomes, and which shall include a process for annual course evaluation by students, providers, faculty, and administration; and

(g) Instructional or reference materials required, which shall be identified.

(5) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

(6) The SANE-A/A course and the SANE-P/A course content shall be consistent with Sexual Assault Nurse Examiner (SANE) Education Guidelines.

(a) In addition to that content, the SANE-A/A course and the SANE-P/A course shall include:

1. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying;

2. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate;

3. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process; and

4. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2) and (4); and

5. The victim's bill of rights, KRS 421.500 through 421.575.

(b) In addition to the requirements of paragraph (a) of this subsection, the SANE-P/A course shall include:

1. Principles of child development;

2. Techniques for acute evaluations;

3. An overview of Kentucky Child Advocacy Centers; and

4. An overview of KRS 431.600 through 431.660 which shall include information about multidisciplinary teams and their functions, model protocols approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse, and the role of peer review in child sexual abuse cases.

Section 3. Contact hour credit for continuing education. (1) The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date, and site of the course; and

(b) Participant roster, containing at a minimum the name, Social

Security number, and license number for each participant.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant;

(b) Title of course, date, and location;

(c) Provider's name; and

(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course.

(1) An application for continued approval of a SANE course shall be submitted on the Application for Initial or Continued SANE Course Approval at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the Application for Initial or Continued SANE Course Approval.

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the procedure established in this section shall be followed.

(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential.

(1) The applicant for the SANE-A/A or SANE-P/A credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.475;

(b) Have completed a board approved SANE educational course or a comparable course, which the board or its designee shall:

1. Evaluate to determine its course comparability; and

2. Advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed.

(c) Complete the Sexual Assault Nurse Examiner Application for Credential;

(d) Pay the fee established in 201 KAR 20:240;

(e) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);

(f) Use the FBI Applicant Fingerprint Card;

(g) Pay any required fee to the KSP and the FBI;

(h) Complete the criminal record check within six (6) months of the date of the application;

(i) Provide a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(j) Provide a letter of explanation that addresses each conviction, if applicable.

(2) Upon completion of the application process, the board shall issue the appropriate SANE credential for a period ending October 31.

(3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(e) of this section and any conviction is addressed by the board.

Section 8. Renewal. (1) To renew the SANE-P/A or the SANE-A/A credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner or

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forensic nursing within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the Annual Credential Renewal Application: SANE Credential with RN in Kentucky or Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky), as applicable, and payment of the fee established in 201 KAR 20:240, the appropriate SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, and the individual wants the credential reinstated, the individual shall apply to reinstate the credential by:

(a) Submitting the Sexual Assault Nurse Examiner Application for Credential;

(b) Paying the fee established in 201 KAR 20:240;

(c) Submitting evidence of earning the continuing education requirement referenced in Section 8(1) of this administrative regulation for the number of registered nurse licensure periods since the SANE credential lapsed;

(d) Providing a criminal record check by the KSP and FBI;

(e) Using the FBI Applicant Fingerprint Card;

(f) Paying any required fee to the KSP and the FBI;

(g) Completing the criminal record check within six (6) months of the date of the application;

(h) Providing a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(i) Providing a letter of explanation that addresses each conviction, if applicable.

(2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.

(3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to approval by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly scheduled meeting, shall consider the comments.

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

(a) "Application for Initial or Continued SANE Course Approval", 10/2018;

(b) "Sexual Assault Nurse Examiner Application for Credential", 10/2022[2018];

(c) "Annual Credential Renewal Application: SANE Credential with RN in Kentucky", 02/2021;

(d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 02/2021; and

(e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2018, International Association of Forensic Nurses.

(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 40222-5172, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also

available on the board's website at <https://kbn.ky.gov/General/Pages/Document-Library.aspx>.

(3) The material in subsection 1(e) of this section may be obtained at https://cdn.ymaws.com/www.forensicnurses.org/resource/resmgr/education/2018_sane_edguidelines.pdf.

AUDRIA DENKER, President

APPROVED BY AGENCY: December 15, 2022

FILED WITH LRC: January 11, 2023 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, KY 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by March 15, 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 March 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, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, KY 40222 (502) 338-2851, 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 Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for Sexual Assault Nurse Examiner programs and credential.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.142.

(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 standards.

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

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

(a) How the amendment will change this existing administrative regulation: It updates the Application for SANE credential.

(b) The necessity of the amendment to this administrative regulation: Amendment is needed to conform the application to the online application process.

(c) How the amendment conforms to the content of the authorizing statutes: By updating the forms.

(d) How the amendment will assist in the effective administration of the statutes: By updating the forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for renewal of SANE credential. Currently, there are approximately 350 nurses who hold an active Kentucky SANE credential.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will use the updated 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 beyond the application fee.

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

entities identified in question (3): The application will be processed 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? The changes will apply equally, there is no tiering.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

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.

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:472. Initial approval for dialysis technician training programs.

RELATES TO: KRS 314.035, 314.131(1), 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians ~~and includes establishing required standards for training programs~~. This administrative regulation establishes the requirements for dialysis technician training programs.

Section 1. (1) A training program that prepares an individual to become a credentialed dialysis technician shall be approved by the board of nursing.

(2)(a) A dialysis technician training program that seeks to be approved by the board shall file an Application for Dialysis Technician Training Program Approval and pay a fee of \$2,000; and

(b) The dialysis technician training program shall include with its application:

1. A copy of the approval of certification for the dialysis technician training program's governing organization to operate a renal dialysis center from the Centers for Medicare and Medicaid Services (CMS); and

2. The most recent site visit or survey report ~~and if applicable,~~ a statement of deficiencies ~~and plan of correction, if applicable.~~

Section 2. (1) A training program that prepares an individual to become a dialysis technician which is located in this state shall meet the standards established by this administrative regulation.

(2) A training program that is located out of state shall not be subject to the approval process specified in this administrative regulation. However, an applicant who has completed an out of state training program may apply for a dialysis technician credential pursuant to 201 KAR 20:476, Section 1(1)(b).

Section 3. Renal Dialysis Organization. (1)(a) An organization which is licensed to operate a renal dialysis center pursuant to 902 KAR 20:018 shall assume full legal responsibility for the overall conduct of the dialysis technician training program.

(b) The organization shall appoint a program administrator who shall be administratively responsible for the oversight of the dialysis technician training program on a twelve (12) month basis.

(c) The organization shall submit to the board in writing the name of the registered nurse who has been designated to assume the administrative duties for the program, the date the person will assume the duties of program administrator, and a copy of his or her curriculum vitae.

(d) The board shall be notified in writing of a change, vacancy, or pending vacancy, in the position of the program administrator within thirty (30) days of the dialysis technician training program's awareness of the change, vacancy, or pending vacancy.

(2) The organization shall develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each dialysis technician training program location.

(3) A system of official records and reports essential to the operation of the dialysis technician training program shall be maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system of records shall include:

(a) A policy that all records shall be maintained for at least five (5) years;

(b) Provider name, dates of program offerings, and sites of the training program;

(c) Admission materials, grades received, and clinical performance records;

(d) Trainee roster that includes name, date of birth, social security number, and program completion date;

- (e) Faculty records including:
 1. Validation of current licensures or credentials; and
 2. Performance evaluation for faculty employed more than one (1) year.
- (f) Systematic plan of evaluation;
- (g) Graduates of the dialysis technician training program; and
- (h) Administrative records and reports from accrediting agencies.

Section 4. Program Administrator and Assistant Program Administrator. (1) The program administrator shall have the following qualifications:

(a)1. A minimum of a master's degree from an accredited college or university;

2. A program administrator who currently does not hold a master's degree from an accredited college or university shall be required to obtain the degree within five (5) years of the effective date of this administrative regulation. The program administrator shall provide documentation that shows active and steady progression towards the degree;~~and~~

3. The board may waive ~~this requirement~~~~[the master's degree requirements in this paragraph]~~ upon a showing that the proposed program administrator is otherwise qualified~~[-such as possessing a minimum of eight (8) years of experience in dialysis patient care and administration]~~.

(b) A minimum of the equivalent of one (1) year of full time teaching experience;

(c) At least two (2) years of experience in the care of a patient with end stage renal disease or who receives dialysis care;

(d) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation. A program administrator without previous program administrator experience shall have a mentor assigned by the renal dialysis center and an educational development plan implemented. The assigned mentor shall have documented experience in program administration;

(e) An active and unencumbered Kentucky registered nurse license, temporary work permit, or multistate privilege; and

(f) Current knowledge of requirements pertaining to the dialysis technician training program and credential as established in 201 KAR 20:472, 474, 476, and 478.

(2) A dialysis technician training program may have an assistant program administrator at each location. An assistant program administrator shall have the following qualifications:

(a)~~[1-]~~ A minimum of a baccalaureate degree in nursing;

~~[2. An assistant program administrator who currently does not hold a baccalaureate degree in nursing from an accredited college or university shall obtain the degree within five (5) years of the effective date of this administrative regulation. The assistant program administrator shall provide documentation that shows active and steady progression towards the degree; and~~

~~3. The board may waive the baccalaureate degree requirements in this paragraph upon a showing that the proposed assistant program administrator is otherwise qualified, such as possessing a minimum of five (5) years of experience in dialysis patient care and administration;]~~

(b) A minimum of the equivalent of one (1) year of full time teaching experience;

(c) At least two (2) years of experience in the care of a patient with end stage renal disease or who receives dialysis care;

(d) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation. A program administrator without previous program administrator experience shall have a mentor assigned by the renal dialysis center and an educational development plan implemented. The assigned mentor shall have documented experience in program administration;

(e) An active and unencumbered Kentucky registered nurse license, temporary work permit, or multistate privilege; and

(f) Current knowledge of requirements pertaining to the dialysis technician training program and credential as established in 201 KAR 20:472, 474, 476, and 478.

Section 5. Faculty. (1) The faculty shall be adequate in number

to implement the curriculum as determined by program outcomes, course objectives, the level of the student, and the educational technology utilized.

(2) The faculty shall be approved by the program administrator and shall include didactic and clinical faculty.

(3) The name, title, and credential identifying the education and professional qualifications of each didactic and clinical faculty shall be provided to the board within thirty (30) days of hire. With each change in faculty, whether a new hire or a termination or retirement, an updated list of current faculty shall be provided to the board.

(4) Didactic faculty.

(a) Didactic faculty shall consist of multidisciplinary members with expertise in the subject matter.

(b) Didactic faculty shall possess:

1. A minimum of a baccalaureate degree from an accredited college or university; or

2. An associate degree from an accredited school of nursing.

(c) Nursing didactic faculty shall possess:

1. a. A current state license as a registered nurse; or

b. A privilege to practice in the state; and

2. A minimum of one (1) year of experience with dialysis patient care.

(d) Didactic faculty shall document a minimum of two (2) years full time or equivalent experience in their profession or discipline.

(e) Didactic faculty shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.

(f) Didactic faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.

(5) Clinical faculty and preceptors.

(a) Clinical faculty or a preceptor shall hold a current, unencumbered Kentucky nursing license, temporary work permit, or multistate privilege or a current, unencumbered Kentucky dialysis technician credential.

(b) Clinical faculty or a preceptor shall have evidence of clinical competencies in end stage renal disease and dialysis care.

(c) A preceptor who is a dialysis technician shall hold certification by one (1) of the ~~[following]~~ dialysis technician certification organizations:

1. The Board of Nephrology Examiners Nursing Technology (BONENT); or

2. The Nephrology Nursing Certification Commission (NNCC);
or

~~3. The National Association of Nephrology Technicians/Technologists (NANT)].~~

(6) There shall be documentation that the clinical faculty have been oriented to the course, program outcomes, student learning objectives, evaluation methods used by the faculty, and documented role expectations.

Section 6. Standards for Training. (1) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the training program shall be clearly defined in writing by the faculty and shall be consistent with those of the Renal Dialysis Center.

(b) The program outcomes shall be consistent with those required by the Centers for Medicare and Medicaid Services and the dialysis technician certification organizations listed in Section 5(5)(c) of this administrative regulation~~[subsection (3)(b) of this section]~~.

(c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(d) The training program shall include a minimum of 200 hours of didactic course work and 200 hours of direct patient contact. The didactic course work and direct patient contact shall be at least ten (10) weeks. The training program shall maintain a log of clinical hours for each student. It ~~shall~~may also include an internship of at least 160 hours. The internship shall begin after two (2) unsuccessful attempts to pass the final examination. The internship shall be completed prior to a third final examination attempt. The internship

shall be under the supervision of a registered nurse and shall include a preceptor.

(2) The curricula of the program shall minimally include the following topics:

(a) The legal and ethical aspects of practice including:

1. The history of dialysis;
2. The state and federal regulations governing dialysis including 201 KAR 20:478, 902 KAR 20:018, 907 KAR 1:400, and 42 C.F.R. 494.140;

3. The resources available for pursuing personal and career development;

4. The principles and legal aspects of documentation, communication, and patient rights;

5. The roles of the dialysis technician and other multidisciplinary team members;

6. The principles related to patient safety; and

7. The role of the board of nursing.

(b) Anatomy and physiology applicable to renal function including:

1. Renal anatomy;

2. Organs of the urinary system and components of the nephron; and

3. Functions of the normal kidney.

(c) Diseases of the kidney including:

1. Causes and complications of acute renal failure; and

2. Causes and complications of chronic renal failure.

(d) The psychosocial and physical needs of the end stage renal disease (ESRD) patient and family including:

1. The impact on family and social systems;

2. Coping mechanisms utilized;

3. Rehabilitative needs;

4. Community resources available;

5. All aspects of renal diet and fluid restrictions; and

6. Educational needs of patients receiving dialysis including the role of the technician and resources available.

(e) The principles of pharmacology as related to ESRD including:

1. Commonly used medications and their side effects;

2. The principles of medication administration;

3. The indications, dosage, action, and adverse effects of heparin, local anesthetics, and normal saline; and

4. The accurate administration of heparin, local anesthetics, and normal saline.

(f) Aseptic techniques and established infection control practices including:

1. Dialysis precautions as issued by the United States Centers for Disease Control; and

2. Proper hand washing technique.

(g) Principles of dialysis and dialysis treatment including:

1. Definitions and terminology;

2. Principles of osmosis, diffusion, ultrafiltration, and fluid dynamic;

3. The structure and function of various types of circulatory access sites and devices;

4. The indications, advantages, disadvantages, and complications of internal arteriovenous (A/V) fistulas and A/V grafts, and central venous access devices;

5. The various types of dialyzers;

6. The benefits, risks, and precautions associated with dialyzer reuse;

7. The purpose and concept of water treatment;

8. Knowledge and ability to manage and operate dialysis equipment;

9. Knowledge and ability to appropriately monitor and collect data throughout the course of treatment;

10. The etiology, signs and symptoms, prevention, intervention and treatment, and options for the most common complications;

11. The knowledge and ability to safely initiate and discontinue treatment; and

12. Routine laboratory tests, values, and collection techniques.

(h) Other treatment modalities for ESRD including:

1. Renal transplantation; and

2. Home dialysis options.

(3) Implementation of the curriculum.

(a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.

(b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program and shall prepare the student to meet the qualifications for certification as established by the dialysis technician certification organizations listed in Section 5(5)(c) of this administrative regulation~~[Board of Nephrology Examiners Nursing Technology (BONENT), the Nephrology Nursing Certification Commission (NNCC), or the National Association of Nephrology Technicians/Technologists (NANT)]~~.

(c) The dialysis technician training program shall have written measurable program outcomes that reflect the role of the dialysis technician graduate upon completion of the program.

(d) The dialysis technician training program shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(e) A course syllabus shall be developed to include outcomes, planned instruction, learning activities, and method of evaluation.

(f) The teaching methods and activities of both instructor and learner shall be specified. The activities shall be congruent with stated objectives, and content shall reflect adult learning principles.

(g) A copy of the course syllabus shall be on file in the dialysis technician training program office and shall be available to the board upon request.

(h) Any proposed substantive changes to the dialysis technician training program syllabus shall be submitted to the board in writing at least two (2) months prior to implementation and shall not be implemented without approval from the board. A substantive change is any change in the philosophy, mission, or outcomes that results in a reorganization or reconceptualization of the entire curriculum.

(i) Training may be offered through distance learning technologies. Training offered through the use of distance learning technologies shall be comparable to the training offered in a campus based program.

(4) The curriculum shall require that the student hold a current Basic Life Support (BLS) certificate.

Section 7. Students in Dialysis Technician Training Programs.

(1) Preadmission requirements shall be stated and published in all publications utilized by the dialysis technician training program including recruitment materials.

(a) Program information communicated by the program shall be accurate, complete, consistent, and publicly available.

(b) Participation shall be made available for students in the development, implementation, and evaluation of the program.

(2) Written dialysis technician training program student policies shall be accurate, clear, and consistently applied.

(3) Upon admission to the training program, each student shall be advised in electronic or written format of policies pertaining to:

(a) Prerequisites for admission, readmission, or dismissal;

(b) Evaluation methods that include the grading system;

(c) Any fees or expenses associated with the training program and refund policies;

(d) Health requirements and other standards as required by the renal dialysis center;

(e) Student responsibilities;

(f) A plan for emergency care while in the clinical setting; and

(g) Program completion requirements.

(4) A student enrolled in a training program is exempt from the credentialing requirement while enrolled. The student shall use the title dialysis technician (DT) trainee.

Section 8. Program Completion Requirements. (1) Requirements for successful completion of the dialysis technician training program shall be clearly specified.

(2) The requirements shall provide evidence of clinical competency through the use of evaluation methods and tools that measure the progression of the student's cognitive, affective, and psychomotor achievement of clinical outcomes based on published rubrics and sound rationale.

(3) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(4) A final examination shall be administered only during the final forty (40) hours of the first 400 hours of the training program.

(a) The final examination shall be mapped to program outcomes and blueprinted to the examination content of one (1) of the certification organizations as listed in Section (5)(c)[Section 6(3)(b)] of this administrative regulation.

(b) Following successful completion of the final examination, the student may begin the internship.

(5) The individual who successfully completes the training program, including the internship, shall receive a certificate of completion that documents the following:

(a) Name of individual;

(b) Title of training program, date of completion, and location;

(c) Provider's name;

(d) The program code number issued by the board; and

(e) Name and signature of the program administrator or the assistant program administrator.

(6) The program shall submit the List of Dialysis Technician Training Program Graduates within three (3) working days of the program completion date.

Section 9. Incorporation by Reference. (1) The following materials are[material-is] incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval", 4/2021; and

(b) "List of Dialysis Technician Training Program Graduates", 4/2021.

(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 40222-5172, 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/legalopinions/Pages/laws.aspx>].

AUDRIA DENKER, President

APPROVED BY AGENCY: December 15, 2022

FILED WITH LRC: January 11, 2023 at 12:13 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by March 15, 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 March 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, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300 Louisville, Kentucky 40222, (502) 338-2851, 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 Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for dialysis technician ("DT") training programs.

(b) The necessity of this administrative regulation: This regulation is necessary pursuant to KRS 314.137(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of KRS 314.137(2) by establishing standards for DT training programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of KRS 314.021 and KRS

314.137(2), by establishing standards for DT training 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: The amendment updates the list of national dialysis credentialing agencies.

(b) The necessity of the amendment to this administrative regulation: To remove reference to credentialing agency that no longer exists.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation conforms to the content of the authorizing statutes, KRS 314.131(1) and KRS 314.137(2), by establishing appropriate standards for DT training programs.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will assist in the effective administration of KRS 314.021, KRS 314.131(1) and KRS 314.137(2).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 700 dialysis technicians with a current and active Kentucky DT credential and seven DT training programs that are located and licensed in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will avoid confusion in regulations and simplify future amendments.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 fees or funding increase is required.

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky 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 and KRS 314.137.

(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 amendments do not generate additional revenue.

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

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

year? None.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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.

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement.

RELATES TO: KRS 314.035, 314.103, 314.131(1), 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians[, and includes establishing credentialing requirements]. This administrative regulation establishes the requirements for credentialing dialysis technicians, initially, by renewal, and by reinstatement.

Section 1. Requirements for Initial Dialysis Technician Credential.

(1) An individual who wants to be credentialed as a dialysis technician (DT) in order to engage in dialysis care shall:

(a) File with the board the Application for Dialysis Technician Credential;

(b) Pay the fee established in Section 4 of this administrative regulation;

(c) Have completed a board approved DT training program;

(d) Submit the Checklist for Dialysis Technician Competency Validation; and

(e) Submit a criminal record check pursuant to subsection (3) of this section and meet the requirements of that subsection.

(2)(a) In addition to the requirements of subsection (1)(a), (b), (d), and (e) of this section, an applicant who has completed an out of state DT training program that is not approved by the board and who does not hold certification from one (1) of the certification organizations listed in subsection (4)(b) of this section shall submit to the board the training program's curriculum and evidence of

completion of the training program.

1. The board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as established in 201 KAR 20:472.

2. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of 201 KAR 20:472, Section 6.

(b) In addition to the requirements of subsection (1)(a), (b), (d), and (e) of this section, an applicant who has completed an out of state DT training program that is not approved by the board and who holds certification from one (1) of the certification organizations listed in subsection (4)(b) of this section shall complete an educational module that covers the information contained in 201 KAR 20:472, Section 6(2)(a)2.

(3) (a) The criminal record check shall have been completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card. The applicant shall pay any fee required by the KSP and the FBI.

(b) The applicant shall provide to the board a certified or attested copy of the court record of any misdemeanor or felony conviction in any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors that are older than five (5) years. The applicant shall provide to the board a letter of explanation that addresses each conviction.

(c) A felony or misdemeanor conviction shall be reviewed by the board to determine if the application shall be processed with no further action. If further action is deemed[~~found as~~] necessary, the application shall not be processed unless the applicant has entered into an agreed order with the board. If the parties are unable to agree on terms and conditions for an agreed order, an administrative hearing shall be held.

(4)(a) After the applicant has met the requirements of subsection (1)(a), (b), (c), (d), and (e) of this section, the board shall issue a provisional credential to the applicant. The applicant shall be referred to as a DT Applicant. The DT Applicant shall practice dialysis care under the supervision of a registered nurse, an advanced practice registered nurse, physician, or a physician's assistant.

(b) The provisional credential shall expire eighteen (18) months from the date the provisional credential is issued[~~application is received~~] by the board. During that time, the applicant shall obtain certification from one (1) of the [following]-certification organizations listed in 201 KAR 20:472 Section 5(5)(c).[:

1. ~~The Board of Nephrology Examiners Nursing Technology (BONENT);~~

2. ~~The Nephrology Nursing Certification Commission (NNCC);~~ or

3. ~~The National Association of Nephrology Technicians/Technologists (NANT).]~~

(c) If the applicant fails to obtain certification as set forth above[~~established in paragraph (b) of this subsection~~], the application shall lapse. The applicant may reapply by completing the training program again and meeting the requirements of subsection (1)(a), (b), (c), (d), and (e) of this section.[~~However, a provisional credential shall not be issued.~~]

(d) A DT application shall be issued a provisional credential under this section only one (1) time, and it shall expire after eighteen (18) months.

(5) The DT Applicant shall only practice dialysis care as a DT Applicant until:

(a) The credential is issued;

(b) The application is denied by the board; or

(c) The application lapses.

(6) (a) Upon approval of the Application for Dialysis Technician Credential pursuant to subsection (1) of this section and the applicant's successful certification pursuant to subsection (4) of this section, the board shall issue the DT credential.

(b) If the credential is issued prior to May 1, it shall expire on October 31 of the current credentialing period as defined in 201 KAR 20:085, Section 2.

(c) If the credential is issued on or after May 1, it shall expire on October 31 of the succeeding credentialing period as defined in 201

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KAR 20:085, Section 2.

(d) After the issuance of the initial DT credential, the credentialing period shall be as defined in 201 KAR 20:085, Section 2.

Section 2. Renewal.

(1) To be eligible for renewal of the credential, the DT shall submit prior to the expiration date of the credential:

(a) The Application for Renewal of the Dialysis Technician Credential~~[Renewal]~~;

(b) The fee established in Section 4 of this administrative regulation; and

(c) Evidence of current certification by one (1) of the organizations listed in Section 1(4)(b) of this administrative regulation.

(2) If the application form is submitted online~~—at www.kn.ky.gov~~, it shall be received by the board prior to midnight on the last day of the credentialing period.

(3) If a paper application is submitted, it shall be received no later than the last day of the credentialing period. If the application is not received by the board until after the last day of the credentialing period, the application shall have been postmarked at least seven (7) days prior to the last day of the credentialing period.

(4) All information needed to determine that an applicant meets the requirements for renewal of credential shall be received by the board no later than the last day of the credentialing period. If the information is not received by the board until after the last day of the credentialing period, in order to be considered by the board for the current renewal, the information shall have been postmarked at least seven (7) days prior to the last day of the credentialing period.

(5) Failure to comply with these requirements shall result in the credential lapsing. A person whose credential has lapsed shall comply with Section 3 of this administrative regulation to reinstate the credential.

Section 3. Reinstatement.

(1) If the DT credential has lapsed for less than twelve (12) months, an individual may reinstate the credential as follows:

(a) Submit the Application for Dialysis Technician Credential;

(b) Provide evidence of certification from a DT certification organization listed in Section 1(4)(b) of this administrative regulation;

(c) Pay the fee established in Section 4 of this administrative regulation; and

(d) Provide a criminal record check by the Department of the Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) and comply with the requirements of subsection (2) of this section.

(2)(a) The criminal record check shall have been completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card. The applicant shall pay any fee required by the KSP and the FBI.

(b) The applicant shall provide to the board a certified or attested copy of the court record of any misdemeanor or felony conviction in any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors that are older than five (5) years. The applicant shall provide to the board a letter of explanation that addresses each conviction.

(c) A felony or misdemeanor conviction shall be reviewed by the board to determine if the application shall be processed with no further action. If further action is ~~deemed~~~~[found-as]~~ necessary, the application shall not be processed unless the applicant has entered into an agreed order with the board. If the parties are unable to agree on terms and conditions for an agreed order, an administrative hearing shall be held.

(3) If the DT credential has lapsed for more than twelve (12) months, an individual may reinstate the credential by one (1) of the following methods.

(a) If the DT has not worked as a DT in another state, the individual shall:

1. Complete a DT training program approved by the board;

2. After completion of the training program, submit an Application for Dialysis Technician Credential;

3. The supervising registered nurse shall complete and submit the Checklist for Dialysis Technician Competency Validation to the board;

4. Pay the fee established by Section 4 of this administrative regulation;

5. Provide a criminal record check by the KSP and the FBI and comply with subsection (2) of this section; and

~~[6. Provide evidence of certification from a]~~

(b) After the applicant has met the requirements of this subsection (3)(a) of this section and provides evidence of a current certification from one (1) of the certification organizations listed in 201 KAR 20:472 Section 5(5)(c), the applicant's credential shall be reinstated.

(c) If the applicant for reinstatement under this subsection does not hold a current certification from one (1) of the organizations listed in 201 KAR 20:472 Section 5(5)(c), the applicant shall be referred to as a DT Applicant and the board may issue a provisional credential to the DT Applicant, if:

1. The DT Applicant previously held a dialysis technician credential; and

2. Provides verification that the DT Applicant has previously held a certification from one (1) of the organizations listed in 201 KAR 20:472 Section 5(5)(c).

(d) A provisional credential issued under subsection 3(c) of this section shall expire eighteen (18) months from the date provisional credential is issued by the board. During that time, the applicant shall obtain recertification from one (1) of the [DT] certification organizations listed in 201 KAR 20:472 Section 5(5)(c)[Section 1(4)(b) of this administrative regulation].

(e) A DT Applicant shall be issued a provisional credential only one (1) time under the subsection 3(c) of this section.

(f) The DT Applicant shall practice dialysis care under the supervision of a registered nurse, an advanced practice registered nurse, a physician, or a physician's assistant.

(g)[(b)] If the DT has worked as a DT in another state, the individual shall:

1. Submit an Application for Dialysis Technician Credential;

2. Submit verification of working as a DT in another state;

3. Pay the fee established by Section 4 of this administrative regulation;

4. Provide a criminal record check by the KSP and the FBI and comply with subsection (2) of this section; and

5. Provide evidence of certification from a DT certification organization listed in Section 1(4)(b) of this administrative regulation.

(4) An application for Dialysis Technician Credential submitted for reinstatement shall be valid for one (1) year from the date of receipt by the board.

(5) Upon approval of the application, the credential shall be reinstated.

Section 4. Fees.

(1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be thirty-five (35) dollars.

(3) The credential reinstatement fee shall be \$100.

(4) A fee of ten (10) dollars shall be charged for issuing a duplicate of the credential.

(5) A check submitted to the board for payment of a fee that is returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.

(6) A fee of ten (10) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(7) A fee of twenty-five (25) dollars shall be charged for a name change and the issuance of a new credential.

(8) All fees shall be nonrefundable.

Section 5. Material Incorporated by Reference.

(1) The following materials are~~[material is]~~ incorporated by reference:

(a) "Application for Dialysis Technician Credential", 4/2021;

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(b) "Application for Renewal of Dialysis Technician Credential [Renewal]", 4/2021; and

(c) "Checklist for Dialysis Technician Competency Validation", 4/2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m. 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/legalopinions/Pages/laws.aspx>].

AUDRIA DENKER, President

APPROVED BY AGENCY: December 15, 2022

FILED WITH LRC: January 11, 2023 at 12:13 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by March 15, 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 March 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, Kentucky Board of Nursing 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, 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 Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for credentialing a Dialysis Technicians (DT), initially, by renewal, and by reinstatement.

(b) The necessity of this administrative regulation: This regulation is necessary pursuant to KRS 314.137.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes requirements for credentialing DTs, initially, by renewal, and by reinstatement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of KRS 314.021 and KRS 314.137, by establishing requirements for credentialing DTs, initially, by renewal, and by reinstatement.

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

(a) How the amendment will change this existing administrative regulation: The amendments provide a process for initial DTs to receive one provisional credential until receiving national credentialing agencies within 18 months. The credentialing agencies are incorporated by reference to 201 KAR 20:472, instead of being listed within 201 KAR 20:476. Provides for a path to credentialing for DTs who's credential has lapsed for more than one year.

(b) The necessity of the amendment to this administrative regulation: To allow a path for DTs to who have been formally credentialed, but are unable to provide proof of credentialing due to the passage of time, and limits this path to one attempt.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation conforms to the content of the authorizing statutes, KRS 314.131(1) and KRS 314.137, by establishing appropriate standards for DT credentialing, in order to protect and safeguard the health and safety of the citizens of the Commonwealth of Kentucky.

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

314.021 and 314.137, by establishing standards for DT credentialing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In 2022, the Board issued approximately 130 DT credentials.

(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: Initial DT applicants will be provisionally licensed and have 18 months to obtain national credentialing. A DT applicant for reinstatement who's credential has lapsed for longer than one year will receive a provisional credential for 18 months, if they provide proof or verification of national credentialing. The provisional credential in both instances will only be provided once.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): DT applicants for reinstatement who have lapsed for longer than one year will have a path receiving a provisional credential if they are unable to provide proof of the prior credential due to unforeseen circumstances.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? No tiering is applied.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky 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 and 314.137.

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

(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 additional revenue will be generated.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the

expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. 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)] This administrative regulation will not have a major economic impact.

**GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)**

201 KAR 20:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.

RELATES TO: KRS 314.021, 314.035, 314.089, 314.091, 314.103, 314.137, 314.991

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians ~~and includes establishing provisions for discipline and further regulating as necessary~~. This administrative regulation establishes the scope of practice and disciplinary procedures for dialysis technicians.

Section 1. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse, an advanced practice registered nurse, a physician, or a physician's assistant:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

(b) Preparation and access of central venous catheters, if the dialysis technician has six (6) months experience that includes training and skills validation regarding central venous catheters;

~~(c)(b)~~ Initiating, delivering, or discontinuing dialysis care;

~~(d)(e)~~ Administration of the following medications only:

1. Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units;

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician; and

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse;

~~(e)(d)~~ Assistance to the registered nurse in data collection;

~~(f)(e)~~ Obtaining a blood specimen via a dialysis line or a peripheral access site;

~~(g)(f)~~ Responding to complications that arise in conjunction with dialysis care; and

~~(h)(g)~~ Performance of other acts as delegated by the registered

nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is determined~~found~~ by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

(b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters, except as provided in Section 1(1)(b) of this administrative regulation; and

(c) The administration of blood and blood products.

Section 2. Discipline of a Dialysis Technician. (1) The board shall have the authority to~~may~~ discipline a dialysis technician (DT) or a dialysis technician applicant (DTA) for:

(a) Failure to safely and competently perform the duties of a DT or DTA as established in this administrative regulation;

(b) Practicing beyond the scope of practice as established in this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Use, or impairment as a consequence of use, of alcohol or drugs while on duty as a dialysis technician, dialysis technician trainee, or dialysis technician applicant;

(g) Possession or use of a Schedule I controlled substance;

(h) Personal misuse or misappropriation for use of others of any drug placed in the custody of the DT or DTA for administration;

(i) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(j) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(k) Practicing without filing an Application for Dialysis Technician Credential~~, as incorporated by reference in 201 KAR 20:476,~~ or without holding a dialysis technician credential;

(l) Abuse of a patient;

(m) Theft of facility or patient property;

(n) Having disciplinary action on a professional or business license;

(o) Violating any lawful order or directive previously entered by the board;

(p) Violating any applicable requirement of KRS Chapter 314 or 201 KAR Chapter 20;

(q) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; or

(r) Having violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

(2) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure established in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the Application for Dialysis Technician Credential~~, as incorporated by reference in 201 KAR 20:476~~.

(3) The board shall follow the procedures established in and have the authority established in KRS 314.091, 201 KAR 20:161, and 201 KAR 20:162 for management and resolution of complaints filed against a dialysis technician.

(4) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to \$10,000.

Section 3. Miscellaneous Requirements. (1) [A]Any person credentialed by the board as a dialysis technician shall maintain a current mailing address and email address with the board and immediately notify the board in writing of a change of mailing address or email address.

(2)(a) Holding a credential shall constitute consent by the dialysis technician to service of notices or orders of the board. Notices and orders shall be sent to the mailing address on file with the board.

(b) Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3) Any[A] dialysis technician credentialed by the board shall, within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction.

(4) Any[A] dialysis technician credentialed by the board shall, within ninety (90) days of entry of a sanction specified in this subsection, notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction:

(a) Is surrendered or terminated under threat of disciplinary action;

(b) Is refused, limited, suspended, or revoked; or

(c) If renewal is denied.

(5) If the board has reasonable cause to believe that any DT or DTA is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it shall require the person to submit to a substance use disorder evaluation or a mental or physical examination by a board approved practitioner.

(a) Holding a credential shall constitute:

1. Consent by the dialysis technician to a substance use disorder evaluation, mental examination, or physical examination if directed in writing by the board. The direction to submit to an evaluation or examination shall contain the basis for the board's concern that the technician is unable to practice safely and effectively; and

2. Waiver of objections to the admissibility of the examining practitioner's testimony or examination reports on the grounds of privileged communication.

(b) The dialysis technician shall bear the cost of substance use disorder evaluation, mental examination, or physical examination ordered by the board.

(c) Upon failure of the dialysis technician to submit to a substance use disorder evaluation, mental examination, or physical examination ordered by the board, unless due to circumstances beyond the person's control, the board ~~shall~~[may] initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(d) If a substance use disorder evaluation, mental examination, or physical examination pursuant to this subsection results in a finding that indicates that the dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, the dialysis technician shall be subject to disciplinary procedures as established in this administrative regulation.

(6) Due process procedures, including appeal, pertaining to this administrative regulation shall be conducted in accordance with KRS Chapter 13B.

AUDRIA DENKER, President

APPROVED BY AGENCY: December 15, 2022

FILED WITH LRC: January 11, 2023 at 12:13 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by March 15, 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 March 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, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, 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 Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope of practice and disciplinary procedures for Dialysis Technicians (DTs).

(b) The necessity of this administrative regulation: This regulation is necessary pursuant to KRS 314.137.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of KRS 314.137 by regulating scope of practice, discipline, and miscellaneous requirements applicable to DTs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of KRS 314.021 and KRS 314.137, by regulating scope of practice, discipline, and miscellaneous requirements applicable to DTs.

(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 provides that DTs may prepare and access of central venous catheters, if they have six months training and experience regarding central venous catheters;

(b) The necessity of the amendment to this administrative regulation: To clarify the DT scope of practice.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation conforms to the content of the authorizing statutes, KRS 314.131(1) and KRS 314.137.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will assist in the effective administration of KRS 314.021 and KRS 314.137, by amending scope of practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 700 dialysis technicians with a current and active Kentucky DT credential and seven DT training programs that are located and licensed in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The DT training programs will need to validate six-months training for DTs engaged in preparing and accessing central venous catheters.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The DTs with the appropriate experience and training will have an expanded scope of practice to facilitate dialysis treatment care.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 required.

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

(9) TIERING: Is tiering applied? Tiering is not applied.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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 and KRS 314.137.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:144. Fall wild turkey hunting.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.305, 150.360, 150.390, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)

authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate [bag] limits and methods of take, and to make such requirements apply to a limited area. KRS 150.390(1) requires that wild turkeys shall not be taken in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR. This administrative regulation establishes seasons, [bag] limits, and methods of take, hunter requirements, and special area restrictions for fall wild turkey hunting.

Section 1. Definitions. (1) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.

(2) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Statewide Wild Turkey Season Dates. Except as established in 301 KAR 2:111, a person shall only take wild turkey[turkeys] during the seasons established in subsections (1) through (3) of this section:

(1) Archery season shall be the first Saturday in September through the third Monday in January;

(2) Crossbow season shall be:

(a) From October 1 through the end of the third full weekend in October; and

(b) From the second Saturday in November through December 31; and

(3) Firearm season shall be:

(a) For seven (7) consecutive days beginning the fourth Saturday in October; and

(b) For seven (7) consecutive days beginning the first Saturday in December.

Section 3. Legal Equipment. (1) A person shall only use legal weapons and ammunition as established in 301 KAR 2:140.

(2) Fall archery season. Archery equipment may be used.

(3) Fall crossbow season. Crossbows and archery equipment may be used.

(4) Fall firearm season. Archery equipment, crossbows, and firearms may be used.

Section 4. Fall Wild Turkey Bag Limits. A person shall take no more than:

(1) Two (2) wild turkeys statewide, of which only:

(a) One (1) shall have a visible beard at least three (3) inches long; and

(b) One (1) shall have no visible beard or a beard less than three (3) inches long.

[(1) A person shall not take more than four (4) wild turkeys, no more than two (2) of which shall be taken with a firearm.]

(2) One (1) wild turkey per day[Only one (1) of the turkeys taken pursuant to subsection (1) of this section shall have a visible beard at least three (3) inches long].

[(3) A person shall not harvest more than one (1) wild turkey per day.]

Section 5. Hunter Restrictions. (1) Dogs may be used to aid in taking wild turkey[s] during any fall season.

(2) A person may take a wild turkey from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(3) A person hunting wild turkey[turkeys] in the fall shall comply with all license, permit, and check-in requirements established in 301 KAR 2:140.

(4) A person shall not take a wild turkey within 600 feet of a baited area, as defined by 301 KAR 2:140, except that this prohibition is not applicable:

(a) To bona fide agricultural practices; and

(b) Across property boundaries.

Section 6. Wildlife Management Areas. Except as established in subsections (1) through (6) of this section, Wildlife Management Areas shall be open to fall wild turkey hunting pursuant to this administrative regulation and 301 KAR 2:140.

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(1) Ballard Wildlife Management Area. A person shall not hunt wild turkey[s] during the fall firearm, crossbow, or archery seasons.

(2) Barren River Wildlife Management Area. On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person:

(a) Shall not hunt during the fall firearm season with a breech-loading firearm;

(b) May use a muzzleloading shotgun or crossbow during the fall firearm season; and

(c) May use a crossbow during the fall archery season.

(3) Higginson-Henry Wildlife Management Area. A person shall not use a firearm while turkey hunting.

(4) Pioneer Weapons Area. A person may use a crossbow during the fall archery turkey season.

(5) Main block of Robinson Forest. A person shall not hunt wild turkey[turkeys] during the fall firearm, crossbow, or archery seasons[season] except a person participating in a department-authorized hunt.

(6) Swan Lake Unit of Boatwright Wildlife Management Area. A person shall not hunt wild turkey[turkeys] during the fall firearm, crossbow, or archery seasons[season].

RICH STORM, Commissioner

APPROVED BY AGENCY: January 12, 2023

FILED WITH LRC: January 12, 2023 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 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 March 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 Affairs, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (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 regulation establishes season dates, shooting hours, and other requirements for fall wild turkey hunting in Kentucky.

(b) The necessity of this administrative regulation: To regulate fall wild turkey hunting for the effective management of wild turkeys in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons and limits and methods of taking wildlife, including wild turkeys. KRS 150.390(1) prohibits a person from taking, pursuing, or molesting a wild turkey in any manner contrary to the provisions of Chapter 150 or its administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining the seasons and limits and methods of taking wild turkeys in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment adjusts limits on taking wild turkeys during fall hunting seasons, including the reduction in bag limit and the addition of a distance-from-bait hunting requirement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enact changes and clarifications to fall turkey hunting regulations.

(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: All hunters that pursue wild turkeys during fall hunting seasons will be affected by this regulatory amendment. In 2020, there were roughly 48,000 fall turkey hunters in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who hunt wild turkeys must comply with the individual requirements for hunting seasons for turkeys, which includes the amended limits to the number of turkeys that may be taken during fall seasons and the new limit on proximity of hunting to baited areas.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for resident adults to turkey hunt is either \$57 (\$30 Fall Turkey Permit plus \$27 Annual Hunting License), \$72 (\$30 Fall Turkey Permit plus \$42 Annual Combination Hunting/Fishing License), \$95 (Sportsman's License), or \$12 (Senior/Disabled Sportsman's License). The cost for resident youth to turkey hunt is either \$16 (\$10 Youth Turkey Permit plus \$6 Annual Youth Hunting License) or \$30 (Youth Sportsman's License). The cost for nonresident adults is \$235 (\$85 Fall Turkey Permit plus \$150 Annual Hunting License). The cost for nonresident youth is \$25 (\$15 Youth Turkey Permit plus \$10 Annual Youth Hunting License).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunting opportunity will be decreased to ensure a sustainable turkey population for the future.

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

(a) Initially: There will be a small administrative cost to the department to implement this regulation.

(b) On a continuing basis: There will be a small cost to the department 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 a fee 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 nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not used because all persons who hunt wild turkeys in fall are required to abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 150.390(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? For the 2021 fall

turkey season, the total amount of revenue generated from the sale of 186,665 licenses and permits that conferred the fall turkey hunting privilege was approximately \$8,600,000. When the number of licenses and permits sold are corrected to only account for the estimated percentage of eligible license holders who actually fall turkey hunted, revenue would be approximately \$2,000,000. The amount of revenue generated by this administrative regulation will decrease if non-resident license/permit sales decline due to the reduction in bag limit.

(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 amount of revenue generated by this administrative regulation for subsequent years is unknown but will likely be less than in 2021.

(c) How much will it cost to administer this program for the first year? There will be a small administrative 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 a small administrative cost incurred in subsequent years.

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

Revenues (+/-): - because of reduced limit on take of turkeys.

Expenditures (+/-): None because no change in expenditures.

Other Explanation: None.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None. This administrative regulation does not amend fees nor does it reduce the cost burden to fall turkey hunters. These amendments will allow for less fall turkey hunting opportunity at the same cost as before.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None. This administrative regulation does not amend fees nor does it reduce the cost burden to fall turkey hunters. These amendments will allow for less fall turkey hunting opportunity at the same cost as before.

(c) How much will it cost the regulated entities for the first year? The cost of a fall turkey permit or license types that confer the same privileges will remain the same. For a resident adult hunter, that cost is either \$57, \$72, or \$95. For a non-resident adult hunter, that cost is \$235. For a resident youth that cost is either \$16 or \$30. For a non-resident youth that cost is \$25.

(d) How much will it cost the regulated entities for subsequent years? Each year, the cost will remain the same under the current regulations.

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

Cost Savings (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This amendment will not result in any form of major economic impact as the license and permit fees associated with this regulation have not changed and the possible decline in revenue with fewer non-resident licenses and permits will be slight relative to overall agency revenues.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 2:300. Black bear seasons and requirements.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. This administrative regulation establishes bear hunting and chasing seasons, bear hunting areas, legal methods of take, and permitting, checking, and recording requirements.

Section 1. Definitions.

(1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Bear" means the species *Ursus americanus*.

(6) "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.

(7) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to harvest one (1) black bear of either sex.

(8) "Bear Zone 1" means Bell, Harlan, Letcher and McCreary Counties.

(9) "Bear Zone 2" means Adair, Bath, Boyd, Breathitt, Carter, Casey, Clark, Clay, Clinton, Cumberland, Elliot, Estill, Fleming, Floyd, Garrard, Greenup, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Lewis, Lincoln, Madison, Magoffin, Martin, Menifee, Montgomery, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Russell, Wayne, Whitley and Wolfe Counties.

(10) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.

(11) "Combination bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to harvest one (1) black bear of either sex and to use dogs to chase a bear.

(12) [(44)] "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(13) [(42)] "Firearm" means a breech- or muzzle-loading rifle, shotgun, or handgun.

(14) [(43)] "License year" means the period from March 1 through the last day of February.

(15) [(44)] "Modern gun" means a rifle, handgun, or shotgun loaded from the rear of the barrel.

(16) [(45)] "Muzzleloader" means a rifle, shotgun, or handgun loaded from the discharging end of the barrel or discharging end of the receiver.

(17) [(46)] "Youth" means a person under the age of sixteen (16) on the day of the hunt.

(18) [(47)] "Youth bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to use dogs to chase a bear.

Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.

Section 3. Bear Chase Requirements.

(1) Unless exempted by KRS 150.170, a person, while using dogs to chase a bear, shall carry on his or her person any[a] valid Kentucky hunting license and a valid:

(a) Bear chase permit; ~~or~~

(b) Youth bear chase permit; or[-]

(c) Combination bear permit.

[(2) A bear chase permit or youth bear chase permit shall only be purchased by a resident of Kentucky.]

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(2)(3) A person shall not:

(a) Kill or intentionally injure a bear during a chase-only season;
(b) Chase a bear except during daylight hours while a chase season is open;

(c) Chase a bear from a baited area:

1. While bait is present; [or]

2. For thirty (30) days after the bait has been removed; or

(d) Disturb a bear in a den.

(3)(4) A person shall only use a dog to chase a bear on public hunting areas, or on private land with permission of the landowner, in all bear zones, except that it shall be prohibited to chase bears with dogs in the areas established in paragraphs (a) through (g) of this subsection:

(a) Daniel Boone National Forest;

(b) Miller-Welch Central Kentucky Wildlife Management Area;

(c) Beaver Creek Wildlife Management Area;

(d) Cane Creek Wildlife Management Area;

(e) Mill Creek Wildlife Management Area;

(f) Pioneer Weapons Wildlife Management Area; and

(g) Redbird Wildlife Management Area.

Section 4. Chasing Bears with Dogs. A person shall not use a dog to chase a bear except during the seasons established in subsections (1) and (2) of this section.

(1) The chase-only season shall be from:

(a) June 1 through August 31; and

(b) September 9 through September 30; and

(2) The bear hunt with dogs season shall be pursuant to Section 8(1) of this administrative regulation and shall also be open as a chase-only season.

Section 5. Bear Permit Requirements.

(1) Unless exempted by KRS 150.170, a person hunting a bear during the archery, crossbow, or modern gun seasons shall carry on his or her person a valid annual Kentucky hunting license and a valid bear permit or combination bear permit while hunting.

(2) Unless exempted by KRS 150.170, during the bear hunt with dogs season:

(a) A person attempting to harvest a bear shall carry on his or her person a valid annual Kentucky hunting license in addition to either:

1. A bear permit and a bear chase permit; or

2. A combination bear permit;

(b) A person in a bear hunt or bear chase party who does not intend to harvest a bear shall carry on his or her person a Kentucky hunting license and either: a bear chase permit or a combination bear permit.

(3) Unless exempted by KRS 150.170, during a bear chase season, a person in a hunt party engaged in the pursuit of bear with the use of dogs shall carry on his or her person any Kentucky hunting license and either:

(a) A valid bear chase permit; or

(b) A combination bear permit while chasing bears.

~~[Section 5. Bear Permit Requirements. Unless exempted by KRS 150.170, a person hunting a bear shall carry on his or her person a valid Kentucky hunting license and the appropriate valid bear permit or permits while hunting during the seasons established in Section 8(1) of this administrative regulation.]~~

Section 6. Hunter Restrictions.

(1) A person shall not:

(a) Harvest a bear except during daylight hours;

(b) Use a dog during the modern gun, muzzleloader, or archery and crossbow season to hunt bear[bears], except leashed tracking dogs may be used to recover a wounded or dead bear;

(c) Hunt bear on a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed;

(d) Harvest:

1. A female bear that has a cub; or

2. A bear that weighs less than seventy-five (75) pounds;

(e) Harvest a bear that is swimming;

(f) Harvest a bear if the person is in a vehicle, boat, or on

horseback, except that a hunter in possession of a disability hunting methods exemption permit issued by the department as established in 301 KAR 3:027 may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den;

(h) Disturb a bear in a den for the purpose of taking the bear if the bear exits the den; or

(i) Use radio telemetry equipment to locate a bear that is equipped with a radio-tracking collar.

(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 7. Equipment Restrictions.

(1) A person shall only use the equipment and ammunition established in paragraphs (a) through (e) of this subsection to take a bear:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A modern rifle:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Loaded with:

a. Bullets of .264 caliber (6.5 mm) or larger; and

b. Centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzleloader of .45 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing a slug or a slug with a sabot; or

(e) A handgun loaded with:

1. Centerfire cartridges;

2. Bullets of .264 caliber (6.5 mm) designed to expand upon impact; and

3. Cartridges with a case length of 1.285 inches or larger.

(2) A crossbow shall contain a working safety device.

(3) A bear hunter using a modern gun shall not use a magazine capable of holding more than ten (10) rounds.

(4) A bear hunter may use archery, crossbow, or muzzleloader equipment to take a bear during bear modern gun season.

Section 8. Bear Season Dates and Bag Limits.

(1) A legal bear hunter shall only kill a bear in the open bear zones during the seasons established in paragraphs (a) through (f) of this subsection:

(a) The archery and crossbow season for bears in Bear Zone 1 shall be for three (3) consecutive days beginning on the fourth Saturday in October;

(b) The archery and crossbow season for bears in Bear Zone 2 shall be for five (5) consecutive days beginning on the fourth Saturday in October;

(c) The modern gun season for bears in Bear Zone 1 shall be for three (3) consecutive days beginning on the second Saturday in December;

(d) The modern gun season for bears in Bear Zone 2 shall be for five (5) consecutive days beginning on the second Saturday in December;

(e) The bear hunt with dogs season in Bear Zone 1 shall be for five (5) consecutive days beginning on the Monday prior to the fourth Saturday in October; and

(f) The bear hunt with dogs season in Bear Zone 2 shall be for five (5) consecutive days beginning on the Monday prior to the fourth Saturday in October and for nine (9) consecutive days beginning the Thursday following the fourth Saturday in October.

(2) A person shall not harvest more than one (1) bear in a license year.

Section 9. Bear Hunt with Dogs Requirements.

(1) A person shall only harvest a bear using legal equipment with the use of unleashed dogs that are actively pursuing, chasing, baying, or treeing a bear prior to harvest.

(2) A dog used to harvest bears shall be a purebred or a crossbreed of the recognized dog breeds established in paragraphs (a) through (l) of this subsection.

(a) Airedale;

(b) American black and tan coonhound;

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- (c) Black mouth cur;
- (d) Bluetick coonhound;
- (e) English coonhound;
- (f) Leopard cur;
- (g) Majestic tree hound;
- (h) Mathis;
- (i) Mountain cur;
- (j) Plott hound;
- (k) Redbone coonhound; or
- (l) Treeing walker coonhound.

~~[(3) The bear hunt with dogs season shall also be open as a chase-only season for any person who possesses a valid bear chase permit.]~~

Section 10. Hunter Orange Clothing Requirements.

(1) During any modern gun or muzzleloader season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

- (a) Waterfowl; or
- (b) Furbearers at night during a legal furbearer season.

(2) The hunter orange portions of a garment worn to fulfill the requirements of this section:

- (a) May display a small section of another color; and
- (b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 11. Bear Reserves. The areas established in subsections (1) through (3) of this section shall be closed to all bear hunting and bear chase with dogs.

- (1) Cumberland Gap National Historical Park;
- (2) Hensley-Pine Mountain Wildlife Management Area; and
- (3) Big South Fork National River and Recreation Area.

Section 12. Harvest Recording and Check-in Requirements.

(1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

- (a) Species taken;
 - (b) Date taken;
 - (c) County where taken; and
 - (d) Sex of the bear.
- (2) A person who has harvested a bear shall:

(a) Retain a completed hunter's log;

(b) Telecheck the bear by 8 p.m. Eastern Standard Time the day the bear was harvested by:

1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and

2. Recording the confirmation number on the hunter's log;

(c) Arrange for department personnel to inspect the bear by:

1. Calling the department at 800-858-1549 within twenty-four (24) hours of harvest and prior to removing the harvested bear from the Bear Zone; and

2. Presenting to department personnel the bear carcass or an intact hide that contains the skull and proof of sex by including the attached:

- a. Testicles, scrotum, or penis for a male bear; or
- b. Udder or vulva for a female bear; and

(d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

RICH STORM, Commissioner

APPROVED BY AGENCY: January 12, 2023

FILED WITH LRC: January 12, 2023 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 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 March 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, (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 regulation establishes black bear chase and hunt seasons, chase and hunt requirements, bag limits, and legal methods of take.

(b) The necessity of this administrative regulation: To establish bear hunting season requirements and methods of take to provide reasonable hunting and chasing opportunity, while properly managing bear populations in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of Chapter 150 or its regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining the seasons, bag limits, and methods of chase and take used to manage black bears in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: These amendments will allow nonresident hunters to engage in the bear chase and bear hunt with dogs seasons. Additionally, these amendments clarify what licenses and permits are necessary to participate in each type of bear season.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow for nonresident hunters to participate as well as to clarify the necessary licenses and permits needed to take bears.

(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 were approximately 1600 bear hunters participating in the 2022 bear hunting season.

(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: Those who hunt bear must comply with the individual requirements and restrictions for respective hunt or chase-only seasons for bears.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Resident bear: thirty (30) dollars;

Resident youth bear: thirty (30) dollars;

Resident bear chase: thirty (30) dollars;

Resident youth bear chase: ten (10) dollars;

Resident combination bear permit, which includes a bear permit and a bear chase permit: fifty (50) dollars;

Nonresident bear: \$250;

Nonresident youth bear: \$100;

Nonresident bear chase: fifty (50) dollars;

Nonresident youth bear chase: fifteen (15) dollars;

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

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entities identified in question (3): The entities identified in question (3) will be afforded the right to pursue and harvest a bear.

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

(a) Initially: There will be a small administrative cost to the department to implement this regulation.

(b) On a continuing basis: There will be a small cost to the department 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 a fee 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 nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not used because all persons who hunt bear are required to abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 150.390(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? For the 2022 bear season, the total amount of revenue generated through permit sales was approximately \$64,350. The amount of revenue generated by this administrative regulation for the first year will likely be similar.

(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 amount of revenue generated by this administrative regulation for subsequent years is unknown but will likely be similar to 2022.

(c) How much will it cost to administer this program for the first year? There will be a small administrative 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 a small administrative cost incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? These amendments will allow for more bear hunting opportunity at the same cost as before.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? These amendments will allow for more bear hunting opportunity at the same cost as before.

(c) How much will it cost the regulated entities for the first year? See 4(b) above.

(d) How much will it cost the regulated entities for subsequent years? See 4(b) 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)]

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 5:001. Definitions for 301 KAR Chapter 5.

RELATES TO: KRS 150.195

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195

requires the department to promulgate administrative regulations. This administrative regulation establishes definitions for terms used in 301 KAR Chapter 5.

Section 1. Definitions.

(1) ~~["Agents of county clerks" means the business establishments included on the list submitted to the department by county clerks of their authorized license agents as of July 16, 1994.]~~

~~(2)] "Commission" is defined by KRS 150.010(6).~~

~~(2)](3)] "Commissioner" is defined by KRS 150.010(7).~~

~~(3)](4)] "Department" is defined by KRS 150.010(11).~~

~~(4)](5)] "License agent" means a [county clerk, government office, or business] person, government entity including the department, business, or organization authorized to sell and issue licenses and conduct other transactions for the department.~~

~~(a) "Governmental agent" means a license agent who is a county clerk or [the representative of another] federal, state, or local governmental entity.~~

~~(b) "Out-of-state agent" means a license agent who sells licenses at a location outside the boundaries of Kentucky.~~

~~(5)](6)] "License stock" means the blank paper upon which licenses are printed[by the POS device].~~

~~[(7) "POS device" means a point-of-sale computer terminal, printer, and associated hardware, software, and connecting cables used to generate licenses and record license sale data.~~

~~(8) "POS licenses" means the licenses or permits authorized by KRS 150.175 and 301 KAR 3:022, which are available for sale through POS devices.]~~

~~(6)](9)] "Transaction" means the application for a hunt or the purchase or sale of a license, permit, [or] product, or service[using a POS device at a license agent location].~~

~~(7) "Vendor" means a person, organization, or business under contract with the department to provide the operation, storage, security, maintenance, and support of the solutions required to deliver department-defined goods and services.~~

~~[(10) "Upload" means the transfer, over telephone lines, of electronic data from the POS device to the department.]~~

~~(8) "Operational Cost" means the fees charged for the operation, storage, security, maintenance, and support of the applicable sales solutions.~~

~~(9) "Issuance Fee" means the fee charged for the sale and delivery of a license, permit, product, or service.~~

RICH STORM, Commissioner

APPROVED BY AGENCY: January 12, 2023

FILED WITH LRC: January 13, 2023 at 11:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28,

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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 March 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, (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 regulation establishes definitions for terms used within 301 KAR, Chapter 5.

(b) The necessity of this administrative regulation: This regulation is necessary to define terms used throughout 301 KAR, Chapter 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to promulgate regulations to provide for the issuance of licenses and permits issued by the department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By defining specific terms used in the other regulations within 301 KAR, Chapter 5, it will assist the effective administration of the statutes by clarifying the specific meanings of the terms in one consolidated location.

(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: Terms that are no longer applicable have been removed and additional terms that are to be utilized are included.

(b) The necessity of the amendment to this administrative regulation: Changes are being made to other regulations in 301 KAR, Chapter 5 to include terms that need to be defined.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to promulgate regulations to provide for the issuance of licenses and permits issued by the department.

(d) How the amendment will assist in the effective administration of the statutes: By defining the new terms to be used in the other regulations within 301 KAR, Chapter 5, it will assist the effective administration of the statutes by clarifying the specific meanings of the terms in one consolidated location.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department currently has 512 license agents who contract to sell licenses and permits; these include 80 county clerks, 8 other government entities such as state parks, and 424 retail businesses.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation only addresses definitions of terms and therefore does not require any specific action for compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation only addresses definitions of terms and therefore does not require any cost for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities do not require any sort of action for compliance. The benefit to the entities will be a clear understanding of the defined terms.

(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: No continuing additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Fish and Game 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: The implementation of the amendments to this regulation will not increase fees or funding.

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

(9) TIERING: Is tiering applied? No tiering is applied. All impacted entities 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? The Department of Fish and Wildlife Resources and any entities that participate as license agents, including some county clerks and state parks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.195

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no added cost to administer these amendments 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? These amendments will not impact cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? These amendments will not impact cost savings.

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

(d) How much will it cost the regulated entities for subsequent years? There will be 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)]. These amendments will not have a major economic impact.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 5:010. License agent applications and agreements.

RELATES TO: KRS 150.175

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 requires the department to provide for the control of the design, issuance, distribution, and other matters relating to licenses and permits issued by the department. This administrative regulation establishes the application procedures for becoming a department license agent.

Section 1. License Agent Applications and Agreements.

(1) Before receiving authorization to serve as license agents, persons, government entities other than the department, businesses, or organizations~~[businesses or governmental agencies]~~ shall:

(a) Complete and submit a License Agent Application Form;
 (b) Enter into a formal contract with the department by agreeing to the provisions of, and signing, the appropriate license agent agreement; and

(c) Complete an Electronic Funds Transfer Request Form that authorizes the department or its vendor to make electronic fund transfers from a [bank-]account into which the license agent shall deposit the proceeds from transactions, or establish and agree upon the process for license agent-initiated fund transfers to the department or vendor.

(2) State agencies, other than the department, serving as license agents shall promptly remit payment through the state accounting system.

(3) The department shall not appoint as an agent~~[agents]~~ a business~~[businesses]~~ that does not~~[have]~~:

(a) Possess a~~[A]~~ valid federal identification number;
 (b) Possess a Kentucky sales tax number, except if it is outside Kentucky; and
 (c) Post a surety bond of \$5,000 if it is an out-of-state, private business.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) License Agent Application Form, 1995;
 (b) Electronic Fund Transfer Authorization Form, 1995;
 (c) License Agent Contractual Agreement, 2022~~[2018]~~ edition[;

and ~~(d) Governmental License Agent Contractual Agreement, 2018 edition].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or online at:

(a) https://fw.ky.gov/Licenses/Documents/LICENSE_AGENT_APPLICATION_FORM.pdf for the "License Agent Application Form";

(b) https://fw.ky.gov/Licenses/Documents/EFT_TRANSFER_FORM.pdf for the "Electronic Fund Transfer Authorization Form"; and

(c) <https://fw.ky.gov/Licenses/Documents/licenseagentagreement.pdf> for the "License Agent Contractual Agreement".

RICH STORM, Commissioner

APPROVED BY AGENCY: January 13, 2023

FILED WITH LRC: January 20, 2023 at 11:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2023, at 2:00 p.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 March 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, (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 regulation establishes the methods for application and operation of license agents.

(b) The necessity of this administrative regulation: This regulation is necessary to create a network of license agents to partner with the department to effectuate the sale and distribution of the department's licenses, permits, and other items sold by the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to name license agents and promulgate regulations to establish which items to be sold, the fees retained by agents, and other matters related to the sale of those items.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the rules for license agent applications and agreements as authorized in KRS 150.195.

(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 establishes updated contractual language for license agents as well as fund transfer authorizations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the license agent application and contract process to be consistent with changes in other 301 KAR, Chapter 5 regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to promulgate regulations establishing license agents, the fees retained, and matters relating to license sales.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in contracting with parties to become and remain license agents consistent with the requirements of the other regulations in 301 KAR, Chapter 5.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All license agents which currently is numbered at 512 throughout the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will need to complete updated paperwork.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be able to participate as license agents which will increase customer traffic into their establishments, become eligible for coupon sponsorships or collection of issuance fees.

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

(a) Initially: There will no added costs to the agency initially.

(b) On a continuing basis: There will be no continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Fish and Game Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not increase any fees. All related fees are established in 301 KAR 5:020.

(9) TIERING: Is tiering applied? Tiering is not applied as all entities are treated equally as there is no limitation regarding how many entities can be license agents or participate in the couponing sponsorship opportunity.

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? Any that participate as license agents.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.195

(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 regulation will not directly impact the agency's expenditures or revenues.

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

(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 directly impact any revenues initially.

(c) How much will it cost to administer this program for the first year? This amendment will not increase any costs to administer the program.

(d) How much will it cost to administer this program for subsequent years? This amendment will not increase any costs to administer the program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This regulation will not result in any direct cost savings.

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

(c) How much will it cost the regulated entities for the first year? This regulation will not impact the cost to entities.

(d) How much will it cost the regulated entities for subsequent years? This regulation will not impact the cost to entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 5:020. License agent requirements and responsibilities.

RELATES TO: KRS 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 requires the department to promulgate administrative regulations governing the issuance of licenses and permits. This administrative regulation establishes the requirements for issuing licenses and permits, electronically reporting license and permit sale data and [license] revenue, and suspending or revoking license agent status.

Section 1. Issuing Licenses and Permits.

(1) A license agent shall issue a license or permit to a person who completes the registration process with the agent and pays the appropriate license or permit fee as established in 301 KAR 3:022 and applicable issuance and operational fee as established in this administrative regulation.

(2) A license agent shall not knowingly enter false information while processing a license, permit or other transaction.

Section 2. Agent [Commission] Issuance Fee and Depositing of Funds.

(1) The license agent shall retain as an issuance fee [commission]:

(a) Three (3) percent of the total sale [Fifty (50) cents for each Peabody permit issued pursuant to 301 KAR 4:100]; or [and]

(b) Print or display, on the initial license or permit issued, a coupon or advertisement, pursuant to a department sponsorship as established in KRS 45A.097, in lieu of retaining the applicable issuance fee. [Fifty (50) cents each for other transactions.]

(2) A license agent shall promptly deposit transaction fees, less the issuance fee [commissions] established in subsection (1) of this section, into the [bank] account established in 301 KAR 5:010.

(3) License Agents are prohibited from requiring or encouraging particular payment methods. [A license agent may elect to print, on any license or permit issued, a coupon or advertisement, pursuant to a department sponsorship established in KRS 45A.097, in lieu of retaining the applicable commissions established in subsection (1) of this section.]

Section 3. Electronic Transfer of Funds to the Department.

(1) The department or its vendor shall provide each license agent with a schedule of dates when electronic fund transfers will be initiated.

(2) On the day of a scheduled electronic fund transfer, a license agent shall have sufficient funds in the account to cover the amount of the transfer.

(3) A license agent shall contact the department or its vendor prior to the day of a scheduled electronic fund transfer if there are any discrepancies or concerns that need to be resolved.

Section 4. Voiding Licenses and Permits.

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(1) A license agent may, within four (4) hours of issuing a license or permit, void a license or permit if the purchaser:

- [(a) The license does not print correctly; or
- (b) After the license is printed, the purchaser:]
- (a) [1.] Discovers that the issued license or permit is incorrect;
- (b) [2.] Will not pay for the license or permit; or
- (c) [3.] Refuses to accept the license or permit.

(2) An agent shall:

(a) Ensure that a license or permit established in subsection (1) of this section is voided in the system; and

(b) Destroy all paper copies of the voided license or permit.

(3) Refund license or permit cost as established in 301 KAR 5:030, section 3(2)(a).

Section 5. Suspensions and Revocation of Agent Status.

(1) In addition to any penalties provided by KRS 150.990, and except as established in subsection (2) of this section, the department shall suspend for one (1) to five (5) years a license agent who twice in a twelve (12) month period:

(a) Causes an electronic fund transfer failure; or

(b) Violates a provision of:

1. KRS 150.195; or

2. An administrative regulation adopted pursuant to KRS 150.195.

(2) The department shall permanently revoke the agent status of a license agent who:

(a) Commits an offense for which the license agent has been previously suspended;

(b) Does not deposit the required funds in his agent bank account within twenty-four (24) hours of notification by the department of insufficient funds;

(c) Fails to notify the department prior to closing his agent bank account;

(d) Closes his business seasonally without notifying the licensing section supervisor in writing by surface mail, fax, or e-mail and settling his account; or

(e) Knowingly issues a license or permit containing false information.

(3) Before issuing a final order suspending or revoking the status of an agent, the department shall:

(a) Notify the agent by registered mail that the agent's status is under review; and

(b) Afford the agent the opportunity for an informal meeting with the commissioner or his designee to show cause why his agent status should not be suspended or revoked.

(4) A suspension or revocation shall become effective upon receipt of notification from the department.

(5) A suspended or revoked agent shall:

(a) Allow the department access to financial records dealing with license and permit sales; and

(b) Immediately pay all funds owed to the department.

Section 6. Appeal of Suspension or Revocation of Agent Status.

(1) A license agent who wishes to appeal a suspension or revocation shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of suspension or revocation.

(2) Upon receipt of the request for a hearing, the department shall conduct a suspension or revocation hearing pursuant to KRS Chapter 13B and KRS 150.195.

(3) The hearing officer's findings of fact, conclusions of law, and recommended order shall be considered by the department's commission at the commission meeting immediately following the deadline for the parties' exceptions pursuant to KRS Chapter 13B.

(4) The department's commission shall issue a final order pursuant to KRS Chapter 13B.

RICH STORM, Commissioner

APPROVED BY AGENCY: January 13, 2023

FILED WITH LRC: January 13, 2023 at 11:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2023, at 1:00pm, 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 March 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, (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 regulation establishes procedures for agents of the department to sell and issue the department's licenses and permits.

(b) The necessity of this administrative regulation: This regulation is necessary to define legal sales parameters to protect the interests of agents, customers and the department in implementing 301 KAR, Chapter 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to promulgate regulations to provide for the issuance of licenses and permits issued by the department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By defining processes for selling licenses and permits, it will assist the effective administration of the statutes authorizing the department and its agents to transact sales to fund the department's operations.

(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: Provisions that are no longer applicable have been removed and new provisions that are to be used are added.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to retain and attract entities to be license agents by increasing the amounts received by license agents for sales to offset the deficit resulting from issuance costs incurred by license agents.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to promulgate regulations to provide for the issuance of licenses and permits issued by the department.

(d) How the amendment will assist in the effective administration of the statutes: KRS 150.195 authorizes the department to partner with license agents to distribute assist in sales. This amendment will improve the department's ability to secure and retain license agents.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department currently has 512 license agents who contract to sell licenses and permits; these include 80 county clerks, 8 other government entities such as state parks, and 424 retail businesses. These license agents will be impacted as well as individuals who make purchases.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will require changes to software code by the department but does not require any specific action from agents for compliance. The agents will receive the fees to offset the costs incurred through issuance. The individual customers will be required to pay the nominal increase to cover the issuance fee.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): Changes will not require any cost for compliance on the part of license agents, they currently run at a deficit so will actually benefit monetarily. Individual customers will pay the issuance fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to the license agents will be an increase in issuance fees received; it has been approximately twenty years since their fees were increased, whereas costs of selling and issuing licenses have continually risen. The individual purchasers will benefit by continued and increased access to license agents.

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

(a) Initially: Changes to computer software code will require an estimated \$3,000 in staff costs.

(b) On a continuing basis: No continuing additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Fish and Game 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: The implementation of the amendments to this regulation will not increase fees or funding for license agents.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation sets the fee for issuance of a license or permit to three percent (3%) rate per sale, replacing the prior flat-rate commission of fifty-cents per license or permit sold.

(9) TIERING: Is tiering applied? No tiering is applied. All impacted entities 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? The Department of Fish and Wildlife Resources and any entities that participate as license agents, including some county clerks and state parks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.195

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will increase revenue to the department at an estimated \$500,000 to \$750,000 per year by allowing the Department to recoup the issuance fee as its own license agent, in addition to external license agents. County clerks and state parks will experience increased revenues as a result of a net increase in issuance fees, but the extent will depend on purchase locations of license customers (some purchases are made at retail businesses or directly from the department, online).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue impact in subsequent years should be consistent with the first year for all license agents based upon their sales numbers.

(c) How much will it cost to administer this program for the first year? There will be no added cost to administer these amendments, once the software code is updated and activated.

(d) How much will it cost to administer this program for subsequent years? There will be no added cost to administer these amendments 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 (+/-): Increases for county clerks, state parks and the department for a higher net rate for issuance of licenses and permits.

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? These amendments will result in cost savings to license agents due to the percentage based fee received for sales vs the prior set rate of \$0.50 per transaction. The exact savings will vary based upon the specific sales of each license agent.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Subsequent year cost savings will continue as with the first year.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs to the external license agents. Individual customers will pay an additional fee of 3% of the purchase price.

(d) How much will it cost the regulated entities for subsequent years? There will be no added costs for license agents. Individual customers will continue to pay the 3% fee.

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 are projected to have a major positive economic impact on the department, and a positive impact on external license agents. While individual customers will be minimally impacted, in aggregate the cost impact will offset the economic gains of the license agents and department.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 5:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits, and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year except the senior lifetime combination license shall be valid for the life of the license holder while they maintain Kentucky residency.

(1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): twenty-three (23) dollars;

(b) Statewide annual fishing license (nonresident): fifty-five (55) dollars;

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(c) Joint married couple statewide fishing license (resident): forty-two (42) dollars;

(d) Statewide three (3) year fishing license (resident): fifty-five (55) dollars; and

(e) Trout permit[~~(resident or nonresident)~~]: ten (10) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident), plus ten (10) resident commercial gear tags: \$150;

(b) Commercial fishing license (nonresident), plus ten (10) nonresident commercial gear tags: \$600; and

(c) Commercial fishing license for Asian carp and scaled rough fish (nonresident), plus ten (10) nonresident gear tags: \$150.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars;

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: \$100; and

(c) Commercial fishing gear tags for Asian carp and scaled rough fish (nonresident), block of ten (10) tags: fifteen (15) dollars.

(4) Hunting licenses:

(a) Statewide hunting license (resident): twenty-seven (27) dollars;

(b) Statewide hunting license (nonresident): \$150;

(c) Statewide junior hunting license (resident): six (6) dollars;

(d) Statewide junior hunting license (nonresident): ten (10) dollars;

(e) Shooting preserve hunting license[~~(resident or nonresident)~~]: five (5) dollars; and

(f) Migratory game bird and waterfowl permit[~~(resident or nonresident)~~]: fifteen (15) dollars.

(5) Combination hunting and fishing license (resident): forty-two (42) dollars.

(6) Sportsman's licenses:

(a) Sportsman's license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory game bird and waterfowl permit, and statewide deer permit: ninety-five (95) dollars;

(b) Junior sportsman's license (resident), which includes a statewide junior hunting license, a statewide youth deer permit, and two (2) youth turkey permits: thirty (30) dollars;

(c) Senior combination hunting and fishing licenses, which include a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory shore and upland game bird, waterfowl permit, and statewide deer permit. Senior licenses shall not be valid unless the holder carries proof of their Kentucky residency and proof of age on his or her person while performing an act authorized by the license:

1. Annual senior combination hunting and fishing license (resident): twelve (12) dollars; and

2. Senior lifetime combination hunting and fishing license (resident): \$180;

(d) Disabled combination hunting and fishing license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory shore and upland game bird, waterfowl permit, and statewide deer permit: twelve (12) dollars.[Senior or disabled combination hunting and fishing license (resident): twelve (12) dollars.]

(7) Trapping licenses:

(a) Trapping license (resident): twenty (20) dollars;

(b) Trapping license (resident landowner – tenant): ten (10) dollars;

(c) Trapping license (nonresident): \$130; and

(d) Junior trapping license (resident): five (5) dollars.

(8) Game permits:

(a) Bear permit (resident): thirty (30) dollars;

(b) Youth bear permit (resident): ten (10) dollars;

(c) Bear chase permit (resident): thirty (30) dollars;

(d) Youth bear chase permit (resident): ten (10) dollars;

(e) Combination bear permit (resident), which includes a bear permit and a bear chase permit: fifty (50) dollars;

(f) Bear permit (nonresident): \$250;

(g) Youth bear permit (nonresident): \$100;

(h) Bear chase permit (nonresident): fifty (50) dollars;

(i) Youth bear chase permit (nonresident): fifteen (15) dollars;

(j) Quota cow elk permit (resident): sixty (60) dollars;

(k) Quota cow elk permit (nonresident): \$400;

(l) Quota bull elk permit (resident): \$100;

(m) Quota bull elk permit (nonresident): \$550;

(n) Quota either sex archery and crossbow elk permit (resident): \$100;

(o) Quota either sex archery and crossbow elk permit (nonresident): \$550.

(p) Out-of-zone elk permit (resident): thirty (30) dollars;

(q) Out-of-zone elk permit (nonresident): \$400;

(r) Statewide deer permit (resident): thirty-five (35) dollars;

(s) Statewide deer permit (nonresident): \$185;

(t) Statewide youth deer permit (resident): ten (10) dollars;

(u) Statewide youth deer permit (nonresident): fifteen (15) dollars;

(v) Additional deer permit: fifteen (15) dollars;

(w) Spring turkey permit (resident): thirty (30) dollars;

(x) Spring turkey permit (nonresident): eighty-five (85) dollars;

(y) Fall turkey permit (resident): thirty (30) dollars;

(z) Fall turkey permit (nonresident): eighty-five (85) dollars;

(aa) Youth turkey permit (resident): ten (10) dollars;

(bb) Youth turkey permit (nonresident): fifteen (15) dollars;

(cc) Quota youth elk permit (resident): thirty (30) dollars; and

(dd) Quota youth elk permit (nonresident): \$200.

[a] Resident bear: thirty (30) dollars;

[b] Resident youth bear: ten (10) dollars;

[c] Nonresident bear: \$250;

[d] Resident bear chase: thirty (30) dollars;

[e] Resident youth bear chase: ten (10) dollars;

[f] Resident quota cow elk permit: sixty (60) dollars;

[g] Nonresident quota cow elk permit: \$400;

[h] Resident quota bull elk permit: \$100;

[i] Nonresident quota bull elk permit: \$550;

[j] Resident either sex archery and crossbow elk permit: \$100;

[k] Nonresident either sex archery and crossbow elk permit: \$550.

[l] Resident out-of-zone elk permit: thirty (30) dollars;

[m] Nonresident out-of-zone elk permit: \$400;

[n] Resident deer permit: thirty-five (35) dollars;

[o] Nonresident deer permit: \$185;

[p] Resident youth deer: ten (10) dollars;

[q] Nonresident youth deer: fifteen (15) dollars;

[r] Additional deer permit (resident or nonresident): fifteen (15) dollars;

(s) Resident spring turkey: thirty (30) dollars;

(t) Nonresident spring turkey: eighty-five (85) dollars;

(u) Resident fall turkey: thirty (30) dollars;

(v) Nonresident fall turkey: eighty-five (85) dollars;

(w) Resident youth turkey: ten (10) dollars;

(x) Nonresident youth turkey: fifteen (15) dollars;

(y) Resident youth elk: thirty (30) dollars; and

(z) Nonresident youth elk: \$200.]

(9) Peabody individual permit: fifteen (15) dollars.

(10) [Sportsman's license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory game bird and waterfowl permit, and deer permit: ninety-five (95) dollars.

(11) Junior sportsman's license (resident), which includes a junior hunting license, junior deer permit, and two (2) junior turkey permits: thirty (30) dollars.

(12) Land Between the Lakes hunting permit: twenty (25)[(20)] dollars.

(11)[(43)] Conservation permit: five (5) dollars.

(12) Bobcat hunting permit: Free.

(13) Commercial guide licenses:

(a) Commercial guide license (resident): \$150; and

(b) Commercial guide license (nonresident): \$400.

Section 2. Licenses, tags, and permits listed in this section shall be valid for the calendar year issued.

(1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): fifty (50) dollars; and

(b) Live fish and bait dealer's license (nonresident): \$150.

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(2) Commercial taxidermist license: \$150.

~~[(3) Commercial guide licenses:~~

~~(a) Commercial guide license (resident): \$150; and~~

~~(b) Commercial guide license (nonresident): \$400.]~~

~~(3) [(4)] Shooting area permit: \$150.~~

~~(4) [(5)] Dog training area permit: fifty (50) dollars.~~

~~(5) [(6)] Collecting permits:~~

~~(a) Educational wildlife collecting permit: twenty-five (25) dollars; and~~

~~(b) Scientific wildlife collecting permit: \$100.~~

~~(6) [(7)] Nuisance wildlife control operator's permit: \$100.~~

~~(7) [(8)] Pay lake license:~~

~~(a) Pay lakes obtaining all fish from private hatcheries only:~~

~~1. Lakes with two (2) acres or less: \$250; and~~

~~2. Each additional acre or part of an acre: Fifty (50) dollars; and~~

~~(b) Pay lakes obtaining all or a portion of catfish from public waters:~~

~~1. Lakes with two (2) acres or less: \$600; and~~

~~2. Each additional acre or part of an acre: fifty (50) dollars.~~

~~(8) [(9)] Commercial captive wildlife permit: \$150.~~

~~(9) [(10)] Commercial fish propagation permit: fifty (50) dollars.~~

~~(10) [(11)] Wildlife rehabilitator's permit: twenty-five (25) dollars.~~

~~(11) [(12)] Annual wildlife transportation permit: \$250.~~

~~(12) [(13)] Peabody Wildlife Management Area annual event permit: \$250.~~

~~(13) [(14)] Fish transportation permit: twenty-five (25) dollars.~~

Section 3. Licenses, tags, and permits listed in this section shall be valid for three (3) years from the date of issue.

(1) Falconry permit: seventy-five (75) dollars.

(2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags, and permits listed in this section shall be valid for the date or dates specified on each.

(1) Short-term licenses:

(a) One (1) day ~~[resident]~~ fishing license (resident): seven (7) dollars;

(b) One (1) day ~~[nonresident]~~ fishing license (nonresident): fifteen (15) dollars;

(c) Seven (7) day ~~[nonresident]~~ fishing license (nonresident): thirty-five (35) dollars;

(d) One (1) day ~~[resident]~~ hunting license (resident) (not valid for deer, elk, bear, or turkey hunting): seven (7) dollars;

(e) One (1) day ~~[nonresident]~~ hunting license (nonresident) (not valid for deer, elk, bear, or turkey hunting): twenty-five (25) dollars; and

(f) Seven (7) day ~~[nonresident]~~ hunting license (nonresident) (not valid for deer, elk, bear, or turkey hunting): sixty-five (65) dollars.

(2) Individual wildlife transportation permit: twenty-five (25) dollars.

(3) Special resident commercial fishing permit: \$600.

(4) Special nonresident commercial fishing permit: \$900.

(5) Commercial waterfowl shooting area permit: \$150.

(6) Shoot-[-]to-[-]retrieve field trial permits:

(a) Per trial (maximum four (4) days): seventy-five (75) dollars; and

(b) Single day: twenty-five (25) dollars.

(7) Boat dock permit: \$100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.

(8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010 and shall contain three (3) tiers:

(a) Tier I: \$100;

(b) Tier II: \$200;

(c) Tier III: \$300; and

(d) The fees shall be pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year permit period.

(9) Peabody individual event permit: twenty-five (25) dollars.

(10) Commercial roe-bearing fish buyer's permit:

(a) Commercial roe-bearing fish buyer's permit (resident): \$500; and

(b) Commercial roe-bearing fish buyer's permit (nonresident): \$1,000.

(11) Commercial roe-bearing fish harvester's permit:

(a) Commercial roe-bearing fish harvester's permit (resident): \$500; and

(b) Commercial roe-bearing fish harvester's permit (nonresident): \$1,500.

(12) Otter Creek Outdoor Recreation Area:

(a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and

(b) Daily Special Activities Permit: seven (7) dollars.

(13) Commercial foxhound training enclosure permit: \$150.

Section 5. Licenses, tags, and permits listed in this section shall be valid on a per unit basis as specified.

(1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

(2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.

(3) Horse stall rental (per space, per day): two (2) dollars.

(4) Dog kennel rental (per dog, per day): fifty (50) cents.

(5) Captive cervid permit (per facility, per year): \$150.

(6) Noncommercial captive cervid permit (per facility, per three (3) years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:

(1) Fur processor's license (resident): \$150;

(2) Fur buyer's license (resident): fifty (50) dollars; and

(3) Fur buyer's license (nonresident): \$300.

Section 7. The following Otter Creek Outdoor Recreation Act permits shall be valid from July 1 through June 30 of the following year:

(1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and

(2) Annual Special Activities Permit: seventy (70) dollars.

RICH STORM, Commissioner

APPROVED BY AGENCY: January 13, 2023

FILED WITH LRC: January 13, 2023 at 11:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2023, at 12:00 p.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 March 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, (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 fees and terms for licenses, permits, and tags sold by the Department of Fish and Wildlife Resources.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the department to establish reasonable license fees, permit terms, and the expiration dates of licenses and permits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.175 authorizes the types of licenses, permits, and tags that the department can issue. KRS 150.195(4)(f) requires the department to promulgate an

administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires the Department to prescribe reasonable fees for licenses, permits, and registrations authorized by Chapter 150. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the requirements and purposes of the statutes identified in (1)(c) by establishing reasonable fees and terms for licenses, permits, and tags issued by the Department.

(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 align this regulation with 301 KAR 2:300 as to mirror the creation of a resident combination bear permit, a nonresident bear chase permit, a nonresident youth bear chase permit and a nonresident youth bear permit. The expiration date for commercial guide licenses changed from calendar year to license year to match hunting license expiration dates. Creates new and establishes price of new senior lifetime combination hunting and fishing license.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to create the license and permits mentioned above and establish pricing for each.

(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: Nonresident bear hunters will be positively influenced by the regulation in that it will allow them to purchase the necessary permits to chase bears with the use of hounds. Additionally, resident hunters will be able to save ten (10) dollars with the creation of the resident combination bear permit, which includes both a bear permit and a bear chase permit. For the 2022 bear season the following number of permits were sold: 1509 resident bear permits, 150 resident bear chase permits, 57 nonresident bear permits, 4 youth bear chase permits and 56 youth bear permits. Commercial guides are affected by adjusting the expiration date of guide permits. Senior residents sixty-five (65) years or older are eligible for an additional voluntary senior license option.

(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 will open up the bear chase season to nonresident hunters for a nominal fee. Additionally, resident bear hunters who both chase and harvest bears will save ten (10) dollars by purchasing the combination bear permit. Commercial guides will now need to renew licenses two months later.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The creation of three new nonresident permits will allow nonresident hunters to chase bears for the following fees: nonresident bear chase permit: fifty (50) dollars, nonresident youth bear chase permit: fifteen (15) dollars, nonresident youth bear permit: \$100. Resident hunters will save ten (10) dollars with the creation of the combination bear permit. There is no change in price for commercial guides. There is no added cost to seniors. Senior residents are simply provided another voluntary licensing option for a lifetime rather than an annual permit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Nonresident hunters will be given the opportunity to chase bears with hounds and resident hunters will save money with the newly created combination bear permit. Senior residents are simply provided another voluntary licensing option. Commercial guides will be able to renew their guide and hunting licenses simultaneously.

(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 the department to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the department 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: There will be no need for fee increases at the state level.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: See (4)(b)

(9) TIERING: Is tiering applied? No. Tiering is not applied because every eligible person will have to pay the same price for each particular license issued.

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 Division of Administrative Services will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.175, 150.195, 150.225, and 150.620.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This is unknown at this point as it will depend on the number of permits purchased by nonresident hunters for the 2023 bear hunting season, and the number of senior lifetime licenses sold.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This is unknown at this point as it will depend on the number of permits purchased by nonresident hunters for the 2023 bear hunting season, and the number of senior lifetime licenses sold.

(c) How much will it cost to administer this program for the first year? There will be a minimal cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There should be no additional costs incurred for subsequent years.

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

Revenues (+/-):

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? Resident hunters have the ability to save ten (10) dollars with the purchase of the combination bear permit. Senior residents may opt to purchase lifetime licenses which over time could result in annual savings of twelve (12) dollars per year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Resident hunters have the ability to save ten (10) dollars with the purchase of the combination bear permit.

(c) How much will it cost the regulated entities for the first year? No additional costs will be incurred by resident bear hunters. This amendment will establish permits and associated fees for

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nonresident bear hunters. Senior residents that opt to purchase the lifetime license will pay \$180 instead of twelve (12) dollars for the annual version of the license.

(d) How much will it cost the regulated entities for subsequent years? No additional costs will be incurred by resident bear hunters. This amendment will establish permits and associated fees for nonresident bear hunters. Seniors that opt to purchase the lifetime license will have no 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)]

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amendment)**

505 KAR 1:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference policies and procedures concerning health and safety for ~~into regulatory form materials used by~~ the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference.

(1) The "Department of Juvenile Justice Policy and Procedures Manual: Health and Safety Services", January 13, 2023 ~~July 13, 2020~~, is incorporated by reference and includes the following:

400	Health Services Definitions (Amended <u>01/13/23</u> 07/13/20)
400.1	Health Services (Amended 04/15/20)
401	Health Services Administration and Personnel (Amended 03/30/18)
402	Access to Treatment and Continuity of Care (Amended 04/15/20)
402.1	Continuity of Care and Medical Discharge (Amended 04/15/20)
403	Medical Records (Amended 04/15/20)
404.1	Admission Screening for Physical and Behavioral Health Challenges (Amended 07/13/20)
404.2	Ectoparasite Control (Amended 03/30/18)
404.3	Health Assessment and Physical Examination (Amended 03/30/18)
404.4	Sick Call (Amended 03/30/18)
404.5	Access to Diagnostic Services (Amended 03/30/18)
404.6	Emergency Medical Services (Amended 03/30/18)

404.7	First Aid, AED, and First Aid Kits (Amended 03/30/18)
404.8	Hospital Care (Amended 03/30/18)
404.10	Special Needs Treatment Plans (Amended 03/30/18)
404.11	Perinatal Care (Amended 03/30/18)
404.12	Oral Screening and Oral Care (Amended 03/30/18)
404.13	Preventative Health Care (Amended 03/30/18)
404.14	Family Planning Services (Amended 03/30/18)
405	Behavioral Health Services Administration and Personnel (Amended 07/13/20)
405.1	Behavioral Health Screening and Evaluation (Amended 04/15/20)
405.2	Forced Psychotropic Medications (Amended 07/10/18)
405.3	Referral for Behavioral Health Services (Amended 07/13/20)
405.4	Suicide Prevention and Intervention (Amended 07/13/20)
405.5	Behavioral Health Emergencies (Amended 04/15/20)
405.6	Psychiatric Hospitalization (Amended 07/13/20)
406	Therapeutic Restraints (Amended <u>01/13/23</u> 03/30/18)
407	Pharmaceuticals (Amended 03/30/18)
408.1	Forensic Information (Amended 03/30/18)
409	Substance Abuse and Chemical Dependency (Amended 03/30/18)
410	Orthoses, Prostheses, and Other Aids to Reduce the Effects of Impairment (Amended 08/14/18)
411	Notification in Emergencies (Amended 03/30/18)
414	Environmental Health and Safety (Amended 03/30/18)
415	Occupational Exposure to Bloodborne Pathogens (Amended 03/30/18)
416	HIV/AIDS/STI (Amended 03/30/18)
416.1	Infectious Communicable Disease (Amended 03/30/18)
424	Emergency Plans (Amended 03/30/18)
424.1	Emergency Plans for Central Office (Amended 03/30/18)
426	Dietary Services (Amended 03/30/18)
427	Maintenance (Amended 03/30/18)
427.1	Control and Use of Tools and Sharps (Amended 03/30/18)
428	Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials (Amended 03/30/18)
428.1	Control of Hazardous Materials in Central Office (Amended 03/30/18)
430	Pets and Domestic Animals (Amended 03/30/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Juvenile Justice Web site at <https://djj.ky.gov/About%20DJJ/Pages/Ircfilings.aspx>.

VICKI REED, COMMISSIONER

APPROVED BY AGENCY: January 12, 2023

FILED WITH LRC: January 13, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21,

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 March 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, Justice.RegContact@ky.gov, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures concerning health and safety governing the operations of the Department of Juvenile Justice (DJJ).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the cabinet and the department to implement practices or procedures to ensure the safe and efficient operation of the department and its juvenile facilities.

(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 DJJ employees, juveniles, and their families concerning policies and procedures that govern operation of the department.

(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 allows the staff to use additional safety measures to protect themselves and control unruly juveniles.

(b) The necessity of the amendment to this administrative regulation: The amendment meets the requirements of authorizing statutes and updates practices for the department regarding disruptive and dangerous behavior of juveniles.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the cabinet and the department to implement or amend practices or procedures to ensure the safe and efficient operation of the department.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff with additional means to control juveniles before they injure themselves, other juveniles, or staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 301 employees of DJJ, 200 juveniles, and their families.

(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, juveniles, and their families 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. Staff will be trained on the use of chemical agents and energy conductive devices as well.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

(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 department.

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

(a) Initially: An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

(b) On a continuing basis: An exact cost is unknown, but devices like pepper spray will be reacquired as they are used or expire. Training costs will continue to be incurred for new staff authorized to use pepper spray or tasers. The tasers, cars with camera equipped security partitions, and other equipment will need to be replaced on an intermittent basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: DJJ budgeted funds 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 funding is anticipated as estimated above.

(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? Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

(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? An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These

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costs are for the amendment of both administrative regulations being filed.

(d) How much will it cost to administer this program for subsequent years? An exact cost is unknown, but devices like pepper spray will be reacquired as they are used or expire. Training costs will continue to be incurred for new staff authorized to use pepper spray or tasers. The tasers, cars with camera equipped security partitions, and other equipment will need to be replaced on an intermittent basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? 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? An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

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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 anticipated.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amendment)

505 KAR 1:140. Department of Juvenile Justice Policies and Procedures Manual: detention services.

RELATES TO: KRS 15A.065, 15A.067, 15A.200-245, 15A.305, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference policies and procedures concerning

detention services for [into regulatory form materials used by] the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference.

(1) The "Department of Juvenile Justice Policy and Procedures Manual: Detention Services", January 13, 2023[July 10, 2018], is incorporated by reference and includes the following:

700	Definitions (Amended 01/13/23[03/30/18])
700.1	Detention Services Delivery System (Amended 01/13/23 [Added 03/30/18])
701	Criteria for Admissions (Amended 03/30/18)
702	Intake, Reception and Orientation (Amended 07/10/18)
703	Detention Risk Assessment (Amended 03/30/18)
704	Alternatives to Secure Detention (Amended 01/13/23[07/10/18])
704.1	Supervision of Juveniles in Alternative to Secure Detention Programs (Amended 03/30/18)
704.2	Revocation of Juveniles in Alternative to Secure Detention Programs (Amended 03/30/18)
704.3	Juvenile Justice and Delinquency Prevention Act (Added 03/30/18)
705	Individual Client Records (Amended 03/30/18)
705.2	Progress Notes (Amended 03/30/18)
706	Grievance Procedure (Amended 03/30/18)
707	Bed Capacities and Staffing of Juvenile Detention Centers (Amended 01/13/23[03/30/18])
708	Classification of Juveniles for Housing and Program Assignment (Amended 01/13/23[03/30/18])
709	Security and Control (Amended 03/30/18)
710	Shift and Log Reports (Amended 03/30/18)
711	Transportation of Juveniles (Amended 01/13/23[03/30/18])
712	Escape/AWOL (Amended 01/13/23[03/30/18])
713	Restraints (Amended 01/13/23[07/10/18])
714	Searches (Amended 03/30/18)
715	Incident Reports (Amended 03/30/18)
716	Behavior Management (Amended 03/30/18)
717	Discipline and Special Behavior Management (Amended 01/13/23[03/30/18])
718	Disciplinary Review (Amended 07/10/18)
720	Programs and Services (Amended 03/30/18)
720.1	Library Services (Amended 01/13/23[03/30/18])
720.2	Recreation and Structured Activities (Amended 01/13/23[03/30/18])
720.3	Religious Programs (Amended 03/30/18)
720.4	Juveniles Work Details (Amended 03/30/18)
720.5	Social Services (Amended 07/10/18)
720.6	Family and Community Contact (Amended 07/10/18)
725	Educational Programming and Assessment (Amended 07/10/18)
725.1	Instructional Staffing (Amended 03/30/18)
725.2	Education Records (Amended 07/10/18)
726	Leaves (Amended 03/30/18)
729	Release From Detention (Amended 03/30/18)
730	Inspections of Secure Juvenile Detention Facilities (Amended 01/13/23[03/30/18])
731	Complaint Investigations of Secure Juvenile Detention Centers and Juvenile Holding Facilities (Amended 03/30/18)

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VOLUME 49, NUMBER 8– FEBRUARY 1, 2023

VICKI REED, Commissioner

APPROVED BY AGENCY: January 12, 2023

FILED WITH LRC: January 13, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 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 March 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, Justice.RegContact@ky.gov, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS

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 concerning health and safety governing the operations of the Department of Juvenile Justice (DJJ).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the cabinet and the department to implement practices or procedures to ensure the safe and efficient operation of the department and its juvenile facilities.

(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 DJJ employees, juveniles, and their families concerning policies and procedures that govern operation of the department.

(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 allows the staff to use additional safety measures to protect themselves and control unruly juveniles.

(b) The necessity of the amendment to this administrative regulation: The amendment meets the requirements of authorizing statutes and updates practices for the department regarding disruptive and dangerous behavior of juveniles.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the cabinet and the department to implement or amend practices or procedures to ensure the safe and efficient operation of the department.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff with additional means to control juveniles before they injure themselves, other juveniles, or staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 301 employees of DJJ, 200 juveniles, and their families.

(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, juveniles, and their families 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. Staff will be trained on the use of chemical agents and energy conductive devices as well.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

(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 department.

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(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: DJJ budgeted funds 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 anticipated, but is not yet fully calculated.

(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? Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

(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? An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera

equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

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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? An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use tasers or pepper spray. These costs are for the amendment of both administrative regulations being filed.

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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 anticipated.

**EDUCATION AND LABOR CABINET
Office of Unemployment Insurance
(Amendment)**

787 KAR 1:090. Unemployed worker's reporting requirements.

RELATES TO: KRS 341.350, 341.360, 341.370, 341.380

STATUTORY AUTHORITY: KRS 336.015, 336.050, 341.115(1), 341.350(11) [2021 Ky Acts ch. 169 Part 1(4)(7)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.350(11) requires the secretary to promulgate administrative regulations related to work search

activities required for benefit eligibility. This administrative regulation establishes the registration and reporting requirements that an unemployed worker is required to meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, the procedures for electronic, telephone, and mail claims, and the requirement for random audits.

Section 1. Registration for Work.

(1) An unemployed worker shall be registered for work with a state employment service before he or she is eligible to receive benefits. A registration shall be considered filed if the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens a claim, he or she shall be assigned a group classification code A or B based upon his or her reemployment prospects. The classification codes described below are solely related to reemployment prospects and not to any classification codes used to identify a claimant's duration of benefits, as detailed in KRS 341.385.

(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of ~~sixteen (16)~~twelve (12) weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:

1. Unemployed and has definite return prospects with his or her last employer within a period of ~~sixteen (16)~~twelve (12) weeks from the date of filing of the initial or reopened claim;

2. Unemployed because of a labor dispute in the establishment where he or she has been employed; or

3. A member of a union which shall be responsible for securing future employment.

(3) During any benefit year, an unemployed worker shall be assigned a different group classification code if review of his or her reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits.

(1) In order for an unemployed worker to file an initial or reopened claim for benefits, he or she shall complete the Initial Claim process by using:

(a) An internet claim registration through the Web site provided by the agency for that purpose at uicclaimsportal.ky.gov;

(b) A telephone claim registration through the call center provided by the agency for that purpose; or

(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) If any issues regarding the unemployed worker's eligibility as provided by KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall:

(a) Provide picture identification and valid proof of the worker's Social Security number from the Social Security Administration; and

(b) Present all facts in support of the application.

(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary shall backdate the initial or reopened claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later. Examples of good cause may include illness, availability issues beyond the claimant's control, or lack of access to internet or phone necessary for claim filing.

(5) An unemployed worker whose unemployment insurance benefit check has been lost or stolen shall notify the office in writing.

Section 3. Claiming Weeks of Benefits.

(1) Once an unemployed worker has filed an initial claim and established a benefit year, the unemployed worker shall claim his or her benefits on a biweekly basis by one (1) of the methods and within

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the time frames established in subsection (2) of this section.

(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits.

(b) Except as provided in paragraph (e) of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his or her benefits during the calendar week following the second week of the period.

(c) For each week an unemployed worker claims benefits, the worker shall certify under penalty of perjury that he or she engaged in at least five (5) work search activities, at least three (3) of which shall consist of submitting an application for employment, or interviewing for employment. "Work search activities" include any of the following:

1. Formally submitting an application for employment online or in person;

2. Interviewing for employment virtually, in person, or online;

3. Job shadowing;

4. Attending a job fair or networking event hosted by state or local government or a business organization;

5. Participating in a job search skills workshop or seminar; and

6. Participating in official Kentucky Career Center or partner programs related to employment or the search for employment.

(d) For each claimed work search activity, the unemployed worker must have documentation verifying he or she engaged in the work search activity and shall preserve that documentation for one (1) full year after each weekly claim for benefits was submitted for auditing purposes. All claimed work search activities are subject to random audit by the Office of Unemployment Insurance.

(e) An otherwise eligible worker shall not be denied benefits under KRS 341.350(5), or because of a failure to actively seek work under paragraph (c) of this subsection, or disqualified under KRS 341.370(1)(a) under the following circumstances:

1. For any week a claimant provides verifiable enrollment in an approved job training or certification program listed on the current eligible training provider list, which can be found on the Kentucky Career Center website under the "Training – Providers" tab, and certifies making satisfactory progress in the program; or,

2. If a claimant provides verifiable definite return-to-work or recall-to-work prospects from his or her employer, either by an employer filed mass electronic claim or by submitting a written notice from the employer within a period of sixteen (16) weeks from the date of filing of the initial or reopened claim.

(f) Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his or her benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his or her benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late. Examples of good cause may include illness, availability issues beyond the claimant's control, lack of access to internet or phone necessary for claim filing, or unemployment insurance system outages.

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

(a) Through the Web site provided by the agency for that purpose at uicclaimsportal.ky.gov, with the claim completed before 7 p.m. Eastern Time on the Friday of the calendar week following the second week of the period claimed; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose, with the claim completed between the hours of 10 a.m. and 9 p.m. Eastern Time on the Sunday, or between the hours of 7 a.m. and 7 p.m. Eastern Time on the Monday through the Friday of the calendar week following the second week of the period claimed.

(3)

(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:

1. Unavailability of those options for the type of benefits claimed;

2. Unavailability of those options due to technical problems; or

3. A physical or mental condition preventing the worker from using those options.

(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.

(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

(d) The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail, and unless the claim is filed within the prescribed time, it shall not be allowed.

Section 4. Employer Filed Claims.

(1) An employer may file a claim on behalf of an unemployed worker if:

(a) The worker has definite recall rights within four (4) calendar weeks;

(b) The employer has a workforce of at least 100 workers at the time of the layoff;

(c) The employer submits the claim information in the required electronic format using the Directions for Submitting an Employer Mass Electronic Claim (E-claim) File and the E-claim – Template; and

(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the Office of Unemployment Insurance that the information is in the required format prior to the date the period of unemployment will begin.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:

(1) The worker's classification as established in Section 1(2) of this administrative regulation;

(2) The worker's individual employment and earning history; and

(3) The local labor market.

Section 6.

(1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:

(a) The employer's failure to comply with 787 KAR Chapter 1;

(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim; or

(c) Failure by the Office of Unemployment Insurance personnel to discharge necessary responsibilities.

(2)

(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

Section 7. The secretary shall conduct random audits of claims. Each random audit shall include one (1) or more of the eligibility requirements provided by KRS 341.350.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Directions for Submitting an Employer Mass Electronic Claim (E-claim) File, 03/20;

(b) E-Claim – Template, 03/20; and

(c) "Continued Claim Form", Rev. 2021.

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

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of Unemployment Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available on the office's Web site at <https://kcc.ky.gov/Pages/Reports-and-forms.aspx>.

BUDDY HOSKINSON, Executive Director

APPROVED BY AGENCY: December 22, 2022

FILED WITH LRC: December 22, 2022 at 1:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amended administrative regulation shall be held on March 21, 2023, at 1:00 p.m. Eastern Time at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 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 below.

CONTACT PERSON: Matthew P. Lynch, Staff Attorney, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone 502-564-2776, email matt.lynch@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Matthew P. Lynch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides updates to reporting requirements of unemployment claimants seeking unemployment insurance benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out KRS 341.350(11).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.350(11) requires the secretary to promulgate regulations related to work search activity reporting and verification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides procedures for unemployment claimants to report and certify work search activities in compliance with KRS 341.350(11).

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

(a) How the amendment will change this existing administrative regulation: In compliance with KRS 341.350(11), the amendment includes the requirement that unemployment claimants must report work search activities each week for which a claim for benefits has been made, specifies the type of activities that qualify as work search activities, and requires the unemployment claimant to certify his or her work search activities under the penalty of perjury as verification.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to comply with KRS 341.350(11).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment specifies the requirement for reporting work search activities as part of making a claim for benefits, specifies the type of work search activities that qualify under KRS 341.350, and requires certification of work search activities as the verification required under KRS 341.350.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the secretary, Office of Unemployment Insurance staff, and unemployment claimants seeking benefits with the necessary information and procedures for

reporting and certifying verifiable work search activities in accordance with KRS 341.350(11).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects unemployment insurance benefit recipients in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Unemployment claimants seeking benefits will have to report and certify to conducting no less than five (5) work search activities per week of claimed benefits as part of the weekly claims process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Unemployment claimants seeking benefits that comply with the work search requirements of KRS 341.350 and this regulation will not be deemed ineligible for benefits for failure to report work search activities.

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

(a) Initially: \$200,000.

(b) On a continuing basis: \$300,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current federal funding will be used for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All unemployment insurance benefit overpayment recipients are treated equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Office of Unemployment Insurance within the Kentucky 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 341.350(11).

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

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

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

(c) How much will it cost to administer this program for the first year? Estimate: \$300,000.

(d) How much will it cost to administer this program for subsequent years? Estimate: \$300,000.

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

regulation.

Revenues (+/-): None.

Expenditures (+/-): See above.

Other Explanation: This amendment will require additional workforce verification tasks to be completed by Office of Unemployment Insurance staff. It is estimated that it will take one staff person 1-hour per week to verify one claimant that has five (5) work search contacts or activities for any given claimed week.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation. This amendment does not impose any additional expenditures on employers.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no additional cost savings to the unemployment insurance benefit recipients to comply with this administrative regulation. This amendment does not confer cost savings to employers.

(c) How much will it cost the regulated entities for the first year? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

(d) How much will it cost the regulated entities for subsequent years? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

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

Cost Savings (+/-): See above.

Expenditures (+/-): No increase.

Other Explanation:

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

**EDUCATION AND LABOR CABINET
Office of Unemployment Insurance
(Amendment)**

787 KAR 1:100. Week of unemployment defined.

RELATES TO: KRS 341.080

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.080(3) provides that the cabinet shall prescribe by administrative regulation the period of time which shall constitute a week of unemployment for the purpose of administering the Unemployment Insurance Program in accordance with KRS Chapter 341. The purpose of this administrative regulation is to satisfy the statutory requirement.

Section 1. A "week of unemployment" shall be a calendar week of seven (7) consecutive calendar days, beginning 12:01 a.m., Sunday and ending 12 midnight the following Saturday except for any week he or she received shared work benefits in accordance with KRS 341.4161 to 341.4173. A week of unemployment beginning in a benefit year shall be deemed to be wholly in that benefit year.

BUDDY HOSKINSON, Executive Director

APPROVED BY AGENCY: December 22, 2022

FILED WITH LRC: December 22, 2022 at 1:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public

hearing on this amended administrative regulation shall be held on March 21, 2023, at 1:00 p.m. Eastern Time at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 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 below.

CONTACT PERSON: Matthew P. Lynch, Staff Attorney, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone 502-564-2776, email matt.lynch@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Matthew P. Lynch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides an exception to the definition of a "week of unemployment."

(b) The necessity of this administrative regulation: This administrative regulation is necessary to reflect the exception to the definition of a "week of unemployment" included in amended KRS 341.080(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.080(3) was amended to include an exception to the definition of "week of unemployment" for any week in which a claimant receives shared work benefits pursuant to KRS 341.4161 to 341.4173.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation specifies the time period constituting a "week of unemployment" in compliance with KRS 341.080(3).

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

(a) How the amendment will change this existing administrative regulation: The amendment to the regulation includes the statutory exception to the definition of "week of unemployment" for any week in which a claimant receives shared work benefits in compliance with amended KRS 341.080(3).

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to comply with KRS 341.080(3).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment specifies that a "week of unemployment" does not include any week in which a claimant receives shared work benefits pursuant to KRS 341.4161 to 341.4173 in compliance with KRS 341.080(3).

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the secretary, Office of Unemployment Insurance staff, and unemployment claimants seeking benefits with the necessary information about the difference between a "week of unemployment" under the regular unemployment insurance program and the shared work benefits program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects unemployment insurance benefit recipients and employers participating in the shared work program in the Commonwealth and Office of Unemployment Insurance staff.

(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 comply with this administrative regulation

or amendment: The Office of Unemployment Insurance staff will need to distinguish between claims for benefits under the regular unemployment insurance program and claims for benefits under the shared work program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the unemployment insurance benefit recipients or employers to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Unemployment claimants receiving benefits under the shared work program will not be deemed to have had a "week of unemployment."

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

(a) Initially: This amendment only includes a statutory exception to the definition of "week of unemployment" and is not expected to have any additional cost.

(b) On a continuing basis: This amendment only includes a statutory exception to the definition of "week of unemployment" and is not expected to have any additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current federal funding will be used for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All unemployment insurance benefit recipients are treated equally depending on if the benefits derive from the regular unemployment insurance program or the shared work benefits program.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Office of Unemployment Insurance within the Kentucky 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 341.080(3).

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment includes an exception to the definition of "week of unemployment" and is not expected to have any additional cost.

(d) How much will it cost to administer this program for subsequent years? The amendment includes an exception to the definition of "week of unemployment" and is not expected to have any additional cost.

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

Revenues (+/-): None.

Expenditures (+/-): See above.

Other Explanation: This amendment only includes a statutory exception to the definition of "week of unemployment" and is not expected to have any additional cost.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation. This amendment does not impose any additional expenditures on employers.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no additional cost savings to the unemployment insurance benefit recipients to comply with this administrative regulation. This amendment does not confer cost savings to employers.

(c) How much will it cost the regulated entities for the first year? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

(d) How much will it cost the regulated entities for subsequent years? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

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

Cost Savings (+/-): See above.

Expenditures (+/-): See above.

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.

PUBLIC PROTECTION CABINET Kentucky Department of Financial Institutions (Amendment)

808 KAR 10:440. Examples of dishonest or unethical practice for broker-dealers and agents.

RELATES TO: KRS 292.337, 292.480

STATUTORY AUTHORITY: KRS 292.336(5), (6), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.336(5) and (6) authorize the commissioner to promulgate administrative regulations prohibiting unreasonable charges, profits, commissions, or other compensation for broker-dealers and agents and prescribing standards for the conduct of business by broker-dealers and agents which the commissioner finds appropriate in the public interest and for the protection of investors. This administrative regulation provides examples of dishonest and unethical practices by broker-dealers and agents and states the consequences of engaging in unacceptable conduct or practices.

Section 1. Broker-dealers shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers and the conduct of their business. The following acts[Acts] and practices shall constitute violations of those standards and principles and[such as the following shall be considered contrary to these standards. Violations] may result in a fine, suspension, or revocation in proportion to the seriousness of the offense, pursuant to KRS 292.337(1):

(1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment of free credit balances reflecting completed transactions of any of its customers;

(2) Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to timely respond to a formal written demand or complaint by a customer;

(3) Attempting to enforce a condition, stipulation, or provision against a customer in Kentucky if the result would:

(a) Leave the customer without the choice of a forum for dispute resolution in the state of Kentucky; or

(b) Limit the timeliness of an action to a period less than that established in KRS 292.480;

(4) Failing to segregate a customer's securities held in safekeeping;

(5) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission;

(6) Charging unreasonable and inequitable fees for services performed, including[such as]:

(a) Collection of monies due for principal;

(b) Dividends or transfer of securities;

(c) Appraisals;

(d) Safekeeping; or

(e) Custody of securities and other services related to its securities business;

(7) Offering to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell, as the case may be, at the price and under the conditions as are stated when the offer is made;

(8) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created, or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution, or any person controlled by, controlling, or under common control with the broker-dealer;

(9) Failing to disclose in writing that the broker-dealer is controlled by, controls, is affiliated with, or is under common control with the issuer of any security, the existence of this control before entering into any binding contract with or for a customer for the purchase or sale of the security;

(10) Failing to make a bona fide public offering of all the securities allotted to the broker-dealer for distribution, whether acquired directly as an underwriter or a selling group member or indirectly from an entity participating in the distribution as an underwriter or selling group member;

(11) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(12) Switching, churning, overtrading, or reloading of a security in a customer's account for the purpose of accumulating or increasing a commission;

(13) Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon a reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(14) Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a formal prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(15) Participating in the solicitation or offer for sale of a security without the use of an offering document or prospectus, if required, or making a statement contrary to or inconsistent with disclosure contained in the offering document or prospectus;

(16) Making a false, misleading, deceptive, or exaggerated representation or prediction in the solicitation or sale of a security, including:

(a) That the security will be resold or repurchased;

(b) That the security will be listed or traded on an exchange or established market;

(c) That the security will result in an assured, immediate, or

material increase in value, future market price, or return on an investment;

(d) That there is a guarantee against risk of loss; or

(e) Any statement with respect to an issuer's financial condition, anticipated earnings, potential growth, or success not supportable by information in the offering document or prospectus;

(17) Engaging or aiding in boiler room operations such as use of high pressure tactics to promote a speculative offering or promotion of a security in an intensive campaign in which the prospective purchaser is encouraged to make a hasty decision to buy a security irrespective of the purchaser's investment needs, objectives, or understanding of the security being offered;

(18) Executing a transaction on behalf of a customer without authorization to do so;

(19) Exercising any discretionary power effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the executing of orders;

(20) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement;

(21) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(22) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design or contrivance, including[which may include any of the following]:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, that has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; except, this subsection shall not prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

(23) Guaranteeing a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer;

(24) Publishing or circulating, or causing the publication or circulation of, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer reasonably believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer reasonably believes that the quotation represents a bona fide bid or offer;

(25) Using any advertising or conducting any sales practice in a deceptive or misleading manner;

(26) Entering into an agreement for a concession, discount, commission, or allowance as consideration for a service in connection with the distribution or sale of a security in Kentucky with a broker-dealer, agent, investment adviser, or investment adviser representative who is not either:

(a) Registered in Kentucky; or

(b) Exempted from the registration requirements for conducting a securities business in Kentucky;

(27) Lying to or otherwise misleading representatives of the Department of Financial Institutions conducting an authorized examination or investigation;

(28) Failing to make requested records available to or otherwise impeding a representative of the Department of Financial Institutions conducting an authorized examination or investigation;

(29) Failing to respond within the specified time period to a written request from an authorized representative of the Department of Financial Institutions for:

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- (a) Information
- (b) An explanation of practices or procedures;
- (c) A response to a complaint filed with the Department of Financial Institutions; or
- (d) A response to a written statement of findings from an examination; ~~and~~

(30) Committing any act involving a customer, a customer's account, or any business records which would constitute a criminal offense; ~~]~~

(31) Failing to pay and fully satisfy any final order, final judgment, or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement;

(32) Attempting to avoid payment of any final order, final judgment, or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements; or

(33) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer or agent by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization.

Section 2. Broker-dealer agents shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers. The following acts and practices shall constitute violations of those standards and principles and ~~are considered contrary to these standards. Violations~~ may result in a fine, suspension, or revocation in proportion to the seriousness of the offense, pursuant to KRS 292.337(1):

(1) Sharing ~~directly or indirectly~~ in profits or losses in the account of a customer without the written authorization of the customer and the broker-dealer which the agent represents;

(2) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(3) Effecting securities transactions not recorded on the regular books and records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(4) Engaging in the practice of lending to or borrowing from a customer either money or securities;

(5) Acting as custodian of a customer's money, securities, or an executed stock power; ~~or~~ ~~and~~

(6) Engaging in conduct specified in Section 1(11) through ~~(33)~~ ~~(30)~~ of this administrative regulation.

Section 3. Issuer agents shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers. The following acts and practices shall constitute violations of those standards and principles and ~~are considered contrary to these standards. Violations~~ may result in a fine, suspension, or revocation in proportion to the seriousness of the offense, pursuant to KRS 292.337(1):

(1) Engaging in conduct specified in Section 1(2), (13), (15) through (18), or (25) through ~~(33)~~ ~~(30)~~ of this administrative regulation; or

(2) Engaging in conduct specified in Section 2(3) or (4).

Section 4. The commissioner may determine that an activity not included in the examples identified in Sections 1 through 3 of this administrative regulation constitutes a dishonest or unethical practice if the activity is similar to an enumerated activity.

JUSTIN BURSE, Acting Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: January 13, 2023

FILED WITH LRC: January 13, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2023, at 1:00 PM, at 500 Mero Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 March 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: Catherine Falconer; General Counsel; 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601; Phone: 502-782-9052; Fax: 502-573-8787; Email: Catherine.Falconer@ky.gov and Marni Gibson, Acting Deputy Commissioner, 500 Mero Street, 2SW19, Frankfort, Kentucky 40601; Phone: 502-782-9053; Fax: 502-573-8787; Email: Marni.Gibson@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Catherine Falconer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides examples of dishonest and unethical practices by broker-dealers and agents and states the consequences of engaging in unacceptable conduct or practices.

(b) The necessity of this administrative regulation: KRS 292.336(5) and (6) authorize the commissioner to promulgate administrative regulations prohibiting unreasonable charges, profits, commissions, or other compensation for broker-dealers and agents and prescribing standards for the conduct of business by broker-dealers and agents which the commissioner finds appropriate in the public interest and for the protection of investors. This regulation is necessary to provide examples of dishonest and unethical practices by broker-dealers and agents and share the consequences of engaging in unacceptable conduct or practices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prohibits unreasonable charges, profits, commissions, or other compensation for broker-dealers and agents and prescribes standards for the conduct of business by broker-dealers and agents which the commissioner finds appropriate in the public interest and for the protection of investors. Furthermore, this regulation provides for standards of conduct of broker-dealers and agents regarding their interaction with clients, the public in general, adherence to the governing laws, and honestly and transparency in their conduct in order to promote confidence in the industry.

(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 regulation establishes an ethical violation for a broker-dealer or agent that fails to satisfy an investment-related, customer-initiated judgment or court order, attempts to avoid payment of referenced judgment or court order or fails to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed on the broker-dealer or agent from a federal or state regulatory body.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to uphold ethical standards of participants in the financial industry, specifically a segment that works directly with clients and engages in transactions that involve the client's hard-earned capital. Failure to pay judgments or avoiding payment on court orders or judgments, related to investment-related activities, undermines the integrity of the securities industry, and allows for broker-dealers and agents to continue to engage with customers in a position of trust when their standards are

compromised.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 292.336(6) provides for the commissioner to prescribe rules for the conduct of business by broker-dealers and investment advisers which he or she finds appropriate in the public interest and for the protection of investors. This amendment will enhance and raise standards for broker-dealers and agents regarding payments for orders or judgments.

(d) How the amendment will assist in the effective administration of the statutes: The amended language will allow the Department to hold broker-dealers and agents accountable for failure to uphold their obligations to the court or other governing body.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All broker-dealers and agent participants in the securities industry in Kentucky will be held to this standard and potentially affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Broker-dealers and agents will be required to pay all fees and fines resulting from court orders, judgments or arbitration awards resulting from an investment-related customer-initiated action or enter into a written payment plan for satisfaction of the judgment. In addition, the broker-dealer will be prohibited from actively avoiding payments or purposely failing to take action to make required payments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs incurred will be a direct result of the actions of the broker-dealer and agent to comply with the judgment or orders and will be dependent upon their compliance. Imposing an enhanced ethical requirement will not directly incur additional business costs to the regulated entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with the amendment language will promote higher ethical standards throughout the industry and increase client confidence in broker-dealers and their agents.

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

(a) Initially: There will be no additional costs initially incurred by the agency for implementation.

(b) On a continuing basis: There is no anticipated additional costs other than for enforcement actions resulting from a lack of compliance with this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this regulation will be funded by the current Department budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Department does not anticipate a need to increase funding to implement this change.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The amended regulation language will not require tiering to be implemented.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Financial Institutions

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.336(5), (6), 292.500(3)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The regulation amendment will not impact the Department's budget. All revenue associated with this regulation are addressed in the current budget.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The regulation amendment will not impact the Department's budget in subsequent years. All revenue associated with this regulation are addressed in the current budget.

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this regulation amendment. All costs associated with this regulation are addressed in the current budget.

(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. All costs associated with this regulation are addressed in the current budget. The Department does not anticipate that the regulatory amendment will have an impact on costs or revenue in the current year or subsequent years.

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. Regulated entities will have no additional costs if they maintain compliance with the current regulatory provisions.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The Department does not anticipate cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The Department does not anticipate cost savings for the regulated entities for subsequent years.

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

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The regulatory amendment will not have a fiscal impact on the Department or the regulated entities for regulatory compliance.

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 to the regulation will not have a major economic impact on the administrative regulation of these entities.

PUBLIC PROTECTION CABINET Kentucky Department of Financial Institutions (Amendment)

808 KAR 10:450. Examples of dishonest or unethical practice for investment advisers and investment adviser representatives.

RELATES TO: KRS Chapter 292, 17 C.F.R. 275.206(4), 15

U.S.C. 78, 80b

STATUTORY AUTHORITY: KRS 292.336(5), (6), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.336(5) and (6) authorize the commissioner to promulgate administrative regulations prohibiting unreasonable charges or other compensation of investment advisers and prescribing standards for the conduct of business by investment advisers and investment adviser representatives which the commissioner finds appropriate in the public interest and for the protection of investors. This administrative regulation provides examples of dishonest and unethical practices by investment advisers and investment adviser representatives and clarifies the consequences of engaging in unacceptable conduct or practices.

Section 1. Definitions.

(1) "Advertisement" means any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any other medium, that offers any one of the following:

- (a) Any analysis, report, or publication concerning securities;
- (b) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;
- (c) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
- (d) Any other advisory service ~~regarding~~[with regard to] securities.

(2) "Investment adviser solicitor" means a person or entity that, directly or indirectly, solicits a prospective client for, or refers a prospective client to, an investment adviser.

Section 2. A person who is an investment adviser or an investment adviser representative shall be a fiduciary and shall have a duty to act primarily for the benefit of its clients. An investment adviser or investment adviser representative shall not engage, either directly or indirectly, in unethical or dishonest practices. The following acts and practices shall ~~constitute~~[be considered either] a breach of fiduciary duty or a dishonest and unethical practice, ~~and violations~~[Violations] may result in a fine, suspension, or revocation in proportion to the seriousness of the offense:

(1) Recommending to a client to whom investment advisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client ~~based on~~[the basis of] information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account ~~considering~~[in light of the fact] that an investment adviser or investment adviser representative ~~may in these situations can~~ directly benefit from the number of securities transactions effected in a client's account;

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so;

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

(7) Loaning money or securities to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

(8)(a) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser;

(b) Misrepresenting the nature of the advisory services being offered or fees to be charged for the service; or

(c) Omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they were made, not misleading;

(9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact;

(10) Charging a client an unreasonable advisory fee in light of the fee charged by other investment advisers providing similar services;

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser, or any of its employees, including:

(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from these clients for advisory services; ~~or~~[and]

(b) The amount of any commissions to be received for executing transactions pursuant to advice given;

(12) Failing to disclose to clients in writing all potentially conflicting divisions of loyalty in connection with a transaction, ~~and failing to obtain~~[obtaining] the written consent of the client to proceed with the transaction ~~in accordance with the following requirements~~:

(a) Any transaction in which a person acts as an investment adviser for one (1) party to that transaction and in which the person (or any person controlling, controlled by, or under common control with the adviser) acts as a broker-dealer for both the advisory client and another person on the other side of the transaction is subject to this disclosure and consent requirement, and the client shall be provided a written confirmation for each such transaction which contains the following:

- 1. A statement of the nature of the transaction;
- 2. The date of the transaction;
- 3. An offer to furnish, upon written request, the time of the transaction; and

4. The source and amount of any other remuneration the adviser received or will receive in connection with the transaction. If the investment adviser is not participating in a distribution when the advisory client is purchasing the security or a tender offer when the advisory client is selling the security, the confirmation may state that the investment adviser has been or will be receiving other remuneration and that the source and the amount of this remuneration will be furnished upon the client's written request;

(b) The disclosure and consent requirements of subsection (12)(a) of this section apply to each contemplated transaction and shall be complied with every time the transaction occurs unless the adviser complies with the provisions of subsection (12)(c) of this section;

(c) If the disclosure and consent requirements of subsection (12)(a) of this section prospectively cover more than one transaction, the adviser is responsible for ensuring that the client receives at least annually, with or as part of a written statement or summary of the client's account, written disclosure of the following:

- 1. The total number of these transactions since the date of the last statement or summary;
- 2. The total amount of all commissions or other remuneration the adviser received or will receive in connection with the transactions; and

3. A conspicuous statement that the client may revoke the written consent previously given by providing written notice of the revocation to the adviser; and

(d) Any transaction in which the same adviser recommended the transaction to both a seller and a purchaser of a security shall be a dishonest or unethical practice regardless of any disclosure and consent;

(13) Failing to disclose to clients in writing before any advice is rendered any material fact with respect to the financial and disciplinary information required to be disclosed by 17 C.F.R.

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275.206(4)-4 (SEC Rule 206(4)4);

(14) Guaranteeing a client that a specific result will be achieved with advice which will be rendered;

(15) Using any advertisement that does ~~[any of]~~ the following:

(a) Refers to any testimonial of any kind concerning any advice, analysis, report, or other service rendered by the adviser or representative unless it meets the following requirements:

1. The testimonial clearly discloses whether the person giving the testimonial is a client or promoter;

2. The testimonial clearly discloses whether the person giving the testimonial is compensated;

3. An adviser or representative using a testimonial provided by a promoter has entered into a written agreement with a promoter; and

4. The adviser or representative and testimonial comply with all provisions of Rule 206(4)-1 of the Investment Advisers Act of 1940, commonly known as the SEC marketing rule, effective December 22, 2020;

(b) Refers to past specific recommendations of the adviser or representative that were or would have been profitable, except that an adviser or representative may furnish or offer to furnish a list of all recommendations made by the adviser or representative within the immediately preceding period of not less than one (1) year if the list also includes the following:

1. The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

2. A legend on the first page in prominent print or type that states that recommendations made in the future may not be as profitable as the securities on the list;

(c) Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; ~~[-or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions without prominently disclosing in the advertisement the limitations and the difficulties with respect to its use;]~~

(d) Represents that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions without prominently disclosing in the advertisement the limitations and the difficulties with respect to its use;

~~(e)[(d)]~~ Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis or other service actually is or will be furnished free and without any direct or indirect condition or obligation;

~~(f)[(e)]~~ Represents that the Department of Financial Institutions has approved any advertisement; or

~~(g)[(f)]~~ Contains any untrue statement or omission of a material fact, or that is otherwise false or misleading;

(16) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to in writing by the client;

(17) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, if the investment adviser has custody or possession of the securities or funds when the adviser's action is subject to and does not comply with the provisions of 808 KAR 10:020 relating to the custody;

(18) Entering into, extending, or renewing an advisory contract unless the contract is in writing and discloses the following:

(a) The nature of the advisory services to be provided;

(b) The time period that the contract remains in effect;

(c) The advisory fee and the formula for computing the fee;

(d) The amount of the prepaid fee to be returned if there is contract termination or nonperformance;

(e) Whether the contract grants discretionary power to the adviser and, if so, the terms of the discretionary power;

(f) Whether the contract grants custody of client funds to the adviser and, if so, the terms of the custody; and

(g) That the adviser shall not assign the contract without the prior written consent of the client;

(19) Including in an advisory contract any condition, stipulation,

or provision binding any client to waive compliance with any provision of the Securities Act of Kentucky, KRS Chapter 292, 808 Chapter 10, or of the Investment Advisors Act of 1940, 15 U.S.C. 80b;

(20) Paying compensation, directly or indirectly, to an investment adviser solicitor unless the investment adviser makes the payment in accordance with the requirements of 17 C.F.R. 275.206(4)-3 (SEC Rule 206(4)-3);

(21) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative contrary to the provisions of Section 206(4) of the Investment Advisors Act of 1940, whether or not the investment adviser is registered or required to be registered under Section 203 of the Act;

(22) Failing to provide all material information with respect to any dealings with or recommendations to any advisory client in violation of KRS 292.320;

(23) Committing any act involving a client, the client's assets, or any business records which would constitute a criminal offense;

(24) Lying to or otherwise misleading a representative of the Department of Financial Institutions conducting an authorized examination or investigation;

(25) Failing to make requested records available to or otherwise impeding a representative of the Department of Financial Institutions conducting an authorized examination or investigation; ~~[-and]~~

(26) Failing to respond in a timely manner to a written request from an authorized representative of the Department of Financial Institutions for:

(a) Information;

(b) An explanation of practices or procedures;

(c) A response to a complaint filed with the department; or

(d) A response to a written statement of findings from an examination.

(27) Failing to pay and fully satisfy any final order, judgment, or arbitration award resulting from an investment-related, client or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to, in writing, and complied with between:

(a) The client and the investment adviser or investment adviser representative; or

(b) Between the customer and the broker-dealer or the broker-dealer agent;

(28) Attempting to avoid payment of any final order, judgment, or arbitration award resulting from an investment-related, client or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to, in writing, and complied with between:

(a) The client and the investment adviser or investment adviser representative; or

(b) Between the customer and the broker-dealer or the broker-dealer agent; or

(29) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser representative by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization.

Section 3. The provisions of this administrative regulation shall apply to federally covered advisers operating in Kentucky to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Market Improvement Act of 1996, 15 U.S.C. 78, and the Investment Advisors Act of 1940, 15 U.S.C. 80b.

Section 4. The commissioner may determine that an activity not included in the examples identified in Section 2 of this administrative regulation constitutes a dishonest or unethical practice if the activity is similar to an enumerated activity.

JUSTIN BURSE, Acting Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: January 13, 2023

FILED WITH LRC: January 13, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public

hearing on this administrative regulation shall be held on March 28, 2023, at 1:00 p.m. at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 March 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: Catherine Falconer, General Counsel, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601, Phone: 502-782-9052, Fax: 502-573-8787, Email: Catherine.Falconer@ky.gov and Marni Gibson, Acting Deputy Commissioner, 500 Mero Street, 2SW19, Frankfort, Kentucky 40601, Phone: 502-782-9053, Fax: 502-573-8787, Email: Marni.Gibson@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Catherine Falconer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides examples of dishonest and unethical practices by investment advisers and investment adviser representatives and states the consequences of engaging in unacceptable conduct or practices.

(b) The necessity of this administrative regulation: KRS 292.336(5) and (6) authorize the commissioner to promulgate administrative regulations prohibiting unreasonable charges, profits, commissions, or other compensation for Investment Advisers and Investment Adviser Representatives, and prescribing standards for the conduct of business by Investment Advisers and Investment Adviser Representatives which the commissioner finds appropriate in the public interest and for the protection of investors. This administrative regulation is necessary to provide examples of dishonest and unethical practices by investment advisers and investment adviser representatives and clarify the consequences of engaging in unacceptable conduct or practices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prohibits unreasonable charges, profits, commissions, or other compensation for Investment Advisers and Investment Adviser Representatives, and prescribes standards for the conduct of business by Investment Advisers and Investment Adviser Representatives which the commissioner finds appropriate in the public interest and for the protection of investors. Furthermore, this regulation provides for standards of conduct of Investment Advisers and Investment Adviser Representatives regarding their interaction with clients and the public in general, for adherence to the governing laws, and for honesty and transparency in their conduct, in order to promote confidence in the industry.

(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 regulation establishes an ethical violation for a broker-dealer or agent that fails to satisfy an investment-related, customer-initiated judgment or court order, attempts to avoid payment of a judgment or court order, or fails to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed on the broker-dealer or agent from a federal or state regulatory body.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to uphold ethical standards of participants in the financial industry, specifically a segment that works directly with clients and engages in transactions that involve the client's hard-earned capital. Failure to pay judgements or

avoiding payment on court orders or judgments related to investment related activities undermines the integrity of the securities industry and allows for Investment Advisers and Investment Adviser Representatives to continue to engage with customers in a position of trust when their standards are compromised.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 292.336(6) authorizes the commissioner to prescribe rules for the conduct of business by Investment Advisers and investment advisers which he or she finds appropriate in the public interest and for the protection of investors. This amendment will enhance and raise standards for Investment Advisers and Investment Adviser Representatives regarding payments for orders or judgements.

(d) How the amendment will assist in the effective administration of the statutes: The amended language will allow the Department to hold Investment Advisers and Investment Adviser Representatives accountable for failure to uphold their obligations to the court or other governing body.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Investment Advisers and agent participants in the securities industry in Kentucky will be held to this standard and potentially affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Investment Advisers and Investment Adviser Representatives will be required to pay all fees and fines resulting from court orders, judgments, or arbitration awards resulting from an investment-related customer-initiated action, or to enter into a written payment plan for satisfaction of the judgement. In addition, the broker-dealer will be prohibited from actively avoiding payments or purposefully failing to take action to make required payments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs incurred will be a direct result of the actions of the broker-dealer and agent to comply with the judgement or orders and will be dependent upon their compliance. Imposing an enhanced ethical requirement will not directly result in additional business costs to the regulated entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with the amendment language will promote higher ethical standards throughout the industry and increase client confidence in Investment Advisers and their Investment Adviser Representatives.

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

(a) Initially: There will be no additional costs initially incurred by the agency for implementation.

(b) On a continuing basis: There is no anticipated additional costs other than for enforcement actions resulting from a lack of compliance with this standard.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this regulation will be funded by the current Department budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Department does not anticipate a need to increase funding to implement this change.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The amended regulation language will not require tiering to be implemented.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Financial Institutions

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.336(5), (6), 292.500(3)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The regulatory amendment will not impact the Department's budget.

(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 regulatory amendment will not impact the Department's budget 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 regulatory amendment.

(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. The Department does not anticipate that the regulatory amendment will have an impact on costs or revenue in the current year or subsequent years.

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. Regulated entities will have no additional costs if they maintain compliance with the current regulatory provisions.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The Department does not anticipate cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The Department does not anticipate cost savings for the regulated entities for subsequent years.

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

(b) How much will it cost the regulated entities for subsequent years? There will be no additional costs to regulated entities in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The regulation amendment will not have a fiscal impact to the Department or the regulated entities for regulatory compliance.

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 to the regulation will not have a major economic impact on the administrative regulation of these entities.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)

820 KAR 1:005. Charitable gaming licenses and exemptions.

RELATES TO: KRS 238.515, 238.525, 238.530, 238.535, 238.540, 238.555

STATUTORY AUTHORITY: KRS 238.515, 238.525, 238.530, 238.535(2), (13), 238.555

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(1) requires the Department of Charitable Gaming to license charitable organizations, charitable gaming facilities, manufacturers, and distributors that desire to engage in charitable gaming. KRS 238.515(2) authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities. This administrative regulation establishes the requirements, fees, and procedures for licensure of a qualifying charitable organization, distributor, manufacturer, or charitable gaming facility. This administrative regulation establishes criteria for temporary licenses, exemptions, and inspections for verifying the information contained in an application.

Section 1. Application for Licensure. (1) At least sixty (60) days prior to the expiration of its existing license or its first expected date of gaming, facility operation, or business operations in Kentucky during the license period, an applicant shall submit the appropriate complete, accurate, and documented application:

(a) A charitable organization shall submit Form CG-APP-ORG[CG-1];

(b) An organization authorized to hold special event raffles pursuant to KRS 238.535(14)(b) shall submit Form CG-APP-SER[CG-SER];

(c) A distributor shall submit Form CG-APP-DIS[CG-2];

(d) A manufacturer shall submit Form CG-APP-MAN[CG-3]; [and]

(e) A charitable gaming facility shall submit Form CG-APP-FAC[CG-4]; and

(f) A licensed charitable organization shall submit Form CG-APP-ORG-CFE in addition to Form CG-ORG-APP for each charity fundraising event it intends to conduct.

(2) The department shall review the application and notify the applicant in writing of any deficiencies in the application as soon as practicable. An application shall not be considered complete until all deficiencies are resolved.

(3) If the applicant does not file a written response to a deficiency request, provide requested information and documents, or otherwise cure the identified deficiency within thirty (30) days of the written notice, the application shall be deemed withdrawn.

(4) If the applicant files a written response to a deficiency request within thirty (30) days of the written notice, but the response does not cure the identified deficiency, the department shall issue a subsequent deficiency notice. If the deficiency is incapable of being cured, the department shall deny the license.

(5) Once the department has received a complete application, it shall grant or deny the license within sixty (60) days of receipt.

Section 2. License Requirements, Fees, and Issuance. (1) The department shall issue a license if the applicant has:

(a) Met the statutory requirements established:

1. For charitable organizations, by KRS 238.535;

2. For special event raffle organizations, by KRS 238.535(14)(b);

3. For distributors and manufacturers, by KRS 238.530; or

4. For charitable gaming facilities, by KRS 238.555;

(b) Paid all fees and fines;

(c) Filed all required reports;

(d) Filed an acceptable financial plan, if required;

(e) Complied with all terms and conditions of any applicable settlement agreement or probationary terms; and

(f) Submitted fingerprints cards as required by KRS 238.525.

(2) Fees for licenses issued shall be paid according to the

following schedule:

(a) A nonrefundable application fee of twenty-five (25) dollars shall accompany each application for licensure and shall be credited against the amount of the annual license fee, if the requested license is granted.

(b) For charitable organizations and organizations licensed pursuant to KRS 238.535(14)(b):

1. \$100 for:

a. A charitable organization upon initial application; or

b. A charitable organization with gross receipts not in excess of \$100,000;

2. \$200 for a charitable organization with gross receipts over \$100,000, but not in excess of \$250,000; or

3. \$300 for a charitable organization with gross receipts over \$250,000.

(c) For manufacturers or distributors: \$1,000.

(d) For charitable gaming facilities:

1. \$1,000 for a facility that does not conduct bingo sessions; or

2. [1-] \$1,250 for a facility conducting between one (1) and eight (8) bingo [or fewer] sessions per week; or

3. [2-] \$2,500 for a facility conducting between nine (9) and eighteen (18) bingo sessions per week.

(3) A license shall not be issued until the license fee and any other fees or fines due are paid in full.

(4) The license term shall be for one (1) year from the effective date of the license.

(5) A licensed charitable organization, distributor, manufacturer, or charitable gaming facility may submit a written change request to change any information contained in the license application or printed on the license. All change requests shall be accompanied by a twenty-five (25) dollar change fee and be signed by an officer. The department shall process change requests and issue or deny an amended license within ten (10) days of receipt, and the licensee shall not engage in gaming until a license reflecting the change request has been issued. An organization shall submit requests for changes to its listed officers and chairpersons by submitting Form CG-OCC-ORG (2023), Notice of Change in Officers or Chairpersons.

(a) Except as provided in KRS 238.535(12)(b)(2), a licensed charitable organization may change the date, time, or location of a charitable gaming session if the licensed charitable organization submits a written request to the department at least ten (10) days prior to the date of the requested change. Any change request made pursuant to this subsection shall [must] be accompanied by a lease, if required, for the new gaming location.

(b) If a charitable organization wishes to cancel a charitable gaming session, the organization shall notify the department, in writing, at least twenty-four (24) hours prior to the scheduled start of the charitable gaming session, except if [in the event of] an emergency beyond the organization's control occurs, in which case the organization shall notify the department of the change as soon as practicable. A cancellation shall not require a change fee.

(6) A charitable organization shall not advertise any charitable gaming activity until the activity has been licensed by the department.

Section 3. Temporary License. (1) Application for Licensure. The department may issue a temporary license to an applicant for a charitable gaming license if the applicant has submitted a complete and accurate license application form, and has complied with all other licensing requirements for an annual license.

(2) License Fee. For each temporary license issued, the licensee shall pay a twenty-five (25) dollar fee. The total temporary license fee charged in a year shall not exceed the annual license fee.

Section 4. Distributor Requirements. (1) For the operation of a distributorship, a distributor shall maintain a separate bank account that is not commingled with a personal account or another business account. If the licensed distributor owns multiple distributorships, a separate bank account shall be maintained for each distributorship.

(2) Any payments received by a distributor from a charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming

account.

(3) A distributor or its agent shall maintain storage facilities within this state for gaming supplies to be sold within the Commonwealth of Kentucky, and shall identify the facilities' physical locations to the department. Storage facilities shall be made accessible to the department for inspection upon request.

Section 5. Charitable Gaming Facility Requirements. (1) A licensed charitable gaming facility shall be permitted to list on its website the names, license numbers, gaming sessions, and information regarding the charitable organizations that game at that licensed charitable gaming facility.

(2) If a charitable organization contracts with a licensed charitable gaming facility to operate a concession stand, the members of the charitable organization that volunteer at the concession stand may volunteer to work for their own gaming session, but shall not volunteer for the gaming session of any other charitable organization that games at that licensed charitable gaming facility.

(3) For a licensed gaming facility operation, a licensed gaming facility shall maintain a separate bank account that is not commingled with a personal account or another business account. If the licensee owns multiple licensed gaming facilities, a separate bank account shall be maintained for each licensed gaming facility. If separate businesses are operated out of the licensed gaming facility, including a check cashing service or a concession stand, each business shall have a separate bank account.

(4) Any payments received by a licensed gaming facility from a charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account of the charitable organization.

(5) The lease agreement executed between the licensed charitable gaming facility and charitable organization shall contain the day and time of each charitable gaming session a charitable organization will conduct at the licensed gaming facility. The day and time listed in the lease agreement shall be accurate and shall match the day and time listed on the organization's charitable gaming license.

Section 6. Exempt Organizations. (1) An organization seeking exemption from charitable gaming licensing requirements shall submit a complete and accurate Form CG-APP-EXE, Notification of Intent to Engage in Exempt Charitable Gaming [CG-Exempt, Organization Grossing Under \$25,000 Application for Exemption], at least thirty (30) days prior to the expected date of gaming. The Form CG-APP-EXE [CG-Exempt] shall be submitted with a non-refundable fee of twenty-five (25) dollars.

(2) If the charitable organization has submitted a complete application, and meets the requirements for exemption established in KRS Chapter 238, the department shall issue a Notification of Exemption within thirty (30) days of the completed submission.

(3) The department shall review the application and shall notify the applicant within thirty (30) days of receipt of the initial application of the nature of any deficiencies. If identified deficiencies are not cured within thirty (30) days from the notice, the application shall be deemed withdrawn, and no exemption will be granted in response to the application.

(4) The charitable organization shall not be required to file an additional exemption application with the department if the gaming activities of the charitable organization remain within the qualifications for exempt status.

(5) The charitable organization shall notify the department of any changes in the exempt status of the charitable organization within thirty (30) days of the occurrence of the [such] changes.

(6) A charitable organization that conducts charitable gaming pursuant to an exemption [possessing a Notice of Exemption] shall file an annual report with the department before January 31 of each year. This report shall be filed on Form CG-FIN-EXE [CG-EFR], Annual Financial Report for [For] Exempt Organization. The report may be filed electronically.

(7) A charitable organization that has had its exemption revoked for any reason shall pay a nonrefundable reinstatement fee of twenty-five dollars (25) with any application or request for reinstatement.

Section 7. Licensee Inspections. (1) An applicant for a license or an exemption shall be able to demonstrate the existence of their establishment by:

- (a) Contracts or leases;
- (b) Utility bills;
- (c) Records maintained by the parent organization;
- (d) Bank records; or
- (e) Similar documents.

(2) Any such records shall be accessible to the department for inspection.

(3) An applicant for a license or an exemption shall be able to demonstrate its maintenance of an office by copies of the business records including the articles of incorporation and by-laws, if any, any tax forms, the check book and bank statements, and any other records kept in the ordinary course of operating the type of business for which licensure is sought.

(4) An applicant for a charitable gaming facility license shall be able to demonstrate that it is the entity that is operating the charitable gaming facility and that the charitable gaming facility does not have any prohibited relationships with organizations, distributors, or manufacturers. This may include an inspection of its office including contracts, required reports, checkbook, bank accounts, and any other records regarding the operation of the charitable gaming facility. Any such records stored or maintained in electronic formats shall likewise be accessible to the department for inspection.

(5) An applicant for a distributor's or manufacturer's license shall be able to demonstrate prior to licensing that it manufactures or distributes gaming supplies from the locations stated on the license application. This may include an inspection of those locations and a demonstration or explanation of its ability to track gaming supplies and maintain the appropriate records. Any such records stored or maintained in electronic formats shall likewise be accessible to the department for inspection.

(6) Inspections shall be completed by appropriate department personnel who shall file a report stating the results of the inspection performed.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form CG-APP-EXE, "Notice of Intent to Engage in Exempt Charitable Gaming (2023)"[CG-Exempt, "Organization—Grossing Under \$25,000 Application for Exemption (2019)"];
- (b) Form CG-FIN-EXE[CG-EFR], "Annual Financial Report for [For] Exempt Charitable Organization (2023)"[(2019)]";
- (c) Form CG-APP-ORG[CG-4], "Charitable Gaming Organization License Application (2023)"[(2019)]";
- (d) Form CG-APP-SER[CG-SER], "Special Event Raffle License Application (2023)"[(2019)]";
- (e) Form CG-APP-DIS[CG-2], "Charitable Gaming Distributor License Application (2023)"[(2019)]";
- (f) Form CG-APP-MAN[CG-3], "Charitable Gaming Manufacturer License Application (2023)"[(2019)]";
- (g) Form CG-APP-FAC[CG-4], "Charitable Gaming Facility License Application (2023)"[(2019)]"; and
- (h) Form CG-OCC-ORG[CG-OC], "Notice of [Of] Change in [In] Officers or [Or] Chairpersons (2023)"[(2019)]".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and commented to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

AMBROSE WILSON IV, Commissioner

APPROVED BY AGENCY: January 12, 2023

FILED WITH LRC: January 13, 2023 at 10:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2023, at 1:00 PM Eastern Time at the Mayo-Underwood Building, Room 133CE, 500 Mero Street, Frankfort, Kentucky 40601.

Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 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: Doug Hardin, Staff Attorney, Department of Charitable, 500 Mero Street 2NW24, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the requirements for certification of charitable organizations as exempt from licensure and sets forth the requirements for charitable gaming organizations, manufacturers, distributors, and gaming facilities to apply for and obtain licensure from the Department of Charitable Gaming for charitable gaming activities within the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary so that the Department of Charitable Gaming may issue licenses and exemptions pursuant to KRS Chapter 238 and 820 KAR Chapter 1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Department provided a copy of these proposed amendments to the Charitable Gaming Advisory Commission on December 16, 2022. KRS 238.515 authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. This administrative regulation provides the basis for the Department to issue charitable gaming licenses and exempt organizations from licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Charitable Gaming is charged with the responsibility of licensing and regulating charitable gaming. This administrative regulation establishes the process and forms necessary for exemptions and licensure of charitable organizations, manufacturers, distributors, and gaming facilities.

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

(a) How the amendment will change this existing administrative regulation: The department has developed new forms to be used by its licensees when applying for or amending an existing charitable gaming license. The changes to the text of the regulation reflect the new titles of the forms. This amendment also amends the annual fee for licensed charitable gaming facilities to include a lesser fee for facilities that do not host regularly-scheduled bingo sessions.

(b) The necessity of the amendment to this administrative regulation: Applicants sometimes find the department's current applications difficult to complete, resulting in delays due to deficiencies identified in license applications, so the department felt a need to make the applications simpler and easier to complete.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments conform to the content of the authorizing statute because this regulation sets forth licensing requirements as permitted by KRS 238.515.

(d) How the amendment will assist in the effective administration of the statutes: The department is streamlining its applications to make them more user-friendly and to reduce the number of questions that ask for information not specifically required by statute. This should result in fewer license applications being delayed by application deficiencies.

(3) List the type and number of individuals, businesses,

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organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming, its employees, licensees, and exempt organizations will be affected by this administrative regulation. As of November 2022, the Department of Charitable Gaming regulates over 1,300 charitable gaming entities that will be affected by this administrative regulation, as follows:

- Over 500 charitable gaming organizations;
- Over 800 exempt charitable gaming organizations;
- Eighteen (18) manufacturers of charitable gaming supplies;
- Eighteen (18) distributors of charitable gaming supplies; and
- Thirty-one (31) charitable gaming facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities seeking licensure or exemption must complete the forms, provide the necessary information, and pay the required fees set forth in this administrative regulation. All these organizations must conform to this administrative regulation prior to conducting charitable gaming.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The existing administrative regulation contains fees for licensure, which the amendment does not increase. Concerning facilities, the amendment would reduce the fee for certain facility applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees and exempt organizations will have simpler forms to fill out, which should eliminate some delays in the application process due to application deficiencies.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost to implement this administrative regulation on a continuing basis.

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

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

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

(9) TIERING: Is tiering applied? The licensing fee for charitable gaming facilities is tiered based on the number of weekly bingo sessions that will be hosted at the facility.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that use charitable gaming for fundraising 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 238.515(2), (6), and (9).

(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 is not intended to generate revenue for any state or local government agency.

(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 is not intended to generate revenue for any state or local government agency.

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

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this administrative 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 (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not intended to generate cost savings for regulated entities in the first year, except that certain licensed charitable gaming facilities will have a reduced annual fee if they do not host regularly scheduled bingo sessions.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not intended to generate cost savings for regulated entities in the first year, except that certain licensed charitable gaming facilities will have a reduced annual fee if they do not host regularly scheduled bingo sessions.

(c) How much will it cost the regulated entities for the first year? This administrative regulation is not intended to generate costs for regulated entities in the first year.

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

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

Cost Savings (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amendment)

820 KAR 1:025. Reports.

RELATES TO: KRS 238.530, 238.550, 238.555, 238.560, 238.570

STATUTORY AUTHORITY: KRS 238.515, 238.530, 238.550, 238.555, 238.560, 238.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(4) authorizes the Department of Charitable Gaming to promulgate administrative regulations establishing standards of accounting, recordkeeping, and reporting to ensure[insure] charitable gaming receipts are properly accounted for. KRS 238.530 authorizes the department to promulgate an administrative regulation to require a

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licensed distributor to report all activities relating to the sale, rental, lease, or furnishing of charitable gaming supplies and equipment. KRS 238.560 authorizes the department to take administrative action against any person for any violation of the provisions of KRS Chapter 238 and the administrative regulations promulgated thereunder. This administrative regulation establishes the method and time of filing financial reports and remitting payment of fees due.

Section 1. Reporting.

(1) Licensees shall submit corresponding forms and reports quarterly as described in Section (2) of this administrative regulation:

(a) Licensed charitable organizations shall submit Form CG-FIN-ORG [CG-FIN], "Financial Report for a Licensed Charitable Organization";

1. Licensed charitable organizations with gross receipts of less than \$200,000 per calendar year and no weekly bingo session shall only be required to submit Form CG-FIN-ORG [CG-FIN] annually, on or before January 31 of each year;

2. Licensed charitable organizations receiving distributions from organizations described in subsection (1)(d) of this administrative regulation shall submit Form CG-FIN-ORG (RRA) [CG-FIN-RA], "Financial Report for a Licensed Charitable Organization, Recipient Account". If the licensed charitable organization receives distributions from more than one such organization, it shall submit Attachment A-1 and G-1 for each distributing organization;

(b) Licensed charitable gaming facilities shall submit Form CG-FAC [CG-FAC], "Licensed Charitable Gaming Facility Quarterly Report";

(c) Licensed distributors shall submit Form CG-FIN-DIS [CG-DIS], "Licensed Charitable Gaming Distributor Quarterly Report" for each quarter that the distributor is licensed;

(d) Organizations licensed pursuant to KRS 238.535(14)(b) shall submit Form CG-FIN-SER, "Licensed Organization Financial Report for Special Event Raffle License Only."

(2) All financial reports shall be:

(a) Submitted on the appropriate form prescribed in Section 1(1) of this administrative regulation;

(b) Typed or in permanent ink;

(c) Complete, accurate, and legible;

(d) Contain the original signature and printed name or, if submitted electronically, the typewritten name of either the chief executive officer or the chief financial officer of the charitable organization, facility, or distributor; and

(e) Contain the original signature and printed name or, if submitted electronically, the typewritten name of the preparer of the report if prepared by an individual other than the chief executive officer or chief financial officer.

Section 2. Quarterly Reporting Requirements.

(1) A licensee required to submit a quarterly report shall do so on or before the following dates for the preceding three month period:

(a) April 30;

(b) July 31;

(c) October 31; and

(d) January 31.

(2) If a date in Section 2(1) of this administrative regulation falls on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

(3) The financial report and fee shall be considered timely filed if it has been:

(a) Mailed to the department by first class mail, postage prepaid, to the correct address and postmarked by the due date;

(b) Received in the department by hand-delivery on or before the due date; or

(c) Received by the department electronically on or before the due date.

(4) If any report or portion thereof is not filed when due, or if any required fee is not remitted when due, the licensee shall be subject to disciplinary action pursuant to KRS 238.560.

Section 3. Specific Reporting Requirements for Licensed Charitable Organizations.

(1) The fee imposed by KRS 238.570(1) on gross gaming

receipts of a licensed charitable organization shall be remitted by check made payable to "Kentucky State Treasurer" at the time the financial report is due.

(2) If a charitable organization does not have any information to place on an attachment to the financial report, it shall indicate "not applicable" on the attachment.

(3) To complete the Bingo Paper Supplies Inventory page of Form CG-FIN-ORG [CG-FIN], the product description shall be listed in the format "# ON # UP", with:

(a) The number "ON" being the number of bingo faces on a bingo paper sheet; and

(b) The number "UP" being the number of bingo paper sheets contained in a bingo paper pack.

(4) If multiple pages are used for inventory, each person completing the inventory shall sign one (1) page of the pages that person completed and initial the remaining pages.

(5) All expenses incurred by a licensee shall be reported on the financial report for the date on which payment was made, which shall be either the date a check was written or an electronic funds transfer was made, regardless of when the supplies were used or the services were rendered.

Section 4. Incorporation by Reference.

(1) The following are incorporated by reference:

(a) Form CG-FIN-ORG [CG-FIN], "Financial Report for a Licensed Charitable Organization (2023) [(2018)]";

(b) Form CG-FIN-ORG (RRA) [CG-FIN-RA], "Financial Report for a Licensed Charitable Organization, Recipient Account (2023) [(2018)]";

(c) Form CG-FIN-SER, "Licensed Organization Financial Report for Special Event Raffle License Only (2023) [(2018)]";

(d) Form CG-FIN-FAC [CG-FAC], "Licensed Charitable Gaming Facility Quarterly Report (2023) [(2018)]"; and

(e) Form CG-FIN-DIS [CG-DIS], "Licensed Charitable Gaming Distributor Quarterly Report (2023) [(2018)]".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 500 Mero Street 2NW24, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and commented to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

AMBROSE WILSON IV, Commissioner

APPROVED BY AGENCY: January 12, 2023

FILED WITH LRC: January 13, 2023 at 10:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2023, at 1:00 PM Eastern Time at the Mayo-Underwood Building, Room 133CE, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 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: Doug Hardin, Staff Attorney, Department of Charitable, 500 Mero Street 2NW24, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the reports that must be filed by licensed charitable gaming organizations, manufacturers, distributors, and gaming facilities and provides instructions for the information to be included and the timing for such reports to be due with the Department of Charitable Gaming.

(b) The necessity of this administrative regulation: This regulation is necessary for the Department of Charitable Gaming to ensure that licensed charitable organizations, manufacturers, distributors, and gaming facilities make certain reports consistent with KRS Chapter 238.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Department provided a copy of this proposed regulatory amendment to the Charitable Gaming Advisory Commission on December 16, 2022. KRS 238.515 authorizes the Department to promulgate administrative regulations to carry out and implement KRS Chapter 238. This administrative regulation requires that licensed charitable organizations, manufacturers, distributors, and gaming facilities make certain reports consistent with KRS Chapter 238 and establishes the forms used for reporting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Charitable Gaming is charged with the responsibility of licensing and regulating charitable gaming in Kentucky. The department must ensure that licensed charitable organizations, manufacturers, distributors, and gaming facilities report the information required by KRS Chapter 238 and 820 KAR Chapter 1 in a timely and accurate manner.

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

(a) How the amendment will change this existing administrative regulation: There is no change to the text of the administrative regulation other than correcting a misspelled word and updating the references to the incorporated forms.

(b) The necessity of the amendment to this administrative regulation: There is no substantive change to the text of the administrative regulation, only updates to the incorporated forms.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of Chapter 238.

(d) How the amendment will assist in the effective administration of the statutes: There is no substantive change to the text of the administrative regulation, only updates to the incorporated forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. Manufacturers and distributors of paper and electronic pulltabs are also impacted by this administrative regulation. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of May 2022, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, including 647 charitable gaming organizations, over 767 exempt charitable gaming organizations, twenty (20) manufacturers of charitable gaming supplies; fifteen (15) distributors of charitable gaming supplies; and twenty-nine (29) charitable gaming facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities must complete the reports, provide the necessary information, and pay the required fee set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to 820 KAR 1:025 will impose no new costs on regulated persons or entities.

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

entities identified in question (3): Licensees completing the required forms will avoid administrative penalties.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is applied in Section 1 of this administrative regulation. Larger charitable organizations (those that gross \$200,000 or more) and those that run weekly bingo games are required to submit financial reports more often than smaller organizations. Because those charitable organizations are more heavily involved in charitable gaming, Department employees must monitor their compliance more frequently.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that use charitable gaming for fundraising 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 238.515, 238.530, 238.550, 238.555, 238.560, 238.570.

(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 is not intended to generate revenue for any state or local government agency.

(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 is not intended to generate revenue for any state or local government agency.

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

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this administrative 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 (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not intended to generate 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 intended to generate cost savings for regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation is not intended to generate costs for regulated entities in the first year.

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

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

Cost Savings (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

**PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)**

820 KAR 1:130. Administrative actions.

RELATES TO: KRS 238.510, 238.515, 238.530, 238.555, 238.560, 238.995

STATUTORY AUTHORITY: KRS 238.515, 238.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 and 238.560 authorize the Department of Charitable Gaming to take appropriate disciplinary action against licensed charitable organizations, charitable gaming facilities, manufacturers, distributors, or persons who do not operate in compliance with KRS Chapter 238 and the administrative regulations promulgated thereunder. KRS 238.560 authorizes the department to classify offenses and recommended administrative actions. This administrative regulation establishes the required classifications and penalties.

Section 1. Department Enforcement Powers. (1) The department may issue a letter of warning, letter of reprimand, or a cease and desist order to any license holder for any violation of KRS Chapter 238 or 820 KAR Chapter 1.

(2) The department may impose administrative action pursuant to KRS 238.560 if the department determines that the action will deter future violations and promote efforts to correct the violation cited.

Section 2. Fines. (1) The department may assess fines against any license holder in accordance with the following schedule:

(2) A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to charitable gaming recordkeeping and reporting requirements, except for failure to file quarterly reports, may be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during a three-year period~~[the same year]~~ may be subject to a fine not to exceed \$1,000 for each offense.

(3) A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to the conduct of charitable games, may be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during a three-year period~~[the same year]~~ may be subject to a fine not to exceed \$1,000 for each offense.

(4) A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to manufacture, packaging, and distribution of charitable gaming supplies and equipment may be subject to a fine not to

exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during a three-year period~~[the same year]~~ may be subject to a fine not to exceed \$1,000 for each offense.

(5) A violation of the provisions of KRS 238.530(10) or 238.555(3) relative to conflicts of interest among types of licensees may be subject to a fine not to exceed \$750 for each offense. A second or subsequent violation during a three-year period~~[the same year]~~ may be subject to a fine not to exceed \$1,000 for each offense.

(6) A violation for conducting any activity without a license for which a license is required pursuant to KRS Chapter 238 and 820 KAR Chapter 1 may be subject to a fine not to exceed \$1,000 for each offense.

(7) A violation for making false statements in any documents submitted to the department may be subject to a fine not to exceed \$1,000 for each offense.

(8) A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to diversion of net receipts from authorized expenses or charitable purposes, unlawful compensation to an individual involved in the conduct of charitable gaming, or any other inurement of net receipts to the private benefit or financial gain of an individual or person, may be subject to a fine not to exceed \$1,000 for each offense.

(9) A violation of KRS 238.510(5) relative to gambling offenses committed on licensed charitable gaming premises or in conjunction with charitable gaming may be subject to a fine not to exceed \$1,000 for each offense.

(10) Any other violation of KRS Chapter 238 or 820 KAR Chapter 1 for which a fine is not established in this section may be subject to a fine not to exceed \$1,000 for each offense.

Section 3. Probation. (1) The department may impose upon any license holder a term of probation for any violation of KRS Chapter 238 or 820 KAR Chapter 1.

(2) The department may impose this administrative action, pursuant to KRS 238.560(3), if it determines that department oversight and monitoring of the license holder's activities will promote efforts to correct the cited violation and deter future violations.

Section 4. Revocation, Suspension, or Denial of License. (1) The department shall revoke, suspend, or deny a license or application for a license if:

(a) An applicant, license holder, license holder seeking renewal, or individual associated with the applicant or license holder in a capacity established in KRS 238.525(3) fails to meet the requirements of KRS 238.525(4) or 820 KAR 1:005 ~~[Chapter 1]~~;

(b) A license holder fails to pay a fine, correct a violation, or comply with any other requirement imposed by a final order of the department within the previous five years; [A license holder fails to file any reports required pursuant to KRS Chapter 238 or 820 KAR Chapter 1]; ~~[or]~~

(c) A license holder, upon notice of delinquency, fails to remit to the department any charitable gaming fee required pursuant to KRS 238.570(1); ~~[r]~~

(d) A licensed charitable organization fails to maintain its federal tax-exempt status or status as a common school, institute of higher learning, or public college or university, as required by KRS 238.535(12)(a); or

(e) A licensed charitable organization fails to maintain an office an office or place of business in the Commonwealth of Kentucky, as required by KRS 238.535(12)(b) and (d).

(2) The department may revoke, suspend, or deny the license or application of a licensed charitable organization, manufacturer, distributor, or charitable gaming facility for violations of KRS Chapter 238 or 820 KAR Chapter 1 if the nature, frequency, and severity of the offenses charged or the license holder's or applicant's history of previous violations demonstrate an unwillingness or inability to operate in compliance with the law.

Section 5. Written Notice of Violation. The department shall issue a written notice of violation to a license holder determined to have violated any provision of KRS Chapter 238 or 820 KAR Chapter 1. ~~[This notice shall be provided on a Form CG-NOV, Notice~~

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of Violation(s).] Any notices of violation [Notices of Violation] issued to a license holder shall be considered by the department in evaluating the license holder's history of previous violation. A notice of violation [Notice of Violation] shall state the provisions alleged to have been violated and shall notify the license holder that the department may take administrative action against the license holder as a result of the violations.

Section 6. Investigations. A person may submit a request, in writing, to the department to initiate an investigation of an alleged violation.

~~[Section 7. Incorporation by Reference. (1) Form CG-NOV, "Notice of Violation(s) (2019)", is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 500 Mero Street 2NW24, Frankfort, Kentucky 40601-3714, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

AMBROSE WILSON IV, Commissioner

APPROVED BY AGENCY: January 12, 2023

FILED WITH LRC: January 13, 2023 at 10:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2023, at 1 p.m. Eastern Time at the Mayo-Underwood Building, Room 133CE, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 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: Doug Hardin, Staff Attorney, Department of Charitable, 500 Mero Street 2NW24, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative actions that may be taken by the Department of Charitable Gaming in the event of violations of KRS Chapter 238 and 820 KAR Chapter 1.

(b) The necessity of this administrative regulation: This regulation is necessary to establish disciplinary actions that may be taken by the Department of Charitable Gaming in the event of violations of KRS Chapter 238 and 820 KAR Chapter 1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, a draft of this regulatory amendment was submitted to members of the Charitable Gaming Advisory Commission on December 16, 2023. No written comments were received from the members of the commission. KRS 238.515 authorizes the department to promulgate administrative regulations to carry out and implement KRS Chapter 238. KRS 238.515(9) authorizes the Department to promulgate administrative regulations to carry out and implement KRS Chapter 238.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to clearly establish the

circumstances under which the department will take certain administrative actions.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amends the time period during which administrative violations are enhanceable from within the same calendar year to within a three-year period. This amendment eliminates circumstances in which the Department "shall" deny, revoke, or suspend a charitable gaming license and gives the Department discretion to pursue alternate remedies short of license revocation or suspension. The amendment further gives the Department authority to revoke or suspend a license if a licensee fails to comply with statutory license eligibility requirements.

(b) The necessity of the amendment to this administrative regulation: "Primary office location" was not previously defined, though it is mentioned in various locations in KRS Chapter 238 and 820 KAR Chapter 1.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. KRS 238.515(2) grants the department the power to establish and enforce reasonable standards for the conduct of charitable gaming. KRS 238.515(6) authorizes the department to take appropriate disciplinary action and make criminal referrals against persons who fail to comply with KRS Chapter 238. KRS 238.560 authorizes the department to investigate allegations of wrongdoing and administrative action against any person licensed under KRS Chapter 238 for violations of the chapter or administrative regulations promulgated thereunder.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist the Department of Charitable Gaming in effectively carrying out KRS Chapter 238 by clarifying administrative actions that may be taken by the Department of Charitable Gaming in the event of violations of KRS Chapter 238 and 820 KAR Chapter 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. Manufacturers and distributors of paper and electronic pulltabs are also impacted by this administrative regulation. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of November 2022, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, including 647 charitable gaming organizations, over 767 exempt charitable gaming organizations, twenty (20) manufacturers of charitable gaming supplies; fifteen (15) distributors of charitable gaming supplies; and twenty-nine (29) charitable gaming facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any new action to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to 820 KAR 1:130 will impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities complying with the law will not face administrative actions authorized by this regulation.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

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There is no additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the definitions set forth in this administrative regulation apply equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that use charitable gaming for fundraising 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 238.515(2), (6), and (9).

(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 is not intended to generate revenue for any state or local government agency.

(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 is not intended to generate revenue for any state or local government agency.

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

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this administrative 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 (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not intended to generate 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 intended to generate cost savings for regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation is not intended to generate costs for regulated entities in the first year.

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

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

Cost Savings (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Health Care Policy (Amendment)

907 KAR 1:026. Dental services' coverage provisions and requirements.

RELATES TO: KRS 205.520, 205.622, 205.8451, 313.010, 313.040, 369.102(8), 369.101 to 369.120, 415.152, 42 C.F.R. 400.203, 415.170, 415.172, 415.174, 438.2, 45 C.F.R. Parts 160 and 164, 42 U.S.C. 1320d, 1396a-d

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Kentucky Medicaid Program provisions and requirements regarding the coverage of dental services.

Section 1. Definitions.

(1) "Comprehensive orthodontic" means a medically necessary dental service for treatment of a dentofacial malocclusion which requires the application of braces for correction.

(2) "Current Dental Terminology" or "CDT" means a publication by the American Dental Association of codes used to report dental procedures or services.

(3) "Debridement" means a preliminary procedure that:

(a) Entails the gross removal of plaque and calculus that interfere with the ability of a dentist to perform a comprehensive oral evaluation;

(b) Does not preclude the need for further procedures; and

(c) Is separate from a regular cleaning and is usually a preliminary or first treatment when an individual has developed very heavy plaque or calculus.

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

(5) "Direct practitioner interaction[contact]" means the billing dentist or oral surgeon is physically present with and evaluates, examines, treats, or diagnoses the recipient, unless the service can be appropriately performed via telehealth pursuant to 907 KAR 3:170.

(6) "Disabling malocclusion" means a condition that meets the criteria established in Section 13(7) of this administrative regulation.

(7) "Electronic signature" is defined by KRS 369.102(8).

(8) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(9) "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and
(b) 1. Requires little additional practitioner resources; or
2. Is clinically integral to the performance of the primary procedure.

(10) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(11) "[Locum tenens dentist]" means a substitute dentist:

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~~(a) Who temporarily assumes responsibility for the professional practice of a dentist participating in the Kentucky Medicaid Program; and~~

~~(b) Whose services are paid under the participating dentist's provider number.~~

~~(12)}~~ "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

~~(12){(13)}~~ "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

~~(13){(14)}~~ "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one (1) another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CDT codes; or

(d) Are described in CDT as inappropriate coding of procedure combinations.

~~(14){(15)}~~ "Other licensed medical professional" or "OLMP" means a health care provider other than a dentist who has been approved to practice a medical specialty by the appropriate licensure board.

~~(15){(16)}~~ "Prepayment review" or "PPR" means a departmental review of a claim regarding a recipient who is not enrolled with a managed care organization to determine if the requirements of this administrative regulation have been met prior to authorizing payment.

~~(16){(17)}~~ "Prior authorization" or "PA" means approval that a provider shall obtain from the department before being reimbursed for a covered service.

~~(17){(18)}~~ "Provider" is defined by KRS 205.8451(7).

~~(18){(19)}~~ "Public health hygienist" means an individual who:

(a) Is a dental hygienist as defined by KRS 313.010(6);

(b) Meets the public health hygienist requirements established in KRS 313.040(8);

(c) Meets the requirements for a public health registered dental hygienist established in 201 KAR 8:562; and

(d) Is employed by or through:

1. The Department for Public Health; or

2. A governing board of health.

~~(19){(20)}~~ "Recipient" is defined by KRS 205.8451(9).

~~(20){(21)}~~ "Resident" is defined by 42 C.F.R. 415.152.

~~(21){(22)}~~ "Timely filing" means receipt of a claim by Medicaid:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

Section 2. Conditions of Participation.

(1) A participating provider shall:

(a) Be licensed as a provider in the state in which the practice is located;

(b) Comply with the terms and conditions established in the following administrative regulations:

1. 907 KAR 1:005;

2. 907 KAR 1:671; and

3. 907 KAR 1:672;

(c) Comply with the requirements to maintain the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164; and

~~(d) Comply with all applicable state and federal laws; and~~

~~(e) Meet all applicable medical and dental standards of practice.~~

(2)(a) A participating provider shall:

1. Have the freedom to choose whether to accept an eligible Medicaid recipient; and

2. Notify the recipient of the decision prior to the delivery of service.

(b) If the provider accepts the recipient, the provider:

1. Shall bill Medicaid rather than the recipient for a covered service;

2. May bill the recipient for a service not covered by Kentucky Medicaid, if the provider informed the recipient of noncoverage prior to providing the service; and

3. Shall not bill the recipient for a service that is denied by the department for:

a. Being:

(i) Incidental;

(ii) Integral; or

(iii) Mutually exclusive;

b. Incorrect billing procedures, including incorrect bundling of procedures;

c. Failure to obtain prior authorization for the service; or

d. Failure to meet timely filing requirements.

(3)(a) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid program.

(b) A provider of a service to an enrollee shall be enrolled in the Medicaid program.

(4)(a) If a provider receives any duplicate or overpayment from the department or managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization.

(b) Failure to return a payment to the department or managed care organization in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d) A provider shall comply with KRS 205.622.

Section 3. Record Maintenance. (1)(a) A provider shall maintain comprehensive legible medical records that substantiate the services billed.

(b) A dental record shall be considered a medical record.

(2) A medical record shall be signed on the date of service by the:

(a) Provider; or

(b) Other practitioner authorized to provide the service in accordance with:

1. KRS 313.040; and

2. 201 KAR 8:562.

(3) An X-ray shall be:

(a) Of diagnostic quality; and

(b) Maintained in a manner that identifies the:

1. Recipient's name;

2. Service date; and

3. Provider's name.

(4) A treatment regimen shall be documented to include:

(a) Diagnosis;

(b) Treatment plan;

(c) Treatment and follow-up; and

(d) Medical necessity.

(5) Medical records, including X-rays, shall be maintained in accordance with 907 KAR 1:672.

Section 4. General and Certain Service Coverage Requirements.

(1) A covered service shall be:

(a) Medically necessary; and

(b) Except as provided in subsection ~~(2){(3)}~~ of this section, furnished to a recipient through direct practitioner ~~interaction~~~~contact~~.

~~(2) [Dental visits shall be limited to twelve (12) visits per year per provider for a recipient who is at least twenty-one (21) years of age.~~

~~(3) A covered service provided by an other licensed medical professional (OLMP) shall be covered if the:~~

(a) OLMP is employed by the supervising oral surgeon, dentist, or dental group;

(b) OLMP is licensed in the state of practice; and

(c) Supervising provider has direct practitioner ~~interaction~~~~contact~~ with the recipient, except for a service provided

by a dental hygienist if the dental hygienist provides the service under general supervision of a practitioner in accordance with KRS 313.040.

(3)(4)(a) A medical resident may provide and the department shall cover services if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.170, 415.172, and 415.174.

(b) A dental resident, student, or dental hygiene student may provide and the department shall cover services under the direction or supervision of a program participating provider in or affiliated with an American Dental Association accredited institution.

~~(4)(5) Services provided by a locum tenens dentist shall be covered:~~

~~(a) If the locum tenens dentist:~~

~~1. Has a national provider identifier (NPI) and provides the NPI to the department;~~

~~2. Does not have a pending criminal or civil investigation regarding the provision of services;~~

~~3. Is not subject to a formal disciplinary sanction from the Kentucky Board of Dentistry; and~~

~~4. Is not subject to any federal or state sanction or penalty that would bar the dentist from Medicare or Medicaid participation; and~~

~~(b) For no more than sixty (60) continuous days.~~

(6) Preventative services provided by a public health hygienist shall be covered.

(5)(7) The department shall cover the oral pathology procedures listed on the DMS Dental Fee Schedule if provided by an oral pathologist who meets the condition of participation requirements established in Section 2 of this administrative regulation.

(6)(8) Coverage shall be limited to the procedures or services:

(a) Identified and established on the DMS Dental Fee Schedule; or

(b) Established in this administrative regulation.

(7)(9) The department shall not cover a service provided by a provider or practitioner that exceeds the scope of services established for the provider or practitioner in:

(a) Kentucky Revised Statutes; or

(b) Kentucky administrative regulations.

Section 5. Diagnostic Service Coverage Limitations.

(1)(a) Except as provided in paragraph (b) of this subsection, coverage for a comprehensive oral evaluation shall be limited to one (1) per twelve (12) month period, per recipient, per provider.

(b) The department shall cover a second comprehensive oral evaluation if the evaluation is provided in conjunction with a prophylaxis ~~to an individual under twenty-one (21) years of age~~.

(c) A comprehensive oral evaluation shall not be covered in conjunction with the following:

1. A limited oral evaluation for trauma related injuries;
2. A space maintainer;
3. Denture relining;
4. A transitional appliance;
5. A prosthodontic service;
6. Temporomandibular joint therapy;
7. An orthodontic service;
8. Palliative treatment;
9. An extended care facility call;
10. A house call; or
11. A hospital call.

(2)(a) Coverage for a limited oral evaluation shall:

1. Be limited to a trauma related injury or acute infection; and
2. Be limited to one (1) per date of service, per recipient, per provider.

(b) A limited oral evaluation shall not be covered in conjunction with another service except for:

1. A periapical X-ray;
2. A bitewing X-ray;
3. A panoramic X-ray;
4. Resin, anterior;
5. A simple or surgical extraction;
6. Surgical removal of a residual tooth root;
7. Removal of a foreign body;
8. Suture of a recent small wound;

9. Intravenous sedation; or

10. Incision and drainage of infection.

(3)(a) Except as provided in paragraph (b) of this subsection, the following limitations shall apply to coverage of a radiograph service:

1. Bitewing X-rays shall be limited to four (4) per twelve (12) month period, per recipient, per provider;

2. Periapical X-rays shall be limited to fourteen (14) per twelve (12) month period, per recipient, per provider;

3. An intraoral complete X-ray series shall be limited to one (1) per twenty-four (24) month period, per recipient, per provider;

4. Periapical and bitewing X-rays shall not be covered in the same twelve (12) month period as an intraoral complete X-ray series per recipient, per provider;

5. A panoramic film shall:

a. Be limited to one (1) per twenty-four (24) month period, per recipient, per provider; and

b. Require prior authorization in accordance with Section 15(1), (2), and (3) of this administrative regulation for a recipient under the age of six (6) years;

6. A cephalometric film shall be limited to one (1) per twenty-four (24) month period, per recipient, per provider; or

7. A cephalometric and panoramic X-ray shall not be covered separately in conjunction with a comprehensive orthodontic consultation.

(b) The limits established in paragraph (a) of this subsection shall not apply to:

1. An X-ray necessary for a root canal or oral surgical procedure;

or

2. An X-ray that:

a. Exceeds the established service limitations; and

b. Is determined by the department to be medically necessary.

Section 6. Preventive Service Coverage Limitations.

(1)(a) Coverage of a prophylaxis shall be limited to[:

~~1. For an individual who is at least twenty-one (21) years of age, one (1) per twelve (12) month period, per recipient; and~~

~~2. For an individual under twenty-one (21) years of age,] one (1) per six (6) month period, per recipient.~~

(b) A prophylaxis shall not be covered in conjunction with periodontal scaling or root planing.

(2)(a) Coverage of a sealant shall be limited to:

1. ~~[A recipient of the age five (5) through twenty (20) years;~~

~~2.] Each six (6) and twelve (12) year molar once every four (4) years with a lifetime limit of three (3) sealants per tooth, per recipient; and~~

~~2.[3.] An occlusal surface that is noncavitated.~~

(b) A sealant shall not be covered in conjunction with a restorative procedure for the same tooth on the same surface on the same date of service.

(3)(a) Coverage of a space maintainer shall[:

~~1. Be limited to a recipient under the age of twenty-one (21) years; and~~

~~2.] require the following:~~

~~1.[a.] Fabrication;~~

~~2.[b.] Insertion;~~

~~3.[c.] Follow-up visits;~~

~~4.[d.] Adjustments; and~~

~~5.[e.] Documentation in the recipient's medical record to:~~

~~a.[(i)] Substantiate the use for maintenance of existing interdental space; and~~

~~b.[(ii)] Support the diagnosis and a plan of treatment that includes follow-up visits.~~

(b) The date of service for a space maintainer shall be considered to be the date the appliance is placed on the recipient.

(c) Coverage of a space maintainer, an appliance therapy specified in the CDT orthodontic category, or a combination of the two (2) shall not exceed two (2) per twelve (12) month period, per recipient.

Section 7. Restorative Service Coverage Limitations.

(1) A four (4) or more surface resin-based anterior composite procedure shall not be covered if performed for the purpose of cosmetic bonding or veneering.

(2) Coverage of a prefabricated crown shall[:

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~~(a) Be limited to a recipient under the age of twenty-one (21) years; and~~

~~(b)] include any procedure performed for restoration of the same tooth.~~

~~(3) Coverage of a pin retention procedure shall be limited to:~~

~~(a) A permanent molar;~~

~~(b) One (1) per tooth, per date of service, per recipient; and~~

~~(c) Two (2) per permanent molar, per recipient.~~

~~(4) Coverage of a restorative procedure performed in conjunction with a pin retention procedure shall be limited to one (1) of the following:~~

~~(a) An appropriate medically necessary restorative material encompassing three (3) or more surfaces;~~

~~(b) A permanent prefabricated resin crown; or~~

~~(c) A prefabricated stainless steel crown.~~

Section 8. Endodontic Service Coverage Limitations.

~~(1) [Coverage of the following endodontic procedures shall be limited to a recipient under the age of twenty-one (21) years:~~

~~(a) A pulp cap direct;~~

~~(b) Therapeutic pulpotomy; or~~

~~(c) Root canal therapy.~~

~~(2)] A therapeutic pulpotomy shall not be covered if performed in conjunction with root canal therapy.~~

~~(2)](3)](a) Coverage of root canal therapy shall require:~~

~~1. Treatment of the entire tooth;~~

~~2. Completion of the therapy; and~~

~~3. An X-ray taken before and after completion of the therapy.~~

~~(b) The following root canal therapy shall not be covered:~~

~~1. The Sargenti method of root canal treatment; or~~

~~2. A root canal that does not treat all root canals on a multi-rooted tooth.~~

Section 9. Periodontic Service Coverage Limitations.

~~(1) Coverage of a gingivectomy or gingivoplasty procedure shall require prepayment review and shall be limited to:~~

~~(a) A recipient with gingival overgrowth due to a:~~

~~1. Congenital condition;~~

~~2. Hereditary condition; or~~

~~3. Drug-induced condition; and~~

~~(b) One (1) per tooth or per quadrant, per provider, per recipient per twelve (12) month period.~~

~~[1. Coverage of a quadrant procedure shall require a minimum of a four (4) tooth area within the same quadrant.~~

~~2. Coverage of a per-tooth procedure shall be limited to no more than three (3) teeth within the same quadrant.]~~

~~(2) Coverage of a gingivectomy or gingivoplasty procedure shall require documentation in the recipient's medical record that includes:~~

~~(a) Pocket-depth measurements;~~

~~(b) A history of nonsurgical services; and~~

~~(c) A prognosis.~~

~~(3) Coverage for a periodontal scaling and root planing procedure shall:~~

~~(a) Not exceed one (1) per quadrant, per twelve (12) months, per recipient, per provider;~~

~~(b) Require prior authorization in accordance with Section 15(1), (2), and (4) of this administrative regulation; and~~

~~(c) Require documentation to include:~~

~~1. A periapical film or bitewing X-ray;~~

~~2. Periodontal charting of preoperative pocket depths; and~~

~~3. A photograph, if applicable.~~

~~(4)](a) Coverage of a quadrant procedure shall require a minimum of a four (4) tooth area within the same quadrant.~~

~~(b) Coverage of a per-tooth procedure shall be limited to no more than three (3) teeth.~~

~~(5)] Periodontal scaling and root planing shall not be covered if performed in conjunction with dental prophylaxis.~~

~~[(6)(a) A full mouth debridement shall only be covered for a pregnant woman.~~

~~(b) More than one (1) full mouth debridement per pregnancy shall not be covered.]~~

Section 10. Prosthodontic Service Coverage Limitations. (1) [A removable prosthodontic or denture repair shall be limited to a recipient under the age of twenty-one (21) years.

(2)] A denture repair in the following categories shall not exceed three (3) repairs per twelve (12) month period, per recipient:

(a) Repair resin denture base; or

(b) Repair cast framework.

(2)](3)] Coverage for the following services shall not exceed one (1) per twelve (12) month period, per recipient:

(a) Replacement of a broken tooth on a denture;

(b) Laboratory relining of:

1. Maxillary dentures; or

2. Mandibular dentures;

(c) An interim maxillary partial denture; or

(d) An interim mandibular partial denture.

(3)](4)] An interim maxillary or mandibular partial denture shall be limited to use:

(a) During a transition period from a primary dentition to a permanent dentition;

(b) For space maintenance or space management; or

(c) As interceptive or preventive orthodontics.

Section 11. Maxillofacial Prosthetic Service Coverage Limitations. The following services shall be covered if provided by a board eligible or board certified prosthodontist:

(1) A nasal prosthesis;

(2) An auricular prosthesis;

(3) A facial prosthesis;

(4) A mandibular resection prosthesis;

(5) A pediatric speech aid;

(6) An adult speech aid;

(7) A palatal augmentation prosthesis;

(8) A palatal lift prosthesis;

(9) An oral surgical splint; or

(10) An unspecified maxillofacial prosthetic.

Section 12. Oral and Maxillofacial Service Coverage Limitations.

(1) The simple use of a dental elevator shall not constitute a surgical extraction.

(2) Root removal shall not be covered on the same date of service as the extraction of the same tooth.

(3) Coverage of surgical access of an unerupted tooth shall:

(a) Be limited to exposure of the tooth for orthodontic treatment; and

(b) Require prepayment review.

(4) Coverage of alveoplasty shall:

(a) Be limited to one (1) per quadrant, per lifetime, per recipient; and

(b) Require a minimum of a four (4) tooth area within the same quadrant.

(5) An occlusal orthotic device shall:

(a) Be covered for temporomandibular joint therapy;

(b) Require prior authorization in accordance with Section 15(1), (2), and (5) of this administrative regulation; and

(c) [Be limited to a recipient under the age of twenty-one (21) years; and

(d)] Be limited to one (1) per lifetime, per recipient.

(6) Frenulectomy shall be limited to two (2) per date of service.

(7) Coverage shall be limited to one (1) per lifetime, per recipient, for removal of the following:

(a) Torus palatinus (maxillary arch);

(b) Torus mandibularis (lower left quadrant); or

(c) Torus mandibularis (lower right quadrant).

Section 13. Orthodontic Service Coverage Limitations. (1) Coverage of an orthodontic service shall:

~~(a) Be limited to a recipient under the age of twenty-one (21) years; and~~

~~(b)] require prior authorization except as established in Section 15(1)(b) of this administrative regulation.~~

(2) The combination of space maintainers and appliance therapy shall be limited to two (2) per twelve (12) month period, per recipient.

(3) Space maintainers and appliance therapy shall not be covered in conjunction with comprehensive orthodontics.

(4) Orthodontic braces shall be limited to recipients under the age of twenty-one (21) years.

(5) Space maintainers shall be allowed for adults when:

(a) There has been an extraction or lost tooth;

(b) A permanent tooth is waiting for a partial;

(c) In preparation for an implant, if an implant is medically necessary and approved;

(d) A third molar is partially erupted; or

(e) There is a congenitally missing tooth.

(6) The department shall only cover new orthodontic brackets or appliances.

(7)(5) An appliance for minor tooth guidance shall not be covered for the control of harmful habits.

(8)(6) In addition to the limitations specified in subsection (1) of this section, a comprehensive orthodontic service shall:

(a) Require a referral by a dentist; and

(b) Be limited to the correction of a disabling malocclusion for transitional, full permanent dentition, or treatment of a cleft palate or severe facial anomaly.

(9)(7) A disabling malocclusion shall:

(a) Exist if a patient:

1. Exhibits a severe overbite encompassing one (1) or more teeth in palatal impingement diagnosed by a lingual view of orthodontic models (stone or digital) showing palatal soft tissue contact;

2. Exhibits a true anterior open bite:

a. Either skeletal or habitual in nature that if left untreated will result in:

(i) The open bite persisting; or

(ii) A medically documented speech impediment; and

b. That does not include:

(i) One (1) or two (2) teeth slightly out of occlusion; or

(ii) Where the incisors have not fully erupted;

3. Demonstrates a significant antero-posterior discrepancy (Class II or III malocclusion that is comparable to at least one (1) full tooth Class II or III):

a. Dental or skeletal; and

b. If skeletal, requires a traced cephalometric radiograph supporting significant skeletal malocclusion;

4. Has an anterior crossbite that involves:

a. More than two (2) teeth within the same arch; or

b. A single tooth crossbite if there is evident detrimental changes in supporting tissues including:

(i) Obvious gingival stripping; or

(ii) A functional shift of the mandible or severe dental attrition for an individual under the age of twelve (12) years; or

c. An edge to edge crossbite if there is severe dental attrition due to a traumatic occlusion;

5. Demonstrates a handicapping posterior transverse discrepancy that:

a. May include several teeth, one (1) of which shall be a molar; and

b. Is handicapping in a function fashion as follows:

(i) Functional shift;

(ii) Facial asymmetry; or

(iii) A complete buccal or lingual crossbite;

6. Demonstrates a medically documented speech pathology resulting from the malocclusion;

7. Demonstrates a significant posterior open bite that does not involve:

a. Partially erupted teeth; or

b. One (1) or two (2) teeth slightly out of occlusion;

8. Except for third molars, demonstrates an impacted tooth that:

a. Will not erupt into the arch without orthodontic or surgical intervention; and

b.(i) Shows a documented pathology; or

(ii) Poses a significant threat to the integrity of the remaining dentition or to the health of the patient;

9. Has an extreme overjet in excess of eight (8) millimeters and one (1) of the skeletal conditions specified in subparagraphs 1 through 8 of this paragraph;

10. Has trauma or injury resulting in severe misalignment of the teeth or alveolar structures and does not include simple loss of teeth with no other affects;

11. Has a congenital or developmental disorder giving rise to a handicapping malocclusion;

12. Has a significant facial discrepancy requiring a combined orthodontic and orthognathic surgery treatment approach; or

13. Has developmental anodontia in which several congenitally missing teeth result in a handicapping malocclusion or arch deformation; and

(b) Not include:

1. One (1) or two (2) teeth being slightly out of occlusion;

2. Incisors not having fully erupted; or

3. A bimaxillary protrusion.

(10)(8) Coverage of comprehensive orthodontic treatment shall not include orthognathic surgery.

(11)(9) If comprehensive orthodontic treatment is discontinued prior to completion, the provider shall submit to the department:

(a) Documentation of the referral referenced in subsection

(8)(6) of this section; and

(b) A letter detailing:

1. Treatment provided, including dates of service;

2. Current treatment status of the patient; and

3. Charges for the treatment provided.

(12)(40) Remaining portions of comprehensive orthodontic treatment may be authorized for prorated coverage upon compliance with the prior authorization requirements specified in Section 15(1), (2), and (7) of this administrative regulation if treatment:

(a) Is transferred to another provider; or

(b) Began prior to Medicaid eligibility.

Section 14. Adjunctive General Service Coverage Limitations.

(1)(a) Coverage of palliative treatment for dental pain shall be limited to one (1) per date of service, per recipient, per provider.

(b) Palliative treatment for dental pain shall not be covered in conjunction with another service except for a radiograph.

(2)(a) Coverage of a hospital or ambulatory surgical center call or extended care facility call shall be limited to one (1) per date of service, per recipient, per provider.

(b) A hospital call, ambulatory surgical center call, or extended care facility call shall not be covered in conjunction with:

1. Limited oral evaluation; or

2. Comprehensive oral evaluation; or

3. Treatment of dental pain.

(3) Intravenous sedation shall not be covered for local anesthesia or nitrous oxide.

Section 15. Prior Authorization. (1)(a) The prior authorization requirements established in this administrative regulation shall apply to services for a recipient who is not enrolled with a managed care organization.

(b) A managed care organization shall not be required to apply the prior authorization requirements established in this administrative regulation for a recipient who is enrolled with the managed care organization.

(c) Prior authorization shall be required for the following:

1. A panoramic film for a recipient under the age of six (6) years;

2. Periodontal scaling and root planing;

3. An occlusal orthotic device;

4. A preorthodontic treatment visit;

5. Removable appliance therapy;

6. Fixed appliance therapy; or

7. A comprehensive orthodontic service.

(2) A provider shall request prior authorization by submitting the following information to the department:

(a) A MAP[-]9, Prior Authorization for Health Services;

(b) Additional forms or information as specified in subsections (3) through (8) of this section; and

(c) Additional information required to establish medical necessity if requested by the department.

(3) A request for prior authorization of a panoramic film shall include a letter of medical necessity.

(4) A request for prior authorization of periodontal scaling and root planing shall include periodontal charting of preoperative pocket depths.

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(5) A request for prior authorization of an occlusal orthotic device shall include a MAP 306, Temporomandibular Joint (TMJ) Assessment Form.

(6) A request for prior authorization of removable and fixed appliance therapy shall include:

(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;

(b) Panoramic film or intraoral complete series; and

(c) Dental models or the digital equivalent of dental models.

(7) A request for prior authorization for comprehensive orthodontic services shall include:

(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;

(b) A MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement;

(c) A cephalometric X-ray with tracing;

(d) A panoramic X-ray;

(e) Intraoral and extraoral facial frontal and profile pictures;

(f) An occluded and trimmed dental model or the digital equivalent of a model; and

(g) An oral surgeon's pretreatment work up notes if orthognathic surgery is required.

(8) If prior authorization for comprehensive orthodontic services is given following a request submitted pursuant to subsection (7) of this section, additional information shall be submitted as required in this subsection.

(a) After six (6) monthly visits are completed, but not later than twelve (12) months after the banding date of service, the provider shall submit:

1. A MAP 559, Six (6) Month Orthodontic Progress Report; and
2. An additional MAP 9, Prior Authorization for Health Services.

(b) Within three (3) months following completion of the comprehensive orthodontic treatment, the provider shall submit:

1. Beginning and final records; and

2. A MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission.

(9) Upon receipt and review of the materials required in subsection (7)(a) through (g) of this section, the department may request a second opinion from another provider regarding the proposed comprehensive orthodontic treatment.

(10) If a service that requires prior authorization is provided before the prior authorization is received, the provider shall assume the financial risk that the prior authorization may not be subsequently approved.

(11)(a) Prior authorization shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the provider.

(12) Upon review and determination by the department that removing a prior authorization requirement shall be in the best interest of a Medicaid recipient, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization, as necessary, an age limit related prior authorization may continue to be enforced.

Section 16. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A dental service provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 17. Auditing Authority. (1) The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(a) Claim;

(b) Medical record; or

(c) Documentation associated with any claim or medical record.

(2) A dental record shall be considered a medical record.

Section 18. Federal Approval and Federal Financial Participation. The coverage provisions and requirements established in 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 of the coverage.

Section 19. Appeal Rights. An appeal of a department decision regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP 9, Prior Authorization for Health Services", December 1995;

(b) "MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement", December 1995;

(c) "MAP 306, Temporomandibular Joint (TMJ) Assessment Form", December 1995;

(d) "MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form", March 2001;

(e) "MAP 559, Six (6) Month Orthodontic Progress Report", December 1995;

(f) "MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission", December 1995; and

(g) "DMS Dental Fee Schedule", December 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site located at <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/dental.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 19, 2022

FILED WITH LRC: December 29, 2022 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 27, 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 March 20, 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 March 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Medicaid program provisions and requirements regarding the coverage of dental services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky Medicaid program provisions and requirements regarding the coverage of dental services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Kentucky Medicaid program provisions and requirements regarding the coverage of dental services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Kentucky Medicaid program provisions and requirements regarding the coverage of dental services.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation by removing age limits throughout the administrative regulation. Previously, nearly all services in the administrative regulation were limited to individuals under the age of twenty-one (21). In addition, the term "direct provider contact" has been changed to "direct provider interaction" to better synchronize with the fuller introduction of telehealth required by 2018's SB 112 and 2021's HB 140. In addition, the usage of the term "locum tenens dentist" is removed because federal law limits the use of locum tenens professionals to physicians. Additional restrictions have also been included around the use of orthodontic braces and space maintainers. Finally, a hospital call, ambulatory surgical center call, or extended care facility call based on dental pain may now be subject to coverage. The department is also going to continue to enforce some age limited prior authorizations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with a new state plan amendment (SPA) to extend coverage to adult Medicaid recipients.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing a state plan amendment.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by effectively implementing a state plan amendment.

(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 all adult recipients in the Medicaid program. DMS anticipates that this could be as many as 900,000 individuals. In addition, Medicaid-participating dental service providers will be affected by the amendments. Currently, there are 1,078 individual dentists, 158 group dental practices, sixty-nine (69) individual physicians who perform oral surgery, and nine (9) group physician practices that perform oral surgery enrolled in Kentucky's Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Dental providers will need to ensure that they provide services within the limits established in the administrative regulation if they wish to be reimbursed for services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individual beneficiaries will benefit from the additional dental services and visits. Dental providers will benefit from the opportunity to provide services to an additional population of Medicaid beneficiaries.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates an increase of about \$1.00 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this amount should be about \$3.8 million. This expenditure should be balanced against expected savings that will be generated within the Medicaid adult population. A lack of dental care for the adult population is a driver of increased emergency department utilization, opioid prescribing, and later – and more expensive – medical interventions such as oral surgery. DMS anticipates savings and decreased utilization in these more expensive care settings. For example, Medicaid enrollees with preventive care may have 43% lower costs and can be as much as eight times less likely to have an emergency department visit for dental care. In addition, up to 1 million work hours could be saved in the Commonwealth if emergency dental care is avoided for Medicaid recipients. Finally, consistent with national trends, DMS expects additional job-seeking opportunities to be available to the adult population as a result of enhanced dental care and this could result in a movement out of the Medicaid program for some adult beneficiaries.

(b) On a continuing basis: DMS anticipates that additional actuarial analysis of preventive dental utilization could reduce the annual PMPM for dental costs or even the overall PMPM. Furthermore, additional savings could be generated from reduced emergency department use, oral surgery and opioid prescriptions. In addition, some movement out of the Medicaid program could be expected for adult beneficiaries able to access adequate dental care. Absent additional information, DMS will continue to anticipate a \$1.00 PMPM and an approximately \$3.8 million annual expenditure in state funds.

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

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

(9) TIERING: Is tiering applied? Tiering is no longer applied within this administrative regulation as dental services are now available to all Medicaid recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396d(r)(3)

(2) State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those

administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs." KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Coverage of dental services is mandated only for certain children within the early and periodic screening, diagnosis and treatment (EPSDT) program for individuals under age twenty-one (21.)

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.520(3), 42 U.S.C. 1396d(r)(3).

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates an increase of about \$1.00 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this amount should be about \$3,857,900. This expenditure should be balanced against expected savings that will be generated within the Medicaid adult population. A lack of dental care for the adult population is a driver of increased emergency department utilization, opioid prescribing, and later – and more expensive – medical interventions such as oral surgery. DMS anticipates savings and decreased utilization in these more expensive care settings. For example, Medicaid enrollees with preventive care may have 43% lower costs and can be as much as eight times less likely to have an emergency department visit for dental care. In addition, up to 1 million work hours could be saved in the Commonwealth if emergency dental care is avoided for Medicaid recipients. Finally, consistent with national trends, DMS expects additional job-seeking opportunities to be available to the adult population as a result of enhanced dental care and this could result in a movement out of the Medicaid program for some adult beneficiaries.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that additional actuarial analysis of preventive dental utilization could reduce the annual

PMPM for dental costs. Furthermore, additional savings could be generated from reduced emergency department use, oral surgery and opioid prescriptions. In addition, some movement out of the Medicaid program could be expected for adult beneficiaries able to access adequate dental care. Absent additional information, DMS will continue to anticipate a \$1.00 PMPM and an approximately \$3.8 million annual expenditure in state funds.

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

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

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

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

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

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

Cost Savings(+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Health Care Policy (Amendment)

907 KAR 1:038. Hearing Program coverage provisions and requirements.

RELATES TO: KRS 205.520, 205.622, 205.8451(9), 334.010(4), (9), 334A.020(5), 334A.030, 42 C.F.R. 400.203, 438.20, [---]457.310, 42 U.S.C. 1396a, b, d, 1396r-6

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program provisions and requirements regarding the coverage of audiology services and hearing instruments.

Section 1. Definitions.

(1) "Audiologist" is defined by KRS 334A.020(5).

(2) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually

by the American Medical Association in Current Procedural Terminology.

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

(4) "Enrollee" means a recipient who is enrolled with a managed care organization.

(5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Healthcare Common Procedure Coding System" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(7) "Hearing instrument" is defined by KRS 334.010(4).

(8) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(9) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(10) "Recipient" is defined by KRS 205.8451(9).

(11) "Specialist in hearing instruments" is defined by KRS 334.010(9).

Section 2. General Requirements.

(1)(a) For the department to reimburse for a service or item, the service or item shall:

1. Be provided:

a. To a recipient[:

(i) ~~Under the age of twenty-one (21) years, including the month in which the recipient becomes twenty-one (21); or~~

(ii) ~~For evaluation and testing services, not limited by age, by an audiologist, only if the recipient has received a referral from a physician]; and~~

b. By a provider who is:

(i) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(ii) Except as provided by paragraph (b) of this subsection, currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(iii) Authorized to provide the service in accordance with this administrative regulation;

2. Be covered in accordance with this administrative regulation;

3. Be medically necessary; and

4. Have a CPT code or HCPCS code that is listed on the most current Department for Medicaid Services Hearing Program Fee Schedule, posted on the department Web site at: <https://chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>. Any fee schedule posted shall comply with all relevant existing rate methodologies utilized by the department and established by state and federal law. As appropriate and relevant, the department shall utilize the Medicaid Physician Fee Schedule established in 907 KAR 3:010 to inform and populate the Hearing Program Fee Schedule.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2)(a) If a procedure is part of a comprehensive service, the department shall:

1. Not reimburse separately for the procedure; and

2. Reimburse one (1) payment representing reimbursement for the entire comprehensive service.

(b) A provider shall not bill the department multiple procedures or procedural codes if one (1) CPT code or HCPCS code is available to appropriately identify the comprehensive service provided.

(3) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(4)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d) A provider shall comply with KRS 205.622.

(5)(a) An in-state audiologist shall:

1. Maintain a current, unrevoked, and unsuspended license in accordance with KRS Chapter 334A;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1. of this paragraph to the department; and

3. Annually submit proof of the license referenced in subparagraph 1. of this paragraph to the department.

(b) An out-of-state audiologist shall:

1. Maintain a current, unrevoked, and unsuspended license to practice audiology in the state in which the audiologist is licensed;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1. of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1. of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the audiologist by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the audiologist by the American Speech-Language-Hearing Association.

(c) If an audiologist fails to comply with paragraph (a) or (b) of this subsection, as applicable based on if the audiologist is in-state or out-of-state, the:

1. Audiologist shall be ineligible to be a Kentucky Medicaid Program provider; and

2. Department shall not reimburse for any service or item provided by the audiologist effective with the date the audiologist fails or failed to comply.

(6)(a) An in-state specialist in hearing instruments shall:

1. Maintain a current, unrevoked, and unsuspended license issued by the Kentucky Licensing Board for Specialists in Hearing Instruments;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1. of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1. of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association.

(b) An out-of-state specialist in hearing instruments shall:

1. Maintain a current, unrevoked, and unsuspended license issued by the licensing board with jurisdiction over specialists in hearing instruments in the state in which the license is held;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1. of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1 of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association.

(c) If a specialist in hearing instruments fails to comply with paragraph (a) or (b) of this subsection, as applicable based on if the specialist in hearing instruments is in-state or out-of-state, the:

1. Specialist in hearing instruments shall be ineligible to be a Kentucky Medicaid Program provider; and

2. Department shall not reimburse for any service or item provided by the specialist in hearing instruments effective with the date the specialist in hearing instruments fails or failed to comply.

Section 3. Audiology Services.

(1) Audiology service coverage shall be limited to one (1) complete hearing evaluation per calendar year.

(2) Unless a recipient's health care provider demonstrates, and the department agrees, that an additional hearing instrument evaluation is medically necessary, a hearing instrument evaluation shall:

(a) Include three (3) follow-up visits, which shall be:

1. Within the six (6) month period immediately following the fitting of a hearing instrument; and

2. Related to the proper fit and adjustment of the hearing instrument; and

(b) Include one (1) additional follow-up visit, which shall be:

1. At least six (6) months following the fitting of the hearing instrument; and

2. Related to the proper fit and adjustment of the hearing instrument.

(3)(a) A referral by a physician to an audiologist shall be required for an audiology service.

(b) The department shall not cover an audiology service if a referral from a physician to the audiologist was not made.

(c) An office visit with a physician shall not be required prior to the referral to the audiologist for the audiology service.

Section 4. Hearing Instrument Coverage. Hearing instrument benefit coverage shall:

(1) If the benefit is a hearing instrument model, be for a hearing instrument model that is:

(a) Recommended by an audiologist licensed pursuant to KRS 334A.030; and

(b) Available through a Medicaid-participating specialist in hearing instruments; and

(2) Except as provided by Section 5(3) of this administrative regulation, not exceed \$800 per ear every thirty-six (36) months.

Section 5. Replacement of a Hearing Instrument.

(1) The department shall reimburse for the replacement of a hearing instrument if:

(a) A loss of the hearing instrument necessitates replacement;

(b) Extensive damage has occurred necessitating replacement; or

(c) A medical condition necessitates the replacement of the previously prescribed hearing instrument in order to accommodate a change in hearing loss.

(2) If replacement of a hearing instrument is necessary within twelve (12) months of the original fitting, the replacement hearing instrument shall be fitted upon the signed and dated recommendation from an audiologist.

(3) If replacement of a hearing instrument becomes necessary beyond twelve (12) months from the original fitting:

(a) The recipient shall be examined by a physician with a referral to an audiologist; and

(b) The recipient's hearing loss shall be re-evaluated by an audiologist.

Section 6. Noncovered Services. The department shall not reimburse for:

(1) A routine screening of an individual or group of individuals for identification of a hearing problem;

(2) Hearing therapy except as covered through the six (6) month adjustment counseling following the fitting of a hearing instrument;

(3) Lip reading instructions except as covered through the six (6) month adjustment counseling following the fitting of a hearing instrument;

(4) A service for which the recipient has no obligation to pay and for which no other person has a legal obligation to provide or to make payment;

(5) A telephone call;

(6) A service associated with investigational research; or

(7) A replacement of a hearing instrument for the purpose of incorporating a recent improvement or innovation unless the replacement results in appreciable improvement in the recipient's hearing ability as determined by an audiologist.

Section 7. Equipment.

(1) Equipment used in the performance of a test shall meet the current standards and specifications established by the American National Standards Institute.

(2)(a) A provider shall ensure that any audiometer used by the provider or provider's staff shall:

1. Be checked at least once per year to ensure proper functioning; and

2. Function properly.

(b) A provider shall:

1. Maintain proof of calibration and any repair, if any repair occurs; and

2. Make the proof of calibration and repair, if any repair occurs, available for departmental review upon the department's request.

Section 8. 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 9. Appeal Rights. An appeal of a negative action regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 19, 2022

FILED WITH LRC: December 29, 2022 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 27, 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 March 20, 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 March 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Medicaid Hearing Program's service and coverage provisions and requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Kentucky Medicaid Hearing Program's service and coverage provisions and requirements.

(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 Kentucky Medicaid Hearing Program's service and coverage provisions and 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 establishing Kentucky Medicaid Hearing Program's service and coverage provisions and requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation by removing an age limit of 21 on receiving vision services. This will allow adults to receive vision services within the Medicaid program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the approval of a state plan amendment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing a state plan amendment.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by effectively implementing a state plan amendment.

(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 all adult recipients in the Medicaid program. DMS anticipates that this could be as many as 900,000 individuals. In addition, there are approximately 177 audiologists enrolled with the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Regulated entities will be required to take no new actions. However, adult hearing testing and referral requirements have been clarified.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Additional adult hearing testing may be provided, and some referral practices have been clarified.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates an increase of about \$0.25 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this additional benefit should be about \$150,000. This expenditure should be balanced against expected savings that could be generated within the Medicaid adult population. Consistent with national trends, DMS expects that Medicaid hearing coverage will decrease the likelihood of dementia, depression, anxiety, and even myocardial infarctions. DMS furthermore expects that up to 16% of Kentucky adults have some degree of hearing loss, and that quality of life and employment opportunities could increase as a result of this additional benefit. This could result in individuals leaving the Medicaid program as a result of receiving full-time employment.

(b) On a continuing basis: DMS anticipates that additional actuarial analysis of hearing services utilization could reduce the annual PMPM for hearing services or even the overall PMPM. The availability of additional hearing services should be beneficial for the adult population, as this is the third most common chronic condition in the United States. DMS does expect some movement out of the Medicaid program could be expected for adult beneficiaries able to access adequate hearing services. Absent additional information, DMS will continue to anticipate a \$0.25 PMPM and an approximately \$150,000 annual expenditure in state funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and

enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching state funds appropriated in the biennium budget.

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

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

(9) TIERING: Is tiering applied? Tiering is no longer applied within this administrative regulation as audiology services are now available to all Medicaid recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396d(r)(4), 42 U.S.C. 1396a(a)(30)(A), 42 C.F.R. 441.56, and 45 C.F.R. 147.126.

(2) State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

KRS 205.520(3) states: "...it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. EPDST hearing coverage must include at least testing and diagnosis and treatment for hearing defects, including hearing aids. Hearing services must also be, "provided—

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and
(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition."

Additionally, state Medicaid programs are required to take measures to monitor that services are appropriate. States are required to establish a plan for review of the appropriateness and quality of care and services furnished to Medicaid recipients by appropriate health care professionals. The plan helps protect against overutilization or unnecessary care and to assure that reimbursement is consistent with efficiency, economy and quality of care.

42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services. ..."

45 C.F.R. 147.126 prohibits the application of annual dollar limits on essential health benefits. Medicaid program benefits are included in the scope of essential health benefits.

(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. The requirements are not stricter than federal requirements.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 441.56; KRS 205.520.

(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 will generate no revenue for DMS.

(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 will generate no revenue for DMS.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates an increase of about \$0.25 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this additional benefit should be about \$150,000. This expenditure should be balanced against expected savings that could be generated within the Medicaid adult population. Consistent with national trends, DMS expects that Medicaid hearing coverage will decrease the likelihood of dementia, depression, anxiety, and even myocardial infarctions. DMS furthermore expects that up to 16% of Kentucky adults have some degree of hearing loss, and that quality of life and employment opportunities could increase as a result of this additional benefit. This could result in individuals leaving the Medicaid program as a result of receiving full-time employment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that additional actuarial analysis of hearing services utilization could reduce the annual PMPM for hearing services or even the overall PMPM. The availability of additional hearing services should be beneficial for the adult population, as this is the third most common chronic condition in the United States. DMS does expect some movement out of the Medicaid program could be expected for adult beneficiaries able to access adequate hearing services. Absent additional information, DMS will continue to anticipate a \$0.25 PMPM and an approximately \$150,000 annual expenditure in state funds.

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

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

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

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

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

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

Cost Savings(+/-):

Expenditures (+/-):

Other Explanation:

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

administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities. DMS anticipates that this amendment may result in additional reimbursement for dentists.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(Amendment)

907 KAR 1:632. Vision program coverage provisions and requirements.

RELATES TO: KRS 205.520, 205.622, 205.8451(7), (9), Chapter 320, Chapter 326, 326.030, 326.040, 369.101 to 369.120, 42 C.F.R. 400.203, 431.17, 438.2, 440.40, 440.60, 447 Subpart B, [42 U.S.C. 1396a-d], 45 C.F.R. 147.126, Parts 160 and 164, 164.306, 164.316, 42 U.S.C. 1320d to 1320d-8, 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.30, 42 C.F.R. 441.56(c)(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Kentucky Medicaid Program provisions and requirements regarding the coverage of vision services.

Section 1. Definitions.

(1) "Current procedural terminology code" or "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

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

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Healthcare Common Procedure Coding System" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(6) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(7) "Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient as a Medicaid-participating provider in accordance with:

1. 907 KAR 1:671; and

2. 907 KAR 1:672;

(b) The Medicaid Program is the payer for the service; and

(c) The recipient is not liable for payment to the provider for the service other than any cost sharing obligation owed by the recipient to the provider.

(8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Ophthalmic dispenser" means an individual who is qualified to engage in the practice of ophthalmic dispensing in accordance with KRS 326.030 or 326.040.

(10) "Optometrist" means an individual who is licensed as an optometrist in accordance with KRS Chapter 320.

(11) "Provider" is defined by KRS 205.8451(7).

(12) "Recipient" is defined by KRS 205.8451(9).

Section 2. General Requirements and Conditions of Participation.

(1)(a) For the department to reimburse for a vision service or item, the service or item shall be:

1. Provided:

- a. To a recipient; and
- b. By a provider who is:
 - (i) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672;
 - (ii) Except as provided in paragraph (b) of this subsection, currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and
 - (iii) Authorized by this administrative regulation to provide the given service or item;
- 2. Covered in accordance with this administrative regulation;
- 3. Medically necessary;
- 4. A service or item authorized within the scope of the provider's licensure; and
- 5. A service or item listed on the Department for Medicaid Services Vision Program Fee Schedule.
- (b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.
- (2)(a) To be recognized as an authorized provider of vision services, an optometrist shall:
 - 1. Be licensed by the:
 - a. Kentucky Board of Optometric Examiners; or
 - b. Optometric examiner board in the state in which the optometrist practices if the optometrist practices in a state other than Kentucky;
 - 2. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and
 - 3. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.
- (b)1. To be recognized as an authorized provider of vision services, an in-state optician shall:
 - a. Hold a current license in Kentucky as an ophthalmic dispenser;
 - b. Comply with the requirements established in KRS Chapter 326;
 - c. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and
 - d. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.
- 2. To be recognized as an authorized provider of vision services, an out-of-state optician shall:
 - a. Hold a current license in the state in which the optician practices as an ophthalmic dispenser;
 - b. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and
 - c. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.
- (c) A physician shall be an authorized provider of vision services.
- (3) A provider shall comply with:
 - (a) 907 KAR 1:671;
 - (b) 907 KAR 1:672;
 - (c) All applicable state and federal laws; and
 - (d) The confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164.
- (4)(a) A provider shall:
 - 1. Have the freedom to choose whether to provide services to a recipient; and
 - 2. Notify the recipient referenced in paragraph (b) of this subsection of the provider's decision to accept or not accept the recipient on a Medicaid basis prior to providing any services to the recipient.
- (b) A provider may provide a service to a recipient on a non-Medicaid basis:
 - 1. If the recipient agrees to receive the service on a non-Medicaid basis; and
 - 2. Whether or not the:
 - a. Provider is a Medicaid-participating provider; or
 - b. Service is a Medicaid-covered service.

Section 3. Vision Service Coverage.

- (1) Vision service coverage shall be limited to a service listed with a CPT code or item with an HCPCS code on the Department

for Medicaid Services Vision Program Fee Schedule.

- (2) Vision service limits shall be as established on the Department for Medicaid Services Vision Program Fee Schedule.

Section 4. Coverage of Eyeglasses and Frames.

- (1) To be eligible for eyeglasses covered by the department, a recipient shall:

~~(a) Be under the age of twenty-one (21) years, including the month in which the recipient becomes twenty-one (21) years of age; and~~

~~(b) have a diagnosed visual condition that:~~

~~(a)[4-] Requires the use of eyeglasses;~~

~~(b)[2-] Is within one (1) of the following categories:~~

~~1.[a-] Amblyopia;~~

~~2.[b-] Post surgical eye condition;~~

~~3.[c-] Diminished or subnormal vision; or~~

~~4.[d-] Other diagnosis which indicates the need for eyeglasses;~~

and

~~(c)[3-] Requires a prescription correction in the stronger lens no weaker than:~~

~~1.[a-] +0.50, 0.50 sphere +0.50, or 0.50 cylinder;~~

~~2.[b-] 0.50 diopter of vertical prism; or~~

~~3.[c-] A total of two (2) diopter of lateral prism.~~

- (2) Provisions regarding any limit on the number of eyeglasses covered shall be as established in 907 KAR 1:631.

(3) For the department to cover:

(a) A frame, the frame shall be:

1. First quality;

2. Free of defects; and

3. Have a warranty of at least one (1) year; or

(b) A lens, the lens shall be:

1. First quality;

2. Free of defects;

3. Meet the United States Food and Drug Administration's impact resistance standards; and

4. Polycarbonate and scratch coated.

(4) The dispensing of eyeglasses shall include:

(a) Single vision prescriptions;

(b) Bi-focal vision prescriptions;

(c) Multi-focal vision prescriptions;

(d) Services to frames; or

(e) Delivery of the completed eyeglasses which shall include:

1. Instructions in the use and care of the eyeglasses; and

2. Any adjustment, minor or otherwise, for a period of one (1) year.

(5) A provider shall be responsible, at no additional cost to the department or the recipient, for:

(a) An inaccurately filled prescription;

(b) Defective material; or

(c) An improperly fitted frame.

Section 5. Contact Lenses, Tint, and Plano Safety Glasses.

(1) The department shall not reimburse for contact lenses substituted for eyeglasses unless:

(a) The corrected acuity in a recipient's stronger eye is twenty (20)/fifty (50) and shall be improved with the use of contact lenses;

(b) The visual prescription is of + 8.00 diopter or greater; or

(c) The recipient's diagnosis is 4.00 diopter anisometropia.

(2) The department shall not reimburse for tint unless the prescription specifically indicates a diagnosis of photophobia.

(3) The department shall not reimburse for plano safety glasses unless the glasses are medically indicated for the recipient.

Section 6. Noncovered Services or Items. The department shall not reimburse for:

(1) Tinting if not medically necessary;

(2) Photochromics if not medically necessary;

(3) Anti-reflective coatings if not medically necessary;

(4) Other lens options which are not medically necessary;

(5) Low vision services;

(6) A press-on prism; or

(7) A service with a CPT code or item with an HCPCS code that is not listed on the Department for Medicaid Services Vision Program Fee Schedule.

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Section 7. Required Provider Documentation.

(1)(a) In accordance with 42 C.F.R. 431.17, a provider shall maintain medical records of a service provided to a recipient for the period of time currently required by the United States Health and Human Services Secretary unless the department requires a retention period, pursuant to 907 KAR 1:671, longer than the period required by the United States Health and Human Services Secretary.

(b) If, pursuant to 907 KAR 1:671, the department requires a medical record retention period longer than the period required by the United States Health and Human Services Secretary, the medical record retention period established in 907 KAR 1:671 shall be the minimum record retention period.

(c) A provider shall maintain medical records of a service provided to a recipient in accordance with:

1. 45 C.F.R. 164.316; and
2. 45 C.F.R. 164.306.

(2) A provider shall maintain the following documentation in a recipient's medical record:

(a) Any covered service or covered item provided to the recipient;

(b) For each covered service or covered item provided to the recipient:

1. A signature by the individual who provided the service or item signed on the date the service or item was provided;
2. The date that the service or item was provided; and
3. Demonstration that the covered service or covered item was provided to the recipient;

(c) The diagnostic condition necessitating the service or item; and

(d) The medical necessity as substantiated by an appropriate medical order.

Section 8. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for the same service provided to the same recipient during the same time period via the physician services program.

Section 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with the claim or medical record.

Section 11. Use of Electronic Signatures.

(1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 12. 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 13. Appeal Rights. An appeal of a department decision regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

Section 14. Incorporation by Reference.

(1) "Department for Medicaid Services Vision Program Fee Schedule", May 13, 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 19, 2022

FILED WITH LRC: December 29, 2022 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:: A public hearing on this administrative regulation shall, if requested, be held on March 27, 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 March 20, 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 March 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid program coverage policies and requirements regarding vision services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program coverage provisions and requirements regarding vision services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid program coverage provisions and requirements regarding vision services.

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

administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid program coverage provisions and requirements regarding vision services; by complying with a federal mandate; and by protecting Kentucky taxpayer monies from being spent if federal matching funds are not provided.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation by removing an age limit of 21 on receiving vision services. This will allow adults to receive vision services within the Medicaid program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the approval of a state plan amendment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing a state plan amendment.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by effectively implementing a state plan amendment.

(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 all adult recipients in the Medicaid program. DMS anticipates that this could be as many as 900,000 individuals. In addition, this administrative regulation will affect vision service providers participating in the Kentucky Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No action is required of the regulated entities other than to properly bill for services and adhere to program integrity requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individual beneficiaries will benefit from the additional dental services and visits. Vision services providers will benefit from the opportunity to provide services to an additional population of Medicaid beneficiaries.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates an increase of about \$0.75 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this additional benefit should be about \$2.1 million. This expenditure should be balanced against expected savings that could be generated within the Medicaid adult population. Consistent with national trends, DMS expects that Medicaid vision coverage will increase the likelihood of working full-time for adult beneficiaries. This could result in individuals leaving the Medicaid program as a result of receiving full-time employment.

(b) On a continuing basis: DMS anticipates that additional actuarial analysis of vision services utilization could reduce the annual PMPM for vision services or even the overall PMPM. The availability of additional vision services should be beneficial for the adult population, as this removes a significant cost barrier to eyewear. As a result, DMS does expect some movement out of the Medicaid program could be expected for adult beneficiaries able to access adequate vision services. Absent additional information, DMS will continue to anticipate a \$0.75 PMPM and approximately \$2.1 million annual expenditure in state funds.

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

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

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

(9) TIERING: Is tiering applied? Tiering is no longer applied within this administrative regulation as vision services are now available to all Medicaid recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)(A), 42 U.S.C. 1396a(a)(33), 42 C.F.R. 441.56(c)(1), 42 C.F.R. 441.30, Section 2711 of the Affordable Care Act, and 45 C.F.R. 147.126.

(2) State compliance standards. Vision services for Medicaid recipients are not mandated by Kentucky law; however, the Department for Medicaid Services is required by KRS 205.8453 to "institute other measures necessary or useful in controlling fraud and abuse." KRS 205.520(3) states: ". . . it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Coverage of vision services is mandated only for certain children within the early and periodic screening, diagnosis and treatment (EPSDT) program for individuals under age twenty-one (21). 42 C.F.R. 441.30 states, "The plan must provide for payment of optometric services as physician services, whether furnished by an optometrist or a physician, if—

(a) The plan does not provide for payment for services provided by an optometrist, except for eligibility determinations under §§435.531 and 436.531 of this subchapter, but did provide for those services at an earlier period; and

(b) The plan specifically provides that physicians' services include services an optometrist is legally authorized to perform." Additionally, state Medicaid programs are required to take measures to monitor that services are appropriate. States are required to establish a plan for review of the appropriateness and quality of care and services furnished to Medicaid recipients by appropriate health care professionals. The plan helps protect against overutilization or unnecessary care and to assure that reimbursement is consistent with efficiency, economy and quality of care. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: ". . . provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services. . . ." 45 C.F.R. 147.126 prohibits the application of annual dollar limits on essential health benefits. Medicaid program benefits are included in the scope of essential health benefits.

(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. Stricter requirements are not imposed.

FISCAL NOTE

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

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(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.30, 42 C.F.R. 441.56(c)(1), and 45 C.F.R. 147.126.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates an increase of about \$0.75 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this additional benefit should be about \$2.1 million. This expenditure should be balanced against expected savings that could be generated within the Medicaid adult population. Consistent with national trends, DMS expects that Medicaid vision coverage will increase the likelihood of working full-time for adult beneficiaries. This could result in individuals leaving the Medicaid program as a result of receiving full-time employment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that additional actuarial analysis of vision services utilization could reduce the annual PMPM for vision services or even the overall PMPM. The availability of additional vision services should be beneficial for the adult population, as this removes a significant cost barrier to eyewear. As a result, DMS does expect some movement out of the Medicaid program could be expected for adult beneficiaries able to access adequate vision services. Absent additional information, DMS will continue to anticipate a \$0.75 PMPM and an approximately \$2.1 million annual expenditure in state funds.

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

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

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

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

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

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

Cost Savings(+/-):

Expenditures (+/-):

Other Explanation:

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

administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities. DMS anticipates that this amendment may result in additional reimbursement for ophthalmologists and optometrists.

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*.

DEPARTMENT OF LAW
Kentucky Opioid Abatement Advisory Commission
(New Administrative Regulation)

40 KAR 9:010. General application procedure.

RELATES TO: KRS 15.291, KRS 15.293

STATUTORY AUTHORITY: KRS 15.291, KRS 15.293

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.291 and 15.293 require the Kentucky Opioid Abatement Advisory Commission (the "Commission") to promulgate administrative regulations to administer funds received by the Commission. Therefore, this administrative regulation establishes the application procedure for funding requests under KRS 15.291 and 15.293, the duties required of the Commission, the duties required of those that receive Commission funds, and other related issues.

Section 1. Definitions.

- (1) "Entity" has the same meaning as its definition in KRS 14A.1-070.
- (2) "Governmental agency" has the same meaning as its definition in KRS 65.940.
- (3) "Member(s)" refers to any of the Commission members contemplated by KRS 15.291(2), whether voting or non-voting.

Section 2. Eligible Applicants. Any entity or governmental agency that submits an application that conforms with the requirements herein; that meets the criteria in KRS 15.291(5); and that is not debarred or suspended from contracting with the Commonwealth shall be an eligible entity or governmental agency.

Section 3. Application.

(1) To apply for funding, the entity or governmental agency shall submit an application using the "OAAC Grant Portal," available at <https://ag.ky.gov/Priorities/Tackling-the-Drug-Epidemic/Pages/Opioid-Abatement-Advisory-Commission-.aspx>. To apply, an applicant shall be required to become an approved state vendor.

(2) Non-conforming or incomplete applications shall not be considered.

Section 4. Review of Applications.

(1) The Commission shall review applications on a continuous basis.

(2) Should the Commission request supplementation of an application, or otherwise inquire about an application, the point of contact shall acknowledge receipt within seven (7) calendar days and subsequently respond to the Commission in a timely manner. Failure to do so shall result in the application being deemed withdrawn.

(3) Contingent upon available funding, the Commission shall fund an application in whole or in part, provided the funding does not exceed the sum requested in the application.

(4) In awarding funds, the Commission shall consider the following factors:

- (a) Compliance with applicable law;
- (b) The entity or governmental agency's record and responsibility in utilizing effectively any funds received previously from the Commission or from the counties, consolidated local governments, urban county governments, and cities of the Commonwealth, as described in KRS 15.293(4);
- (c) The geographic reach of the application;
- (d) Amounts received by an entity or governmental agency from the Commission or from the counties, consolidated local governments, urban county governments, and cities of the Commonwealth, as described in KRS 15.293(4);

- (e) The utility and effectiveness of any part of the application;
- (f) The extent to which Kentucky residents are served by the application;
- (g) The extent to which prior allocations from the Commission have served similar purposes;
- (h) The extent to which the application proposes to serve a portion of the population that otherwise would not receive such service;
- (i) The extent to which the application proposes to incorporate relevant partnerships that are likely to increase the efficiency and effectiveness of programming;
- (j) The extent to which the application proposes, among other things, to educate the public about opioid misuse and opioid use disorder, reduce the occurrence of opioid misuse and opioid use disorder, promote resistance to opioid misuse and opioid use disorder, promote the effective treatment of opioid use disorder, and/or combat the effects of opioid misuse, including co-occurring mental health issues;
- (k) The extent to which the application activities align with accepted evidence-based practices; and/or
- (l) The sufficiency of records to validate the requested amounts.

Section 5. Recipients' Duties.

(1) Entities and governmental agencies that receive funding shall submit quarterly certifications to the Commission due on the following dates of the calendar year:

- (a) March 31;
- (b) June 30;
- (c) September 30; and
- (d) December 31.

(2) Entities and governmental agencies shall submit certifications using the KYOAAC Certification Form.

(3) Certifications are required until the recipient exhausts all funds received from the Commission and until the recipient has submitted a certification stating that all such funds have been exhausted.

(4) Separate certifications are required for each funding award.

Section 6. Noncompliance.

(1) Noncompliance shall include:

- (a) Materially falsified information in any certifications filed pursuant to or required by KRS 15.291, KRS 15.293, or related regulations;
- (b) Failure to meet certification submission deadlines; and
- (c) Failure to expend funds in conformity with the enumerated purposes set forth in KRS 15.291, pursuant to KRS 15.293(5).

(2) The Commission shall require entities or governmental agencies to reimburse the Commission for any funds expended in a noncompliant manner.

(3) The Commission shall require noncompliant entities or governmental agencies to forfeit any remaining funds received from the Commission.

(4) The Commission shall bar noncompliant entities or governmental agencies from receiving funds from the Commission.

(5) The Commission shall report noncompliance to the Department of Law for appropriation determination as to whether further action is necessary to ensure compliance with opioid-related agreements.

Section 7. Commission Appointments. The terms of members appointed pursuant to KRS 15.291(3)(b) shall begin upon the Commission's first meeting.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "OAAC Grant Portal," available at <https://ag.ky.gov/Priorities/Tackling-the-Drug-Epidemic/Pages/Opioid-Abatement-Advisory-Commission-.aspx>;

and

(b) KYOAC Certification Form, December 2022.

(2) This material shall be inspected, copied, or obtained, subject to copyright law, at the Office of the Attorney General Capital Complex East, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DANIEL CAMERON, Attorney General

W. BRYAN HUBBARD, Executive Director

APPROVED BY AGENCY: December 21, 2022

FILED WITH LRC: January 6, 2023 at 10:26 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2023, at 1:00 p.m. Eastern Time at 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall 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. If you do not wish to be heard at the public hearing, you shall submit written comments on the proposed administrative regulation. Written comments shall be accepted through midnight on March 28, 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: Alison Chavies, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-3449, phone 502-696-5638, fax 502-564-2894, email alison.chavies@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alison Chavies

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for administering the settlement funds from certain opioid-related litigation

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 15.291(7) and is necessary to establish a process for administering the settlement funds from certain opioid-related litigation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 15.291 and 15.293, because it establishes a process for administering opioid-related settlement funds, while adhering to the statutory goals of KRS 15.291 and 15.293.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 15.291 and KRS 15.293 by defining the rules and methods used to apply for and distribute the opioid-related settlement funds. The administrative regulation will also further the statutes' goal of providing accountability in the use of such funds.

(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 the administrative regulation: N/A

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all those eligible entities and governmental agencies—as defined by KRS 14A.1-070 and KRS 65.940, respectively—that apply for and are awarded funds by the Commission.

(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: An entity or governmental agency seeking funding from the Commission must comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There shall be minor administrative costs to comply with this administrative regulation. Those costs are difficult to estimate at this juncture. The Commission does not anticipate any other costs for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity or governmental agency that complies with the administrative regulation will be eligible for funding from the Commission for opioid abatement.

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

(a) Initially: The Department of Law shall bear administrative costs in implementing this regulation, which are difficult to estimate at this time. The Commission does not anticipate any other costs for implementation.

(b) On a continuing basis: N/A

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Opioid Abatement Advisory Commission is funded by proceeds from the opioid-related settlements, judgements, and bankruptcies referenced in KRS 15.293.

(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 need to 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: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all those entities and governmental agencies regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Department of Law because the Department of Law is charged with the administration of the Commission. The regulation will also impact any counties, consolidated local governments, urban county governments, and cities of the Commonwealth that receive any opioid-related monies referenced by KRS 15.291 or 15.293.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.291 and/or 15.293 require and authorize the action taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation facilitates the distribution of certain opioid-related settlement funds; therefore, this regulation does not generate any revenue. However, as a result of the opioid settlements, local governments shall qualify for funds that they shall then expend on opioid abatement. At this time, an estimate for the amounts relevant local governments will receive from these opioid settlement funds cannot be provided.

(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? See 3 above.

(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? See 3 above.

(c) How much will it cost to administer this program for the first year? At this time, an estimate of the cost to the Department of Law

to administer this program cannot be provided. However, the Department of Law will make funding requests to the Commission, per KRS 15.291 and 15.293, as appropriate to offset the Department of Law's relevant costs.

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

Revenues (+/-): N/A

Expenditures (+/-): Expenditure amounts will be determined by receipt of settlement funds and the manner in which the Commission expends such funds.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. The administrative regulation facilitates the distribution of certain opioid-related settlement funds; therefore, this regulation does not save entities specific costs. However, as a result of the opioid settlements, eligible entities and governmental agencies shall qualify for funds that they shall use in ways to save on associated costs of opioid and substance abuse. At this time, an estimate for the amounts relevant entities or governmental agencies will receive cannot be provided.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? See 4 above.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? See 4 above.

(c) How much will it cost the regulated entities for the first year? At this time, estimates of the cost to the regulated entities and governmental agencies cannot be provided.

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

Cost Savings (+/-): N/A

Expenditures (+/-): Expenditure amounts will be determined by receipt of settlement funds and the manner in which the regulated entities expend such funds.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact: This administrative will not have a major impact as it will not incur costs upon state or local government or regulated entities, in aggregate, of more than \$500,000.

DEPARTMENT OF LAW Kentucky Opioid Abatement Advisory Commission (New Administrative Regulation)

40 KAR 9:020. Local government application procedure.

RELATES TO: KRS 15.291, KRS 15.293

STATUTORY AUTHORITY: KRS 15.291, KRS 15.293

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.291 and 15.293 permit the Kentucky Opioid Abatement Advisory Commission (the "Commission") to promulgate administrative regulations to administer funds received by the Commission and to oversee the use of funds received under KRS 15.293(4). KRS 15.293 requires each recipient of funds under KRS 15.293(4) to submit certifications that the use of such funds is consistent with the criteria in KRS 15.291(5), a description of the use of such funds, and other information as the Commission requests through the promulgation of administrative regulations. Therefore, this administrative regulation establishes the procedure for a county, consolidated local government, urban-county government, or city of the Commonwealth that receives funds under KRS 15.293(4) to certify use consistent with KRS 15.293.

Section 1. Covered Governmental Bodies. Any county, consolidated local government, urban-county government, or city in the Commonwealth that received or will receive opioid funds under KRS 15.293(4) shall be a covered governmental body.

Section 2. Duties of Covered Governmental Bodies.

(1) Consistent with KRS 15.293(4)(c)(2), covered governmental bodies shall submit quarterly certifications to the Commission due on the following dates of the calendar year:

- (a) March 31;
- (b) June 30;
- (c) September 30; and
- (d) December 31.

(2) Covered governmental bodies shall submit certifications using the KYOAC Certification Form, which is incorporated by reference in 40 KAR 9:010.

(3) Certifications are required until the recipient exhausts all funds received pursuant to KRS 15.291 or 15.293 and until the recipient has submitted a certification stating that all such funds have been exhausted.

Section 3. Noncompliance.

(1) Noncompliance shall include:

(a) Materially falsified information in any certifications filed pursuant to or required by KRS 15.291, KRS 15.293, or related regulations;

(b) Failure to meet certification submission deadlines; or

(c) Failure to expend funds in conformity with the enumerated purposes set forth in KRS 15.291, pursuant to KRS 15.293(5).

(2) The Commission shall require covered governmental bodies to reimburse the Commission for any funds expended in a noncompliant manner.

(3) The Commission shall report noncompliance to the Department of Law for determination as to whether further action is necessary to ensure compliance with opioid-related agreements.

DANIEL CAMERON, Attorney General

W. BRYAN HUBBARD, Executive Director

APPROVED BY AGENCY: December 21, 2022

FILED WITH LRC: January 6, 2023 at 10:26 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2023, at 1:00 p.m. Eastern Time at 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall 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. If you do not wish to be heard at the public hearing, you shall submit written comments on the proposed administrative regulation. Written comments shall be accepted through midnight of March 28, 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: Alison Chavies, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-3449, phone 502-696-5638, fax 502-564-2894, email alison.chavies@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alison Chavies

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for covered governmental bodies that receive settlement funds from certain opioid-related litigation to submit certifications on the use of such funds.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a process for ensuring compliance by covered governmental bodies that receive settlement funds from certain opioid-related litigation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 15.291 and 15.293, because it establishes a process for covered governmental bodies to certify that funds were used consistent with KRS 15.291.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 15.291 and KRS 15.293 by defining the rules and methods used to certify use and compliance with statutes in the use of opioid-related settlement funds. The administrative regulation will also

further the statutes' goal of providing accountability in the use of such funds.

(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 the administrative regulation: N/A

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all covered governmental bodies that receive settlement funds from certain opioid-related litigation.

(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: Covered governmental bodies will have to submit the required certifications and maintain the required records in accordance with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There shall be minor administrative costs, which are difficult to estimate at this juncture, to comply with this administrative regulation; the Commission does not anticipate any other costs for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A covered governmental body that complies with the administrative regulation will avoid the potential consequences of noncompliance.

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

(a) Initially: The Department of Law shall bear administrative costs, which are difficult to estimate at this time, in implementing this regulation; other costs for implementation are not anticipated.

(b) On a continuing basis: N/A.

(6) What is the source of funding to be used to the implementation and enforcement of this administrative regulation: The Commission is funded by proceeds from the opioid-related settlements, judgments, and bankruptcies referenced in KRS 15.293.

(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 need to 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: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all those entities and governmental agencies regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Department of Law because the Department of Law is charged with the administration of the Commission. The regulation will also impact any covered governmental bodies that receive any opioid-related monies referenced by KRS 15.291 or 15.293.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.291 and 15.293 require and authorize the action taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation facilitates certification of the use of certain opioid-related settlement funds; therefore, this regulation does not generate any revenue. However, as a result of the opioid settlements, local governments shall qualify for funds that they shall then expend on opioid abatement. At this time, an estimate for the amounts relevant local governments will receive from these opioid settlement funds cannot be provided.

(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? See 3 above.

(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? See 3 above.

(c) How much will it cost to administer this program for the first year? At this time, an estimate of the cost to the Department of Law to administer this program cannot be provided. However, the Department of Law will make funding requests to the Commission, per KRS 15.291 and 15.293, as appropriate to offset the Department of Law's related costs.

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

Revenues (+/-): N/A.

Expenditures (+/-): Expenditure amounts will be determined by receipt of settlement funds and the manner in which the Commission expends such funds.

Other Explanation: N/A.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. As a result of the opioid settlements, covered governmental bodies shall qualify for funds that they shall use in ways to save on associated costs of opioid and substance abuse. At this time, the Department of Law is unable to provide an estimate for the amounts that will be received from these opioid settlement funds.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? See 4 above.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? See 4 above.

(c) How much will it cost the regulated entities for the first year? At this time, the Commission is unable to estimate the cost to the regulated entities during the first year or subsequent years.

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

Cost Savings (+/-): N/A.

Expenditures (+/-): Expenditure amounts will be determined by receipt of settlement funds and the manner in which the regulated entities expend such funds.

Other Explanation: N/A.

(5) Explain whether this administrative regulation will have a major economic impact: This administrative will not have a major impact as it will not incur costs upon state or local government or regulated entities, in aggregate, of more than \$500,000.

PUBLIC PROTECTION CABINET Department of Insurance Division of Health, Life, Managed Care (New Administrative Regulation)

806 KAR 6:072. Valuation of life insurance and annuity reserves.

RELATES TO: KRS 304.1-050, 304.2-290, 304.3-240, 304.6, 304.15-410

STATUTORY AUTHORITY: KRS 304.2-110, 304.6-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS

304.1-010. KRS 304.6-140 authorizes the commissioner to promulgate administrative regulations approving any mortality table "adopted by the National Association of Insurance Commissioners after 1980" for use in determining the minimum standard for valuation of policies. This administrative regulation establishes the framework for valuation standards acceptable to the department and establishes the conditions under which the department actuary will verify the valuation of a company's reserves without cost to the insurer.

Section 1. Definitions.

(1) "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December, 1983 by the National Association of Insurance Commissioners.

(2) "1983 Table 'a'" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June, 1982 by the National Association of Insurance Commissioners.

(3) "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force.

(4) "2012 Individual Annuity Mortality Period (2012 IAM Period) Table" means the period table, developed by the Society of Actuaries Committee on Life Insurance Research, containing loaded mortality rates for calendar year 2012 and containing rates, qx2012.

(5) "2012 Individual Annuity Reserve Table (2012 IAR Table)" means the generational mortality table developed by the Society of Actuaries Committee on Life Insurance Research and containing rates, qx2012-n, derived from a combination of the 2012 Individual Annuity Mortality Period (2012 IAM Period) Table and Projection Scale G2 (Scale G2), using the methodology established in Section 4(3)(i) of this administrative regulation.

(6) "Actuarial guidelines" mean a series of interpretive guidelines approved by the National Association of Insurance Commissioners for inclusion in its Handbook for Financial Examiners.

(7) "Annual statement" means the annual statement required by KRS 304.3-240.

(8) "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research. The Annuity 2000 Mortality Table is included in the report on pages 211-249 of Volume XLVII of the Transactions of the Society of Actuaries (1995).

(9) "Commissioner" is defined by KRS 304.1-050(1).

(10) "Department" is defined by KRS 304.1-050(2).

(11) "Department actuary" means the actuary employed by or contracted with the department for the purpose of making or verifying a valuation.

(12) "Generational mortality table" means a mortality table containing a set of mortality rates that decrease for a given age from one (1) year to the next based on a combination of a period table and a projection scale containing rates of mortality improvement.

(13) "Life insurances policies, annuities, and pure endowment contracts":

(a) Means any contracts, together with all riders or endorsements and all additional benefits related thereto, whether these additional benefits are provided by policy provision or supplementary contract; and

(b) Does not mean a provision through which the insurer accepts deposits to provide future insurance, annuity, or pure endowment benefits.

(14) "Period table" means a table of mortality rates applicable to a given calendar year.

(15) "Projection Scale AA (Scale AA)" means a table developed by the Society of Actuaries Group Annuity Valuation Table Task Force of annual rates, AAx, of mortality improvement by age for projecting future mortality rates beyond calendar year 1994.

(16) "Projection Scale G2 (Scale G2)" means a table developed by the Society of Actuaries Committee on Life Insurance Research, of annual rates, G2x, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012.

(17) "Qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements of Section 6 of this administrative regulation.

(18) "Reserve comparison" means a calculation:

(a) Setting out three (3) year tabulations of extracts from a company's valuation; and

(b) Which is completed by plan, with subtotals by mortality table, interest assumption, and valuation method which correspond to the line entries in Exhibit 5 of the current annual statement.

Section 2. Filing Requirements for Domestic Insurers.

(1) To facilitate the commissioner's evaluation of the valuation of reserves for life insurance policies, annuities, and pure endowment contracts made by a domestic insurer's actuary or consulting actuary, each insurer shall furnish the department actuary an affidavit, signed by the qualified actuary responsible for the valuation and setting out insurance amounts and reserves on all contracts by basis of valuation and a reserve comparison.

(2) Each domestic insurer shall maintain in corresponding order, with the necessary documentation, lists, tabulations, and working papers for policy contract obligations to be valued which shall be in readily accessible and auditable form at its home office.

Section 3. Valuation Principles.

(1) Extraterritoriality. The commissioner may question or reject any valuation made by the insurance supervisory official of another state which does not comply with the minimum standards as provided in KRS Chapter 304.6.

(2) Nature of liabilities. The liabilities covered by reserves for life insurance policies, annuities, and pure endowment contracts shall be generated by recognition of obligations to provide future sums of money, which are guaranteed in these contracts, and the standards of valuation set out in KRS 304.6-140 through 304.6-180, are set out in prospective terms. If these methods are not possible to apply directly, retrospective methods, using accumulations at appropriate rates of interest shall be acceptable; however, a company using these methods shall be prepared to demonstrate that these methods result in sufficient amounts to fund any obligations set out in its contracts as guarantees of future performance. Obligations which arise from known past events shall be valued retrospectively.

Section 4. Specific Requirements.

(1) Interest assumptions. The Moody's Corporate Bond Yield Averages referenced in KRS 304.6-145(4) are those for the period ending July 1 for each calendar year.

(2) The actuarial guidelines shall be used as published unless specifically prohibited by statute.

(3) Mortality tables.

(a) Except as provided in paragraph (b) of this subsection, the 1983 Table "a" shall be recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1976.

(b) Except as provided in paragraph (c) of this subsection, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1985.

(c) Except as provided in paragraph (d) of this subsection, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2005.

(d) Except as provided in paragraph (e) of this subsection, the 2012 Individual Annuity Reserve Table (2012 IAR Table) shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2015.

(e) The 1983 Table "a" without projection shall be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2005, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

1. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
2. Settlements involving similar actions; or
3. Settlements of long-term disability claims where a temporary

or life annuity has been used in lieu of continuing disability payments.

(f) Except as provided in paragraph (g) of this subsection, the 1983 GAM Table and the 1983 Table "a" shall be recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1976, under a group annuity or pure endowment contract.

(g) Except as provided in paragraph (h) of this subsection, the 1983 GAM Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1985, under a group annuity or pure endowment contract. The commissioner shall give consideration to the approval of other tables of mortality which produce lower reserves in any special case, if the request for approval is accompanied by an actuarial report, signed by the qualified actuary, of the reasons for the request. If applicable, the report shall include an estimate of the degree of protection against insolvency provided as margin in the proposed table.

(h) The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2015 under a group annuity or pure endowment contract. The commissioner shall give consideration to the approval of other tables of mortality which produce lower reserves in any special case, if the request for approval is accompanied by an actuarial report, signed by the qualified actuary, of the reasons for the request. If applicable, the report shall include an estimate of the degree of protection against insolvency provided as margin in the proposed table.

(i)1. In using the 2012 Individual Annuity Reserve Table (2012 IAR Table), the mortality rate for a person age x in year $(2012 + n)$ shall be calculated as follows:

$$q_{x, 2012+n} = q_{x, 2012} (1 - G2) ^ n$$

2. The resulting $q_{x, 2012+n}$ shall be rounded to three (3) decimal places per 1,000.

3. The rounding shall occur according to the formula in subparagraph 1. of this paragraph, starting at the 2012 period table rate.

4. An Example: Rounding Calculations for Mortality Table Construction for 2012 IAR Table page for use of this mortality table is incorporated by reference in this administrative regulation.

(j) In using the 1994 GAR Table, the mortality rate for a person age x in year $(1994 + n)$ shall be calculated as follows where the q_{1994} and AA are as specified in the 1994 GAR Table:

$$q_{x, 1994+n} = q_{x, 1994} (1 - AA) ^ n$$

(4) Changes of method (domestic insurers). The effects of changes in the methods of valuing life contracts shall be reported in Exhibit 5A of the annual statement in the year in which the change first takes place. Exhibit 5A shall show the old and the new method of valuation and the increase or decrease in the actuarial reserve due to the change. If adopting a method that produces an increase in the reserve, the company shall notify the department. However, if a change will produce a reserve that will be less than the amount under the old method, the company shall have the prior approval of the commissioner.

Section 5. Cost of Noncompliance.

(1) If the material is not available as outlined above, the additional burden of cost for additional time required by the staff of the Department of Insurance, or its department actuary, shall be borne by the life insurance company as provided for in KRS 304.2-290. A special examination may be ordered by the commissioner, providing for a written report to him or her together with a time and expense billing to the company so examined.

(2) If a detail audit of reserves reveals that an error was made in the filed annual statement and in the certificate issued by the department, the commissioner may order the withdrawal of certification and reissuance of certificates and copies, and require a refiled annual statement on a significant error, or request the

company to file a corrective action plan prior to the next filed annual statement when the resultant error is not significant.

Section 6. Qualified Actuary Requirements.

(1) In order to be considered a qualified actuary, a person shall be familiar with the valuation requirements applicable to life and health insurance companies.

(2) (a) The actuary shall not meet the requirements of a qualified actuary if that person has:

1. Violated any provision of, or any obligation imposed by, any law in the course of his or her dealings as qualified actuary;
2. Been found guilty of fraudulent or dishonest practices;
3. Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary;

4. Submitted an actuarial opinion or memorandum that was rejected because it did not comply with the Kentucky Insurance Code, KRS Chapter 304, or standards established by the Actuarial Standards Board during the past five (5) years; or

5. Resigned or been removed as an actuary within the past five (5) years as a result of an act or omission indicated in any adverse report on examination or as a result of the failure to adhere to generally acceptable actuarial standards; and

(b) Failed to notify the commissioner of any adverse action taken against the actuary pursuant to paragraph (a)1. through 5. of this subsection by any insurance regulatory official of any other state.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "1983 Table 'a'", 1/2023;
- (b) "1983 GAM Table", 1/2023;
- (c) "1994 GAR Table", 1/2023;
- (d) "2012 Individual Annuity Mortality Period (2012 IAM Period) Table", 1/2023;
- (e) "2012 Individual Annuity Reserve Table (2012 IAR Table)", 1/2023;

- (f) "Annuity 2000 Mortality Table", 1/2023;
- (g) "Projection Scale AA (Scale AA)", 1/2023;
- (h) "Projection Scale G2 (Scale G2)", 1/2023; and
- (i) "Example: Rounding Calculations for Mortality Table Construction for 2012 IAR Table", 1/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. This material is also available on the Web site at: <http://insurance.ky.gov/ppc/CHAPTER.aspx>.

SHARON P. CLARK, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: January 13, 2023

FILED WITH LRC: January 13, 2023 at 10:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on March 24th, 2023 at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on March 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 below.

Contact Person: Abigail Gall; Title: Executive Advisor; Address: 500 Mero Street, Frankfort, Kentucky 40601; Phone: +1 (502) 564-6026; Fax: +1 (502) 564-1453; Email: abigail.gall@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides annuity mortality table for use in determining reserve liabilities for annuities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to be uniform with the other states in the regulation of annuities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the regulation to provide for methods to determine premiums based on future experience. This regulation provides the calculations for future experience.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the calculations for future experience through a generational mortality table for annuities.

(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: Over 450 entities 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: All states and jurisdictions have to same regulation as of 1/2015. This administrative regulation was previously codified in the Insurance Code- there are no new requirements for compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurance Companies will be able to correct the premiums based on mortality change on an ongoing basis rather than every 10 to 20 years.

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

(a) Initially: No associated cost

(b) On a continuing basis: No associated cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Insurance's operational budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, there is not a need to increase fees.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the provisions of this administrative regulation apply to all 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? The Department of Insurance as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-290, 304.6, 304.15-410

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no expectation of any fiscal impact.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings are associated with this regulation or amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are associated with this regulation or amendments.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: There is no cost associated with this administrative regulation and therefore no fiscal impact.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation will not have a major economic impact.

PUBLIC PROTECTION CABINET Kentucky Department of Financial Institutions Student Education Loan Servicers (New Administrative Regulation)

808 KAR 16:010. Licensing, Registration, Renewals and Fees

RELATES TO: KRS 286.12-030, 286.12-040, 286.12-060, 286.12-070

STATUTORY AUTHORITY: KRS 286.1-011, 286.1-020, KRS 286.12-030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner to promulgate, amend, and repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. KRS 286.12-030(2)(a) authorizes the commissioner to prescribe the form and materials required to apply for a license under KRS Chapter 286.12. This administrative regulation establishes licensing and registration requirements for student education loan servicers and procedures for using the Nationwide

Multistate Licensing System (NMLS).

Section 1. Definitions.

- (1) "Applicant" is defined by KRS 286.12-010(2).
- (2) "Commissioner" is defined by KRS 286.1-010(1).
- (3) "Department" is defined by KRS 286.1-010(2).
- (4) "Federal student education loan" is defined by KRS 286.12-020(1).
- (5) "Student education loan servicer" and "servicer" are defined by KRS 286.12-010(13).

Section 2. Initial Application and Notice:

(1) A person providing notice to the commissioner as a federal student education loan servicer doing business in Kentucky prior to December 31, 2022, shall submit:

(a) A completed NMLS Company Form available online at <http://mortgage.nationwidelicencingsystem.org>; and

(b) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicencingsystem.org>;

(2) Non-federal student education loan servicers, federal student education loan servicers that also service non-federal student education loans, and federal student education loan servicers that begin conducting business in Kentucky after December 31, 2022, shall submit:

(a) A completed NMLS Company Form available online at <http://mortgage.nationwidelicencingsystem.org>; and

(b) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicencingsystem.org>;

(c) All documents required on the New Application Checklist available online at <http://mortgage.nationwidelicencingsystem.org>;

(d) Either:

1. An audited financial statement prepared by a certified public accountant (CPA), in accordance with generally accepted accounting principles (GAAP), verifying a minimum net worth of at least two hundred and fifty thousand dollars (\$250,000); or

2. The following CPA prepared financial statements, if such request is made by the applicant and is deemed reasonable by the Commissioner based on the size, structure, and complexity of the applicant:

a. A Reviewed financial statement; or

b. A Compiled financial statement;

(e) An Electronic Surety Bond online at <http://mortgage.nationwidelicencingsystem.org>, which shall:

1. Include the name of the principal insured, which shall match the full legal name of applicant;

2. Be to the benefit of the department; and

3. Be in an amount of the lessor of:

a. One hundred thousand dollars (\$100,000.00); or

b. .01% (.0001) of the amount of the Kentucky servicing portfolio; and

(f) A nonrefundable investigation fee of five thousand dollars (\$5,000.00).

Section 3. Renewal Applications - All Licensees.

(1) A licensee applying for an annual renewal of a student education loan servicer license, on or before December 31st, shall:

(a) Submit required updates and attestations verifying that all information in the licensee's record, maintained in the NMLS operated by the State Regulatory Registry, LLC, is correct and available online at <http://mortgage.nationwidelicencingsystem.org>; and

(b) Pay the annual assessment fee to be established by commissioner's order pursuant to KRS 286.12-070(2). The minimum assessment fee shall be five thousand dollars (\$5,000) and the maximum assessment fee shall be twenty thousand dollars (\$20,000).

(2) A licensee applying to reinstate a student education loan servicer license after December 31st shall:

(a) Submit all fees and materials required by subsection (1) of this section; and

(b) Pay a late filing fee in the amount of one thousand dollars (\$1,000) on or before January 31st of the following year that the renewal application was due.

(3) The commissioner shall not accept an application for renewal

or reinstatement when the application, fees, or any required information is not received on or before January 31st of the following year that the renewal application was due. Failure to complete the renewal or reinstatement application of a license shall cause the license to automatically expire as of February 1st by operation of law.

Section 4. Change of address, name, control, or agent for service-All Licensees.

(1) A licensee that intends to change its address, name, or agent for service of process shall notify the commissioner in writing at least:

(a) Ten (10) days prior to the change of address or name; and

(b) Five (5) days prior to the change of agent for service of process.

(2) A licensee that intends to file for a change of control, as defined by KRS 286.12-010(6), shall notify the commissioner in writing thirty (30) days prior to the effective date of the change of control and shall submit:

(a) For an existing licensee acquiring another licensee, a change of control fee of one thousand dollars (\$1,000); or

(b) For all non-licensed entities, a change of control fee of five thousand dollars (\$5,000).

(3) A licensee changing its address, name, control, or agent for service of process shall update this information in NMLS within the same time periods set forth in this section.

Section 5. Annual Report - All Licensees. Each licensee shall file an annual report electronically with the commissioner, on Form SLSCR-Student Loan Servicer Call Report, on or before November 1st of each year.

Section 6. Electronic Submission of Filings and Fees through the Nationwide Multistate Licensing System Operated by the State Regulatory Registry, LLC.

(1) A person applying for licensure, registration, renewal, or reinstatement pursuant to Sections 2, 3, and 4 of this administrative regulation shall electronically submit the following to NMLS, at <http://mortgage.nationwidelicencingsystem.org>, as part of the nationwide multi-state licensing system:

(a) All forms, updates, attestations, reports, and documentation required by Sections 2, 3, and 4 of this administrative regulation, as applicable; and

(b) All fees referenced in this administrative regulation.

(2) Any fees assessed by NMLS, to process the electronic submissions referenced in subsection (1) and (2) of this section shall be paid by the applicant.

Section 7. Incorporation by Reference.

(1) "SLSCR-Student Loan Servicer Call Report", January 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 500 Mero St 2SW19, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the Department's website at <http://www.kfi.ky.gov>.

JUSTIN BURSE, Acting Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: January 13, 2023

FILED WITH LRC: January 13, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2023, at 2:00 p.m., at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 March 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: Catherine Falconer, Counsel, 500 Mero Street, 2SW19, Frankfort, Kentucky 40601, Phone: 502-782-9052, Fax: 502-573-8787, Email: Catherine.Falconer@ky.gov and Marni Gibson, Acting Deputy Commissioner, Dept. of Financial Institutions, Mero Street, 2SW19, Frankfort, Kentucky 40601, Phone: 502-782-9053, Fax: 502-573-8787, Email: Marni.Gibson@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Catherine Falconer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensing and registration requirements for student education loan servicers and procedures for using the Nationwide Multistate Licensing System, (NMLS).

(b) The necessity of this administrative regulation: KRS 286.12 was a new statute enacted in the 2021-2022 legislative session. These regulations set forth the requirements and procedures for student loan servicers to file for licensing and registration, to provide notice of required fees, and to incorporate forms utilized by the Department to process applications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the requirements of KRS 286.12-030 by providing notice of the procedure for filing an application for a license. This administrative regulation conforms to the requirements of KRS 286.12-040 by providing guidance related to the required information to be submitted to the Department for approval of an application and submissions for a change of control request. This administrative regulation conforms to the requirements of KRS 286.12-060 for notice and requirements related to the submission of information and reports necessary for the Department to complete an application review or renewal for regulatory oversight. This administrative regulation conforms to the requirements of KRS 286.12-070 to provide notice of the calculation of assessment fees and requirements to the servicer related to submission of reports for renewals of licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the Department in maintaining oversight of the student loans servicers industry by requiring licensure for servicers and by monitoring activities related to customer accounts of Kentucky citizens.

(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: N/A

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all student loan servicers that have accounts for Kentucky citizens. The exact number of individuals and businesses affected by this regulation will fluctuate depending upon the number of servicers and status of the loans in a given year. Currently there are 74 entities licensed in NMLS as student education loan servicers that would be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All industry participants are required to be licensed or to qualify for an exemption from licensure. Regulated entities will need to submit applications with the corresponding required information and fees in order for DFI to review and make a determination of their license application or renewal. The

applications for licensure, and renewal for licensure, require the submission of specific reports and information into the national database system, NMLS, which compiles licensure information for all fifty states.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs for servicers would be part of their regular internal record keeping and administrative activities. Servicers will be required to file appropriate forms and records with the Department, submit an investigative fee of \$5,000.00 for a new application, submit a renewal fee of no less than \$5,000.00 and no more than \$20,000.00, and maintain a bond, if applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals will have the benefit of the entities regulatory compliance with specific areas of student loan account management including accurate record keeping for accounts, maintaining communication with account servicers and borrowers, and added protections of notice and information sharing for changes in account status of account holder information including participation in government loan forgiveness or payment adjustment programs. Servicers will have notice of requirements and procedures to comply with the statute and regulations that apply universally to all servicers operating in Kentucky. The regulation establishes requirements and procedures related to the national database for submission of records, payments, and information related to account activities and customer service.

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

(a) Initially: Initially, there is no additional costs to the Department to implement the new regulations. The Department will utilize current staff to process these applications and maintain reviews of submissions through the national database.

(b) On a continuing basis: The Department anticipates needing dedicated staff to conduct regulatory functions in subsequent years. At that time, the anticipated costs to the Department will include a one-time expense for employee equipment of approximately \$20,000.00, thereafter approximately \$482,000.00 per year for salary, benefits, and travel costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Revenue will be generated through submission of registration, renewal, and other fees to the Department.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This new regulation sets the fees that student education loan servicers will be assessed at renewal at no less than \$5,000.00 and no more than \$20,000.00. The fee will be based on the volume of loans that are serviced by each servicer. Fees assessed will provide the Department with the revenue to implement the regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes the procedure for filing for licensure and renewals and the accompanying fees associated with the applications. The regulation establishes a late filing fee and a change of control fee. The statute allows for assessment fee adjustments every five years.

(9) TIERING: Is tiering applied? Tiering was not applied. It was not deemed necessary or relevant to the registration application process or for submission to the NMLS.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.12-030, 286.12-040, 286.12-060, 286.12-070, and KRS 286.1-011, 286.1-020.

(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 is expected to be revenue neutral. The fees mandated by this administrative regulation will be used to perform the Department's regulatory duties.

(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 is expected to be revenue neutral. The fees mandated by this administrative regulation will be used to perform the department's regulatory duties.

(c) How much will it cost to administer this program for the first year? Initially, there is no additional costs to the Department to implement the new regulations. The Department will utilize current staff to process these applications and maintain reviews of submissions through the national database.

(d) How much will it cost to administer this program for subsequent years? The Department anticipates needing dedicated staff to conduct regulatory functions in subsequent years. At that time, the anticipated costs to the Department will include a one-time expense for employee equipment of approximately \$20,000.00, thereafter approximately \$482,000.00 per year for salary, benefits, and travel 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: This regulation relates to the procedures and submission of registration documents. Costs for application for licensure are provided by statutory guidance.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This regulation is not expected to provide any cost savings to the regulated entities the first year.

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

(c) How much will it cost the regulated entities for the first year? It will cost regulated entities \$5,000.00 for the first year due to the investigative fee for new applications, as well nominal processing fees charged by NMLS.

(d) How much will it cost the regulated entities for subsequent years? These costs cannot be specifically determined at this time. It will cost regulated entities no less than \$5,000 and no more than \$20,000 in fees in subsequent years due to the renewal assessment, which is based on loan servicing volume, as well as nominal processing fees charged by NMLS.

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 on the student loan servicer industry.

**PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
Student Education Loan Servicers
(New Administrative Regulation)**

808 KAR 16:020. Recordkeeping Requirements; Unfair, Deceptive, or Predatory Practices

RELATES TO: KRS 286.12-050 and 286.12-080

STATUTORY AUTHORITY: KRS 286.1-011, 286.1-020, KRS 286.12-050,

KRS 286.12-080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner to promulgate administrative regulations as are necessary to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.12-080 prohibits a student education loan servicer from engaging in unfair, deceptive, abusive, or predatory practice towards any borrower, or from misrepresenting or omitting any material information in connection with servicing a student education loan. This administrative regulation establishes standards that a licensee must abide by to maintain accurate records and prevent unfair, deceptive, or predatory practices.

Section 1. Definitions.

(1) "Best financial interest of the borrower" means reducing the total cost of a student loan, including principal balance, interest, and fees to the borrower.

(2) "Commissioner" is defined by KRS 286.1-010(1).

(3) "Necessary information" includes the following:

(a) A schedule for all transactions credited or debited to the student loan account;

(b) A copy of the promissory note for the student loan;

(c) Notes created by a student loan servicer's personnel reflecting communication with the borrower regarding the student loan account;

(d) A report of the data fields relating to the borrower's student loan account created by the student loan servicer's electronic systems in connection with servicing practices;

(e) Copies of electronic records or any information or documents provided by the borrower to the student loan servicer;

(f) Usable data fields with information necessary to assess qualification for forgiveness, including public service loan forgiveness, if applicable; and

(g) Any information necessary to compile payment history.

(4) "Negative financial consequences" includes:

(a) Negative credit reporting;

(b) Loss or denial of eligibility for a borrower benefit or protection established under federal law or by contract; and

(c) Late fees, interest capitalization, and other financial injury.

(5) "Qualified request" means a request made by a borrower to a student loan servicer in which the borrower either:

(a) Requests specific information from the student loan servicer; or

(b) Reports what the borrower believes to be an error regarding the borrower's account.

(6) "Student loan servicer" and "servicer" are defined by KRS 286.12-010(13).

Section 2. A student loan servicer shall:

(1) Process student loan payments pursuant to the servicer's established payment processing policies, which shall be disclosed and readily accessible to borrowers;

(2) Credit student loan payments to the borrower's account in accordance with the following:

(a) A payment received before 11:59 p.m. on the date on which that payment is due, in the amount, manner, and location indicated by the servicer, shall be credited as effective on the date on which the payment was received by the servicer. A servicer shall treat a payment received from the borrower on the borrower's due date as an on-time payment;

(b) If a payment is made by check, a servicer shall credit the payment on the date the check was received by the servicer regardless of the date of processing;

(c) If the servicer receives a check with no identifying account

information, the servicer shall:

1. Within ten (10) days, determine to which account and loan the payment should be credited and credit the payment as of the date it was received by the servicer; and

2. Update the borrower's online account within one (1) business day of the determination made under (a) of this subparagraph;

(d) If the borrower submits an overpayment to the student loan servicer, the servicer shall inquire of a borrower, either through electronic communication or in writing, to which account the borrower prefers to apply an overpayment. A borrower's direction regarding application of an overpayment to a student loan account shall be effective with respect to future overpayments during the term of a student loan, until the borrower provides to the servicer written alternative instructions regarding overpayment. In the absence of a direction provided by a borrower, the student loan servicer shall allocate an overpayment in a manner consistent with the best financial interest of the borrower; and

(e) If the borrower submits a partial payment, except as otherwise provided by a student loan agreement, comply with the direction provided by a borrower, regarding which account to allocate a partial payment. In the absence of a direction provided by a borrower, the student loan servicer shall allocate a partial payment in a manner consistent with the best financial interest of the borrower;

(3) Not assess negative financial consequences related to the material change by a servicer of the mailing address, office, or procedures for handling borrower payments causing a delay in the crediting of a borrower payment;

(4) Supervise and monitor actions of service providers, including maintaining policies and procedures to oversee compliance by third-party service providers engaged in all aspects of student loan servicing;

(5) Manage and process loan accounts and paperwork, consistent with existing federal requirements, and maintain records ensuring the servicer's personnel have received the following:

(a) Training on the management and processing of accounts and corresponding paperwork; and

(b) Access to necessary account information regarding forms and applications that have been approved, denied, or are in process, applications for income-driven repayment plans, and all forms required to access benefits and protections for federal student loans, pursuant to 20 U.S.C. secs. 1070 et seq., as amended;

(6) Unless a longer period of time is stipulated by a student loan agreement or by federal law, maintain all records regarding a borrower's account for the period of time during which a servicer performs student loan servicing and for a minimum of three (3) years after the loan serviced has been paid in full or assigned to collections, or the servicing rights have been transferred;

(7) Institute and maintain policies and procedures permitting a borrower who is dissatisfied with the outcome of an initial qualified request to escalate the borrower's concern to a supervisor or higher level of review;

(8) Not take actions resulting in negative financial consequences that are directly related to the issue identified in a borrower's qualified request, until that request has been resolved;

(9) Not take actions resulting in negative financial consequences that are directly related to a sale, assignment, transfer, system conversion, or payment made by the borrower to the original student loan servicer consistent with the original student loan servicer's policy;

(10) If a sale, assignment, or other transfer of the servicing of a student loan, results in a change in the identity of the party to whom the borrower is required to send payments or direct any communications concerning the student loan account, notify the borrower, in writing, fifteen (15) days prior to the date the borrower's payment is due on the student loan account, of the following:

(a) If applicable, the license number issued by the commissioner of the new student loan servicer;

(b) The name and address of the new student loan servicer to whom subsequent payments or communications are to be sent;

(c) The telephone numbers and the Web sites of the new student loan servicer;

(d) The effective date of the sale, assignment, or transfer;

(e) The date on which the current student loan servicer will stop

accepting payments on the borrower's student loan account; and

(f) The date on which the new student loan servicer will begin accepting payments on the borrower's student loan;

(11) Transfer all necessary information regarding a borrower, a borrower's account, and a borrower's complete student loan history to any new student loan servicer within forty-five (45) calendar days of the effective date of the sale, assignment, or transfer;

(12) Provide and maintain a record of specialized training for customer service personnel to inform:

(a) Military borrowers about student loan repayment benefits and protections;

(b) Borrowers working in public service about student loan repayment benefits and protections;

(c) Older borrowers about the risks specifically applicable to older borrowers to ensure that, once identified, older borrowers are informed about student loan repayment benefits and protections, including discharge or loan forgiveness programs for private and federal loans, if applicable; and

(d) Borrowers with disabilities about student loan repayment benefits and protections, including disability discharge programs for private and federal loans;

(13) Respond to a qualified request by:

(a) Acknowledging, in writing or through electronic communication, receipt of the request within ten (10) business days; and

(b) Within thirty (30) business days of receipt of the request, providing information relating to the status of the request and, if applicable, either the action the student loan servicer will take to correct the account or an explanation for a determination that the borrower's account is correct.

1. The thirty (30) day period set out in subsection (13)(b) of this Section may be extended for fifteen (15) days if, before the end of the thirty (30) day period, the servicer notifies the borrower of the extension and the reason for the delay in responding; and

2. A servicer is required to send a borrower up to three subsequent notices stating there will be no response to a qualified request if the borrower has previously submitted the same request and received a complete response, and no new information is submitted in subsequent, duplicative qualified requests;

(14) Respond within ten (10) business days to communications from the Commissioner;

(15) Provide information to borrowers, in writing, about the availability of loan forgiveness programs and income-driven repayment plan opportunities;

(16) Maintain on its website, free of charge, complete information and account records for each borrower, which shall;

(a) Be accessible to the borrower only, through a secure log-in system;

(b) Include a consolidated account report for each borrower, and a loan history for each student loan serviced; and

(c) Be available to borrowers at all times, except for occasional, short periods of time when the student loan servicer's system is not available because the system is undergoing routine maintenance or is blocked for security reasons.

1. The consolidated account report required under this subsection shall include:

a. Borrower name;

b. Number of student loan(s) serviced for each borrower;

c. Loan number, for each student loan;

d. Loan type, i.e., Direct Loan; FFELP Loan; Perkins Loan; or private student loan;

e. Loan disbursement amount and date, for each student loan;

f. Interest rate(s) and maturity date, or number of monthly payments required to repay the loan, for each student loan;

g. Loan balance and status, for each student loan;

h. Cumulative balance owing for each borrower;

i. Whether the borrower has an application pending for, or is repaying under, an alternative repayment plan, and listing the plan chosen by the borrower; and

j. Whether the borrower has an application pending for any loan forgiveness, cancellation, or discharge benefit and current status of the application; and

2. The loan history required under this subsection shall include the following information, including the corresponding dates or data

range, for each:

- a. disbursements;
- b. interest accruals;
- c. fees;
- d. late charges;
- e. any other miscellaneous amounts charged to the borrower;
- f. payments received;
- g. payments toward loan forgiveness programs; and
- h. the borrower's repayment plan;

(17) Upon request by a borrower, within seven (7) days, provide a borrower, free of charge, a complete and accurate payoff statement. The statement shall clearly indicate the date on which it was prepared, the relevant time frame for submission of the payoff amount, and any circumstances which may change the amount required to pay off the loan account. A student education loan servicer is required to provide one (1) payoff statement per quarter, at no charge to the borrower, upon request. Thereafter, the student loan servicer may charge the borrower the actual cost to produce a physical copy of the account record.

JUSTIN BURSE, Acting Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: January 13, 2023

FILED WITH LRC: January 13, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2023, at 2:00 PM, at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 March 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: Catherine Falconer, General Counsel, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601, Phone: 502-782-9052, Fax: 502-573-8787, Email: Catherine.Falconer@ky.gov and Marni Gibson, Acting Deputy Commissioner, Dept. of Financial Institutions, 500 Mero Street, 2SW19, Frankfort, Kentucky 40601, Phone: 502-782-9053, Fax: 502-573-8787, Email: Marni.Gibson@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Catherine Falconer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards that a student loan servicer must abide by in order to maintain accurate records and prevent unfair, deceptive, abusive, or predatory practices.

(b) The necessity of this administrative regulation: KRS 286.12 was a new statute enacted in the 2021-2022 legislative session. These regulations set forth the requirements and procedures for student loans servicers to follow regarding record and account management along with providing guidance to the licensees regarding unfair, deceptive, abusive, and predatory practices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.12-050 requires specific records be maintained by the servicer along with a three-year record retention of all account records upon closure of the account. These account records include books, records, correspondence, and accounts of the borrower, to be provided to the Department when required or upon examination, to confirm compliance. KRS 286.12-080 sets forth specific prohibitions of deceptive or abusive acts or practices by the licensee. This administrative regulation provides specific guidance as to appropriate and responsible student loan servicer account management and communication with relevant parties.

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

administrative regulation will assist the Department to maintain oversight of the student loans servicers industry by requiring licensee to abide by record retention schedules for specific account records and for proper oversight of account management for the benefit and protection of the borrower.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all student loan servicers that have accounts for Kentucky citizens. The exact number of individuals and businesses affected by this regulation will fluctuate depending upon the number and status of the loans in a given year. There are 74 non-exempt entities licensed in NMLS as student education loan servicers that the Department anticipates will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All industry participants are required to maintain account records to be compliant with statutory requirements. Specifically, Licensees are required to maintain correspondence between servicer and borrower, maintain records related to payments and application of payments to proper accounts and all account related updates and program applications. The Licensee is required to maintain adequate training and to provide servicer personnel with all required information needed to adequately maintain account records to mitigate abuse, misleading information, or predatory account practices as well as provide required services in the best interest of the borrower. Regulated entities will need to implement proper procedures to ensure servicing standards are met and the borrower is provided with relevant information regarding account management while working in the best interests of the borrower.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Servicers are required to maintain account records; therefore, there should be no additional cost to implement the requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All participants, servicers, and borrowers will benefit from process efficiencies and timely information exchanges between servicers and borrowers, along with maintaining the borrower on the lowest cost loan basis which will assist in mitigation of misapplied payments, abusive practices, and participation in the least advantageous loan payment programs to the borrower.

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

(a) Initially: Initially, there is no additional costs to the Department to implement the new regulations. The Department will utilize current staff to process these applications and maintain reviews of submissions through the national database.

(b) On a continuing basis: On a continuing basis, dedicated staff will be needed to perform our regulatory functions. The subsequent cost to the Department will be a one-time cost for employee equipment of \$20,000.00, then approximately \$482,000.00 per year for salary, benefits, and travel costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Revenue will be generated through submission of registration, renewal, and other fees to the Department.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable to these regulations based on the nature and subject matter contained within. This regulation relates to record keeping and account management.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Financial Institutions

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-011, 286.1-020, KRS 286.12-050, KRS 286.12-080

(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 new revenue.

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

(c) How much will it cost to administer this program for the first year? Costs to administer this regulation will be absorbed into the annual Department budget for the current fiscal cycle.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, dedicated staff will be needed to perform our regulatory functions. The costs incurred will be a one-time cost for employee equipment of \$20,000.00, then approximately \$482,000.00 per year for salary, benefits, and travel 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 is not expected to generate cost savings to the regulated entities.

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

(c) How much will it cost the regulated entities for the first year? This administrative regulation is not expected to incur additional costs to the regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation is not expected to impose additional costs to the regulated entities in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: This regulation relates to record keeping requirements and prohibited activities of the licensee. Record keeping is expected to be an ongoing and required business activity and adhering to regulatory requirements should not require

additional costs. Prohibited activities should be avoided by the licensee and with compliance, the licensee should not incur additional costs.

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

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (New Administrative Regulation)

902 KAR 20:490. Rural emergency hospitals.

RELATES TO: KRS 2.015, 42 C.F.R. 485.500—485.546, 42 C.F.R. 485.618, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2 – 1320d-8

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the minimum requirements for licensure as a rural emergency hospital.

Section 1. Definitions. "Rural emergency hospital (REH)" is defined by 42 C.F.R. 485.502 as an entity that:

(1) Operates for the purpose of providing emergency department services, observation care, and other outpatient medical and health services specified by the secretary of the U.S. Department of Health and Human Services in which the annual per patient average length of stay does not exceed twenty-four (24) hours; and

(2) Shall not provide inpatient services, except those furnished in a unit that is a distinct part licensed as a skilled nursing facility to furnish post-REH or post-hospital extended care services.

Section 2. Licensure. (1) A facility shall be eligible to apply for a license as an REH if the facility is certified as an REH by the Centers for Medicare and Medicaid Services and was, as of December 27, 2020:

(a) Licensed as a critical access hospital pursuant to 906 KAR 1:110; or

(b)1. Licensed as a general acute care hospital pursuant to 902 KAR 20:016;

2. Had fifty (50) or fewer beds; and

3. Was considered rural or treated as being located in a rural area in accordance with 42 C.F.R. 485.506(b) or (c).

(2) Except for beds the REH maintains in a distinct part unit licensed as a skilled nursing facility, the facility's inpatient beds shall be delicensed.

(3) A facility that converts to an REH shall not be relicensed to operate as a critical access hospital or acute care hospital without first obtaining certificate of need.

Section 3. Application and Fees. (1) A facility that applies for initial licensure or annual renewal as an REH shall submit to the Office of Inspector General:

(a) A completed Application for Licensure to Operate a Rural Emergency Hospital; and

(b) An accompanying fee in the amount of \$1,000, made payable to the Kentucky State Treasurer.

(2) As a condition of annual renewal, the application required by subsection (1) of this section shall be submitted to the cabinet at least sixty (60) days prior to the date of expiration of the REH's licensure.

Section 4. Change of Status. (1) An REH shall report a change of:

(a) Name or location in accordance with the requirements of 902 KAR 20:008, Section 3(3); or

(b) Ownership in accordance with the requirements of 902 KAR 20:008, Section 2(16).

(2) Failure to renew a license by the annual renewal date shall result in a late penalty pursuant to 902 KAR 20:008, Section 3(4).

Section 5. Services and Basic Requirements. (1) An REH shall comply with applicable federal, state, and local laws and regulations pertaining to the operation of the facility, including compliance with 42 C.F.R. 485.506 – 485.546.

(2) An REH shall:

(a) Provide emergency department services and observation care, including compliance with the requirements of:

1. 42 C.F.R. 485.516; and

2. 42 C.F.R. 485.618 with respect to:

a. Twenty-four (24) hour availability of emergency services;

b. Equipment, supplies, and medication;

c. Blood and blood products;

d. Personnel; and

e. Coordination with emergency response systems;

(b) Provide basic laboratory services in accordance with 42 C.F.R. 485.518;

(c) Maintain, or have available, diagnostic radiologic services in accordance with 42 C.F.R. 485.520;

(d) Have pharmaceutical services that meet the needs of its patients in accordance with 42 C.F.R. 485.522; and

(e) In accordance with 42 C.F.R. 485.538, have in effect a transfer agreement with at least one (1) hospital that is a level I or level II trauma center for the referral and transfer of patients requiring emergency medical care beyond the capabilities of the REH.

(3) In accordance with 42 C.F.R. 485.524(a), an REH may provide outpatient and medical health diagnostic and therapeutic items and services that are commonly furnished in a physician's office or at another entry point into the health care delivery system, including:

(a) Therapeutic radiologic services;

(b) Laboratory services;

(c) Outpatient rehabilitation;

(d) Surgical services;

(e) Maternal health services; or

(f) Behavioral health services.

(4) An REH may provide skilled nursing facility services in a distinct part unit in accordance with 42 C.F.R. 485.546.

Section 6. Personnel. An REH shall assure that licensed personnel meet the applicable standards required by the appropriate professional licensing board and provide services within the applicable scope of practice.

Section 7. Patient Records. (1) Ownership.

(a) Medical records shall be the property of the REH.

(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.

(2) Confidentiality and Security: Use and Disclosure.

(a) The REH shall maintain the confidentiality and security of patient 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 REH may use and disclose patient 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 REH 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.

(d) Retention of records. After a patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for at least:

1. Six (6) years; or

2. Three (3) years after the patient reaches the age of majority in accordance with KRS 2.015, whichever is longer.

(3) The REH shall:

(a) Designate a specific location for the maintenance and storage of the agency's medical records;

(b) Have provisions for storage of medical records in the event the agency ceases to operate; and

(c) Safeguard the record and its content against loss, defacement, or tampering.

Section 8. Incorporation by Reference. (1) The form, OIG-20:490, "Application for Licensure to Operate a Rural Emergency Hospital", December 2022 edition, is incorporated by reference.

(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/ltrapplications.aspx>.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 16, 2022

FILED WITH LRC: December 29, 2022 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 27, 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 March 20, 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 March 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: Kara Daniel; Stephanie Brammer-Barnes, Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the minimum requirements for licensure as a rural emergency hospital (REH). REHs are a new provider type established by the Consolidated Appropriations Act of 2021. The REH designation provides an opportunity for critical access hospitals (CAHs) and certain rural hospitals to avert potential closure and continue to provide essential services for the communities they serve. Conversion to an REH allows for the provision of emergency services, observation care, and additional

outpatient services, if elected by the REH, that do not exceed an annual per patient average of twenty-four (24) hours. Although REHs are prohibited from providing inpatient services, except those furnished in a unit that is a distinct part licensed as a skilled nursing facility to furnish post-REH or post-hospital extended care services, this level of care is intended to promote equity in health care for those living in rural communities by facilitating access to needed services.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to comply with KRS 216B.042, and as a condition of licensure, this new administrative regulation is necessary to require REHs to comply with the new federal Conditions of Participation established by 42 C.F.R. 485.500—485.546.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation conforms to the content of KRS 216B.042 by establishing the minimum requirements for licensure as an REH.

(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 the minimum requirements for licensure as an REH.

(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 facilities certified by the Centers for Medicare and Medicaid Services (CMS) as an REH in accordance with 42 C.F.R. 485.506. It is not known how many CAHs or rural hospitals will convert to an REH.

(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 this administrative regulation, entities seeking licensure as an REH will be required to submit an initial and annual application to the cabinet with accompanying documentation. REHs will have to comply with the federal requirements established by 42 C.F.R. 485.500—485.546 as a condition of state licensure.

(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 establishes an initial and annual renewal fee of \$1,000. However, CAHs and other rural hospitals that convert to an REH already pay a higher licensure fee in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): CAHs and rural hospitals that convert to an REH may avert potential closure and continue to provide essential services for the communities they serve.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement

of the licensure function is from federal funds and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes an initial and annual renewal fee of \$1,000. However, CAHs and other rural hospitals that convert to an REH already pay a higher licensure fee in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively.

(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 renewal fee of \$1,000.

(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 rural emergency hospitals (REH) 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.042 and 42 C.F.R. 485.500—485.546

(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 establishes an initial and annual renewal fee of \$1,000. Because critical access hospitals (CAHs) and other rural hospitals that convert to an REH already pay licensure fees in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively, there is no increase in 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 establishes an initial and annual renewal fee of \$1,000. Because CAHs and other rural hospitals that convert to an REH already pay licensure fees in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively, there is no increase in revenue.

(c) How much will it cost to administer this program for the first year? There are no additional costs to the Office of Inspector General for implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to the Office of Inspector General for implementation of this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? By shuttering infrequently used inpatient beds, this administrative regulation will generate cost savings for CAHs and rural hospitals that convert to an REH.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? By shuttering infrequently used inpatient beds, this administrative regulation will generate cost savings for CAHs and rural hospitals that convert to an REH.

(c) How much will it cost the regulated entities for the first year? This administrative regulation establishes an initial and annual renewal fee of \$1,000. However, CAHs and other rural hospitals that convert to an REH already pay a higher licensure fee in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation establishes an initial and annual renewal fee of \$1,000. However, CAHs and other rural hospitals that convert to an REH already pay a higher licensure fee in accordance with 902 KAR 20:008, Section 3(2)(x) and (k) respectively.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] It is not known how many entities will convert to an REH. However, CAHs and rural hospitals that shutter infrequently used inpatient beds and convert to an REH may avert potential closure and continue to provide essential services for the communities they serve.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 485.500—485.546, 42 C.F.R. 485.618, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2 –1320d-8

(2) State compliance standards. KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 485.500—485.546 establish the federal conditions of participation for the certification of rural emergency hospitals. In accordance with 42 C.F.R. 485.516, rural emergency hospitals must meet the critical access hospital requirements of 42 C.F.R. 485.618 for emergency services. 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of January 10, 2023

Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, January 10, 2023 at 1 p.m. in Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken.

Present were:

Members: Senator Stephen West, Co-Chair; Representative Derek Lewis, Co-Chair; Senators Julie Raque Adams, Damon Thayer, and David Yates; and Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

LRC Staff: Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, and Christy Young.

Guests: Michael Adams, Jennifer Scutchfield, Office of the Secretary of State; Taylor Brown, State Board of Elections; Graham Gray, Farrah Petter, Jon Grate, Auditor of Public Accounts; Robert B. Barnes, Teachers' Retirement System; Carrie Bass, Jessica Beaubien, Kentucky Retirement Systems; Lois Ann Disponett, August Lincoln Pozgay, Real Estate Authority; Marc Kelly, Board of Social Work; William Brab, Jeremy Sylvester, Zachary Zimmerer, Board of Registration for Professional Geologists; Steven Fields, Jenny Gilbert, Rich Storm, Dan Figert, Department of Fish and Wildlife Resources; Abigale George, Clint Quarles, Ryan Burnette, Department of Agriculture; Michael Kennedy, Division of Air Quality; Amy Barker, Amelia Howell, Justice and Public Safety Cabinet; Jonathan Scott, Department for Medicaid Services; Rachael Ratliff, Department for Behavioral Health, Development and Intellectual Disabilities; Laura Begin, Andrea Day, Department for Community Based Services.

Administrative Regulations Reviewed by this Subcommittee:

SECRETARY OF STATE: Filings

030 KAR 009:010. Forms. Michael Adams, Secretary of State, represented the office.

In response to a question by Co-Chair West, Secretary Adams stated that this administrative regulation was in response to House Bill 336 from the 2020 Regular Session of the General Assembly, which established the deadline for filing the name and address of the Lieutenant Governor running mate for a governor's race. This administrative regulation established and incorporated that form.

A motion was made and seconded to approve the following amendments: to amend the TITLE; 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.

STATE BOARD OF ELECTIONS: Electronic Voting Systems

031 KAR 002:030E. E-Poll book product certification. Taylor Brown, general counsel, represented the board.

In response to questions by Co-Chair West, Mr. Brown stated that electronic poll books were replacing hand-signed rosters for voting purposes. There was currently only one (1) certified vendor in Kentucky for electronic poll books, Tenex, which was located in Tampa, Florida. Pursuant to this emergency administrative regulation, the board had received four (4) applications for vendor certification, including Tenex.

031 KAR 002:030. E-poll book product certification.

GENERAL GOVERNMENT CABINET: Auditor of Public Accounts: Audits

045 KAR 001:050. Audits of fiscal courts. Jon Grate, chief of staff, and Farrah Petter, assistant state auditor, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Teachers' Retirement System: General Rules

102 KAR 001:361E. Disability retirement for TRS 4 members with less than five (5) years of service. Robert Barnes, general counsel and deputy executive secretary, represented the system.

In response to a question by Co-Chair West, Mr. Barnes stated that House Bill 258 from the 2021 Regular Session of the General

Assembly established a new, fourth retirement tier, TRS 4.

102 KAR 001:361. Disability retirement for TRS 4 members with less than five years of service.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Retirement Systems: General Rules

105 KAR 001:071. Repeal of 105 KAR 001:070. Carrie Bass, staff attorney supervisor, and Jessica Beaubien, policy specialist, represented the systems.

105 KAR 001:371. Repeal of 105 KAR 001:370.

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

105 KAR 001:451. Quasi-governmental employer reports on independent contractors and leased employees.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 and 6 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.

BOARDS AND COMMISSIONS: Real Estate Commission

201 KAR 011:121. Standards of professional conduct. Lois Ann Disponett, chair, and August Pozgay, general counsel, represented the board.

In response to questions by Senator Yates, Mr. Pozgay stated that neither this administrative regulation nor the incorporated material addressed members, partnerships, or Limited Liability Companies with minority or percentage ownership in real estate purchasing groups. Disclosures were required for licensees of the commission. The amendment to this administrative regulation removed the requirement to disclose former clients involved in transactions. Ms. Disponett stated that this administrative regulation was being amended to clarify who constituted an agent.

In response to questions by Co-Chair West, Ms. Disponett stated that the Seller Disclosure applied to residential property of four (4) units or less. Mr. Pozgay stated that the agency would follow up with this subcommittee regarding to whom the Agency Disclosure applied.

In response to a question by Representative Grossberg, Ms. Disponett stated that a "former prospective client" was established if

there was a written offer signifying a true fiduciary responsibility.

In response to questions by Representative Bridges, Mr. Pozgay stated that the term, “retained,” did not necessarily imply that any payment had been made, but that there was a formalized relationship. Ms. Disponett stated that a buyer’s agent would not be paid by a buyer. Mr. Pozgay stated that payment was not a component of the disclosure form.

A motion was made and seconded to approve the following amendments: to amend Section 11 to revise incorporated forms for clarity and to align form content with current regulatory provisions. Without objection, and with agreement of the agency, the amendments were approved.

Board of Registration for Professional Geologists

201 KAR 031:010. Fees. William Brab, chair, and Jeremy Sylvester, board counsel, represented the board.

In response to questions by Representative Frazier Gordon, Mr. Brab stated that fees were last increased in 2001 and 2009. The fee increase was to address an office cost increase of approximately \$20,000 per fiscal year.

201 KAR 031:031. Repeal of 201 KAR 031:030.

In response to a question by Co-Chair West, Mr. Brab stated that this administrative regulation established a grace period for temporary licensure in 1994 and 1995. There had been no requests or records of requests for this licensure; therefore, this administrative regulation was being repealed.

201 KAR 031:040. Applications and examinations.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 031:050. Renewals.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS, AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 002:015. Feeding of wildlife. Steven Fields, staff attorney; Dan Figert, assistant director of wildlife; and Rich Storm, commissioner, represented the department.

301 KAR 002:075. Wildlife rehabilitation permit.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 4 and 6 through 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 002:081. Transportation and holding of live native wildlife.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 and 5 through 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 002:082. Transportation and holding of live exotic wildlife.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3 through 7 and 9 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 10(5)(c) to establish conditions for euthanasia for confiscated wildlife. Without objection, and with agreement of the

agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Organic Agricultural Product Certification

302 KAR 040:010. Certification of organic production, processing, or handling operations. Ryan Burnette, division director; Abigale George, Organic Program specialist; and Clint Quarles, attorney, represented the department.

In response to questions by Co-Chair West, Mr. Quarles stated that Organic Program fees, which had not been adjusted since at least 2004, were doubling. Fees were intended to recoup expenses for the program, such as costs for gas and vehicles. This program generally operated under a financial loss to the agency. Mr. Burnette stated that the fee for an organic-certified crop farm was going from \$250 to \$500; however, with the U.S.D.A. cost-sharing program, the expense for the farm would continue to be \$250. The applicants were able to apply for the federal cost-sharing funds through the application or as part of an inspection.

In response to questions by Senator Thayer, Mr. Burnette stated that there was widespread support for these increases because the department fees continued to be far lower than what private entities charged. The department did not have a letter from the industry stating that the fees would not be passed on to consumers. Co-Chair West clarified that industry preferred that the department continued to implement this program because it would otherwise cost more.

Senator Yates stated that costs could be lowered if more competition were available in the organic industry. If the program ceased, competition would likely be reduced, which would seem to keep costs high.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5 and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: General Standards of Performance

401 KAR 063:060. List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list. Michael Kennedy, division director, represented the division.

In response to questions by Co-Chair West, Mr. Kennedy stated that 1-Bromopropane was a solvent used to clean metals and other materials. Adding 1-Bromopropane to the list was expected to have no immediate impact because emissions control was not a requirement of adding the contaminant to the list.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 006:050. Luther Luckett Correctional Complex. Amy Barker, assistant general counsel, and Amelia Howell, program administrator, represented the office.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to clarify provisions and comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Payments and Services

907 KAR 003:160. Specialized children’s services clinics. Jonathan Scott, regulation coordinator, represented the department.

In response to questions by Co-Chair West, Mr. Scott stated that, moving forward, this would be a fee-for-service benefit that bypassed the MCOs. The department had the statutory authority for this, and many of the child advocacy centers were not participating with the MCOs. Only approximately half were participating with an MCO, and the department endeavored to ensure that this provider type was fully able to participate without barriers. Out of approximately fifteen (15) child advocacy centers, only seven (7) or (8) were fully participating. Senator Raque Adams clarified that the cabinet did not increase the reimbursement rate. Senate Bill 8 from the 2022 Regular Session of the General Assembly required

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increased reimbursement for child advocacy centers.

In response to a question by Senator Thayer, Mr. Scott and Senator Raque Adams stated the department was complying with Senate Bill 8 from the 2022 Regular Session of the General Assembly.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 2 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Rachael Ratliff, regulation coordinator, represented the department.

Department for Community Based Services: Daycare

922 KAR 002:165. Employee Child Care Assistance Partnership. Laura Begin, regulation coordinator, and Andrea Day, division director, represented the department.

In response to a question by Co-Chair West, Ms. Begin stated that House Bill 499 from the 2022 Regular Session of the General Assembly established the Employee Child Care Assistance Partnership, which intended to help employers obtain and maintain children in childcare. The cost of childcare was often the most salient decision point in determining employment and continuation of employment.

A motion was made and seconded to approve the following amendments: to amend: (1) Section 3 to comply with the drafting requirements of KRS Chapter 13A; (2) Section 8 for clarity; (3) Section 9 to update the edition date of material incorporated by reference; and (4) the material incorporated by reference for consistency with this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Co-Chair West introduced new subcommittee members in order of seniority, including: Senator Damon Thayer, Representative Derek Lewis, and Representative Daniel Grossberg. Representative Hale had resigned as Co-Chair of this subcommittee, and it was necessary to elect a replacement House Co-Chair to complete the unexpired portion of that term. Representative Frazier Gordon made a motion, seconded by Representative Bridges, that Representative Derek Lewis be nominated for House Co-Chair. Representative Lewis accepted the nomination. Representative Bridges made a motion, seconded by Representative Frazier Gordon, to end House Co-Chair nominations and elect Representative Lewis by acclamation. Representative Lewis was endorsed as House Co-Chair of the subcommittee.

The following administrative regulations were deferred or removed from the January 10, 2023, subcommittee agenda:

OFFICE OF THE ATTORNEY GENERAL: Department of Law: Office of Consumer Protection

040 KAR 002:150. Cremation forms and inspections.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 001:411. Hospital and medical insurance for retired members and Kentucky Retirement Systems Insurance Fund Trust.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:360. Naloxone dispensing.

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.

201 KAR 008:601. Mobile dental facilities and portable dental units.

Board of Social Work

201 KAR 023:016. Temporary permission to practice. Marc Kelly, executive director, represented the board.

In response to a question by Co-Chair West, Mr. Kelly requested deferral of this administrative regulation to the February 2023 meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

201 KAR 023:051E. Renewal, termination, reinstatement of license.

EDUCATION AND LABOR CABINET: Department of Education: Charter Schools

701 KAR 008:010. Charter school student application, lottery, and enrollment.

701 KAR 008:020. Evaluation of charter school authorizers.

701 KAR 008:030. Charter school appeal process.

701 KAR 008:040. Conversion charter school petition, conversion, and operation.

701 KAR 008:050. Charter school funding.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 017:280. Registration, utilization review, and internal appeal.

806 KAR 017:290. Independent External Review Program.

Department of Financial Institutions: General Provisions

808 KAR 001:170. Licensing and registration.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Health Services and Facilities

902 KAR 020:470. Kentucky heart attack response and treatment recognition process.

Department for Medicaid Services

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

907 KAR 001:680. Vaccines for children program.

Payments and Services

907 KAR 003:010. Reimbursement for physicians' services.

Medicaid Eligibility

907 KAR 020:050. Presumptive eligibility.

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).

921 KAR 002:500. Family Assistance Short Term (FAST).

921 KAR 002:510. Relocation Assistance Program (RAP).

921 KAR 002:520. Work Incentive (WIN).

The subcommittee adjourned at 2 p.m. The next meeting of this subcommittee was tentatively scheduled for February 14, 2023, at 8 a.m.

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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 VETERANS, MILITARY AFFAIRS, AND PUBLIC PROTECTION Meeting of November 16, 2022

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 16, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The Interim Joint Committee on Veterans, Military Affairs, and Public Protection met on November 16, 2022 and a quorum was 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):

106 KAR 002:031
106 KAR 002:021
106 KAR 001:371
106 KAR 001:341
106 KAR 001:291
106 KAR 001:261
106 KAR 001:251
106 KAR 001:241
106 KAR 001:231
106 KAR 001:221
106 KAR 001:211
106 KAR 001:201
106 KAR 001:191
106 KAR 001:181
106 KAR 001:171

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 16, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON HEALTH SERVICES Meeting of January 12, 2023

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health Services for its meeting of January 12, 2023, having been referred to the Committee on December 7, 2022 and January 4, 2023, pursuant to KRS 13A.290(6):

December 7, 2022
201 KAR 022:053
900 KAR 010:120
900 KAR 012:005
907 KAR 001:008

907 KAR 004:020
907 KAR 004:030
907 KAR 020:020
907 KAR 020:100

January 4, 2023
201 KAR 023:016
901 KAR 005:120
901 KAR 005:130
901 KAR 005:140
902 KAR 008:160
902 KAR 020:365
906 KAR 001:210
907 KAR 001:065
907 KAR 003:160

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

910 KAR 001:090

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 12, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH SERVICES Meeting of January 12, 2023

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health Services for its meeting of January 12, 2023, having been referred to the Committee on December 7, 2022 and January 4, 2023, pursuant to KRS 13A.290(6):

December 7, 2022
201 KAR 022:053
900 KAR 010:120
900 KAR 012:005
907 KAR 001:008
907 KAR 004:020
907 KAR 004:030
907 KAR 020:020
907 KAR 020:100

January 4, 2023
201 KAR 023:016
901 KAR 005:120
901 KAR 005:130
901 KAR 005:140
902 KAR 008:160
902 KAR 020:365
906 KAR 001:210
907 KAR 001:065
907 KAR 003:160

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

910 KAR 001:090

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 13, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 49th year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

Locator Index - Effective Dates

H - 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

H - 14

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

H - 25

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

H - 28

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

H - 29

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

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** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			201 KAR 002:412E	48 Ky.R. 1466	10-11-2021
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(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.			201 KAR 012:030E	49 Ky.R. 253	7-12-2022
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- 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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	300 KAR 001:021E	150.235	301 KAR 001:410
	300 KAR 001:021		301 KAR 002:081
95A.262	739 KAR 002:070		301 KAR 002:082
117.001	031 KAR 002:030E	150.240	301 KAR 005:022
	031 KAR 002:030	150.275	301 KAR 003:120
117.379	031 KAR 002:030E		301 KAR 005:022
	031 KAR 002:030	150.280	301 KAR 002:095
118.126	030 KAR 009:010		301 KAR 005:022
131.020	103 KAR 043:340E	150.290	301 KAR 002:095

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150.305	301 KAR 005:022	157.224	707 KAR 001:002
	301 KAR 002:090	157.226	707 KAR 001:002
	301 KAR 002:142	157.230	707 KAR 001:002
	301 KAR 002:144	157.250	707 KAR 001:002
	301 KAR 002:221	157.260	707 KAR 001:002
150.320	301 KAR 002:228	157.270	707 KAR 001:002
	301 KAR 002:081	157.280	707 KAR 001:002
150.330	301 KAR 002:082	157.285	707 KAR 001:002
	301 KAR 002:075	157.290	707 KAR 001:002
	301 KAR 002:081	157.320	702 KAR 007:125
	301 KAR 002:082	157.350	702 KAR 007:125
	301 KAR 002:090	157.360	707 KAR 001:002
	301 KAR 002:219	158.030	701 KAR 008:010E
	301 KAR 002:221		701 KAR 008:010
	301 KAR 002:225		702 KAR 007:125
150.340	301 KAR 003:120		707 KAR 001:002
	301 KAR 002:221	158.050	701 KAR 008:010E
	301 KAR 002:225		701 KAR 008:010
150.360	301 KAR 002:228	158.070	701 KAR 008:010E
	301 KAR 002:081		701 KAR 008:010
	301 KAR 002:090		701 KAR 008:020E
	301 KAR 002:144		701 KAR 008:020
150.370	301 KAR 002:081		702 KAR 007:125
	301 KAR 002:251	158.100	701 KAR 008:010E
150.390	301 KAR 002:144		701 KAR 008:010
	301 KAR 002:245		702 KAR 007:125
150.399	301 KAR 002:251		707 KAR 001:002
150.410	301 KAR 003:120	158.135	013 KAR 003:050
150.415	301 KAR 002:251	158.140	704 KAR 003:305
150.416	301 KAR 002:251	158.142	704 KAR 003:305
150.445	301 KAR 001:410	158.143	013 KAR 003:050
150.450	301 KAR 005:022	158.150	707 KAR 001:002
150.485	301 KAR 005:022	158.196	704 KAR 008:060
150.520	301 KAR 005:022	158.240	702 KAR 007:125
150.525	301 KAR 005:022	158.281	701 KAR 008:010E
150.600	301 KAR 005:022		701 KAR 008:010
150.603	301 KAR 005:022	158.441	503 KAR 007:010
150.620	301 KAR 001:410	158.4410	503 KAR 007:010
150.660	301 KAR 005:022	158.4414	503 KAR 007:010
150.720	301 KAR 005:022	158.4416	704 KAR 003:535
150.722	301 KAR 002:245	158.443	503 KAR 007:010
150.990	301 KAR 001:410	158.645	704 KAR 003:303
	301 KAR 002:075		704 KAR 003:305
	301 KAR 002:081		704 KAR 008:060
	301 KAR 002:082	158.6451	704 KAR 008:120
	301 KAR 002:142		704 KAR 003:303
	301 KAR 002:144		704 KAR 003:305
	301 KAR 002:185		704 KAR 003:535
	301 KAR 002:221		704 KAR 008:060
	301 KAR 002:228		704 KAR 008:120
	301 KAR 002:251	158.6453	704 KAR 003:303
	301 KAR 002:300		704 KAR 008:060
	301 KAR 005:020		704 KAR 008:120
150.995	301 KAR 002:251	158.6455	013 KAR 003:050
151.601	200 KAR 017:111	158.649	701 KAR 008:020E
151.603	301 KAR 002:225		701 KAR 008:020
151.605	200 KAR 017:111	158.810	705 KAR 004:041
151B.403	013 KAR 003:050	159.010	701 KAR 008:010E
156.070	704 KAR 003:303		701 KAR 008:010
	704 KAR 003:535		702 KAR 007:125
	704 KAR 008:060	159.030	702 KAR 007:125
156.160	704 KAR 008:120	159.035	702 KAR 007:125
	704 KAR 003:303	159.140	702 KAR 007:125
	704 KAR 003:305	159.170	702 KAR 007:125
	704 KAR 003:535	160.1590	701 KAR 008:010E
	704 KAR 008:060		701 KAR 008:010
	704 KAR 008:120		701 KAR 008:020E
156.196	701 KAR 008:010E		701 KAR 008:020
156.802	705 KAR 004:041		701 KAR 008:030E
157.196	701 KAR 008:010		701 KAR 008:030
157.200	701 KAR 008:010E		701 KAR 008:040E
	701 KAR 008:010		701 KAR 008:040
	707 KAR 001:002		701 KAR 008:050E
157.220	707 KAR 001:002		701 KAR 008:050

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160.1591	701 KAR 008:010E 701 KAR 008:010 701 KAR 008:020E 701 KAR 008:020 701 KAR 008:030E 701 KAR 008:030 701 KAR 008:040E 701 KAR 008:040 701 KAR 008:050E 701 KAR 008:050	160.1599	701 KAR 008:020E 701 KAR 008:020 701 KAR 008:030E 701 KAR 008:030 701 KAR 008:040E 701 KAR 008:040 701 KAR 008:050E 701 KAR 008:010E 701 KAR 008:010 701 KAR 008:020E 701 KAR 008:020 701 KAR 008:030E 701 KAR 008:030 701 KAR 008:040E 701 KAR 008:040 701 KAR 008:050E 701 KAR 008:050
160.15911	701 KAR 008:050E 701 KAR 008:050		701 KAR 008:010 701 KAR 008:020E 701 KAR 008:020 701 KAR 008:030E 701 KAR 008:030 701 KAR 008:040E 701 KAR 008:040 701 KAR 008:050E 701 KAR 008:050
160.1592	701 KAR 008:010E 701 KAR 008:010 701 KAR 008:020E 701 KAR 008:020 701 KAR 008:030E 701 KAR 008:030 701 KAR 008:040E 701 KAR 008:040 701 KAR 008:050E 701 KAR 008:050	160.290	704 KAR 003:303 704 KAR 008:060 704 KAR 008:120 707 KAR 001:002 704 KAR 003:535 701 KAR 008:010E 701 KAR 008:010 704 KAR 003:535 701 KAR 008:040E 701 KAR 008:040 016 KAR 009:100 016 KAR 009:110 016 KAR 009:100 016 KAR 009:110 016 KAR 009:100 016 KAR 009:110 701 KAR 008:010E 701 KAR 008:010 701 KAR 008:020E 701 KAR 008:020 701 KAR 008:040E 701 KAR 008:040 702 KAR 007:125 102 KAR 001:361E 102 KAR 001:361 701 KAR 008:040E 701 KAR 008:040 011 KAR 004:080 011 KAR 005:001 011 KAR 004:080 011 KAR 005:037 011 KAR 005:145 011 KAR 004:080 011 KAR 004:080 011 KAR 005:037 011 KAR 005:145 011 KAR 004:080 011 KAR 004:080 011 KAR 004:080 011 KAR 005:145 011 KAR 004:080 806 KAR 009:025 603 KAR 005:350 603 KAR 005:155 603 KAR 005:155 603 KAR 005:155 603 KAR 005:155 603 KAR 005:155 922 KAR 001:300 603 KAR 005:350 603 KAR 005:350 603 KAR 005:350
160.1593	701 KAR 008:010E 701 KAR 008:010 701 KAR 008:020E 701 KAR 008:020 701 KAR 008:030E 701 KAR 008:030 701 KAR 008:040E 701 KAR 008:040 701 KAR 008:050E 701 KAR 008:050	160.345 160.346 160.380 161.011 161.028 161.030 161.048 161.141	
160.1594	701 KAR 008:010E 701 KAR 008:010 701 KAR 008:020E 701 KAR 008:020 701 KAR 008:030E 701 KAR 008:030 701 KAR 008:040E 701 KAR 008:040 701 KAR 008:050E 701 KAR 008:050	161.200 161.661 161.800 164.518 164.740-164.785 164.744 164.748 164.753	
160.1595	701 KAR 008:010E 701 KAR 008:010 701 KAR 008:020E 701 KAR 008:020 701 KAR 008:030E 701 KAR 008:030 701 KAR 008:040E 701 KAR 008:040 701 KAR 008:050E 701 KAR 008:050	164.7535 164.769 164.780 164.785 164.7889 164.7890 164.7894 165A.330 174.020 176.010 176.050 177.106 177.830 177.990 189.125 189.281 189.390 189.515	
160.1596	701 KAR 008:010E 701 KAR 008:010 701 KAR 008:020E 701 KAR 008:020 701 KAR 008:030E 701 KAR 008:030 701 KAR 008:040E 701 KAR 008:040 701 KAR 008:050E 701 KAR 008:050		
160.1597	701 KAR 008:010E 701 KAR 008:010 701 KAR 008:020E 701 KAR 008:020 701 KAR 008:030E 701 KAR 008:030 701 KAR 008:040E 701 KAR 008:040 701 KAR 008:050E 701 KAR 008:050		
160.1598	701 KAR 008:010E 701 KAR 008:010		

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189.520	603 KAR 005:350	205.240	921 KAR 002:035
194.540	201 KAR 020:620	205.245	921 KAR 002:035
194A.005	922 KAR 001:350		921 KAR 002:050
194A.030	911 KAR 001:085	205.455	910 KAR 001:090
	911 KAR 001:090	205.510	900 KAR 012:005
194A.060	907 KAR 001:044	205.510-205.647	907 KAR 004:020
	921 KAR 002:035	205.520	907 KAR 001:008
	922 KAR 001:350		907 KAR 001:026E
	922 KAR 002:160		907 KAR 001:026
194A.700-194A.729	902 KAR 020:480		907 KAR 001:038E
196	501 KAR 006:040		907 KAR 001:038
	501 KAR 006:050		907 KAR 001:632E
	501 KAR 006:080		907 KAR 001:632
	501 KAR 006:130		907 KAR 001:680
196.700-196.736	500 KAR 010:001		907 KAR 020:020
	500 KAR 010:020		907 KAR 020:050
	500 KAR 010:030		907 KAR 020:100
	500 KAR 010:040		911 KAR 001:090
197	501 KAR 006:040	205.5375	907 KAR 020:050
	501 KAR 006:050	205.5510-205.5520	907 KAR 023:020
	501 KAR 006:080	205.557	907 KAR 003:160E
	501 KAR 006:130		907 KAR 003:160
198B.050-198B.090	922 KAR 001:300	205.559	900 KAR 012:005
198B.260	908 KAR 001:374	205.5591	900 KAR 012:005
199	300 KAR 001:020	205.560	907 KAR 001:008
	300 KAR 001:021E		907 KAR 003:010
199.011	922 KAR 001:300		907 KAR 003:160E
	922 KAR 001:350		907 KAR 003:160
199.555	106 KAR 002:031		907 KAR 023:020
199.640	922 KAR 001:300	205.5606	911 KAR 001:090
199.642	922 KAR 001:300	205.561	907 KAR 023:020
199.650	922 KAR 001:300	205.5631	907 KAR 023:020
199.660	922 KAR 001:300	205.5632	907 KAR 023:020
199.670	922 KAR 001:300	205.5634	907 KAR 023:020
199.881-888	922 KAR 002:165	205.5636	907 KAR 023:020
199.894	922 KAR 002:160	205.5638	907 KAR 023:020
199.8943	922 KAR 002:165	205.5639	907 KAR 023:020
199.896	922 KAR 002:160	205.565	907 KAR 003:010
199.898	922 KAR 002:160	205.592	907 KAR 020:050
199.8982	922 KAR 002:160	205.622	907 KAR 001:026E
199.899	922 KAR 002:160		907 KAR 001:026
200.080-200.120	505 KAR 001:120E		907 KAR 001:038E
	505 KAR 001:120		907 KAR 001:038
	505 KAR 001:140E		907 KAR 001:044
	505 KAR 001:140		907 KAR 001:632E
200.460	911 KAR 001:060		907 KAR 001:632
200.460-200.499	911 KAR 001:085		907 KAR 023:020
	911 KAR 001:090	205.6316	907 KAR 023:020
200.654	911 KAR 001:090	205.6317	911 KAR 001:090
202A.011	907 KAR 001:044	205.6481-205.6497	907 KAR 004:020
205	921 KAR 002:040		907 KAR 004:030
205.010	921 KAR 002:006	205.703	921 KAR 002:006
205.170	921 KAR 002:060	205.705	921 KAR 001:380
205.175	921 KAR 002:035	205.710-205.802	921 KAR 001:380
205.177	921 KAR 002:035		921 KAR 001:400
205.193	921 KAR 002:050	205.720	921 KAR 002:006
205.200	921 KAR 002:016	205.8451	907 KAR 001:026E
	921 KAR 002:017		907 KAR 001:026
	921 KAR 002:035		907 KAR 001:038E
	921 KAR 002:050		907 KAR 001:038
	921 KAR 002:370		907 KAR 001:044
	921 KAR 002:500		907 KAR 001:632E
	921 KAR 002:520		907 KAR 001:632
205.2001	921 KAR 002:016		910 KAR 001:090
205.2003	921 KAR 002:017	205.900-205.925	910 KAR 001:090
	921 KAR 002:500	205.990	921 KAR 001:400
205.2005	921 KAR 002:006	205.992	921 KAR 001:380
205.210	921 KAR 002:016	206.10	921 KAR 002:035
205.211	921 KAR 002:016	209.005	500 KAR 016:010
	921 KAR 002:017	209.032	902 KAR 020:480
	921 KAR 002:500	210.366	201 KAR 026:175E
	921 KAR 002:510	210.370-210.485	907 KAR 003:010
	921 KAR 002:520	211.090	902 KAR 021:040
205.232	921 KAR 002:050	211.1751	902 KAR 008:160

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211.180	902 KAR 021:040	217B.525	302 KAR 029:011
211.332	900 KAR 012:005	217B.545	302 KAR 029:011
211.340	902 KAR 020:470	217B.550	302 KAR 026:150
244.341	902 KAR 020:470		302 KAR 029:011
211.342	902 KAR 020:470	217B.585	302 KAR 029:011
211.350-211.380	922 KAR 001:300	218A.010	902 KAR 055:110
211.461-211.466	907 KAR 004:030	218A.180	908 KAR 001:374
211.645	911 KAR 001:085	218A.200	902 KAR 020:480
	911 KAR 001:090	218A.202	902 KAR 055:110
211.647	911 KAR 001:085		908 KAR 001:374
	911 KAR 001:090	218A.240	902 KAR 055:110
212.230	902 KAR 008:160	222.231	908 KAR 001:374
212.240	902 KAR 008:160	222.462	908 KAR 001:374
212.245	902 KAR 008:160	224.10-100	401 KAR 063:060
212.890	902 KAR 008:160	224.20-110	401 KAR 063:060
213.011	901 KAR 005:130	224A.011	200 KAR 017:111
213.046	911 KAR 001:085	224A.020	200 KAR 017:111
	911 KAR 001:090	224A.035	200 KAR 017:111
	921 KAR 001:380	224A.040	200 KAR 017:111
	921 KAR 001:400	224A.050-224A.314	200 KAR 017:111
213.081	040 KAR 002:150	238.500	820 KAR 001:001
	901 KAR 005:140	238.505	820 KAR 001:032
213.096	901 KAR 005:130	238.510	820 KAR 001:130
213.098	040 KAR 002:150	238.515	820 KAR 001:005
213.101	901 KAR 005:120		820 KAR 001:130
213.106	901 KAR 005:120	238.525	820 KAR 001:005
213.991	901 KAR 005:140	238.530	820 KAR 001:005
214.034	922 KAR 001:300		820 KAR 001:025
214.036	922 KAR 002:160		820 KAR 001:130
214.615	201 KAR 008:571	238.535	820 KAR 001:005
216.2970	911 KAR 001:085	238.540	820 KAR 001:005
	911 KAR 001:090	238.545	820 KAR 001:032
216.380	907 KAR 001:065	238.550	820 KAR 001:025
216.515	902 KAR 020:480	238.555	820 KAR 001:005
216.530	902 KAR 020:480		820 KAR 001:025
216.532	902 KAR 020:480		820 KAR 001:130
216.595	902 KAR 020:480	238.560	820 KAR 001:025
216.718	902 KAR 020:480		820 KAR 001:130
216.718-216.728	906 KAR 001:210	238.570	820 KAR 001:025
216.765	902 KAR 020:480	238.995	820 KAR 001:130
216.785-216.793	906 KAR 001:210	257.160	201 KAR 016:560
216.789	902 KAR 020:480		201 KAR 016:562
216B.015	902 KAR 020:365	258.005	902 KAR 008:160
	902 KAR 020:480	258.015	922 KAR 001:350
216B.020	902 KAR 020:480	258.035	922 KAR 001:350
216B.105	902 KAR 020:365	258.065	301 KAR 002:081
	902 KAR 020:480		301 KAR 002:082
216B.160	902 KAR 020:480	258.085	301 KAR 002:081
216B.165	902 KAR 020:480		301 KAR 002:082
216B.200-216B.210	902 KAR 020:365	260.020	302 KAR 040:010
216B.400	201 KAR 020:411	260.030	302 KAR 040:010
217.015	907 KAR 023:020	260.038	302 KAR 040:010
217.177	201 KAR 016:550	271B	922 KAR 001:300
217.186	201 KAR 002:360	273.161	922 KAR 001:300
217.211	806 KAR 017:280	275.206	808 KAR 010:450
217B	302 KAR 026:010	278.010	807 KAR 005:001E
	302 KAR 026:020	278.020	807 KAR 005:001E
	302 KAR 026:030	278.100	807 KAR 005:001E
	302 KAR 026:040	278.180	807 KAR 005:001E
	302 KAR 026:050	278.300	807 KAR 005:001E
	302 KAR 026:060	278.410	807 KAR 005:001E
	302 KAR 026:070	281.010	907 KAR 004:030
	302 KAR 026:080	286.4	808 KAR 001:170
	302 KAR 026:090	286.8-010	808 KAR 001:170
	302 KAR 026:100	286.8-020	808 KAR 001:170
	302 KAR 027:011	286.8-030	808 KAR 001:170
	302 KAR 028:011	286.8-032	808 KAR 001:170
	302 KAR 029:011	286.8-034	808 KAR 001:170
217B.120	302 KAR 026:150	286.8-036	808 KAR 001:170
	302 KAR 027:011	286.8-060	808 KAR 001:170
	302 KAR 028:011	286.8-070	808 KAR 001:170
217B.190	302 KAR 029:011	286.8-080	808 KAR 001:170
217B.515	302 KAR 029:011	286.8-090	808 KAR 001:170
217B.520	302 KAR 029:011	286.8-140	808 KAR 001:170

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286.8-255	808 KAR 001:170	304.37-010	806 KAR 037:010
286.8-260	808 KAR 001:170	304.37-020	806 KAR 037:010
286.8-290	808 KAR 001:170	304.37-030	806 KAR 037:010
286.9-010	808 KAR 001:170	304.37-110	806 KAR 037:010
289.9-020	808 KAR 001:170	304.37-120	806 KAR 037:010
286.9-030	808 KAR 001:170	304.37-130	806 KAR 037:010
286.9-040	808 KAR 001:170	304.38-225	806 KAR 017:280
286.9-050	808 KAR 001:170	304.39-060	806 KAR 039:030
286.9-060	808 KAR 001:170	304.4-010	806 KAR 009:025
286.9-071	808 KAR 001:170	304.40-320	900 KAR 012:005
286.9-073	808 KAR 001:170	304.5-040	907 KAR 004:020
286.9-080	808 KAR 001:170		907 KAR 004:030
286.12-030	808 KAR 016:010	304.6	806 KAR 037:010
286.12-040	808 KAR 016:010	304.9-030	806 KAR 009:025
286.12-050	808 KAR 016:020	304.9-105	806 KAR 009:025
286.12-060	808 KAR 016:010	304.9-130	806 KAR 009:025
286.12-070	808 KAR 016:010	304.9-150	806 KAR 009:025
286.12-080	808 KAR 016:020	304.9-160	806 KAR 009:025
292	808 KAR 010:450	304.9-230	806 KAR 009:025
292.337	808 KAR 010:440	304.9-260	806 KAR 009:025
292.480	808 KAR 010:440	304.9-270	806 KAR 009:025
304	900 KAR 010:120	304.9-295	806 KAR 009:025
304.1-050	806 KAR 006:072	304.9-320	806 KAR 009:025
	806 KAR 017:290	304.9-430	806 KAR 009:025
	806 KAR 037:010	304.9-642	806 KAR 009:025
304.2-100	806 KAR 017:290	304.39-110	603 KAR 005:350
304.2-140	806 KAR 017:280	304.47-050	806 KAR 017:280
304.2-230	806 KAR 017:290	311	911 KAR 001:090
304.2-290	806 KAR 006:072	311.530-311.620	201 KAR 009:470
304.2-310	806 KAR 017:280	311.595	901 KAR 005:120
	806 KAR 017:290	311.5975	900 KAR 012:005
304.3-240	806 KAR 006:072	311.621-311.643	201 KAR 009:470
304.6	806 KAR 006:072	311.720	901 KAR 005:120
304.14-110	900 KAR 010:120		902 KAR 020:365
304.15-410	806 KAR 006:072		922 KAR 001:350
304.17-412	806 KAR 017:280	311.732	901 KAR 005:140
304.17A-005	806 KAR 017:280	311.7731	902 KAR 020:365
	806 KAR 017:290	311.7733	902 KAR 020:365
	900 KAR 012:005	311.7734	902 KAR 020:365
	907 KAR 004:020	311.774	901 KAR 005:120
	907 KAR 004:030	311.781	901 KAR 005:120
304.17A-138	900 KAR 012:005	311.782	901 KAR 005:120
304.17A.163	806 KAR 017:280	311.783	901 KAR 005:120
304.17A.1631	806 KAR 017:280	311.840	907 KAR 003:010
	806 KAR 017:290		922 KAR 001:350
304.17A.167	806 KAR 017:280	311.901	201 KAR 009:305
304.17A-168	806 KAR 017:280	311.905	201 KAR 009:305
	806 KAR 017:290	311.909	201 KAR 009:305
304.17A-243	900 KAR 010:120	311.990	201 KAR 009:470
304.17A-245	900 KAR 010:120	311A.010	202 KAR 007:201
304.17A-505	806 KAR 017:290		202 KAR 007:301
304.17A-535	806 KAR 017:280		202 KAR 007:330
	806 KAR 017:290	311A.020	202 KAR 007:330
304.17A-600	806 KAR 017:280	311A.025	202 KAR 007:201
	806 KAR 017:290		202 KAR 007:301
304.17A-607	806 KAR 017:280		202 KAR 007:330
	806 KAR 017:290		202 KAR 007:401
304.17A-617	806 KAR 017:290	311A.030	202 KAR 007:201
304.17A-619	806 KAR 017:280		202 KAR 007:401
304.17A-621-304.17A.-631	806 KAR 017:290		202 KAR 007:555
304.17A-623	806 KAR 017:280	311A.050	202 KAR 007:330
304.17B-021	806 KAR 017:351		202 KAR 007:601
304.17B-023	806 KAR 017:351	311A.050-311A.100	202 KAR 007:401
304.17C-010	806 KAR 017:280	311A.060	202 KAR 007:201
304.17C-030	806 KAR 017:280		202 KAR 007:301
304.18-045	806 KAR 017:280	311A.090	202 KAR 007:330
304.24-390	806 KAR 037:010	311A.095	202 KAR 007:201
304.24-400	806 KAR 037:010		202 KAR 007:301
304.24-415	806 KAR 037:010		202 KAR 007:330
304.3-750	806 KAR 003:250	311A.100	202 KAR 007:330
304.3-768	806 KAR 003:250	311A.120	202 KAR 007:401
304.32-147	806 KAR 017:280		202 KAR 007:601
304.32-330	806 KAR 017:280	311A.130	202 KAR 007:301
304.33	806 KAR 037:010		202 KAR 007:601

KRS SECTION	REGULATION	KRS SECTION	REGULATION
311A.135	202 KAR 007:401	314.991	201 KAR 020:478
311A.140	202 KAR 007:701	315.010	201 KAR 002:380
	202 KAR 007:201		201 KAR 002:413E
	202 KAR 007:301	315.020	201 KAR 002:413E
	202 KAR 007:330	315.025	201 KAR 002:450
	202 KAR 007:701	315.030	201 KAR 002:450
311A.142	202 KAR 007:401	315.0351	201 KAR 002:450
311A.145	202 KAR 007:201		201 KAR 002:460
	202 KAR 007:301	315.050	201 KAR 002:030
	202 KAR 007:330		201 KAR 002:413E
311A.150	202 KAR 007:330	315.065	201 KAR 002:413E
311A.160	202 KAR 007:201	315.121	201 KAR 002:450
	202 KAR 007:701	315.131	201 KAR 002:450
311A.165	202 KAR 007:301	315.135	201 KAR 002:413E
	202 KAR 007:701	315.191	201 KAR 002:030
311A.170	202 KAR 007:401		201 KAR 002:380
	202 KAR 007:701		201 KAR 002:460
311A.175	202 KAR 007:701	315.205	201 KAR 002:413E
311A.185	202 KAR 007:401	315.210	201 KAR 002:030
311A.190	202 KAR 007:401	317A.020	201 KAR 012:030
	202 KAR 007:555		201 KAR 012:082
311A.195	202 KAR 007:330		201 KAR 012:290
312.207	201 KAR 016:572	317A.050	201 KAR 012:030
313.010	907 KAR 001:026E		201 KAR 012:082
	907 KAR 001:026		201 KAR 012:260
313.021	201 KAR 008:016		201 KAR 012:290
	201 KAR 008:601	317A.060	201 KAR 012:030
313.022	201 KAR 008:016		201 KAR 012:060
	201 KAR 008:601		201 KAR 012:230
313.030	201 KAR 008:571		201 KAR 012:290
313.035	911 KAR 001:060	317A.062	201 KAR 012:260
313.040	907 KAR 001:026E	317A.070	201 KAR 012:190
	907 KAR 001:026	317A.090	201 KAR 012:082
313.045	201 KAR 008:571	317A.140	201 KAR 012:060
313.050	201 KAR 008:571		201 KAR 012:190
313.080	201 KAR 008:571	317A.145	201 KAR 012:030
313.130	201 KAR 008:571		201 KAR 012:190
313.550	201 KAR 008:016	319	911 KAR 001:090
314.011	201 KAR 020:411	319.032	201 KAR 026:175E
	201 KAR 020:490	319.050	201 KAR 026:175E
	907 KAR 003:160E	319.053	201 KAR 026:175E
	907 KAR 003:160	319.064	201 KAR 026:175E
	922 KAR 001:350	319.071	201 KAR 026:175E
	922 KAR 002:160		201 KAR 026:225E
314.021	201 KAR 020:478	320	907 KAR 001:632E
314.035	201 KAR 020:472		907 KAR 001:632
	201 KAR 020:476	320.230	201 KAR 005:002
	201 KAR 020:478	320.295	201 KAR 005:002
314.041	201 KAR 020:260	320.300	201 KAR 005:002
	201 KAR 020:370	320.310	201 KAR 005:002
314.042	201 KAR 020:370	320.295	201 KAR 005:038
314.051	201 KAR 020:370	320.310	201 KAR 005:045
314.071	201 KAR 020:370		201 KAR 005:105
314.089	201 KAR 020:478	321.185	301 KAR 002:075
314.091	201 KAR 020:370	321.190	201 KAR 016:610
	201 KAR 020:478	321.207	201 KAR 016:550
314.103	201 KAR 020:370		201 KAR 016:552
	201 KAR 020:411		201 KAR 016:560
	201 KAR 020:476	321.235	201 KAR 016:562
	201 KAR 020:478		201 KAR 016:550
314.111	201 KAR 020:260		201 KAR 016:552
	201 KAR 020:310		201 KAR 016:560
314.131	201 KAR 020:260		201 KAR 016:562
	201 KAR 020:472		201 KAR 016:610
	201 KAR 020:476	321.351	201 KAR 016:550
314.137	201 KAR 020:472		201 KAR 016:552
	201 KAR 020:476		201 KAR 016:560
	201 KAR 020:478		201 KAR 016:562
314.142	201 KAR 020:411		201 KAR 016:610
314.400-314.414	201 KAR 020:620	321.353	201 KAR 016:610
314.404-314.416	201 KAR 020:650	321.360	201 KAR 016:610
314.475	201 KAR 020:310	322.340	807 KAR 005:001E
	201 KAR 020:370	322A.030	201 KAR 031:031
	201 KAR 020:411		201 KAR 031:040

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322A.040	201 KAR 031:040	369.101-369.120	907 KAR 001:026E
322A.045	201 KAR 031:040		907 KAR 001:026
322A.050	201 KAR 031:010		907 KAR 001:044
322A.060	201 KAR 031:010		907 KAR 001:632E
	201 KAR 031:050		907 KAR 001:632
322A.070	201 KAR 031:010	369.102	807 KAR 005:001E
	201 KAR 031:050		907 KAR 001:026E
325.261	201 KAR 001:190		907 KAR 001:026
325.270	201 KAR 001:190	381.280	500 KAR 016:010
326	907 KAR 001:632E	387.010	701 KAR 008:010E
	907 KAR 001:632		701 KAR 008:010
326.030	907 KAR 001:632E	391.010	040 KAR 002:150
	907 KAR 001:632	400.203	907 KAR 001:026E
326.040	907 KAR 001:632E		907 KAR 001:026
	907 KAR 001:632		907 KAR 001:038E
326.060	201 KAR 005:002		907 KAR 001:038
	201 KAR 005:038		907 KAR 001:044
327.300	201 KAR 022:170		907 KAR 001:632E
334.010	907 KAR 001:038E		907 KAR 001:632
	907 KAR 001:038		907 KAR 003:010
334A	911 KAR 001:090	403.160	921 KAR 001:400
334A.020	907 KAR 001:038E	403.210-403.240	921 KAR 001:400
	907 KAR 001:038	403.211	921 KAR 001:380
	911 KAR 001:085	403.707	201 KAR 020:411
	911 KAR 001:090	403.720	921 KAR 002:006
334A.030	907 KAR 001:038E		921 KAR 002:370
	907 KAR 001:038	405.430	921 KAR 001:380
335.010-335.160	201 KAR 023:051E		921 KAR 001:400
	201 KAR 023:051	405.440	921 KAR 001:400
335.080	201 KAR 023:016E	405.450	921 KAR 001:400
	201 KAR 023:016	405.467	921 KAR 001:380
335.090	201 KAR 023:016E	405.520	921 KAR 001:380
	201 KAR 023:016	405.991	921 KAR 001:400
335.100	201 KAR 023:016E	406.021	921 KAR 001:380
	201 KAR 023:016		921 KAR 001:400
335.990	201 KAR 023:051E	406.025	921 KAR 001:380
	201 KAR 023:051		921 KAR 001:400
337	803 KAR 001:006	407.5101-407.5903	921 KAR 001:380
337.275	803 KAR 001:081	414	907 KAR 003:010
	922 KAR 002:160	415.110	907 KAR 003:010
337.285	803 KAR 001:081	415.152	907 KAR 001:026E
337.355	201 KAR 002:450		907 KAR 001:026
337.365	201 KAR 002:450	415.170	907 KAR 001:026E
341.350	787 KAR 001:090E		907 KAR 001:026
	787 KAR 001:090	415.172	907 KAR 001:026E
341.360	787 KAR 001:090E		907 KAR 001:026
	787 KAR 001:090	415.174	907 KAR 001:026E
341.370	787 KAR 001:090E		907 KAR 001:026
	787 KAR 001:090	415.208	907 KAR 001:044
341.380	787 KAR 001:090E	416.164	907 KAR 001:008
	787 KAR 001:090	416.166	907 KAR 001:008
	787 KAR 001:100E	421.500-421.575	201 KAR 020:411
	787 KAR 001:100	422.317	907 KAR 001:044
342.0011	803 KAR 025:089	424	922 KAR 001:300
342.019	803 KAR 025:089	424.300	807 KAR 005:001E
342.020	803 KAR 025:089	431.17	907 KAR 001:044
342.035	803 KAR 025:089		907 KAR 001:632E
362	202 KAR 007:601		907 KAR 001:632
363.900-363.908	302 KAR 079:009	431.52	907 KAR 001:044
365	202 KAR 007:601	431.600-431.660	201 KAR 020:411
365.015	807 KAR 005:001E	434.840-434.860	907 KAR 001:044
367.93103	040 KAR 002:150	435.603	911 KAR 001:090
367.93105	040 KAR 002:150	438.2	907 KAR 001:026E
367.93115	040 KAR 002:150		907 KAR 001:026
367.93117	040 KAR 002:150		907 KAR 001:038E
367.97501	040 KAR 002:150		907 KAR 001:038
367.97504	040 KAR 002:150		907 KAR 001:632E
367.97507	040 KAR 002:150		907 KAR 001:632
367.97511	040 KAR 002:150		907 KAR 003:010
367.97514	040 KAR 002:150	439	501 KAR 006:040
367.97517	040 KAR 002:150		501 KAR 006:050
367.97521	040 KAR 002:150		501 KAR 006:080
367.97524	040 KAR 002:150		501 KAR 006:050
367.97527	040 KAR 002:150	440.40	907 KAR 001:632E

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440.50	907 KAR 001:632	40 C.F.R.	302 KAR 026:020
440.60	907 KAR 003:010		302 KAR 026:150
	907 KAR 001:632E		302 KAR 027:011
440.120	907 KAR 001:632		302 KAR 028:011
446.400	907 KAR 023:020		302 KAR 079:009
447	202 KAR 007:401	42 C.F.R.	401 KAR 063:060
	907 KAR 001:632E		900 KAR 010:120
447.10	907 KAR 001:632		902 KAR 020:490E
447.200-447.205	907 KAR 003:010		902 KAR 020:490
447.271	907 KAR 003:010		902 KAR 055:110
447.325	907 KAR 001:008		907 KAR 001:008
447.45	907 KAR 003:010		907 KAR 001:026E
447.500-447.520	907 KAR 023:020		907 KAR 001:026
454.220	907 KAR 023:020		907 KAR 001:038E
457.310	921 KAR 001:400		907 KAR 001:038
	907 KAR 001:038E		907 KAR 001:044
485.500-485.546	907 KAR 001:038		907 KAR 001:065
485.618	902 KAR 020:490		907 KAR 001:632E
527.100	902 KAR 020:490		907 KAR 001:632
527.110	922 KAR 001:350		907 KAR 003:010
531.31-531.58	922 KAR 001:350		907 KAR 004:020
600-645	803 KAR 001:081		907 KAR 004:030
	505 KAR 001:120		907 KAR 020:020
	505 KAR 001:140		907 KAR 023:020
600.020	921 KAR 002:500		908 KAR 001:374
	922 KAR 001:300		911 KAR 001:090
	922 KAR 001:350	45 C.F.R.	922 KAR 001:350
	922 KAR 002:160		807 KAR 005:001E
605.080	922 KAR 001:300		900 KAR 010:120
605.090	922 KAR 001:300		902 KAR 020:480
	922 KAR 001:350		902 KAR 020:490E
605.120	922 KAR 002:160		902 KAR 020:490
610.110	922 KAR 001:300		907 KAR 001:026E
	922 KAR 001:350		907 KAR 001:026
610.170	921 KAR 001:380		907 KAR 001:044
615.010	922 KAR 001:300		907 KAR 001:632E
615.030	922 KAR 001:300		907 KAR 001:632
615.040	922 KAR 001:300		921 KAR 001:380
620.020	201 KAR 020:620		921 KAR 001:400
	907 KAR 003:160E		921 KAR 002:006
	907 KAR 003:160		921 KAR 002:016
	922 KAR 001:300		921 KAR 002:017
	922 KAR 002:160		921 KAR 002:035
620.030	922 KAR 001:300		921 KAR 002:370
	922 KAR 001:350		921 KAR 002:500
620.050	907 KAR 003:160E		921 KAR 002:510
	907 KAR 003:160		921 KAR 002:520
	922 KAR 001:350		922 KAR 001:350
620.090	922 KAR 001:300		922 KAR 002:160
620.140	922 KAR 001:300	47 C.F.R.	807 KAR 005:001E
	922 KAR 001:350	50 C.F.R.	301 KAR 002:075
620.230	922 KAR 001:300		301 KAR 003:120
620.360	922 KAR 001:350	7 U.S.C.	302 KAR 026:010
620.363	922 KAR 001:350		302 KAR 026:020
625	922 KAR 001:350		302 KAR 026:150
654.1-654.5	011 KAR 004:080		302 KAR 027:011
654.30-654.52	011 KAR 004:080		302 KAR 028:011
7 C.F.R.	302 KAR 040:010		302 KAR 029:011
	902 KAR 008:160		921 KAR 002:006
	922 KAR 002:160		922 KAR 002:160
16 C.F.R.	302 KAR 079:009	8 U.S.C.	921 KAR 002:006
	603 KAR 005:350		921 KAR 002:016
	922 KAR 001:350		922 KAR 001:350
17 C.F.R.	808 KAR 010:450	10 U.S.C.	202 KAR 007:330
20 C.F.R.	922 KAR 002:160	15 U.S.C.	808 KAR 010:450
21 C.F.R.	902 KAR 020:480		908 KAR 001:374
	908 KAR 001:374	20 U.S.C.	011 KAR 004:080
26 C.F.R.	900 KAR 010:120		701 KAR 008:010E
29 C.F.R.	202 KAR 007:555		701 KAR 008:010
	803 KAR 001:081		707 KAR 001:002
	900 KAR 010:120		807 KAR 005:001E
34 C.F.R.	011 KAR 004:080		921 KAR 002:016
	707 KAR 001:002		922 KAR 001:300
	922 KAR 002:160	21 U.S.C.	921 KAR 002:006

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22 U.S.C.	921 KAR 002:006		921 KAR 002:016
25 U.S.C.	921 KAR 002:016		922 KAR 002:160
	922 KAR 002:160		921 KAR 002:510
26 U.S.C.	105 KAR 001:365		921 KAR 002:520
	105 KAR 001:411		922 KAR 001:300
	900 KAR 010:120		922 KAR 001:350
	921 KAR 002:016		922 KAR 002:160
29 U.S.C.	701 KAR 008:010E	42 U.S.C.	105 KAR 001:411
	701 KAR 008:010		401 KAR 063:060
	921 KAR 002:016		701 KAR 008:010E
	922 KAR 002:160		701 KAR 008:010
	900 KAR 012:005		902 KAR 020:480
	921 KAR 002:370		902 KAR 020:490E
	922 KAR 002:160		902 KAR 020:490
31 U.S.C.	045 KAR 001:050		907 KAR 001:026E
38 U.S.C.	017 KAR 003:020		907 KAR 001:026
	105 KAR 001:365		907 KAR 001:038E
	105 KAR 001:415		907 KAR 001:038
	106 KAR 001:141		907 KAR 001:632E
	106 KAR 001:171		907 KAR 001:632
	106 KAR 001:181		907 KAR 001:680
	106 KAR 001:191		907 KAR 003:010
	106 KAR 001:201		907 KAR 020:050
	106 KAR 001:221		911 KAR 001:090
	201 KAR 002:413E		921 KAR 002:035
	900 KAR 010:120		921 KAR 002:040
	900 KAR 012:005		921 KAR 002:050
	907 KAR 001:044		921 KAR 002:060
	907 KAR 001:065		921 KAR 002:370
	907 KAR 004:020		922 KAR 002:165
	907 KAR 004:030	49 U.S.C.	302 KAR 029:011
	907 KAR 020:020	50 U.S.C.	106 KAR 001:141
	907 KAR 023:020		106 KAR 001:171
	921 KAR 001:380	52 U.S.C.	921 KAR 002:035
	921 KAR 001:400		
	921 KAR 002:006		
	921 KAR 002:500		

CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
013 KAR 002:045	06-22-2022	Remain in Effect without Amendment
016 KAR 002:110	12-01-2022	To be Amended, filing deadline 06-01-2024
016 KAR 002:140	12-01-2022	To be Amended, filing deadline 06-01-2024
016 KAR 002:150	12-01-2022	To be Amended, filing deadline 06-01-2024
016 KAR 002:160	12-01-2022	To be Amended, filing deadline 06-01-2024
016 KAR 002:170	12-01-2022	To be Amended, filing deadline 06-01-2024
016 KAR 002:200	12-01-2022	To be Amended, filing deadline 06-01-2024
016 KAR 004:030	09-08-2022	To be amended, filing deadline 03-08-2024
016 KAR 009:030	12-01-2022	To be Amended, filing deadline 06-01-2024
031 KAR 003:040	09-02-2022	To be amended, filing deadline 03-02-2024
031 KAR 004:120	09-02-2022	Remain in Effect without Amendment
031 KAR 004:180	09-02-2022	To be amended, filing deadline 03-02-2024
106 KAR 003:010	12-02-2022	Remain in Effect without Amendment
201 KAR 001:050	12-02-2022	Remain in Effect without Amendment
201 KAR 001:063	12-02-2022	Remain in Effect without Amendment
201 KAR 001:081	12-02-2022	Remain in Effect without Amendment
201 KAR 001:140	12-02-2022	Remain in Effect without Amendment
201 KAR 001:150	12-02-2022	Remain in Effect without Amendment
201 KAR 002:220	09-09-2022	To be amended, filing deadline 03-09-2024
201 KAR 005:030	11-10-2022	Remain in Effect without Amendment

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201 KAR 005:110	11-10-2022	Remain in Effect without Amendment
201 KAR 009:025	01-11-2023	Remain in Effect without Amendment
201 KAR 009:305	09-08-2022	To be amended, filed on 07-13-2022
201 KAR 009:470	01-11-2023	To be amended, going through process now 1-12-2023
201 KAR 044:010	07-01-2022	Remain in Effect without Amendment
301 KAR 001:122	08-04-2022	To be amended, filing deadline 02-04-2022
301 KAR 001:146	08-04-2022	To be amended, filing deadline 02-04-2024
500 KAR 013:020	08-25-2022	To be amended, filing deadline 02-24-2024
501 KAR 001:080	11-29-2022	To be amended, filing deadline 11-29-2021
501 KAR 006:050	09-14-2022	To be amended, filing deadline 3-14-2024
601 KAR 009:135	06-02-2022	Remain in Effect without Amendment
603 KAR 005:155	07-26-2022	Remain in Effect without Amendment
702 KAR 001:170	08-09-2022	Remain in Effect without Amendment
803 KAR 001:035	06-13-2022	Remain in Effect without Amendment
803 KAR 002:402	08-26-2022	To be amended, filing deadline 2-26-2024
803 KAR 002:445	08-26-2022	To be amended, filing deadline 02-26-2024
804 KAR 004:015	09-13-2022	Remain in Effect without Amendment
804 KAR 010:031	09-13-2022	Remain in Effect without Amendment
808 KAR 012:020	09-16-2022	Remain in Effect without Amendment
902 KAR 020:180	12-14-2022	Remain in Effect without Amendment
902 KAR 020:200	12-14-2022	Remain in Effect without Amendment
902 KAR 020:205	12-14-2022	Remain in Effect without Amendment
902 KAR 100:037	12-14-2022	Remain in Effect without Amendment

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907 KAR 001:044	06-09-2022	Remain in Effect without Amendment
907 KAR 001:055	10-18-2022	Remain in Effect without Amendment
907 KAR 001:350	06-09-2022	Remain in Effect without Amendment
907 KAR 009:005	10-18-2022	Remain in Effect without Amendment
907 KAR 009:010	10-18-2022	Remain in Effect without Amendment
907 KAR 009:015	10-18-2022	Remain in Effect without Amendment
907 KAR 009:020	10-18-2022	Remain in Effect without Amendment
907 KAR 010:014	08-10-2022	Remain in Effect without Amendment
907 KAR 010:016	08-10-2022	Remain in Effect without Amendment
907 KAR 015:085	8/10/2022	Remain in Effect without Amendment
910 KAR 001:170	06-09-2022	To be Amended, Filing deadline 12-09-2023
910 KAR 001:270	08-11-2022	To be amended, filing deadline 02-11-2024
921 KAR 002:006	10-03-2022	To be amended, filed 8-4-2022
921 KAR 002:016	10-03-2022	To be amended, filed 8-4-2022
921 KAR 002:017	10-03-2022	To be amended, filed 9-12-2022
921 KAR 002:046	10-03-2022	Remain in Effect without Amendment
921 KAR 002:050	10-03-2022	To be amended, filed 9-12-2022
921 KAR 002:060	10-03-2022	To be amended, filed 9-12-2022
921 KAR 002:370	10-03-2022	To be amended, filed 9-12-2022
921 KAR 002:500	10-03-2022	To be amended, filed 8-4-2022
921 KAR 002:510	10-03-2022	To be amended, filed 8-4-2022
921 KAR 002:520	10-03-2022	To be amended, filed 8-4-2023

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 49th year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
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*****A substantial number of technical amendments have been filed and are in the process of being entered. The index will be updated with that information as soon as possible. *****

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