



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon February 15, 2023.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet on March 7, 2023, at 8:00 a.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 1727 [Online agenda updated as needed](#)

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

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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



**Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Tuesday, March 7, 2023 at 8 a.m.
Annex Room 149**



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

OFFICE OF THE GOVERNOR

Department of Veterans Affairs

State Veteran's Nursing Home

017 KAR 003:020. Changes for room and board, goods, and services at state veterans' nursing homes.

DEPARTMENT OF LAW

Kentucky Opioid Abatement Advisory Commission

040 KAR 009:010E. General application procedure. ("E" expires 10-03-2023) (Filed with Ordinary)

040 KAR 009:020E. Local government application procedure. ("E" expires 10-3-2023) (Filed with Ordinary)

GENERAL GOVERNMENT CABINET

Auditor of Public Accounts

Audits

045 KAR 001:030. Audits of sheriffs' tax settlements.

FINANCE AND ADMINISTRATION CABINET

Kentucky Retirement Systems

General Rules

105 KAR 001:001. Definitions for Title 105 of the Kentucky Administrative Regulations.

105 KAR 001:365. Hybrid cash balance plan.

BOARDS AND COMMISSIONS

Board of Licensure for Long-Term Care Administrators

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

Board of Veterinary Examiners

201 KAR 016:550. Authorization for animal control agencies to apply for restricted controlled substances certificate from DEA.

201 KAR 016:552. Responsibilities for certified animal control agencies; limitations on drugs.

201 KAR 016:560. Certification as an animal euthanasia specialist.

201 KAR 016:562. Duties and responsibilities of an animal euthanasia specialist.

201 KAR 016:572. Certificate renewal for animal control agencies and animal euthanasia specialists; renewal notice.

201 KAR 016:610. Procedures for grievances, investigations, and administrative charges.

Board of Physical Therapy

201 KAR 022:170. Physical Therapy Compact Commission.

Board of Social Work

201 KAR 023:051. Renewal, termination, reinstatement of license. (Filed with Emergency) (Amended After Comments)

Board of Emergency Medical Services

202 KAR 007:201. Emergency medical responders.

202 KAR 007:301. Emergency medical technician.

202 KAR 007:330. Advanced emergency medical technician.

202 KAR 007:401. Paramedics.

202 KAR 007:555. Ground agencies.

202 KAR 007:601. Training, education, and continuing education.

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 002:245. Wanton waste and disposal of big game and upland game birds.

Hunting and Fishing

301 KAR 003:120. Commercial nuisance wildlife control.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

Office of the Secretary

501 KAR 006:040. Kentucky State Penitentiary. (Amended After Comments)

Department of Juvenile Justice

Child Welfare

505 KAR 001:120E. Department of Juvenile Justice Policies and Procedures Manual; Health and Safety Services. ("E" expires 10-10-

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2023) (Filed with Ordinary)

505 KAR 001:140E. Department of Juvenile Justice Policies and Procedures Manual: Detention Services. ("E" expires 10-10-2023) (Filed with Ordinary)

EDUCATION AND LABOR CABINET

Department of Education

Charter Schools

701 KAR 008:010. Charter school student application, lottery, and enrollment. (Filed with Emergency) (Not Amended After Comments)

701 KAR 008:020. Evaluation of charter school authorizers. (Filed with Emergency) (Not Amended After Comments)

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

701 KAR 008:040. Conversion charter school petition, conversion, and operation. (Filed with Emergency) (Not Amended After Comments)

701 KAR 008:050. Charter school funding. (Filed with Emergency) (Not Amended After Comments)

Office of Instruction

704 KAR 003:303. Required academic standards.

Academic Standards

704 KAR 008:060. Required academic standards for social studies.

704 KAR 008:120. Required Kentucky academic standards for science.

Exceptional and Handicapped Programs

707 KAR 001:002. Definitions.

Office of Unemployment Insurance

Unemployment Insurance

787 KAR 001:090E. Unemployed worker's reporting requirements. ("E" expires 09-18-2023) (Filed with Ordinary)

787 KAR 001:100E. Week of unemployment defined. ("E" expires 09-18-2023) (Filed with Ordinary)

Department of Workplace Standards

Labor Standards; Wages and Hours

803 KAR 001:006. Employer-employee relationship.

PUBLIC PROTECTION CABINET

Department of Insurance

Authorization of Insurers and General Requirements

806 KAR 003:250. Cybersecurity reporting procedures.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

902 KAR 020:470. Kentucky heart attack response and treatment recognition process. (Amended After Comments)

902 KAR 020:490E. Rural emergency hospitals. ("E" expires 09-25-2023) (Filed with Ordinary)

Department of Medicaid Services

Medicaid Services

907 KAR 001:026E. Dental services' coverage provisions and requirements. ("E" expires 09-25-2023) (Filed with Ordinary)

907 KAR 001:038E. Hearing Program coverage provisions and requirements. ("E" expires 09-25-2023) (Filed with Ordinary)

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

907 KAR 001:632E. Vision program coverage provisions and requirements. ("E" expires 09-25-2023) (Filed with Ordinary)

3. REGULATIONS REMOVED FROM MARCH'S AGENDA

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:380. Board authorized protocols. (Filed with Emergency) (Amended After Comments) (Deferred from January)

Board of Optometric Examiners

201 KAR 005:002. Board administration and optometric practice. (Comments Received; SOC ext. due 03-15-2023)

Board of Dentistry

~~201 KAR 008:532. Licensure of dentists. (Withdrawn)~~

~~201 KAR 008:562. Licensure of dental hygienists. (Withdrawn)~~

Board of Social Work

201 KAR 023:016. Temporary permission to practice. (Filed with Emergency) (Deferred from January)

PUBLIC PROTECTION CABINET

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

902 KAR 020:480. Assisted living communities. (Comments Received; SOC ext. due 03-15-2023)

Controlled Substances

902 KAR 055:110. Monitoring system for prescription controlled substances. (Comments Received; SOC ext. due 03-15-2023)

**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.

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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

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Health Care Policy

(Emergency As Amended at ARRS, February 14, 2023)

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

EFFECTIVE: February 14, 2023

Prior versions:

Emergency Amendment - 49 Ky.R. 1579

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. 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:
 - 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)(10)~~ 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>).

www.chfs.ky.gov/dms/incorporated.htm].

Section 21. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on February 14, 2023.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(Emergency As Amended at ARRS, February 14, 2023)**

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

EFFECTIVE: February 14, 2023

Prior versions:

Emergency Amendment - 49 Ky.R. 1586

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, [7] 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.

Section 10. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on February 14, 2023.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Health Care Policy

(Emergency As Amended at ARRS, February 14, 2023)

907 KAR 1:632E. Vision program coverage provisions and requirements.

EFFECTIVE: February 14, 2023

Prior versions:

Emergency Amendment - 49 Ky.R. 1590

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:~~

~~1.[a.] Requires the use of eyeglasses;~~

~~2.[b.] 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

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- (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>].

Section 15. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on February 14, 2023.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 14, 2023)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4),(7),(8), 164.753(3),(4),(6), 164.7535, 164.769, 164.780, 164.785, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3),(6), 164.7535, 164.769(5),(6)(f), 164.7894(6), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires[authorizes] the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7894(6) requires the Authority to promulgate administrative regulations as may be needed for the administration of the Kentucky Coal County College Completion Program. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. To participate in a specified grant, scholarship, or work-study program administered by the Kentucky Higher Education Assistance Authority, the following application forms shall be completed for the appropriate academic year in which an award is sought in accordance with their instructions:

(1) For the KHEAA Grant Program established in 11 KAR 5:130, the Free Application for Federal Student Aid (FAFSA);

(2) For the KHEAA Work-Study Program established in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;

(3) For the Teacher Scholarship Program established in 11 KAR 8:030, the Teacher Scholarship Application;

(4) For the Early Childhood Development Scholarship Program established in 11 KAR 16:010:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Early Childhood Development Scholarship Application;

(5) For the Robert C. Byrd Honors Scholarship Program established in 11 KAR 18:010:

(a) For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and

(b) For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients;

(6) For the Go Higher Grant Program established in 11 KAR 5:200;

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Go Higher Grant Program Application;

(7) For the Coal County Scholarship Program for Pharmacy Students established in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students Application;

(8) For the Kentucky Coal County College Completion Scholarship Program established in 11 KAR 20:020:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Kentucky Coal County College Completion Scholarship Application;

(9) For the Optometry Scholarship Program established in KRS 164.7870, the Optometry Scholarship Application;

(10) For the Dual Credit Scholarship Program established in KRS 164.786, the Dual Credit Scholarship Application; and

(11) For the Work Ready Kentucky Scholarship Program established in KRS 164.787:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Work Ready Kentucky Scholarship Application.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Free Application for Federal Student Aid July 1, 2023 - June ~~30/2021~~, 2024[July 1, 2022 - June 30, 2023]" (FAFSA), October 2022[2021];

(b) The "Free Application for Federal Student Aid July 1, 2022 - June 30, 2023[July 1, 2021 - June 30, 2022]" (FAFSA), October 2021[2020];

(c) The "KHEAA Work-Study Program Student Application", July 2001;

(d) The "Teacher Scholarship Application", June 2006;

(e) The "Early Childhood Development Scholarship Application", April 2006;

(f) The "Robert C. Byrd Honors Scholarship Program", June 2009;

(g) The "Robert C. Byrd Honors Scholarship Program-GED Recipients", June 2009;

(h) The "Go Higher Grant Program Application", January 2008;

(i) The "Coal County Scholarship Program for Pharmacy Students Application", February 2011;

(j) The "Kentucky Coal County College Completion Scholarship Application", October 2014;

(k) The "Optometry Scholarship Application", January 2022;

(l) The "Dual Credit Scholarship Application", July 2021; and

(m) The "Work Ready Kentucky Scholarship Application", August 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at www.kheaa.com.

CONTACT PERSON: Hon. Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7309, email mjustice@kheaa.com.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 14, 2023)

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.

RELATES TO: KRS 164.740-164.785

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

Section 1. Definitions.

(1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution.

(2) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(3) "Authority" is defined by KRS 164.740(1).

(4) "College Access Program" or "CAP" means the program of student financial assistance grants authorized under KRS

164.7535 to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(5) "Correspondence course" means a home study course that:

(a) Is provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution; and

(b) Meets the following requirements:

1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and returns the examinations to the institution for grading;

2. The institution provides instruction through the use of video cassettes or video discs in an academic year, unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and

3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course.

(6) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(7) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) As a condition of enrollment as a regular student, requires that the person:

1. Have a certificate of graduation from a school providing secondary education, or the equivalent of a certificate; or

2. a. Be beyond the age of compulsory attendance in Kentucky; and

b. Have the ability to benefit from the training offered by the institution;

(c) Either:

1. Has its headquarters or main campus in Kentucky; or

2. If based outside of Kentucky, offers no more than forty-nine

(49) percent of the courses offered in Kentucky as online courses; and

(d) 1. For purposes of the College Access Program, is a public or private participating institution; or

2. For purposes of the Kentucky Tuition Grant Program, is a private independent college or university, accredited by a regional accrediting association recognized by the United States Department of Education, that is a participating institution whose institutional programs are not comprised solely of sectarian instruction.

(8) "Eligible institution" is defined by KRS 164.740(4).

(9) "Eligible noncitizen" means an individual who is:

(a) Either:

1. A U.S. national;

2. A U.S. permanent resident with an Alien Registration Receipt Card (I-151 or I-551); or

3. A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

a. ["Refugee"];

b. ["Asylum granted"];

c. ["Indefinite parole"] or ["humanitarian parole"]; or

d. ["Cuban-Haitian entrant"]; or and

4. A citizen of:

a. The Freely Associated States;

b. The Federated States of Micronesia;

c. The Republic of Palau; or

d. The Republic of the Marshall Islands; and

(b) Not in the United States on a:

1. F1 or F2 student visa;

2. J1 or J2 exchange visa; or

3. G series visa; or;

4. Deferred Action for Childhood Arrivals (DACA) status.

(10) "Eligible program of study" means an undergraduate

program, of a least two (2) academic years' duration, offered by an educational institution which:

(a) For purposes of the KTG or CAP Grant Programs, leads to a degree; or

(b) For purposes of only the CAP Grant Program:

1. Leads to a certificate or diploma while attending a publicly operated vocational-technical institution; or

2. Is designated as an equivalent undergraduate program of study by the Council on Postsecondary Education.

(11) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying the federal methodology established in 20 U.S.C. 1087kk through 1087vv to the information that the student and his family provided on the application.

(12) "Federal act" is defined by KRS 164.740(8) and means 20 U.S.C. 1001 through 1146a.

(13) "Full-time student" means an enrolled student who is carrying a full-time academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student, except that correspondence courses shall not be counted in determining the student's full-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. Twelve (12) semester hours or eighteen (18) quarter hours per academic term in an educational program using a semester, trimester, or quarter system;

2. Twenty-four (24) semester hours or thirty-six (36) quarter hours per academic year for an educational program using credit hours, but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one (1) academic year;

3. Twenty-four (24) clock hours per week for an educational program using clock hours;

4. In an educational program using both credit and clock hours, any combination of credit and clock hours if the sum of the following fractions is equal to or greater than one (1):

a. For a program using a semester, trimester, or quarter system, the number of credit hours per term divided by twelve (12) and the number of clock hours per week divided by twenty-four (24); or

b. For a program not using a semester, trimester, or quarter system, the number of semester or trimester hours per academic year divided by twenty-four (24), the number of quarter hours per academic year divided by thirty-six (36), and the number of clock hours per week divided by twenty-four (24);

5. A series of courses or seminars that equals twelve (12) semester hours or twenty-four (24) quarter hours in a maximum of eighteen (18) weeks; or

6. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(14) "Grant" is defined by KRS 164.740(9).

(15) "Kentucky Tuition Grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(16) "KHEAA grant" means an award of a student financial assistance grant under the College Access Program or the Kentucky Tuition Grant Program or a combination of the two (2).

(17) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards:

(a) That are made to an individual for all academic years of the eligible program of study in which the student receives a KHEAA grant (including any KHEAA grant limit previously used in a different eligible program of study or at a different educational institution); and

(b) That shall be:

1. Measured in terms of the applicable percentage of the maximum KHEAA grant that would have been disbursed for the academic year to a full-time student and not fully refunded;

2. Depleted each academic term by subtracting, from the applicable percentage, the percentage used for the academic term, derived by dividing the net amount of KHEAA grant disbursed for the academic term by the maximum KHEAA grant award for the academic year that would have been disbursed to a full-time student, using the then current maximum KHEAA grant; and

3. Based upon the following applicable percentages representing the aggregate limitation of KHEAA grant awards:

a. 200 percent for a student enrolled in a two (2) year eligible program of study; or

b. 400 percent for a student enrolled in a four (4) year eligible program of study.

(18) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(6), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authority's grant programs.

(19) "On-ground course" means a course that meets the following criteria:

(a) Instruction is delivered face-to-face, typically in a lecture-style format, in a setting in which the student and the instructor are in the same physical location on the educational institution's campus; and

(b) Is not an online course.

(20) "Online course" means a course for which any portion of the instruction is transmitted electronically over telecommunication lines or the Internet.

(21) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:130 through 5:145.

(22) "Participating institution" is defined in KRS 164.740(14).

(23) "Part-time student" means an enrolled student who is carrying an academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as at least a half-time student, except that correspondence courses shall not be counted in determining the student's part-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. At least six (6) semester hours per semester;

2. Six (6) quarter hours per quarter; or

3. Half of the academic workload of a full-time student as determined by the educational institution.

(24) "Pell Grant" means an award under the federal Pell Grant Program operated by the secretary under the provisions of 20 U.S.C. 1070a.

(25) "Resident of Kentucky" or "resident" means a person who is determined by the participating institution to be a resident of Kentucky in accordance with the criteria established in 13 KAR 2:045.

(26) "Total cost of education" means an amount determined for an academic year for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 14, 2023)

11 KAR 5:037. CAP Grant student eligibility.

RELATES TO: KRS 164.744(2), 164.753(4), ~~164.7535~~

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), ~~164.7535~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) ~~requires~~**[required]** the Authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 ~~authorizes~~**[authorized]** the Authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. This administrative regulation establishes student eligibility criteria for the college access program.

Section 1. ~~[In order]~~To qualify for disbursement of a college access program grant, a student shall:

(1) Be a resident of Kentucky;

(2) Be enrolled at an educational institution as at least a part-time student, as determined by the educational institution, in an eligible program of study and not have previously earned a first baccalaureate or professional degree;

(3) Demonstrate financial need in accordance with 11 KAR 5:130 and 11 KAR 5:145 for CAP grant assistance;

(4) Have remaining KHEAA grant limit;

(5) Not receive financial assistance in excess of the need to meet educational expenses;

(6) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution in which the student is enrolled;

(7) Satisfy all financial obligations to the Authority under any program administered pursuant to KRS 164.740 to 164.7891 and to any educational institution, except that ineligibility for this reason may be waived by the executive director of the Authority, at the recommendation of a designated staff review committee, for cause;

(8) Be a citizen of the United States or an eligible noncitizen;

(9) Be receiving at least part-time credit at an educational institution in an eligible program of ~~study~~**[studying]** and paying at least part-time tuition and fees to that institution, if the student is studying abroad or off-campus.

(10) Have been eligible to receive a CAP Grant in the preceding year, if the student is enrolled in an equivalent undergraduate program of study, established by the Authority in 11 KAR 15:090, Section 5;

(11) Be:

(a) Attending an eligible institution with the main campus or headquarters located in Kentucky; or

(b) Attending at least fifty (50) percent of courses on-ground in Kentucky if enrolled at an eligible institution with the main campus or headquarters not located in Kentucky; and

(12) Not be:

(a) In default on any loan under Title IV of the federal act, codified at 20 U.S.C. 1070 to 1099, unless eligibility has been reinstated;

(b) Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified at 20 U.S.C. 1070 to 1099; and

(c) Liable for overpayment of any grant or loan under Title IV of the federal act, codified at 20 U.S.C. 1070 to 1099.

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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 14, 2023)

11 KAR 5:145. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.7889(3)

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), 164.7889(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires[authorizes] the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that establishes the maximum amount available under the grant programs, and the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 4:080 and 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be \$6,206[5,846] or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (2) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution in an eligible program shall be the lesser of:

(a) \$1,250[1,100] for an applicant enrolled in a two (2) year institution;

(b) \$2,650[1,450] for an applicant enrolled in a four (4) year institution; or

(c) The amount of eligibility the student has remaining within the aggregate KHEAA grants[grant] limit.

(2) The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution in an eligible program shall be:

(a) The amount specified in subsection (1)(a) or (b) of this section:

1. Divided by twelve (12); and

2. Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and

(b) Not in excess of the maximum specified in subsection (1)(c) of this section.

(3) For any academic year, a student shall not receive more than \$2,500[2,200] if enrolled in a two (2) year institution or \$5,300[2,900] if enrolled in a four (4) year institution for an aggregate CAP grant award.

Section 3. (1) A KHEAA grant awarded to an incarcerated individual shall be considered an over award to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(2) A KHEAA grant award shall not be made for a summer academic term.

Section 4. (1) A KHEAA grant award shall not exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student.

(3) The KHEAA Grant Program Officer (KGPO) and the grant recipient shall make every reasonable effort to provide the

authority the information needed to prevent an over award.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his or her need, the excess shall be considered to be an over award. If an over award occurs, this amount shall be returned to the authority immediately.

Section 5. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 6. If the educational institution receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant, and:

(1) If the grant has not yet been disbursed for the fall academic term, the reduction shall be made to both the fall and spring disbursements and the educational institution shall notify the student of the reduction;

(2) If the grant for the fall academic term has already been disbursed and the student enrolls for the spring academic term, the reduction shall be made to the spring disbursement and the educational institution shall notify the student of the reduction;

(3) If the grant for the fall academic term has already been disbursed and the student does not enroll for the spring academic term, the educational institution shall notify the student of the fall overaward and the student shall repay the overaward to the authority; or

(4) If both the fall and spring disbursements have been made, the educational institution shall notify the student of the overaward and the student shall repay the overaward to the authority.

Section 7. (1) Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant.

(2) Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

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OFFICE OF ATTORNEY GENERAL
Office of Consumer Protection
(As Amended at ARRS, February 14, 2023)

40 KAR 2:150. Cremation forms and inspections.

RELATES TO: KRS 213.081, 213.098, 367.93103, 367.93105, 367.93115, 367.93117, 367.97501, 367.97504, 367.97507, 367.97511, 367.97514, 367.97517, 367.97521, 367.97524, 367.97527, 391.010

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.97501, 367.97504, 367.97534

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.180 authorizes the Attorney General to promulgate administrative regulations that will facilitate performing the duties and exercising the authority vested in the Attorney General and the Department of Law. KRS 367.150(4) requires the Department of Law to recommend administrative regulations in the consumers' interest. KRS 367.97501 and 367.97504 require the Attorney General to promulgate an administrative regulation to establish an application for a crematory authority license and report forms. KRS 367.97524 requires crematory authorities to obtain signed cremation authorization forms before conducting any cremations. KRS 367.97534(5) authorizes the Attorney General to promulgate

administrative regulations necessary to carry out the provisions of KRS 367.97501 to 367.97537, pertaining to crematory authorities. This administrative regulation prescribes the license application form, and other forms, to be used by crematory authorities[establishes forms related to cremation as required by KRS 367.97501, 367.97504, and 367.97514]. This administrative regulation establishes the records and information that shall be retained by [the] crematory authorities[operator as identified in KRS 367.97504(5);] and permits crematory inspections by the Attorney General[establishes guidelines for crematory inspections regarding KRS 367.97504(1) and (5), 367.97511(4), 367.97514(5), and 367.97534].

Section 1. Crematory Authority License Application Form.

(1) An applicant for a crematory authority license shall complete and submit a Crematory Authority License Application, Form CR-5, to the Office of Attorney General before commencing business.

(2) An applicant for a crematory authority license shall submit with each Crematory Authority License Application, Form CR-5:

(a) Payment of the \$100 registration fee;

(b) The applicant's certificate of existence, authorization certificate from the Kentucky Secretary of State's office, or other evidence of the applicant's authority to transact business in Kentucky; and

(c) A completed Preneed Merchandise Sellers Application, CPN-6 Form, as incorporated by reference in 40 KAR 2:155, if the applicant intends to sell preneed burial contracts.

Section 2.[Section 1-] Cremation Authorization Form.

(1) A licensed crematory authority[authorities] shall complete and keep a Cremation Authorization, Form CR-1, for every cremation of human remains it has performed[by them].

(2) A licensed crematory authority shall attach to the Cremation Authorization, Form CR-1, for authorizing agents for cremation, if applicable:

(a) An original Funeral Planning Declaration, Form FPD-1, as incorporated by reference in 40 KAR 2:145;

(b) An original discontinued Preneed Cremation Authorization, Form CR-3, executed prior to July 15, 2016; and

(c) An original U.S. Department of Defense form, Record of Emergency Data, DD Form 93, or a successor form adopted by the United States Department of Defense.[The Cremation Authorization, Form CR-1, required by KRS 367.97524, shall contain:

(1) The name of the crematory authority;

(2) The address of the crematory authority, including the city, state, and zip code;

(3) The telephone number of the crematory authority;

(4) A statement informing the authorizing agent that it is the policy of the crematory authority that it will accept a declarant or decedent for cremation only after all necessary authorizations have been obtained, and all prerequisites to be performed by the state regarding the death have taken place and any required forms or permits are attached;

(5) The name, address (including the city, state, and zip code), age, date of birth, and gender of the declarant or decedent, and the place and date of death;

(6) Whether or not the declarant's or decedent's death was due to an infectious disease and, if so, an explanation;

(7) A statement that pacemakers, radioactive, silicon or other implants, mechanical devices or prosthesis may create a hazardous condition if placed in cremation chamber and subjected to heat, and that the authorizing agent instructs the crematory authority or funeral home to remove all devices that may become hazardous during the cremation process;

(8) Whether the declarant's or decedent's remains contain any devices, including mechanical, prosthetic, implants or materials, which may have been implanted in or attached to the declarant or decedent, or any other device that may become hazardous during the cremation process;

(9) A description of any devices, including mechanical,

prosthetic, implants, or materials, which may have been implanted in or attached to the declarant or decedent, or any other device that may become hazardous during the cremation process;

(10) A statement informing the authorizing agent of the following concerning identification of the declarant or decedent:

(a) Kentucky law requires the individual's remains to be identified before cremation can take place; and

(b) The individual making the identification may be the authorizing agent, a family member, friend, coroner, or any other person who has personal knowledge of the decedent or the ability to make positive identification and who accepts any liability arising from the identification;

(11) The name of the individual identifying the decedent's remains prior to cremation, the relationship of that individual to the decedent, and the signature of the individual identifying the body for cremation;

(12) Statements informing the authorizing agent of the following regarding cremation authorization:

(a) The person legally entitled to order the cremation of a declarant or decedent is the authorizing agent; and

(b) The right to control the disposition of the remains of a declarant or decedent devolves according to the order of authority of classes of authorizing agents listed in subsection (13) of this section;

(13) The selection of the class of authorizing agents having the right to authorize the cremation of the declarant's or decedent's body, in the following order of authority:

(a) The individual executing a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145, and that the original Funeral Planning Declaration shall be attached;

(b) The person named as the designee or alternate designee in a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145, and that the original Funeral Planning Declaration shall be attached;

(c) The person named in a United States Department of Defense form Record of Emergency Data (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces, and the original form shall be attached;

(d) The decedent through a Preneed Cremation Authorization, Form CR-3 completed and executed before July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3, and that the original Preneed Cremation Authorization, Form CR-3 shall be attached;

(e) The surviving spouse of the declarant or decedent;

(f) The surviving adult child of the declarant or decedent, or a majority of the adult children if more than one (1) adult child is surviving, or less than a majority of the surviving adult children by attesting in writing showing the reasonable efforts to notify the other adult surviving children of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children. The number of surviving adult children shall be written in the completed Cremation Authorization, Form CR-1;

(g) The surviving parent or parents of the declarant or decedent, or if one (1) parent is absent, the parent who is present has the right to control the disposition by attesting in writing showing the reasonable efforts to notify the absent parent. The number of surviving parents shall be written in the completed Cremation Authorization, Form CR-1;

(h) The surviving adult grandchild of the declarant or decedent, or a majority of the adult grandchildren if more than one (1) adult grandchild is surviving, or less than a majority of the surviving adult grandchildren by attesting in writing showing the reasonable efforts to notify the other adult surviving grandchildren of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult grandchildren. The number of surviving adult grandchildren shall be written in the completed Cremation Authorization, Form CR-1;

(i) The surviving adult sibling of the declarant or decedent, or a majority of the adult siblings if more than one (1) adult sibling is

surviving, or less than a majority of the surviving adult siblings by attesting in writing showing the reasonable efforts to notify the other adult surviving siblings of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult siblings. The number of surviving adult siblings shall be written in the completed Cremation Authorization, Form CR-1;

(j) The surviving individual or individuals of the next degree of kinship under KRS 391.010 to inherit the estate of the declarant or decedent, or a majority of those in the same degree of kinship if more than one (1) individual of the same degree is surviving, or less than a majority of the surviving individuals of the same degree of kinship by attesting in writing showing the reasonable efforts to notify the other individuals of the same degree of kinship of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the individuals of the same degree of kinship. The number of surviving individuals of the same degree of kinship, and a description of the relationship to the declarant or decedent, shall be written in the completed Cremation Authorization, Form CR-1;

(k) If none of the persons listed in paragraphs (a) through (j) of this subsection are available, one (1) of the following who attests in writing showing the good-faith effort made to contact any living individuals in an order of authority class described in paragraphs (a) to (j) of this subsection:

1. A person willing to act and arrange for the final disposition of the decedent; or

2. A funeral home that has a valid prepaid funeral plan that makes arrangements for the disposition of the decedent's remains, if the funeral director makes the written attestation described in this subsection; and

(l) The district court in the county of the decedent's residence or the county in which the funeral home or the crematory is located;

(14) Statements informing the authorizing agent of the following regarding other rights and responsibilities concerning cremations:

(a) The declarant or authorizing agent shall carefully read and understand the statements described in this subsection before signing the authorization;

(b) The declarant or authorizing agent shall direct the crematory authority on the final disposition of the cremated remains;

(c) The crematory authority shall not conduct any cremation nor accept a body for cremation unless it has a Cremation Authorization, Form CR-1 signed by the authorizing agent clearly stating the final disposition;

(d) The original form shall be attached to the Cremation Authorization, Form CR-1 if:

1. The cremation is being performed pursuant to a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145; or

2. A Preneed Cremation Authorization, Form CR-3 that was completed and executed before July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3;

(e) All cremations are performed individually and it is unlawful to cremate the remains of more than one (1) individual within the same cremation chamber at the same time;

(f) The consumer may choose cremation without choosing embalming services;

(g) If the crematory authority does not have a refrigerated holding facility, it shall not accept human remains for anything other than immediate cremation;

(h) The consumer is not required to purchase a casket for the purpose of cremation;

(i) The crematory authority requires that the body of the declarant or decedent shall be delivered for cremation in a suitable, closed container that shall be either a casket or an alternative cremation container for cremation, but the crematory authority shall not require that the body be placed in a casket before cremation or that the body be cremated in a casket, nor shall a crematory

authority refuse to accept human remains for cremation because the remains are not in a casket;

(j) The container in which the body is delivered to the crematory for cremation shall be:

1. Composed of readily-combustible materials suitable for cremation;

2. Able to be closed to provide a complete covering for the human remains;

3. Resistant to leakage or spillage; and

4. Rigid enough to support the weight of the declarant or decedent;

(k) The crematory authority may inspect the casket or alternative container, including opening it if necessary, and the crematory authority shall not accept for holding a cremation container from which there is any evidence of leakage of the body fluids from the human remains in the container;

(l) The type of casket or cremation container selected for cremation;

(m) Due to the nature of the cremation process any personal possessions or valuable materials, such as dental gold or jewelry, as well as any body prostheses or dental bridgework, that are left with the declarant or decedent and not removed from the casket or alternative cremation container prior to cremation shall be destroyed or shall otherwise not be recoverable, unless authority to do so otherwise is specifically granted in writing;

(n) As the casket or alternative container will usually not be opened by the crematory authority to remove valuables, to allow for final viewing or for any other reason unless there is leakage or damage, the authorizing agent understands that arrangements shall be made to remove any possessions or valuables prior to the time the declarant or decedent is transported to the crematory authority;

(o) Cremated remains, to the extent possible, shall not be contaminated with foreign material;

(p) All noncombustible materials, such as dental bridgework, and materials from the casket or alternative cremation container, such as hinges, latches, and nails, shall be separated and removed, to the extent possible, by visible or magnetic selection and shall be disposed of by the crematory authority with similar materials from other cremations in a nonrecoverable manner, so that only human bone fragments and organic ash, including both human remains and container remains, remain, unless those objects are used for identification or as may be requested by the authorizing agent;

(q) As the cremated remains often contain recognizable bone fragments, unless otherwise specified, after bone fragments have been separated from the other material, they shall be mechanically processed or pulverized, which includes crushing or grinding into granulated particles of unidentifiable dimensions, virtually unrecognizable as human remains, prior to placement into the designated container; and

(r) While every effort shall be made to avoid commingling of cremated remains, inadvertent or incidental commingling of minute particles of cremated remains from the residue of previous cremations is a possibility, and the authorizing agent understands and accepts this fact;

(15) Instructions on disposition of the cremated remains, indicating whether the cremated remains will be:

(a) Interred and, if so, where;

(b) Scattered in a scattering area or garden and, if so, where;

(c) In any manner on private property with the permission of the owner and, if so, where;

(d) Delivered either in person or by a method that has an internal tracking system that provides a receipt signed by the person accepting delivery and, if so, to whom; or

(e) Picked up at the crematory office and, if so, by whom;

(16) The date the remains were received by the crematory authority, the cremation number, the date of cremation, and the name of the person performing the cremation;

(17) A statement informing the declarant or authorizing agent of the following regarding execution of the Cremation Authorization, Form CR-1:

(a) Executing the Cremation Authorization, Form CR-1 as

authorizing agent, or as declarant, designee, or alternate designee if using a Funeral Planning Declaration, Form FPD-1, grants consent to the cremation of the decedent;

(b) Executing the Cremation Authorization, Form CR-1 as authorizing agent, or as declarant, designee, or alternate designee if using a Funeral Planning Declaration, Form FPD-1, warrants:

1. That all representations and statements contained on the Cremation Authorization, Form CR-1 are true and correct;

2. That the statements contained on the Cremation Authorization, Form CR-1 were made to induce the crematory authority to cremate the human remains of the declarant or decedent; and

3. That the person executing the Cremation Authorization, Form CR-1 has read and understands the provisions contained on the Cremation Authorization, Form CR-1; and

(c) If a written attestation is required, the authorizing agent shall select and complete an attestation:

1. For authorizing agent or agents listed in subsection (13)(f), (h), (i), or (j) of this section, an attestation that reasonable efforts have been made to notify the other members of the authorizing class and the authorizing agent or agents are not aware of any opposition to the final instructions, and stating the number of individuals in the authorizing class, the number of authorizing agents authorizing the cremation, the name of the decedent, a description of the reasonable efforts, and the number of other members of the authorizing class;

2. For an authorizing agent listed in subsection (13)(g) of this section, an attestation that reasonable efforts have been made to notify the other parent, and a description of the reasonable efforts; or

3. For authorizing agent or agents listed in subsection (13)(k) of this section, an attestation that a good-faith effort has been made to contact any living individual described in subsection (13)(a) through (j) of this section, and a description of the good-faith effort;

(18) Signature of each authorizing agent granting consent to the cremation of the decedent;

(19) The name of each authorizing agent and the relationship of the authorizing agent to the declarant or decedent;

(20) The address of the authorizing agent, including the city, state, and zip code;

(21) The telephone number of the authorizing agent;

(22) The name, address, city, state, zip code, telephone number, and signature of the funeral director or other individual as witness for the authorizing agent; and

(23) The date and location where the authorizing agent signed the Cremation Authorization, Form CR-1.]

Section 3.[Section 2.] Crematory Annual Report Form.

(1) A licensed crematory **authority[authorities]** shall complete and submit a Crematory **Authority** Annual Report, Form **CR-2**, for each calendar year beginning January 1 and ending December 31.

(2) The completed Crematory **Authority** Annual Report, Form **CR-2**, shall be filed with the Attorney General's Office by March 31 of the year following the calendar year reported.

(3) A licensed crematory authority shall submit with the Crematory Authority Annual Report, Form CR-2, a ten (10) dollar annual registration fee.

Section 4. Statement of Supervision Form. A licensed crematory **authority[authorities]** shall complete and submit a Statement of Supervision for Registered Crematory Retort Operators, Form **CR-4**, for each trained retort operator before permitting the trained operator to operate a retort.[The Crematory Annual Report, Form CR-2, required by KRS 367.9750(6), shall contain:

(1) The name of the crematory authority;

(2) The address of the crematory authority, including the city, state, and zip code;

(3) The number of retorts operated by the crematory authority;

(4) The number of cremations performed by the crematory authority in each retort during the preceding calendar year;

(5) The total number of cremations performed by the crematory

authority during the preceding calendar year;

(6) A numerical breakdown of the disposition of cremated remains in the preceding year, indicating the number:

(a) Scattered;

(b) Interred, either in a niche or in-ground burial;

(c) Returned to the family or funeral home; or

(d) With other means of disposition. The other means of disposition used shall be briefly described;

(7) A list of the names and registration numbers of all crematory operators who worked for the crematory authority during the preceding year;

(8) The signature of the individual completing the form and the date on which the form was completed; and

(9) A statement requiring the remittance of a ten (10) dollar check or money order for the annual registration fee.

Section 3. Preneed Cremation Authorization Form.

(1) The Preneed Cremation Authorization, Form CR-3, shall not be completed or executed on or after July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3.

(2) A Preneed Cremation Authorization, Form CR-3, completed and executed prior to July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3, shall contain:

(a) The name of the crematory authority;

(b) The address, including the city, state, and zip code;

(c) The telephone number of the crematory authority;

(d) The name of the authorizing agent;

(e) The address of the authorizing agent, including the city, state, and zip code;

(f) The home telephone number of the authorizing agent;

(g) The age and gender of the authorizing agent;

(h) Whether the decedent authorizing agent has any infectious or contagious disease and, if so, an explanation;

(i) Whether the decedent authorizing agent's body contains a pacemaker, prosthesis, radioactive implant, or any other device that could be explosive;

(j) Whether the decedent authorizing agent has been treated with therapeutic radionuclides such as Strontium 89 or any other treatment that would result in residual radioactive material remaining as part of the decedent authorizing agent's remains and, if so, what the treatment was and the last date it was administered;

(k) A statement specifying that all cremations are performed individually and that it is unlawful to cremate the remains of more than one (1) individual within the same cremation chamber at the same time;

(l) A statement informing the authorizing agent that the agent may choose cremation without choosing embalming services and that if the crematory chosen does not have a refrigerated holding facility it shall not accept human remains for anything other than immediate cremation;

(m) A statement informing the authorizing agent that:

1. The agent is not required to purchase a casket for the purpose of cremation;

2. The crematory authority shall require the decedent authorizing agent to be delivered for cremation in a suitable container, which shall be either a casket or an alternative cremation container; and

3. An alternative cremation container shall be:

a. Composed of readily-combustible materials suitable for cremation;

b. Able to be closed to provide a complete covering for the human remains;

c. Resistant to leakage or spillage; and

d. Rigid enough to support the weight of the decedent;

(n) A statement informing the authorizing agent that the crematory may inspect the casket or alternative container, including opening if necessary, and if there is leakage or damage, the crematory shall refuse to accept the decedent authorizing agent's remains for the purpose of cremation or refrigeration;

(o) The type of casket or alternative container selected for cremation;

(p) A statement informing the authorizing agent that:

1. Due to the nature of the cremation process any personal possessions or valuable materials, such as dental gold or jewelry, as well as any body prostheses or dental bridgework, that are left with the decedent authorizing agent and not removed from the casket or alternative container prior to cremation shall be destroyed or shall otherwise not be recoverable; and

2. The casket or alternative container will usually not be opened by the crematory authority to permit the removal of valuables, to allow for final viewing or for any other reason unless there is leakage or damage, so the authorizing agent shall make arrangements to have any possessions or valuables removed prior to the time the remains are transported to the crematory authority;

(q) A statement informing the authorizing agent that:

1. To the extent possible, cremated remains shall not be contaminated with foreign material;

2. All noncombustible materials such as dental bridgework, and materials from the casket or alternative container, such as hinges, latches, and nails, shall be separated and removed, to the extent possible, by visible or magnetic selection and shall be disposed of by the crematory authority with similar materials from other cremations in a nonrecoverable manner, so that only human bone fragments and organic ash, including both human remains and container remains, remain;

3. As the cremated remains often contain recognizable bone fragments, unless otherwise specified, after the bone fragments have been separated from the other material, they shall be mechanically processed or pulverized, which includes crushing or grinding into granulated particles of unidentifiable dimensions, virtually unrecognizable as human remains, prior to placement into the designated container; and

4. While every effort shall be made to avoid commingling of cremated remains, inadvertent or incidental commingling of minute particles of cremated remains from the residue of previous cremations is a possibility, and the authorizing agent understands and accepts this fact;

(r) A statement informing the authorizing agent that:

1. The original copy of the Preneed Cremation Authorization, Form CR-3 shall be retained by the firm or person with which the arrangements are being made and a copy shall be provided to the authorizing agent; and

2. A person arranging his or her own cremation shall have the right to transfer or cancel this authorization at any time prior to death by notifying by certified mail, the firm or person with which the preneed authorization form is filed;

(s) A statement informing the authorizing agent that if there are not different or inconsistent instructions provided to the crematory authority at the time of death, the crematory authority shall release or dispose of the cremated remains as indicated on this Preneed Cremation Authorization, Form CR-3;

(t) A statement informing the authorizing agent that:

1. If there is a conflict between the authorizing agent's preneed authorization and the demands of the next class of authorizing agent, the crematory authority shall not accept for cremation the authorizing agent's remains without an order deciding the issues entered by the district court of the county of the decedent authorizing agent's residence or the county where the funeral home or the crematory authority is located;

2. The order may be issued by the court after a petition for a resolution has been initiated by any natural person in the next class of authorizing agent or the crematory authority; and

3. Unless extraordinary circumstances exist, the court shall give due deference to the desires of the decedent authorizing agent as expressed in the Preneed Cremation Authorization, Form CR-3;

(u) Instructions on the disposition of the cremated remains, indicating whether the cremated remains will be:

1. Interred and, if so, where;

2. Scattered in a scattering area or garden and, if so, where;

3. Scattered on private property with the permission of the owner and, if so, where;

4. Delivered either in person or by registered mail and, if so, to whom; or

5. Picked up at the crematory office and, if so, by whom;

(v) The printed name, signature, address (including city, state, and zip code) and home telephone of the authorizing agent, explicitly authorizing the crematory authority to cremate the human remains of the authorizing agent;

(w) The date and location where the authorizing agent signed the Preneed Cremation Authorization, Form CR-3;

(x) The signature of the funeral director or other individual as witness for the authorizing agent;

(y) The name of the funeral director or other individual acting as witness for the authorizing agent;

(z) The address of the funeral director or other individual acting as witness for the authorizing agent, including the city, state, and zip code; and

(aa) The telephone number of the funeral director or other individual acting as witness for the authorizing agent.

Section 4. Statement of Supervision Form. The Statement of Supervision for Registered Crematory Retort Operators, Form CR-4, required by KRS 367.97514(6), shall contain the:

(1) Name of the crematory retort operator who was supervised;

(2) Name of the employer crematory authority;

(3) Name of the supervising crematory operator, verifying that the crematory retort operator completed forty-eight (48) hours of on the job training supervised by the crematory operator;

(4) Date on which the form was signed;

(5) Signature of the crematory retort operator;

(6) Signature of the crematory operator who supervised the crematory retort operator; and

(7) Registration number of the crematory operator.

Section 5. Crematory Authority License Application Form. The Crematory Authority License Application, Form CR-5 required by KRS 367.97504(1), shall contain:

(1) A statement informing the applicant that a crematory authority license shall be obtained from the Attorney General at least thirty (30) days prior to the opening of the crematory authority to conduct cremations;

(2) A statement informing the applicant that a \$100 registration fee shall accompany the application, and that the application shall be signed by a person, officer, or agent with authority to do so, under oath, and the signature shall be notarized;

(3) The date of the application;

(4) The full legal name of the applicant;

(5) The crematory name, if different from the applicant;

(6) The business telephone number;

(7) The physical address of the crematory, including the city, county, state, and zip code;

(8) Mailing address, including city, state, and zip code, of the crematory authority, if different from the physical address;

(9) The form of organization of the crematory, indicating whether it is a:

(a) Corporation, and if so indicate the state of incorporation;

(b) Limited liability company, and if so indicate the state of organization;

(c) Partnership, and if so indicate the state of formation;

(d) Individual; or

(e) Other, and if so, please explain and indicate the state of formation;

(10) Evidence of authority to transact business in the Commonwealth of Kentucky, including a copy of the applicant's certificate of authority to transact business in the Commonwealth of Kentucky issued by the Kentucky Secretary of State, or other evidence of authority to transact business in the Commonwealth of Kentucky and describing the other evidence;

(11) The name, position, home address, including the city, state, and zip code, driver's license number and state of issuance, and date of birth, of every owner of the applicant, or if the applicant is a business entity, every member, officer, and director of the applicant;

(12) The name, address, including city, state, and zip code,

and account number, if applicable, of one (1) financial reference. Suitable financial references shall include financial institutions and industry suppliers. Personal references shall not be acceptable;

(13) The name and address, including city, state, and zip code, of the financial institution at which the applicant has its business bank account;

(14) The account number of the business bank account;

(15) Whether the applicant intends to solicit preneed funeral contracts. If yes, a completed application for a Preneed Merchandise Sellers Application, Form CPN-6, incorporated by reference in 40 KAR 2:155, shall be attached;

(16) A statement from the applicant's retort manufacturer, which shall include:

(a) The date on which the manufacturer delivered the retort to the applicant;

(b) Whether the manufacturer installed the retort and, if so, when the installation occurred; and

(c) Whether the retort was tested upon installation and, if so, the results of those tests;

(17) A statement informing the applicant that by submitting the application, the applicant represents, agrees to, and states under penalty of law, that:

(a) The information provided is true and accurate to the best of the applicant's knowledge;

(b) The applicant is required to notify the Attorney General immediately of any change in the information required by this section and that KRS 367.97504(2) governs when a new license application form is required to be filed;

(c) The applicant is not insolvent, has not conducted business in a fraudulent manner, and is duly authorized to do business in the state;

(d) The applicant is in a position to commence operating a crematory and that all relevant state and local permits required have been issued;

(e) Final judgment or conviction for any crime involving moral turpitude has not been entered against the applicant;

(f) The license may be denied pursuant to KRS 367.97504, and may be denied, suspended, or revoked pursuant to KRS 367.97534;

(g) The applicant understands that, pursuant to KRS 367.97504(2), changes in the persons, firm, partnership, ownership, association, or corporate structure as originally named in the application render the license, if granted, void, and that the crematory authority shall file a new application before the changes shall be official; and

(h) The applicant is authorized to complete the application on behalf of the applicant crematory; and

(18) A dated and notarized signature of the person making the application on behalf of the crematory, and that person's title or position held].

Section 5.[Section 6.] Required Records of the Crematory Authority. To comply with KRS 367.97504(5), a crematory authority shall keep and maintain the following records for all cremations occurring within the prior ten (10) years[The records maintained by the crematory authority required by KRS 367.97504(5) shall include]:

(1) The original or a[For all cremations occurring within the last ten (10) years:

(a) A copy of the completed Cremation Authorization, Form CR-1; and, if applicable, the]

(2) Any discontinued Preneed Cremation Authorization, Form CR-3 completed and executed prior to July 15, 2016[, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3; or; and

(3)[(b)] Any[The] Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145.];

[(2) A copy of the identification required to be attached to the outside of the cremation container by KRS 367.97507(2) and 367.97514(2); and

(3) A copy of any stainless steel identification tag that is placed with the human remains prior to cremation, is subjected to the

cremation process with the human remains, survives the cremation process, and is left with the cremated remains after the cremation process is complete.];

Section 6.[Section 7.] Inspection of Crematory Authorities. The Attorney General may conduct announced and unannounced inspections of the applicant[s]applicants] and a licensed crematory authority[s]authorities] premises during normal business hours to review records and ensure compliance with KRS 367.97501 to 367.97537 and related administrative regulations. An applicant[Applicants] and a licensed crematory authority[authorities] shall permit these[such] inspections and make all requested records readily available to the Attorney General upon request.[An inspection of the crematory authority and its records, as required by KRS 367.97504(5), shall include annual, unannounced inspections of all crematory authority facilities and records and may include:

(1) An inspection of the crematory authority to determine if it is in active operation or is in a position to commence operation;

(2) An inspection of the retort for proper operation;

(3) An inspection of the crematory authority facility to determine if it is secure from unauthorized access;

(4) An inspection of the crematory authority facility to determine if the crematory authority license is displayed in a conspicuous place;

(5) An inspection of the refrigerated holding facility used for holding human remains to determine if it is secure from unauthorized access and functioning properly; and

(6) An inspection of crematory records for all cremations occurring within ten (10) years of the date of the inspection, including all information required to be kept by KRS 367.97504(5) and this administrative regulation.];

Section 7. Material Changes in Application and Reports. A licensed crematory authority shall notify the Attorney General within fourteen (14) days of any material change in the information provided in its applications or reports.

Section 8. Human Remains of Deceased Pregnant Mother. A licensed crematory may cremate the remains of a deceased pregnant woman together with the fetal remains of her unborn child or children[child(ren)] within the same cremation chamber. Completion of a Cremation Authorization, Form CR-1 authorizing cremation of the deceased pregnant woman shall also authorize cremation of her unborn child or children[child(ren)].

[Section 8. Inspection Completion Certificate. Each crematory authority that successfully passes an annual inspection shall receive an Inspection Completion Certificate, which shall contain:

(1) The name of the crematory authority;

(2) The address of the crematory authority, including city, state, and zip code;

(3) A certified statement that an inspection has been performed by the Kentucky Attorney General's Office;

(4) The date on which the inspection was performed; and

(5) The signature of an authorized representative of the Attorney General's Office.];

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Cremation Authorization", Form CR-1, Oct. 2022[04-17];

(b) "Crematory Authority Annual Report", Form CR-2, Oct. 2022[11-02];

(c) ["Preneed Cremation Authorization", Form CR-3, 11-02;]

[(d)] "Statement of Supervision for Registered Crematory Retort Operators", Form CR-4, Oct. 2022[11-02]; and

(d)[(e)] "Crematory Authority License Application", Form CR-5, Oct. 2022[07-16].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the

Office's Web site, <https://ag.ky.gov/Pages/default.aspx>.

CONTACT PERSON: Stephen B. Humphress, Asst. Attorney General, Office of Consumer Protection, Kentucky Office of Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone 502-696-5408, fax (502) 573-8317, email steve.humphress@ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, February 14, 2023)**

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), 106, 115, 213(d), 42 U.S.C. 300bb-8(3), 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 78.552. 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 by/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;

1. With a participating employer ~~that/which~~ offers the member a hospital and medical insurance benefit;f; or

2. By a participating employer ~~that/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 ~~that/which~~ offers the spouse a hospital and medical insurance benefit, or by a participating employer ~~that/which~~ is prevented from offering a hospital and medical benefit to the spouse as a condition of reemployment under KRS 70.293, 95.022, or 164.952; 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 by/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", if/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:

(a) Meets/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 if/when the alteration is consistent with the change; and

(b) Is included on the/the agency shall provide a list of qualifying events provided annually to the members by the agency.

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

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

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

(16) "Retirement office" is defined by/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.

(18) "Wellness" or "wellbeing promise" means an annual health assessment or screening that, if completed timely, provides a discounted insurance rate for the following fiscal year's health insurance plan premium.

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 ~~adopt~~adopts for Medicare and non-Medicare eligible coverage, or may choose to adopt a monthly contribution rate that is the same for Non-Medicare eligible coverage and MEM coverage.

(2) The boards shall adopt a contribution plan for each monthly contribution rate in subsection (1) of this section.

(3) The boards may adopt separate contribution rates for:

- (a) Tobacco and non-tobacco users;~~is~~ and
- (b) Wellness or wellbeing promise completion and incomplection.

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)~~ (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)~~ (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, the recipient's[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, the recipient's[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, the recipient's[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 ~~form,~~ 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 ~~form,~~ 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, ~~if[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 required by paragraph (a) of this subsection~~[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 ~~shall[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~~(1) or (2)~~ 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)~~ If enrollment is mandatory:

~~1. [(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]~~.

~~2. [(b)]~~ If the recipient fails to file the complete insurance enrollment forms as required by subparagraph 1. of this paragraph~~[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)]~~

~~(b) [(c)]~~ If [When] enrollment is not mandatory:

1. The recipient may 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.

2. If the recipient does not file the complete insurance enrollment forms as required by subparagraph 1. of this paragraph, the recipient, and the recipient's spouse and disabled or dependent children as applicable, ~~shall[will]~~ remain ~~on[is]~~ the same plan with the same level of coverage as the previous plan year.

(4)

(a)

1. In order to receive health insurance contributions toward an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22), the recipient shall file a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, by November 30th of the calendar year prior to the calendar year in which coverage is effective, regardless of whether enrollment is mandatory or not mandatory.

2. If a qualifying event results in a new eligible spouse or dependent child, in order to receive health insurance contributions toward the eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22), the recipient shall file a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions.

(b)

1. If the recipient does not file a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, in accordance with paragraph (a) of this subsection, health insurance contributions shall not be paid toward the premiums for an eligible spouse or dependent children unless a complete Form 6256 is filed at the retirement office in the calendar year in which coverage is in effect.

2. If the recipient files a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, between December 1 and December 31 of the calendar year prior to the calendar year in which coverage is effective, then health insurance contributions may be paid for an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22) as of January of the calendar year in which coverage is effective. If the health insurance contributions are not paid for an eligible spouse or a dependent child as of January of the calendar year in which coverage is effective, then health insurance contributions shall be paid starting

in February of the calendar year in which coverage is effective and the recipient shall also be reimbursed for the January health insurance contributions for the eligible spouse or dependent child.

3. If the recipient files a complete Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, prior to December 31 of the calendar year in which coverage is in effect, health insurance contributions shall be paid toward premiums for an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22) in any month in the calendar year in which coverage is effective after the Form 6256 is filed at the retirement office. If a complete Form 6256 is filed at the retirement office prior to December 31 of the calendar year in which coverage is in effect, the recipient shall also be reimbursed for up to three (3) months of health insurance contributions for the eligible spouse and dependent children.

Section 11. Changes in Spouse and Disabled or Dependent Child Eligibility.

(1) Recipients, spouses, and disabled or dependent children shall notify the agency of any change that may affect the eligibility of the spouse, disabled child, or dependent child to enroll in a hospital and medical insurance plan offered by the agency or the eligibility of the spouse or dependent child to have all or a portion of their premiums paid for by the boards in accordance with KRS 61.702 and 78.5536.

(2)

(a) The recipient shall ~~[be required to]~~ repay any premiums that were paid by the boards after the spouse or dependent child ceased to be eligible to have all or portion of their premiums paid in accordance with KRS 61.702 and 78.5536.

(b) If the agency is unable to recover from the recipient the full amount of premiums paid in accordance with paragraph (a) of this subsection, the agency may withhold any remaining amount from the recipient's monthly retirement allowance payment.

(c) If the agency is not able to recover the full amount of the premiums paid in accordance with paragraphs (a) and (b) of this subsection, the agency may recover any remaining amount from the spouse or dependent child.

Section 12. Medical Insurance Reimbursement Plan for Recipients Living Outside of Kentucky.

(1) A recipient may participate in the medical insurance reimbursement plan pursuant to KRS 61.702(6) and 78.5536(6) if the recipient lives in an area outside of the coverage of the group hospital and medical insurance plans offered by the agency.

(2) The medical insurance reimbursement plan shall be available in any month the recipient:

(a) Resides outside of Kentucky; ~~;~~

(b) Is not eligible for the same level of hospital and medical benefits as recipients who resided inside of Kentucky with the same Medicare status; ~~;~~ and

(c) Has paid hospital and medical insurance plan premiums capable of being reimbursed.

(3) Recipients eligible to participate in the medical insurance reimbursement plan shall be reimbursed up to the applicable monthly contribution rate for premiums paid for hospital and medical coverage less any premiums paid by the recipient's employer.

(4)

(a) In order to receive the applicable reimbursement, an eligible recipient shall file a Form 6240, Application for Out of State Reimbursement for Medical Insurance, and as applicable Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, at the retirement office with one (1) or more of the following as proof of coverage and payment of premiums for hospital and medical insurance that covers the entire time period for the requested reimbursement:

1. Form 6241, Employer Certification of Health Insurance for Health Insurance Reimbursement Plan, completed by the employer;

2. Form 6242, Insurance Agency/Company Certification of Health Insurance for Health Insurance Reimbursement Plan, completed by the insurance agency or company;

3. A signed statement from the employer listing individuals[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 individuals[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, if[when] all documentation is filed at the retirement office by January 20;

(b) In May, if[when] all documentation is filed at the retirement office by April 20;

(c) In August, if[when] all documentation is filed at the retirement office by July 20; or

(d) In November, if[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 individuals[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 individuals[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, if[when] all documentation is filed at the retirement office by January 20;

(b) In May, if[when] all documentation is filed at the retirement office by April 20;

(c) In August, if[when] all documentation is filed at the retirement office by July 20; or

(d) In November, if[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 6256, "Designation of Spouse and/or Dependent Child for Health Insurance Contributions", September 2022;~~

(i) Form 6280, "Application for Dollar Contribution Reimbursement for Medical Insurance", September 2022;

(j) Form 6281, "Employer Certification of Health Insurance for Dollar Contribution Reimbursement Plan", September 2022; and

(k) Form 6282, "Insurance Agency/Company Certification of Health Insurance for Dollar Contribution Reimbursement Plan", September 2022.f;

(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.

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

Board of Pharmacy

(As Amended at ARRS, February 14, 2023)

201 KAR 2:360. Opioid antagonist[Naloxone] dispensing.

RELATES TO: KRS 217.186

STATUTORY AUTHORITY: KRS 217.186, KRS 315.191(1)(a) NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.186(6) requires the Board of Pharmacy to promulgate administrative regulations governing dispensing of an opioid antagonist[naloxone] by a pharmacist pursuant to a physician-approved protocol. This administrative regulation establishes the minimum requirements for the pharmacist to be able to dispense an opioid antagonist[naloxone] pursuant to a physician-approved[approval] protocol; and, ~~This administrative regulation also~~ provides the requirements for a pharmacy to stock an opioid antagonist[naloxone] to an emergency department.

Section 1. Certification.

(1) A pharmacist desiring to achieve certification to initiate the dispensing of an opioid antagonist[naloxone] shall complete and submit an Application for Pharmacist Certification for Opioid Antagonist[Naloxone] Dispensing, Form 1, with the board and provide the following:

(a) Name;

(b) Address;

(c) Phone number; and

(d) Pharmacist license number.

(2) The board shall issue the certification to a pharmacist within thirty (30) days of the receipt of the application.

Section 2. Procedures for Dispensing of an Opioid Antagonist[Naloxone]. A pharmacist may initiate the dispensing of an opioid antagonist[naloxone] under the following conditions:

(1) The pharmacist has met the requirements of Section 1 of this administrative regulation;

(2) The pharmacist has received his or her certification;

(3) The pharmacist has a physician-approved protocol that meets the minimum requirements of Section 3 of this administrative regulation; and

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

(a) Documentation as required in 201 KAR 2:171 for the dispensing of prescription medication; and

(b) Documentation that the individual receiving an opioid antagonist[naloxone] was provided with the required training and education pursuant to Section 4 of this administrative regulation, unless the recipient of the opioid antagonist[Naloxone] is a person or agency operating a harm reduction program.

(5) A pharmacist may dispense an opioid antagonist[naloxone] to any person or agency who provides training on the mechanism and circumstances for the administration of an opioid antagonist[naloxone] to the public as part of a harm reduction program, regardless of whom the ultimate user of the opioid antagonist[naloxone] may be. The documentation of the dispensing of an opioid antagonist[naloxone] to any person or agency operating a harm reduction program shall satisfy any general documentation or recording requirements.

Section 3. Protocol Minimum Requirements. A physician-approved protocol authorizing a pharmacist to initiate the dispensing of an opioid antagonist[naloxone] shall contain:

(1) Criteria for identifying persons or agencies eligible to receive an opioid antagonist[naloxone] under the protocol;

(2) **Opioid antagonist[Naloxone]** products authorized to be dispensed, including:

- (a) Name of product;
- (b) Dose; and
- (c) Route of administration;

(3) Specific education to be provided to the person whom the **opioid antagonist[naloxone]** is dispensed;

(4) Procedures for documentation of **opioid antagonist[naloxone]** dispensation, including procedures for notification of the physician authorizing the protocol, if desired by the physician in accordance with KRS 217.186(6)(b)3.[(3)]KRS 217.186(5)(b)3;

(5) The length of time the protocol is in effect;

(6) The date and signature of the physician approving the protocol;~~and~~

(7) The names and work addresses of pharmacists authorized to initiate dispensing of **an opioid antagonist[naloxone]** under the protocol;~~and~~

(8) Authorization for **an opioid antagonist[naloxone]** to be supplied to an emergency department for dispensing under the protocol.

Section 4. Education to be Provided to Person Receiving **an Opioid Antagonist[Naloxone]** Prescription Under Protocol. Except as described in Section 2(5) of this administrative regulation[5(e)], a pharmacist dispensing **an opioid antagonist[naloxone]** to a person or agency not operating a harm reduction program shall provide verbal counseling and written educational materials appropriate to the dosage form of **an opioid antagonist[naloxone]** dispensed.

Section 5.

(1) ~~[Nothing shall prohibit]~~ A pharmacist may supply an opioid antagonist[from supplying naloxone] to an emergency department to be dispensed per the physician approved protocol ~~if provided that~~:

(a) ~~[If —]~~ The pharmacist is providing the opioid antagonist[naloxone] from a pharmacy other than the institutional pharmacy, the pharmacy is under common ownership, or has a written service agreement with the hospital:

(b) The opioid antagonist[naloxone] is stored in a locked drug storage area or automated pharmacy system;

(c) Access to the opioid antagonist[naloxone] storage area is monitored and approved per a service agreement or hospital policy;

(d) There is a monthly documented check of the opioid antagonist[naloxone] storage area for proper storage, labeling, educational[education] material, and expiration dating;

(e) With the exception of patient name, the pharmacist labels the opioid antagonist[naloxone] in accordance with KRS 217.065 prior to supplying to the emergency department;

(f) An opioid antagonist[Naloxone] from this supply is provided to the patient by a licensed health care provider as described in KRS 217.186(2);

(g) The patient is provided written educational[education] materials appropriate to the dosage form of the opioid antagonist[naloxone] which includes the telephone number of the supplying pharmacy;

(h) A record of each provision to a patient is communicated to the providing pharmacy and documented in the pharmacy management system; and

(i) The dispensing record is reviewed by a pharmacist at the supplying pharmacy within one (1) pharmacy business day.

(2) Dispensing from an emergency drug stock shall not require a prospective drug use review.

Section 6.[Section 5.] Incorporation by Reference.

(1) "Application for Pharmacist Certification for **Opioid Antagonist[Naloxone]** Dispensing", Form 1, 12/2022[6/2021], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building

Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the Web site at: <https://pharmacy.ky.gov/Forms/Documents/Application%20for%20Pharmacist%20Certification%20for%20OPIOID%20ANTAGONIST%20Dispensing%20%2812-2022%29.pdf> [<https://pharmacy.ky.gov/Documents/APPLICATION%20FOR%20PHARMACIST%20CERTIFICATION%20FOR%20NALOXONE%20DISPENSING.pdf>].

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

BOARDS AND COMMISSIONS

Board of Pharmacy

(As Amended at ARRS, February 14, 2023)

201 KAR 2:380. Board authorized protocols.

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

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

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

Section 1. Definitions[Definition].

(1) "Fully executed" means a protocol has been signed and dated by the prescriber and the pharmacist or pharmacists who are the[pharmacist(s)] party or parties to the protocol agreement as required by Section 3 of this administrative regulation[document].

(2) "Prescriber" means any Kentucky licensed physician or advanced practice registered nurse practitioner[individual authorized to prescribe a legend drug].

(3) "Protocol" means a written agreement between a pharmacist or pharmacists and a prescriber that outlines the plan to initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services within the prescriber's statutory scope of practice.

(4) "Protocol registry" means the records maintained by the board[of pharmacy] of any fully executed protocol that is being utilized to initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services.

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

(1) ~~[A prescriber-approved protocol that meets the minimum requirements in Section 3 of this administrative regulation is in place, and is dated and signed by the prescriber and pharmacist authorized to initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services. A pharmacist not party to the executed protocol has no authority to utilize the protocol for medication dispensing or other professional service provision.]~~ The protocol:

(a) Meets the minimum requirements in Section 3 of this administrative regulation;

(b) Directs the care, based on current clinical guidelines,

for acute self-limiting conditions and other minor ailments, preventative health services, and disease state monitoring and management as ~~determined/deemed~~ appropriate by the board;

(c) ~~States/Must state~~ the permit number of the Kentucky permitted pharmacy where the protocol will be utilized;

(d) Has been reviewed and authorized by the board prior to its execution; and

(e) Has been fully executed and submitted to the board for inclusion in the protocol registry, which shall be made available to the prescriber's licensing board upon request.

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

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

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

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

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

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

(4) Any pharmacist not party to the fully executed protocol shall not utilize the protocol;

(5) A pharmacist utilizing the protocol shall be employed by or contracted with the permit holder;

(6) ~~A/No~~ fully executed protocol shall ~~not~~ be used to initiate the dispensing of medications or to provide other professional services until it has been submitted to the board for inclusion in the protocol registry; and

(7) The pharmacist-in-charge shall be responsible for:

(a) Submitting the fully executed protocol to the board for inclusion into the registry; and

(b) Submitting a written notification to the board to remove a protocol from the registry no later than thirty (30) days after discontinuing a protocol.

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

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

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

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

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

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

(6) Length of time protocol is in effect;

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

and

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

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

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

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

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

~~(2) Acute streptococcal pharyngitis infection;~~

~~(3) Acute, uncomplicated urinary tract infection;~~

~~(4) Acute cutaneous or mucocutaneous fungal infection;~~

~~(5) Alcohol use disorder utilizing naltrexone-based therapy pursuant to recommendations from the American Psychiatric Association;~~

~~(6) Allergic rhinitis;~~

~~(7) Anaphylaxis;~~

~~(8) Colorectal cancer prevention and screening;~~

~~(9) HCV infection screening;~~

~~(10) HIV infection prophylaxis, pre-exposure and post-exposure pursuant to recommendations by the CDC;~~

~~(11) HIV infection screening pursuant to recommendations by the CDC;~~

~~(12) Nutritional supplementation with vitamins and minerals;~~

~~(13) Opioid use disorder pursuant to recommendations by the American Society of Addiction Medicine;~~

~~(14) Tobacco use disorder;~~

~~(15) Traveler's health pursuant to recommendations by the CDC;~~

~~(16) Tuberculosis prevention and control through skin testing, and referral as necessary, pursuant to recommendations by the CDC; and~~

~~(17) Self-care conditions appropriately treated with over-the-counter medications and products.]~~

Section 4. Protocol Review Committee.

(1) The board shall form a committee comprised of four (4) pharmacists and one (1) physician. This committee shall meet no less than quarterly to:

(a) Evaluate new protocols proposed for board approval to ensure compliance with Section 2(1)(b) and Section 3 of this administrative regulation; and

(b) Review previously authorized protocols no later than three (3) years from the authorization date to ensure alignment with current practice guidelines.

(2) The protocol review committee may consult with an expert with relevant practice experience.

(3) The pharmacists shall be appointed by the Board of Pharmacy and the physician by the Kentucky Board of Medical Licensure.

(4) Terms for the pharmacist and physician members on the committee shall be for a term of four (4) years.

(5) The chair of the committee shall be a pharmacist member.

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VOLUME 49, NUMBER 8– MARCH 1, 2023

BOARDS AND COMMISSIONS Board of Pharmacy (As Amended at ARRS, February 14, 2023)

201 KAR 2:450. Unprofessional conduct of a pharmacy permit holder.

RELATES TO: KRS 315.030, ~~315.035~~~~[315.025]~~, 315.0351, 315.121, 315.131, 337.355, 337.365

STATUTORY AUTHORITY: KRS 315.191(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: ~~KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters set forth in KRS Chapter 315 relating to pharmacists and pharmacies. This administrative regulation establishes the actions that constitute unprofessional conduct of a pharmacy permit holder[is necessary to ensure that permit holders are provided notice of what may be considered unprofessional conduct. This administrative regulation is required to ensure that the public is protected from pharmacy practices that lead to errors and patient harm, including practices that stem from demands a permit holder places on pharmacists that prevents them from responsibly practicing pharmacy].~~

Section 1. Definitions.

~~(1) "Pharmacy permit holder" means any permit maintained by a resident or non-resident pharmacy.~~

~~(2) "Provision of pharmacy services" means the services provided to a patient from a licensee, permit holder, or registrant.~~

~~(3)[(2)] "Safe practices" means[mean] practices that aim to prevent and reduce risks, errors, and harm, or threat of harm to the public.~~

~~Section 2. Unprofessional Conduct.[It shall be] Unprofessional conduct for a pharmacy permit holder includes conduct such as[, but is not limited to]:~~

~~(1) Introducing or enforcing[Introduce or enforce] policies and procedures related to the provision of pharmacy services in a manner that results in deviation from safe practices;~~

~~(2) Unreasonably preventing or restricting[prevent or restrict] a patient's timely access to patient records or [essential] pharmacy services;~~

~~(3) Failing[Fail] to identify and resolve conditions that interfere with a pharmacist's ability to practice competently[with competency] and safely[safety] or creating[create] an environment that jeopardizes patient care, including by failing to provide appropriate staffing, training, and appropriately requested rest and meal periods as permitted by KRS 337.355 and KRS 337.365;[and]~~

~~(4) Repeatedly[, habitually,] or knowingly failing[fail] to provide resources appropriate for a pharmacist of reasonable diligence to safely complete professional duties and responsibilities under state and federal laws and regulations;[and], including, but not limited to:~~

~~a. Drug utilization review;~~

~~b. Immunization;~~

~~c. Counseling;~~

~~d. Verification of the accuracy of a prescription; and~~

~~e. All other duties and responsibilities of a pharmacist under state and federal laws and regulations.]~~

~~(5) Requiring a pharmacist to operate a pharmacy with policies and procedures that deviate from safe practices; and~~

~~(6) Taking disciplinary action or otherwise retaliating against a licensee or registrant that reports or refuses to operate a pharmacy that deviates from safe practices or a pharmacy that deviates from state and federal laws and regulations.~~

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BOARDS AND COMMISSIONS Board of Dentistry (As Amended at ARRS, February 14, 2023)

201 KAR 8:016. Registration of dental laboratories.

RELATES TO: KRS 313.021, 313.022, 313.550

STATUTORY AUTHORITY: KRS 313.021(1)(a), (c), 313.022(1)[(c)], 313.080, 313.090, 313.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)(a) requires the board to govern dental laboratories. KRS 313.021(1)(c) requires the board to promulgate administrative regulations for any license or registration created by the board. KRS 313.022(1) requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes requirements for the issuance and renewal of dental laboratory registration ~~and the~~~~with the board. This administrative regulation establishes~~ fees for the issuance, renewal, and reinstatement of registrations of dental laboratories with the board.

Section 1.

(1) Each commercial dental laboratory operating, doing business, or intending to operate or do business in ~~Kentucky~~~~[the state]~~ shall register with the board ~~and pay the fee established in Sections 4 and 8 of this administrative regulation~~.

(2) A dental laboratory shall be considered operating or doing business ~~in Kentucky~~~~[within this state]~~ if its work product is prepared pursuant to a written authorization originating within this state.

Section 2. The board shall not issue a registration to a commercial dental laboratory unless the applying dental laboratory is operated under the supervision of at least one (1) certified dental technician (CDT) or dentist licensed in this state in accordance with KRS 313.550.

Section 3. If the dental laboratory has violated any provision of KRS Chapter 313 or 201 KAR Chapter 8, the dental laboratory shall be subject to disciplinary action pursuant to KRS 313.080 and 313.100.

Section 4. ~~[Each commercial dental laboratory shall pay a fee of \$150 to the board before a registration shall be issued to the applicant.]~~

~~[Section 5.]~~ Upon the granting of a registration, the board shall assign to that laboratory a dental registration number. The laboratory registration number shall appear on all invoices or other correspondence of the laboratory.

~~Section 5.[Section 6.]~~ A dentist shall use only those services of a commercial dental laboratory that is duly registered with the board as required by this administrative regulation. A dentist shall include the registration number of the dental laboratory on the dentist's work order.

Section 6.[Section 7.] Initial Registration.

~~(1) The owner or operator of a commercial dental laboratory desiring to obtain a registration shall:~~

~~(a) Submit an Application for Registration of Dental Laboratories; and~~

~~(b) Pay the fee required by 201 KAR 8:520.~~

~~(2) [Each commercial dental laboratory operating, doing business, or intending to operate or do business within the state shall submit an Application for Registration of Dental Laboratory or Renewal of Registration of Dental Laboratory to the board on a form provided by the board accompanied with the registration or renewal fee required.]~~The application shall include:

(a)[(4)] The name, mailing address, phone number, and e-mail address of the laboratory;

(b)[(2)] The physical address of the laboratory if different from the mailing address;

(c)[(3)] The name and CDT number of the supervising CDT or the name and license number of the supervising dentist who is licensed in this state; and

(d) An acknowledgement by the supervising CDT or dentist who is licensed in this state that the laboratory:

1. [(4)] ~~[A statement that the laboratory]~~Meets the infectious disease control requirements under Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control and Prevention (CDC) of the United States Public Health Service;

2. [(5)] ~~[An acknowledgement by the supervising CDT or dentist who is licensed in this state that the laboratory]~~Will provide material disclosure to the prescribing dentist that contains the U.S. Food and Drug Administration registration number of all patient contact materials contained in the prescribed restoration in order that the dentist may include those numbers in the patient's record; and

3. [(6)] ~~[An acknowledgement by the supervising CDT or dentist who is licensed in this state that he or she]~~Will disclose to the prescribing dentist the point of origin of the manufacture of the prescribed restoration. If the restoration was partially or entirely manufactured by a third-party provider, the point of origin disclosure shall identify the portion manufactured by a third-party provider and the city, state, and country of the provider.

Section 7. Registration Renewal.

(1) Commercial dental ~~laboratory~~[lab] registrations shall expire on July 31 of each year and ~~shall~~[must] be renewed to continue operating or doing business in Kentucky.

(2) To renew a registration, the owner or operator shall:

(a) Submit a Renewal Application for Registration of Dental Laboratories on or before July 31; and

(b) Pay the fee required by 201 KAR 8:520.

(3) The renewal application shall include the information required in Section 6(2)(a)-(d)[(a-d)] of this administrative regulation.

[Section 8.] ~~[Each commercial dental laboratory registered with the board shall be required to renew its registration before July 31 each year by completing and submitting a Renewal of Registration of Dental Laboratory form and paying a fee of \$150.]~~

Section 8.[Section 9.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Registration of Dental Laboratories", November 2022[June 2014]; and

(b) "Renewal Application for Registration of Dental Laboratories", November 2022[March 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

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BOARDS AND COMMISSIONS

Board of Dentistry

(As Amended at ARRS, February 14, 2023)

201 KAR 8:520. Fees and fines.

RELATES TO: KRS 218A.205(3)~~(f)~~~~(e)~~4., 313.022, 313.030, 313.100(2)(c)

STATUTORY AUTHORITY: KRS 218A.205(3)~~(f)~~~~(e)~~4., 313.022(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.022(1) requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions.

Section 1. Dentists. (1) The initial licensure fee for a dental license applied for in the first year of the biennial license period shall be \$325.

(2) The initial licensure fee for a dental license applied for in the second year of the biennial license period shall be \$175.

(3) The renewal fee for a dental license appropriately renewed before the expiration of the license shall be \$295.

(4) The reinstatement fee for an expired dental license reinstated between January 1 and January 15 of the year following the expiration of the license shall be \$575.

(5) The reinstatement fee for an expired dental license reinstated between January 16 and January 31 of the year following the expiration of the license shall be \$835.

(6) The reinstatement fee for an expired dental license reinstated on or after February 1 of the year following the expiration of the license shall be \$1,415.

(7) The reinstatement fee for a properly retired dental license shall be \$325.

(8) The initial licensure fee for a dental specialty license shall be \$100.

(9) The renewal fee for a dental specialty license properly renewed before the expiration of the license shall be fifty (50) dollars in addition to the renewal fee for a standard dental license.

(10) The reinstatement fee for an expired a dental specialty license shall be fifty (50) dollars in addition to the reinstatement fee for an expired standard dental license.

(11) The reinstatement fee for a properly retired dental specialty license shall be fifty (50) dollars in addition to the reinstatement fee for a retired standard dental license.

(12) The initial licensure fee and renewal fee for a charitable limited dental license shall be twenty-five (25) dollars.

(13) The initial fee for a dental anesthesia or sedation permit shall be \$250.

(14) The renewal fee for a dental anesthesia or sedation permit properly renewed before the expiration of the permit shall be seventy-five (75) dollars.

(15) The reinstatement fee for an expired dental anesthesia or sedation permit shall be seventy-five (75) dollars.

Section 2. Dental Hygienists. (1) The initial licensure fee for a dental hygiene license applied for in the first year of the biennial license period shall be \$125.

(2) The initial licensure fee for a dental hygiene license applied for in the second year of the biennial license period shall be seventy-five (75) dollars.

(3) The renewal fee for a dental hygiene license appropriately renewed before the expiration of the license shall be \$110.

(4) The reinstatement fee for an expired dental hygiene license reinstated between January 1 and January 15 of the year following the expiration of the license shall be \$240.

(5) The reinstatement fee for an expired dental hygiene license reinstated between January 16 and January 31 of the year following the expiration of the license shall be \$370.

(6) The reinstatement fee for an expired dental hygiene license reinstated on or after February 1 of the year following the

expiration of the license shall be \$630.

(7) The initial licensure fee and renewal fee for a charitable limited dental hygiene license shall be twenty-five (25) dollars.

(8) The initial registration fee to administer local anesthesia shall be fifty (50) dollars.

(9) The initial registration fee to practice under general supervision shall be fifty (50) dollars.

(10) The initial registration fee to administer an intravenous access line shall be fifty (50) dollars.

(11) The initial registration fee to perform laser debridement shall be fifty (50) dollars.

(12) The initial registration fee to be a public health registered dental hygienist shall be fifty (50) dollars.

(13) The reinstatement fee for a properly retired dental hygiene license shall be \$125.

Section 3. Anesthesia and Sedation Facilities. (1) The initial certification fee for an anesthesia or sedation facility shall be \$250.

(2) The renewal fee for an anesthesia or sedation facility certificate shall be seventy-five (75) dollars.

(3) The reinstatement fee for an expired anesthesia or sedation facility certificate reinstated between January 1 and January 15 of the year following the expiration of the certificate shall be \$125.

(4) The reinstatement fee for an expired anesthesia or sedation facility certificate reinstated between January 16 and January 31 of the year following the expiration of the certificate shall be \$175.

(5) The reinstatement fee for an expired anesthesia or sedation facility certificate reinstated on or after February 1 of the year following the expiration of the certificate shall be \$225.

Section 4. Dental Laboratories. (1) The initial registration fee for a commercial dental laboratory shall be \$150.

(2) The renewal fee for a dental laboratory registration appropriately renewed on or before the expiration of the registration shall be \$150.

(3) The reinstatement fee for an expired dental laboratory registration reinstated between August 1 and August 15 following the expiration of the certificate shall be \$250.

(4) The reinstatement fee for an expired dental laboratory registration reinstated between August 16 and August 31 following the expiration of the certificate shall be \$300.

(5) The reinstatement fee for an expired dental laboratory registration reinstated on or after September 1 following the expiration of the certificate shall be \$350.

Section 5. Mobile Dental Facilities and Portable Dental Units. (1) The initial registration fee for a mobile dental facility or portable dental unit shall be \$150.

(2) The renewal fee for a mobile dental facility or portable dental unit registration shall be seventy-five (75) dollars.

(3) The reinstatement fee for an expired mobile dental facility or portable dental unit registration reinstated between January 1 and January 15 of the year following the expiration of the registration shall be \$150.

(4) The reinstatement fee for an expired mobile dental facility or portable dental unit registration reinstated between January 16 and January 31 of the year following the expiration of the registration shall be \$175.

(5) The reinstatement fee for an expired mobile dental facility or portable dental unit registration reinstated on or after February 1 of the year following the expiration of the registration shall be \$225.

Section 6. General Fees. (1) The fee for the verification of a license shall be forty (40) dollars.

(2) The fee for a contact list for either currently licensed dentists, currently licensed dental hygienists, or currently registered dental assistants shall be:

- (a) \$100 for lists obtained for not-for-profit use; and
- (b) \$1,000 for lists obtained for profit use.

(3) The fee for any returned check or rejected electronic payment shall be equal to the fee charged to the board by the bank.

~~Section 7.~~~~[Section 6.]~~ General Fines. (1) The payment of reinstatement fees shall not be construed to exempt licensees and other entities regulated by the board from additional penalties associated with practicing or operating without an appropriate license, permit, or registration.

(2) Fines shall be determined by settlement or agreed order as negotiated by the Law Enforcement Committee or as issued by a hearing panel in accordance with KRS 313.100.

~~Section 8.~~~~[Section 7.]~~ All fines and fees paid to the board shall be nonrefundable.

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BOARDS AND COMMISSIONS

Board of Dentistry

(As Amended at ARRS, February 14, 2023)

201 KAR 8:571. Registration of dental assistants.

RELATES TO: KRS ~~[214.615,]~~ 313.030, 313.045, 313.050, 313.080, 313.130

STATUTORY AUTHORITY: KRS ~~[214.615(2),]~~ 313.021(1)(a), (b), (c), 313.030(3), 313.045

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.045(1) requires the board to promulgate administrative regulations relating to requirements and procedures for registration, duties, training, and standards of practice for dental assistants. This administrative regulation establishes the requirements and procedures for registration, duties, training, and standards of practice for dental assistants.

Section 1. Definitions.

(1) "Coronal polishing" means a procedure that is the final stage of a dental prophylaxis on the clinical crown of the tooth after a dentist or a hygienist has verified there is no calcareous material.

(2) "Dental assistant" ~~means~~~~[mean]~~ a person who is directly involved with the care and treatment of a patient under the direct supervision of a dentist and performs reversible procedures delegated by a dentist licensed in the Commonwealth.

Section 2. Supervision Requirements. A dental assistant operating under this administrative regulation shall be under the direct supervision of a Kentucky licensed dentist at all times while in the performance of patient care and treatment. The supervising dentist shall accept sole responsibility for the actions of the dental assistant.

Section 3. General Registration ~~[Requirements—]~~and Documentation~~[General Training]~~ Requirements.

(1) A dentist licensed in the Commonwealth shall register all dental assistants in the dentist's~~[their]~~~~[his or her]~~ practice on the Application for Renewal of Dental Licensure incorporated by reference in 201 KAR 8:532~~[201 KAR 8:530]~~.

(2) A dental assistant shall maintain certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the ~~[guidelines set forth by the]~~ American Heart Association CPR Guidelines, as incorporated by reference in 201 KAR 8:532. The supervising dentist shall retain the current CPR certification of each dental assistant in ~~the dental assistant's~~~~[their]~~~~[the]~~ personnel file.

(3) The supervising dentist shall maintain a ~~[for the registered dental assistant the following:]~~

~~[(a)] [A copy of the certificate of completion issued for the completion of the Coronal Polishing Course if the course has been taken by the dental assistant;]~~

~~[(b)] [A copy of the certificate of completion issued for the completion of the Radiation Safety Course if the course has been taken by the dental assistant;]~~

~~[(c)] [A copy of the certificate of completion issued for the completion of the Radiation Techniques Course if the course has been taken by the dental assistant;]~~

~~[(d)] [A copy of the certificate of completion issued for the completion of the Starting Intravenous Access Lines if the course has been taken by the dental assistant;]~~

~~[(e)] [A copy of proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines set forth by the American Heart Association, as incorporated by reference in 201 KAR 8:531; and]~~

~~[(f)] [A statement of the competency of procedures delegated to the dental assistant from the Delegated Duties List that includes the name of the:~~

~~(a)[4-] Individual trained; and~~

~~(b)[2-] Licensee attesting to the competency of the dental assistant.~~

Section 4.[Section 3-] Coronal Polishing Requirements.

~~(1) A registered dental assistant may perform coronal polishing only if the assistant has[. If coronal polishing is performed by a registered dental assistant, the assistant shall have]:~~

~~(a) Completed the training described in subsection (2) of this section; and~~

~~(b) Obtained a certificate from the authorized institution.~~

~~(2) The required training shall consist of an eight (8) hour course taught at an institution of dental education accredited by the Council on Dental Accreditation to include the following:~~

~~(a) Overview of the dental team;~~

~~(b) Dental ethics, jurisprudence, and legal understanding of procedures allowed by each dental team member;~~

~~(c) Management of patient records, maintenance of patient privacy, and completion of proper charting;~~

~~(d) Infection control, universal precaution, and transfer of disease;~~

~~(e) Personal protective equipment and overview of Occupational Safety and Health Administration requirements;~~

~~(f) Definition of plaque, types of stain, calculus, and related terminology and topics;~~

~~(g) Dental tissues surrounding the teeth and dental anatomy and nomenclature;~~

~~(h) Ergonomics of proper positioning of patient and dental assistant;~~

~~(i) General principles of dental instrumentation;~~

~~(j) Rationale for performing coronal polishing;~~

~~(k) Abrasive agents;~~

~~(l) Coronal polishing armamentarium;~~

~~(m) Warnings of trauma that can be caused by improper techniques in polishing;~~

~~(n) Clinical coronal polishing technique and demonstration;~~

~~(o) Reading component consisting of the topics established in paragraphs/subsection (2)(a) to (n) of this subsection[section];~~

~~(p) Passing score of seventy-five (75) percent or higher on a written comprehensive examination covering the material listed in this subsection[section], which shall be passed by a score of seventy-five (75) percent or higher; and~~

~~(q) Passing score on a clinical competency examination performed on a live patient and supervised by a licensed dentist.~~

~~(3) The supervising dentist shall retain in the personnel file for the registered dental assistant a copy of the certificate issued for completion of the Coronal Polishing Course.~~

~~[(p)] [Completion of the reading component as required by subsection (3) of this section; and]~~

~~[(q)] [Clinical competency examination supervised by a dentist licensed in Kentucky, which shall be performed on a live patient.]~~

~~[(3)] [A required reading component for each course shall be prepared by each institution offering coronal polishing education that shall:]~~

~~[(a)] [Consist of the topics established in subsection (2)(a) to (n) of this section;]~~

~~[(b)] [Be provided to the applicant prior to the course described in subsection (2) of this section; and]~~

~~[(c)] [Be reviewed and approved by the board based on the requirements of subsection (2)(a) to (n) of this section.]~~

~~[(4)] [The institutions of dental education approved to offer the coronal polishing course in Kentucky shall be:]~~

~~[(a)] [University of Louisville School of Dentistry;]~~

~~[(b)] [University of Kentucky College of Dentistry;]~~

~~[(c)] [Western Kentucky University Dental Hygiene Program; and]~~

~~[(d)] [Kentucky Community Technical College System Dental Hygiene or Dental Assisting Programs.]~~

~~[(5)] [An institution of dental education from a state outside of Kentucky meeting the standards of the institutions listed in subsection (4) of this section shall be approved upon request to the Kentucky Board of Dentistry.]~~

Section 5.[Section 4-] X-rays by Registered Dental Assistants.

~~(1) A registered dental assistant may take x-rays only if the assistant has[under the direct supervision of a dentist licensed in Kentucky. If a registered dental assistant takes x-rays under the direct supervision of a dentist licensed in Kentucky, the dental assistant shall have] completed ten (10) hours of training that includes[as follows]:~~

~~(a)1.[(4)] A six (6) hour course in dental radiography safety; and~~

~~2.[(b)][(2)] A four (4) **hour** course in dental radiography technique; or~~

~~(b)[(c)] Four (4) hours of instruction in dental radiography technique [while under the employment and supervision of the dentist in the office] or a four (4) hour course in radiography technique].~~

~~(2) The supervising dentist shall retain in the personnel file for the registered dental assistant a copy of the certificates issued for completion of courses in dental radiography safety and technique.~~

Section 6.[Section 5-] Requirements for Starting Intravenous Access Lines.

~~(1) A registered dental assistant in Kentucky may only start intravenous (IV) access lines if the assistant:~~

~~(a) Does so[An individual registered as a dental assistant in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to start intravenous (IV) access lines while] under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board; and~~

~~(b) Completes[Complete] [shall submit documentation to the licensed dentist for whom the registered dental assistant will be providing services proving successful completion of] a board-approved course in starting IV access lines that includes[based on]:~~

~~1.[(a)] Patient Safety Techniques;~~

~~2.[(b)] Anatomy and physiology of the patient;~~

~~3.[(c)] Techniques in starting and maintaining an IV access line; and~~

~~4.[(d)] Appropriate methods of discontinuing an IV access line.~~

~~(2) The supervising dentist shall retain in the personnel file for the registered dental assistant a copy of the certificate issued for completion of the Starting Intravenous Access Lines Course.[A registered dental assistant shall not start an IV access line if the individual has not completed a Board approved course in IV access lines.]~~

~~[Section 6-] [A dental assistant operating under this administrative regulation shall be under the direct supervision of the dentist licensed in the Commonwealth. The dentist licensed in the Commonwealth shall accept sole responsibility for the actions of the dental assistant or dental auxiliary personnel while in the performance of duties in the dental office.]~~

Section 7. Incorporation by Reference.

~~(1) "Delegated Duties[Duty] List", January 2023/October 2022[May 2014], is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.~~

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BOARDS AND COMMISSIONS
Board of Dentistry
(As Amended at ARRS, February 14, 2023)

201 KAR 8:601. Mobile Dental Facilities and Portable Dental Units.

RELATES TO: KRS 313.021, 313.022~~1~~

STATUTORY AUTHORITY: KRS 218A.205(3), 313.022, 313.060(1)~~1~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)(a) requires the board to govern mobile dental facilities and portable dental units. KRS 313.021(1)(c) requires the board to promulgate administrative regulations for any license or registration created by the board. KRS 313.022(1) requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes requirements for the issuance and renewal of registrations for mobile dental facilities and portable dental units by the board.

Section 1. Definitions. (1) "Mobile dental facility" means a self-contained facility in which dentistry is practiced and that may be towed, moved, or transported from one (1) location to another.

(2) "Portable dental unit" means a non-facility in which dental equipment used in the practice of dentistry is transported and used on a temporary basis at an out-of-office location.

(3) "Registration holder" means a dentist or employer of a dentist which is the principal operator of a mobile dental facility or portable dental unit registered pursuant to this administrative regulation.

Section 2. Scope and Applicability. (1) The practice of dentistry and dental hygiene conducted via mobile dental facility or portable dental unit shall be held to the same standard of care and scope of practice requirements as any other patient encounter provided for under KRS Chapter 313 and 201 KAR Chapter 8.

(2) Mobile dental facilities and portable dental units engaged exclusively in charitable dental practices as governed by 201 KAR 8:581 shall be exempt from Sections 3(2)(b) and 7(2)(b) of this administrative regulation.

(3) Public health programs governed by KRS 313.040 (8) and 201 KAR 8:562 Section 15 shall be exempt from the requirements of this administrative regulation.

(4) Any violations of KRS Chapter 313 or 201 KAR Chapter 8 related to the operation of a mobile dental facility or portable dental unit shall be subject to disciplinary action pursuant to KRS 313.080 and 313.100.

Section 3. Registration of Mobile Dental Facilities and Portable Dental Units. (1) Each mobile dental facility or portable dental unit doing business in Kentucky shall be registered with the board and abide by the provisions of this administrative regulation.

(2) To register a mobile dental facility or portable dental unit, the intended registration holder shall:

(a) Submit a completed and signed Application for Mobile Dental Facility or Portable Dental Unit Registration, which shall contain:

1. The name of the intended registration holder;
2. An official business or mailing address of record, which shall not be a post office box;
3. An official phone number and email address of record; and
4. The name and license number of any individual(s) licensed with the board who are providing services on behalf of or in partnership with the registration holder.

(b) Pay the fee required by 201 KAR 8:520.

Section 4. Emergency and Follow Up Care. (1) Unless an accommodation is issued by the board, a mobile dental facility or portable dental unit shall maintain a signed agreement with a fixed general practice or pediatric dental office within seventy (70) miles of the treatment location that will accept timely referrals for follow up and emergency care.

(2) At the conclusion of each patient's visit, the mobile dental facility or portable dental unit shall provide each patient with an information sheet that contains:

(a) Contact information that allows the patient to reach the registration holder or dentist of record for emergency care, follow-up care, access to dental records, or information about treatment received;

(b) The name of the dentist or dental hygienist, or both, who provided services;

(c) A description of the diagnostic findings, the treatment rendered; and

(d) A plan for follow-up care, including contact information to a dental office as provided for in subsection (1) of this Section.

(3) A mobile dental facility or portable dental unit that accepts a patient and provides preventive treatment, including prophylaxis, radiographs, and fluoride, but does not provide referral information for comprehensive treatment when ~~the~~~~[such]~~ treatment is indicated, shall be considered in violation of this section.

Section 5. Patient Records and Communications. (1) Mobile dental facilities and portable dental units shall maintain:

(a) A written or electronic record detailing the location where services are provided, the dates of each session, and the services administered;

(b) Patient records of prior treatment to have readily available during subsequent treatment visits; and

(c) All dental and official records at the address of record when not in transit.

(2) Mobile dental facilities and portable dental units shall maintain a reliable means of communication onsite and at the address of record to:

(a) Contact necessary parties in the event of a medical or dental emergency;

(b) Allow the patient or the parent or guardian of the patient treated to contact the provider for emergency care, follow-up care, or information about treatment received; and

(c) Allow a provider who renders follow-up care to request and receive treatment information, including radiographs.

(3) Mobile dental facilities and portable dental units doing business in Kentucky shall not perform services on minors without a signed consent form from the parent or guardian, which shall indicate that:

(a) If the minor already has a dentist, the parent or guardian should continue to arrange dental care through that provider; and

(b) The treatment of the child by the mobile dental facility may affect the future benefits that the child may receive under private and public insurance plans.

Section 6. General Operating Requirements. Mobile dental facilities and portable dental units shall:

(1) Operate under the supervision of a Kentucky-licensed dentist, who shall be responsible for all aspects of patient care;~~1~~

(2) Display in or on the mobile dental facility or portable dental unit a current valid registration issued pursuant to this administrative regulation in a manner which is readily observable by patients or visitors;

(3) Conform to all applicable federal, state, and local laws, regulations, and ordinances dealing with radiographic equipment, flammability, construction, sanitation, zoning, infectious waste management, universal precautions, Occupational Safety and Health Administration guidelines, and Centers for Disease Control and Prevention protocols; and

(4) Be driven or transported by a driver possessing a valid driver's license appropriate for the operation of the vehicle.

Section 7. Registration Renewal and Reinstatement. (1) Each

mobile dental facility and portable dental unit registration shall expire on December 31 of even-numbered years.

(2) A registration holder desiring renewal of an active mobile dental facility or portable dental unit registration shall:

(a) Submit a completed Application for Renewal of Mobile Dental Facility or Portable Dental Unit; and

(b) Pay the fee required by 201 KAR 8:520.

(3) A registration holder desiring reinstatement of a mobile dental facility or portable dental unit registration that has expired within ninety (90) days shall:

(a) Submit a completed Application for Renewal of Mobile Dental Facility or Portable Dental Unit; and

(b) Pay the fee required by 201 KAR 8:520.

(4) A registration holder desiring reinstatement of a mobile dental facility or portable dental unit registration that has been expired for more than ninety (90) days shall:

(a) Reapply for registration as required by Section 3(2) of this administrative regulation; and

(b) Be subject to disciplinary action pursuant to KRS 313.~~f~~^j080 and 313.~~f~~^j100.

Section 8. Notification Requirements. (1) The registration holder shall notify the board of any changes to the information required by Section 3(2)(a) of this administrative regulation within thirty (30) days of the change.

(2) If ownership of the mobile dental facility or portable dental unit changes, the prior registration is invalid, and a new application shall be submitted to the board prior to continued operation of the mobile dental facility or portable dental unit.

(3) If a mobile dental facility or portable dental unit ceases operations, the registration holder shall notify the board within thirty (30) days after the last day of operation and report on the disposition of patient records.

Section 9. Incorporation by Reference. (1) The following material ~~is~~^{shall be} incorporated by reference:

(a) "Application for Mobile Dental Facility or Portable Dental Unit Registration," Sept. ~~2022~~²⁰²¹; and

(b) "Application for Renewal of Mobile Dental Facility or Portable Dental Unit Registration," Sept. ~~2022~~²⁰²¹.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site~~[website]~~ at <http://dentistry.ky.gov>.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

BOARDS AND COMMISSIONS
Board of Nursing
(As Amended at ARRS, February 14, 2023)

201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.475

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the completed application ~~[form]~~ to the board office, for:

(a) RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;

(b) RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;

(c) Licensure or reinstatement as an Advanced Practice Registered Nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d) Renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e) ~~[Licensure as an RN and as an APRN, Application for RN and APRN Licensure];~~

~~(f)]~~ Retired licensure status, Application for Retired Status;

~~(f)](g)]~~ APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky);

~~(g)](h)]~~ APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License; or

~~(h)](i)]~~ In addition to any other renewal form, for APRN renewal, APRN Practice Data;

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. An application shall lapse and the fee shall be forfeited if the application is not completed:

(1) For an application for licensure by endorsement, within one (1) year~~six (6) months]~~~~one (1) year]~~ from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 3. Incorporation by Reference.

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(1) The following material is incorporated by reference:

(a) "Application for Licensure", 10/2022[4/2016], Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 02/2022, Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 10/2022[4/2016], Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 02/2022, Kentucky Board of Nursing;

~~[(e)] "Application for RN and APRN Licensure", 1/2016, Kentucky Board of Nursing;~~

~~[(e)]~~ [(f)] "Application for Retired Status", 8/2004, Kentucky Board of Nursing;

~~[(f)]~~ [(g)] "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 02/2022, Kentucky Board of Nursing;

~~[(g)]~~ [(h)] "Annual Licensure Renewal Application, APRN with Kentucky RN License", 02/2022, Kentucky Board of Nursing; and

~~[(h)]~~ [(i)] "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx> [<https://kbn.ky.gov/conpro/Pages/Laws-and-Regulations.aspx>].

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, email Jeffrey.Prather@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, February 14, 2023)

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(45), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions.

(1) "Active military personnel" means a member of the Armed Forces on active duty, including members of the National Guard and Reserves on active duty other than for training.

(2) "Adult" means a person who has reached his or her 18th birthday.

(3) "Dark geese" means Canada geese, cackling geese, white-fronted geese, or brants.

(4) "Light geese" is defined by KRS 150.010(20).

(5) "Light geese conservation order" is defined by KRS 150.010(21).

(6) "Veteran" means a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.

(7) "Waterfowl" is defined by KRS 150.010(45).

(8) "Youth" means a person who has not reached his or her 16th birthday.

Section 2. Except as established in 301 KAR 2:222 or 2:225, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

Section 3. Season Dates.

(1) The duck, coot, and merganser season shall:

(a) Begin on Thanksgiving Day for four (4) consecutive days; and

(b) Be from December 7 through January 31.

(2) The dark geese season shall be from Thanksgiving Day through February 15.

(3) The light geese season shall be from Thanksgiving Day through February 15.

(4) The light geese conservation order season shall be from February 16 through March 31.

(5) A person shall not hunt light or dark geese in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. Ballard Zone.

(1) The Ballard Zone includes the portion of Ballard County north and west of:

(a) The Ballard-McCracken County line to State Road 358;

(b) State Road 358 to US 60;

(c) US 60 to the city limits of Wickliffe; and

(d) The city limits of Wickliffe to the center of the Mississippi River.

(2) In the Ballard Zone, a person hunting waterfowl shall:

(a) Not hunt or establish a blind within:

1. 100 yards of another blind; or

2. Fifty (50) yards of a property line; and

(b) Not possess more than one (1) uncased or loaded shotgun while in a blind.

(3) The requirements of subsection (1) of this section shall not apply if the Light Geese Conservation Order, as established in Section 3 of this administrative regulation, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits.

(1) Ducks. The daily limit shall be six (6), which shall not include more than:

(a) Four (4) mallards;

(b) Two (2) hen mallards;

(c) Three (3) wood ducks;

(d) Two (2) black ducks;

(e) Two (2) redheads;

(f) One (1) pintail;

(g) One (1) scaup beginning Thanksgiving Day for four (4) consecutive days and December 7 through December 17;

(h) Two (2) scaup beginning on December 18 through January 31;

(i) One (1) mottled duck; or

(j) Two (2) canvasbacks.

(2) Coot. The daily limit shall be fifteen (15).

(3) Merganser. The daily limit shall be five (5), which shall not include more than two (2) hooded mergansers.

(4) Dark geese. The daily limit shall be five (5), which shall not include more than:

(a) Three (3) Canada geese or cackling geese, in combination;

(b) Two (2) white-fronted geese; or

(c) One (1) brant.

(5) Light geese. The daily limit shall be twenty (20), except that there shall not be a limit during the light geese conservation order season.

(6) The possession limit shall be triple the daily limit, except that there shall not be a light geese possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) Sunset, except as established in 301 KAR 2:222; or

(2) One-half (1/2) hour after sunset if hunting light geese during the light geese conservation order season.

Section 7. Falconry Waterfowl Season and Limits.

(1) The ~~light geese~~ season for waterfowl shall be from Thanksgiving Day through the last Sunday in February~~(February 15).~~

~~[(2) The light geese conservation order season shall be from February 16 through March 31.~~

~~(3) The season for all other waterfowl shall be from Thanksgiving Day through February 15.]~~

~~[(2)][(4)] The daily limit shall be three (3) waterfowl, except that there shall not be a limit on light geese during the light geese conservation order season].~~

~~[(3)][(5)] The possession limit shall be nine (9) waterfowl, except that there shall not be a possession limit on light geese during the light geese conservation order season].~~

Section 8. Permit for the Light Geese Conservation Order Season.

(1) A person hunting light geese during the light geese conservation order season shall first obtain a free permit by completing the online Snow Geese Conservation Order Permit process on the department's Web site at fw.ky.gov.

(2) A person hunting light geese during the light geese conservation order season shall submit a Snow Geese Conservation Order Permit Survey to the department by April 10.

Section 9. Special Youth Waterfowl Season.

(1) ~~For the waterfowl season, [A youth shall only hunt waterfowl and gallinule on] the Saturday before Thanksgiving and the second Saturday in February shall be exclusive to youth hunters.~~

~~(2) A youth hunter shall be accompanied by an adult. [;]~~

~~(3) If hunting, youth hunters shall comply with [obey] the provisions of 301 KAR 2:221 and 301 KAR 2:222[,], and also [except that he or she may] hunt on the applicable additional dates established in this administrative regulation. [;]~~

~~(4) An adult accompanying a youth who is waterfowl hunting shall:~~

~~(a) Remain in a position to take immediate control of the youth's firearm;~~

~~(b) Not hunt ducks, coots, mergansers, and gallinules; or[and]~~

~~(c) Not be required to possess a hunting license or waterfowl permit if he or she is not hunting.~~

Section 10. A Special Veterans and active Military Personnel Waterfowl Hunting Season.

(1) ~~For the waterfowl season, [A veteran or active military personnel shall only hunt waterfowl and gallinule on] the Sunday before Thanksgiving and the second Sunday in February shall be exclusive to veterans or active military personnel hunters.~~

~~(2) If hunting, veteran or active-duty military hunters shall comply with [obey] the provisions of 301 KAR 2:221 and 301 KAR 2:222[,], and also [except that applicable hunters shall only] hunt on the applicable additional dates established in this administrative regulation.~~

(3) While in the field during the special veterans and active military personnel waterfowl hunting season, waterfowl hunters shall either have a state hunting license showing veteran status or carry proof of their veteran or active military personnel status. Acceptable forms of proof shall be a current military identification card, a VA-issued identification card, state issued driver's license or identification card with a veteran's designation, or an original or copy of a DD Form 214, DD Form 215, NGB Form 22, NGB Form 22-a, or DD Form 256.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Snow Geese Conservation Order Permit", April 2022; and

(b) "Snow Geese Conservation Order Permit Survey", April 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or

online at:

(a) <https://app.fw.ky.gov/snowgoosesurvey/snowgoose.aspx> for the "Snow Geese Conservation Permit"; and

(b) <https://app.fw.ky.gov/snowgoosesurvey/snowgoosesurvey.aspx> for the "Snow Geese Conservation Order Permit Survey."

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, February 14, 2023)**

301 KAR 2:228. Sandhill crane hunting requirements.

RELATES TO: KRS 150.010, 150.305, 150.340, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.170(3), (4), 150.330, 150.603(2), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.170(3), (4) authorizes license exemptions for people under twelve (12) and resident owners of farmlands, including their spouses and dependent children who hunt on those farmlands. KRS 150.330 authorizes take and possession of migratory birds when in compliance with the provisions of the Federal Migratory Bird Treaty Act and authorizes hunting of migratory birds with the appropriate permits. KRS 150.603(2) requires a person sixteen (16) years or older to possess a hunting license and a Kentucky migratory game bird and waterfowl permit in order to hunt migratory birds. This administrative regulation establishes the requirements for taking sandhill cranes within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions.

(1) "Crane" means a sandhill crane.

(2) "Wildlife Management Area" or "WMA" means a tract of land that:

(a) Is controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) Has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Applications and Permits.

(1) To apply for a crane hunting permit a person shall:

(a) Complete the online application process, not more than once per calendar year, on the department's Web site at fw.ky.gov between September 1 and September 30;

(b) Possess a valid hunting license by September 30, unless the applicant is license exempt as established in KRS 150.170; and

(c) Pay a three (3) dollar application fee.

(2) The department shall:

(a) Rank each applicant with a random electronic draw from all qualified applicants;

(b) Issue a crane hunting permit and one (1) printable crane tag to all ranked applicants up to the maximum number of crane tags allowed by the United States Fish and Wildlife Service for that season, as established in 50 C.F.R. 20, except that if the number of applicants:

1. Exceeds the maximum number of tags, then those applicants ranking higher than the maximum shall[will] not receive a permit; or[and]

2. Is less than the maximum number of tags available, then the additional tags shall[will] be assigned to applicants in the order of ranking until all tags are assigned;

(c) ~~[Issue each permit via the department's Web site at fw.ky.gov;~~

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~~(d) Issue the appropriate number of metal leg tags to each permit recipient prior to the crane hunting season; and~~

~~(e) Disqualify an applicant who does not possess a hunting license prior to September 30, unless the applicant is license exempt as established in KRS 150.170.~~

(3) A person who does not have access to the internet may call the department's toll-free number at 1-800-858-1549 for assistance in applying.

(4) A crane hunting permit shall not be transferable.

(5) A person selected to receive a permit shall pass a bird identification test provided by the department prior to receiving a permit.

(6) A permit recipient shall complete and submit a post-season crane hunting survey on the department's Web site no later than fourteen (14) days after the close of the season.

(7) A person who fails to complete the post-season survey by the date specified in subsection (6) of this section shall be ineligible to be drawn the following year.

Section 3. Season, Bag Limits, and Hunting Requirements.

(1) Unless license exempt as established in KRS 150.170, a person shall not hunt a crane without a:

- (a) Valid Kentucky hunting license;
- (b) Valid Kentucky crane hunting permit; and
- (c) Kentucky migratory game bird and waterfowl permit.

(2) A permit recipient shall possess a printed or electronic copy of a valid crane hunting permit, available via the customer's profile on the department's Web site at <https://app.fw.ky.gov/Myprofile/default.aspx> or mobile application:

- (a) While crane hunting; and
 - (b) When in possession of a harvested crane.
- (3) The season shall be from December 7 through January 31.
- (4) The bag limit shall be:

(a) Two (2) cranes daily for permit holders with two (2) or more crane tags; or

(b) One (1) crane for permit holders with one (1) tag.

(5) A person shall only hunt cranes from sunrise to sunset.

(6) A person who has harvested a crane shall attach a department-issued printable[metal] tag to the leg of the crane prior to moving the carcass. The department-issued tags shall be available for print via the customer's profile on the department's Web site at <https://app.fw.ky.gov/Myprofile/default.aspx> or mobile application.

(7) A person shall check a harvested crane on the day the crane is harvested by:

(a) Calling 800-245-4263 and providing the information requested by the automated check-in system; or

(b) Completing the check-in process on the department's Web site at [fw.ky.gov](https://app.fw.ky.gov); and

(c) Recording and retaining the check-in confirmation number for the rest of the current season.

(8) A hunter who has harvested a crane shall possess the check-in confirmation number when in the field during the current season.

(9) A person shall not knowingly falsify the harvest of a crane on the automated check-in system.

(10) A person hunting cranes shall not use or possess a shotgun shell containing:

- (a) Lead shot; or
- (b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting.

(11) A person shall not use the following to take cranes:

- (a) A shotgun larger than ten (10) gauge;
- (b) A shotgun shell larger than three and one-half (3 1/2) inches; or

(c) A shotgun shell with shot larger than size "T".

(12) A person hunting a crane on a Wildlife Management Area shall comply with the applicable WMA waterfowl hunting requirements, as established in 301 KAR 2:222, except that on:

(a) Barren River WMA crane hunting shall be prohibited within 100 yards of the normal summer pool level of 552 feet in the embayments established in subparagraphs 1. through 3. of this paragraph:

- 1. Beaver Creek;
- 2. Peters Creek; and
- 3. Skaggs Creek; and

(b) Green River Lake, crane hunting shall be prohibited within 100 yards of the normal summer pool level of 675 feet, east of the Hwy 551 bridge in the embayments established in subparagraphs 1. and 2. of this paragraph:

- 1. Green River to the Snake Creek Boat Ramp; and
- 2. Casey Creek to the Hwy 76 bridge.

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.

JUSTICE AND PUBLIC SAFETY CABINET

Office of the Secretary

(As Amended at ARRS, February 14, 2023)

500 KAR 16:010. Funds disbursement from the elder and vulnerable victims trust fund.

RELATES TO: KRS 15A.011, 41.305, 209.005, 381.280(3)

STATUTORY AUTHORITY: KRS 15A.160, 41.305, 196.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 41.305 requires the Justice and Public Safety Cabinet to administer the elder and vulnerable victims trust fund and to promulgate administrative regulations to implement operation of the fund. KRS 15A.160, ~~and~~ 41.305, and 196.035 authorize the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation defines the terms, standards, and criteria governing the disbursement of money from the fund.

Section 1. Definitions.

(1) "Cabinet" means the Justice and Public Safety Cabinet as defined by KRS 15A.011(1).

(2) "Elder Abuse Committee" is defined by KRS 209.005(1).

(3) "Elder and vulnerable victim" means:

- (a) A natural person sixty-five (65) years of age or older; or
- (b) A natural person eighteen (18) years of age or older who, because of mental or physical dysfunction, is unable to manage his or her own resources, carry out the activities of daily living, or protect himself or herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services.

(4) "Funded program" means any program, campaign, project, or combination thereof, proposed by an applicant for which the trust fund review panel grants an award of funds from the elder and vulnerable victims trust fund.

(5) "Trust fund review panel" means the Elder Abuse Committee, with a representative from the cabinet and a representative from the Administrative Office of the Courts.

Section 2. Funding Criteria.

(1) The trust fund review panel may disburse funds from the elder and vulnerable victims trust fund.

(2) If funds are disbursed from the elder and vulnerable victims trust fund, the trust fund review panel shall disburse said money in accordance with KRS 41.305.

(3) In accordance with KRS 41.305(6), the trust fund review panel may only disburse available money from the elder and vulnerable victims trust fund to applicants that are qualified under KRS 41.305(6) as public or private nonprofit organizations, including government organizations, that[which] have completed the Application for Grant Funding incorporated by reference in Section 5[6] of this administrative regulation.

(4) The applicant shall:

(a) Complete and submit the Application for Grant Funding online at <https://justice.ky.gov/Pages/index.aspx> in the Grants Management Division section no later than August 1 of the state

fiscal year prior to the state fiscal year in which the award funds would be disbursed. The trust fund review panel may grant an extension of time up to and including September 1 of the state fiscal year prior to the state fiscal year in which the award funds would be disbursed; and

- (b) Seek funding to:
 - 1. Develop or operate the programming outlined in KRS 41.305(6)(c); and
 - 2. Demonstrate the ability to comply with KRS 41.305(6)(a), (b), (c)1., 2., 3., and 4.
- (5) The trust fund review panel shall make its decision as to disbursement of available money based on:
 - (a) The requirements in KRS 41.305;
 - (b) An assessment of the applicant's ability to meet the purposes of KRS 41.305;
 - (c) The strength of the applicant's plan, including project overview and proposed budget;
 - (d) If applicable, consideration of whether grant requirements were met for a previous grant, including consideration of whether the applicant properly submitted required reports as well as the content of the reports;
 - (e) An area of specific grant focus determined by the Elder Abuse Committee, if any; and
 - (f) Other factors of similar importance in assessing the strength of an application.

Section 3. Awards.

- (1) The trust fund review panel shall provide written notice of its decision regarding a grant application to a grant applicant no later than January 1 of state fiscal year prior to the state fiscal year in which the award funds would be disbursed.
- (2) If an award is granted to an applicant, the applicant shall execute a memorandum of agreement with the cabinet memorializing the proposed program prior to the disbursement of any funds.
- (3) Disbursement of money from the elder and vulnerable victims trust fund shall occur during the state fiscal year following the approval of funding by the trust fund review panel.
- (4) Denial of an award to an applicant by the trust fund review panel shall not be subject to an appeal.

Section 4. Reporting. (1) If an application for funding is approved by the trust fund review panel and funds are disbursed to the applicant, the organization or entity who is granted the funds shall:

- (a) [(1)] Submit a quarterly report on the status of the funded program to the Grants Management Division (GMD) with the cabinet;
- (b) [(2)] Submit a follow-up report within five (5) calendar days of conclusion of the funded program to the GMD; and
- (c) [(3)] Submit a final report monitoring the success of the funded program within six (6) months of the conclusion of the funded project to the GMD.
- (2) [(4)] Any report required by this section shall be in writing and delivered to JUSIGX@ky.gov. An email shall constitute a writing for purposes of this section.

Section 5. Incorporation by Reference.

- (1) "Elder and Vulnerable Victims Trust Fund, Application for Grant Funding[Application]", 2022, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed on the Justice and Public Safety Cabinet Web site at <https://justice.ky.gov/about/pages/lrcfilings.aspx>.

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PUBLIC PROTECTION CABINET
Department of Insurance
Health Life and Managed Care Division
(As Amended at ARRS, February 14, 2023)

806 KAR 17:280. Registration, utilization review, and internal appeal.

RELATES TO: KRS 217.211, 304.2-140, 304.2-310, 304.17-412, 304.17A-005, 304.17A-163, 304.17A-1631, 304.17A.167, 304.17A-168, 304.17A-535, 304.17A-600, 304.17A-607, 304.17A-619, 304.17A-623, 304.17C-010, 304.17C-030, 304.18-045, 304.32-147, 304.32-330, 304.38-225, 304.47-050

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-609, 304.17A-613, 304.17A-1631

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-609 requires the department to promulgate administrative regulations regarding utilization review and internal appeal and KRS 304.17A-1631 requires the commissioner to promulgate administrative regulations regarding step therapy protocols and exceptions. KRS 304.17A-613 requires the department to promulgate administrative regulations to develop a process for the registration of insurers or private review agents. This administrative regulation establishes requirements for the registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions and step therapy exception request denials.

Section 1. Definitions.

- (1) "Adverse determination" is defined by KRS 304.17A-600(1).
- (2) "Authorized person" is defined by KRS 304.17A-600(2).
- (3) "Board" means one (1) of the following governing bodies:
 - (a) The American Board of Medical Specialties;
 - (b) The American Osteopathic Association; or
 - (c) The American Board of Podiatric Surgery.
- (4) "Coverage denial" is defined by KRS 304.17A-617(1).
- (5) "Department" means Department of Insurance.
- (6) "Enrollee" is defined by KRS 304.17C-010(2).
- (7) "Health benefit plan" is defined by KRS 304.17A-005(22).
- (8) "Health Care Provider" or "provider" is defined in KRS 304.17A-005(23) and includes pharmacy as required under 806 KAR 17:580.
- (9) "Insurer" is defined by KRS 304.17A-005(29).
- (10) "Internal appeals process" is defined by KRS 304.17A-600(9).
- (11) "Limited health service benefit plan" is defined by KRS 304.17C-010(5).
- (12) [(14)] "Nationally recognized accreditation organization" is defined by KRS 304.17A-600(10).
- (13) [(12)] "Notice of coverage denial" means a letter, a notice, or an explanation of benefits statement advising of a coverage denial.
- (14) [(13)] "Policies and procedures" means the documentation which outlines and governs the steps and standards used to carry out functions of a utilization review program.
- (15) [(14)] "Private review agent" is defined by KRS 304.17A-600(11).
- (16) [(15)] "Registration" is defined by KRS 304.17A-600(14).
- (17) "Step therapy exception" is defined in KRS 304.17A-163(1)(f).
- (18) "Step therapy protocol" is defined in KRS 304.17A-163(1)(g).
- (19) [(16)] "Utilization review" is defined by KRS 304.17A-600(17) [(17)].
- (20) [(17)] "Utilization review plan" is defined by KRS 304.17A-600(18).

Section 2. Registration Required for Utilization Review.

- (1) The department shall issue a registration to an applicant

who[that] has met the requirements of KRS 304.17A-600 through 304.17A-619 and KRS 304.17A-623, if applicable, and Sections 2 through 11 of this administrative regulation.

(2) An applicant seeking registration to provide or perform utilization review shall:

(a) Submit an application to the department as required by Section 4 of this administrative regulation; and

(b) Pay an application fee as required by Section 3 of this administrative regulation.

(3) If an insurer, [or] private review agent, or other registered UR entity desires a renewal of registration to perform utilization review, an application for renewal of registration shall be submitted to the department at least ninety (90) days prior to expiration of the current registration.

Section 3. Fees.

(1) An application for registration shall be accompanied by a fee of \$1,000.

(2) A submission of changes to utilization review policies or procedures to the department shall be accompanied by a fee of fifty (50) dollars.

(3) A fee as established in subsection (1) or (2) of this section shall be made payable to the Kentucky State Treasurer.

Section 4. Application Process for Utilization Review.

(1) An applicant for registration shall complete and submit to the department an application, HIPMC-UR-1 and HIPMC-MD-1, and except as provided in subsection (3) of this section, documentation to support compliance with KRS 304.17A-600 through 304.17A-623, as applicable, including:

(a) A utilization review plan;

(b) The identification of criteria used for all services requiring utilization review;

(c) Types and qualifications of personnel, employed directly or under contract, performing utilization review in compliance with KRS 304.17A-607, including names, addresses, and telephone numbers of the medical director and contact persons for questions regarding the filing of the application;

(d) A toll-free telephone number to contact the insurer, limited health service benefit plan, [or] private review agent, or other registered UR entity as required by KRS 304.17A-607(1)(e) and 304.17A-609(3);

(e) A copy of the policies and procedures required by:

1. KRS 304.17A-163;

2. KRS 304.17A-1631;

3. [By] KRS 304.17A-167;

4. [2.] [By] KRS 304.17A-603;

5. [3.] [By] KRS 304.17A-607, and including the policies and procedures required by KRS 304.17A-607(1)(f) and (i); and

6. [4.] [By] KRS 304.17A-609(4);

(f) A copy of the policies and procedures by which:

1. A limited health service benefit plan provides a notice of review decision which complies with KRS 304.17A-607(1)(h) to (j) and includes:

a. Date of service or preservice request date;

b. Date of the review decision; [and]

c. Date and time the step therapy exception request was received;

d. Date and time the step therapy exception request was completed; and

e. Instructions for filing an internal appeal; or

2. An insurer, [or] private review agent, or other registered UR entity provides a notice of review decision, which complies with KRS 304.17A-607(1)(h) to (j) and 806 KAR 17:230, and includes:

a. Date of service or preservice request date;

b. Date of the review decision;

c. Date and time the step therapy exception request was received;

d. Date and time the step therapy exception request was completed; and

e. Instructions for filing an internal appeal, including information concerning:

(i) The availability of an expedited internal appeal and a concurrent expedited external review;

(ii) For an adverse determination, the right to request that the appeal be conducted by a board eligible or certified physician pursuant to KRS 304.17A-617(2)(c); and

(iii) The insurer's contact information for conducting appeals, which shall include an address and direct ten (10) digit [including a] telephone number, and which shall be bolded and more prominently displayed than the contact information of the department [and address]; and

d. Information relating to the availability of:

(i) A review of a coverage denial by the department following completion of the internal appeal process; or

(ii) A review of an adverse determination by an independent review entity following completion of the internal appeal process, in accordance with KRS 304.17A-623;

(g) If a part of the utilization review process is delegated, a description of the:

1. Delegated function;

2. Entity to whom the function was delegated, including name, address, and telephone number; and

3. Monitoring mechanism used by the insurer, [or] private review agent, or other registered UR entity to assure compliance of the delegated entity with paragraph (f) of this subsection;

(h) A sample copy of an electronic or written notice of review decision, which complies with paragraph (f) of this subsection;

(i) A copy of the policies and procedures by which a covered person, authorized person, or provider may request an appeal of an adverse determination, or coverage denial in accordance with KRS 304.17A-617, including:

1. The method by which an appeal may be initiated, including:

a. An oral request followed by a brief written request, or a written request for an expedited internal appeal;

b. A written request for a nonexpedited internal appeal; and

c. If applicable, the completion of a specific form, including a medical records release consent form with instructions for obtaining the required release form;

2. Time frames for:

a. Conducting a review of an initial decision; and

b. Issuing an internal appeal decision;

3. Procedures for coordination of expedited and nonexpedited appeals;

4. Qualifications of the person conducting internal appeal of the initial decision in accordance with KRS 304.17A-617(2)(c);

5. Information to be included in the internal appeal determination in accordance with KRS 304.17A-617(2)(e), including the:

a. Title and, if applicable, the license number, state of licensure, and certification of specialty or subspecialty of the person making the internal appeal determination;

b. Clear, detailed decision; and

c. Availability of an expedited external review of an adverse determination; and

6. A sample copy of the internal appeal determination in compliance with paragraph (i)5 of this subsection; and

(j) A copy of the policies and procedures, which:

1. Address and ensure the confidentiality of medical information in accordance with KRS 304.17A-609(5), 806 KAR 3:210, and 806 KAR 3:230;

2. Comply with the requirements of KRS 304.17A-615 if the insurer, [or] private review agent, or other registered UR entity fails to:

a. Provide a timely utilization review decision; or

b. Be accessible, as determined by verifiable documentation of a provider's attempts to contact the insurer, [or] private review agent, or other registered UR entity, including verification by:

(i) Electronic transmission records; or

(ii) Telephone company logs;

3. Comply with the requirements of KRS 304.17A-619, regarding the submission of new clinical information prior to the initiation of the external review process;

4. Address and ensure consistent application of review criteria for all services requiring utilization review; and

5. Comply with the requirements of KRS 304.17A-607(1)(k), as applicable.

(2) Upon review of an application for registration, [or] submitted changes to utilization review policies and procedures in accordance with KRS 304.17A-607(3), or submitted changes to internal appeals policies and procedures in accordance with KRS 304.17A-617(3), the department shall:

(a) Inform the applicant if supplemental information is needed;
(b) Identify and request that supplemental information be submitted to the department within thirty (30) days;

(c) If requested information is not provided to the department within the timeline established in paragraph (b) of this subsection:

1. Deny the application for registration or proposed changes to utilization review or internal review policies and procedures; and
2. Not refund the application or filing fee; and

(d) Approve or deny registration or proposed changes to utilization review or internal review policies and procedures.

(3) ~~[In order]~~ To be registered to perform utilization review in Kentucky, an applicant who[which] holds accreditation or certification in utilization review by a nationally recognized accreditation organization in accordance with KRS 304.17A-613(10) shall be required to submit with its completed application to the department:

(a)
1. Evidence of current accreditation or certification in utilization review, including an expiration date; and

2. Documentation to demonstrate compliance with the requirements of KRS 304.17A-613(10) and that the standards of the accreditation organization sufficiently meet the minimum requirements in subsection (1) of this section.

(b) If the national accreditation standard does not meet all the requirements as established in subsection (1) of this Section, then the applicant shall submit the additional information required under subsection (1) of this section.

Section 5. Denial or Revocation Hearing Procedure. Upon denial of an application for registration, or suspension or revocation of an existing registration, the department shall:

(1) Give written notice of its action; and
(2) Advise the applicant or registration holder that if dissatisfied, a hearing may be requested and filed in accordance with KRS 304.2-310.

Section 6. Complaints Relating to Utilization Review.

(1) A written complaint regarding utilization review shall be reviewed by the department in accordance with KRS 304.17A-613(8).

(2) Upon receiving a copy of the complaint, an insurer, ~~[or]~~ private review agent, or other registered UR entity shall provide a response in accordance with KRS 304.17A-613(8)(a), including:

(a) Any information relating to the complaint;
(b) All correspondence or communication related to the denial between any of the parties, including the insurer, the member, provider, and private review agent; and
(c) Corrective actions to address the complaint, if applicable, including a timeframe for each action.

(3) Within thirty (30) days of implementation of a corrective action, as identified in subsection (2) of this section, an insurer, ~~[or]~~ private review agent, or other registered UR entity shall notify the department in writing of the implementation of the corrective action.

(4) If an insurer, ~~[or]~~ private review agent, or other registered UR entity fails to comply with this section, the department may impose a penalty in accordance with KRS 304.2-140.

(5) The number, recurrence, and type of complaints, as identified in subsection (1) of this section, shall be considered by the department in reviewing an application for registration pursuant to KRS 304.17A-613(9).

Section 7. Internal Appeals for a Health Benefit Plan. In addition to the requirements of KRS 304.17A-617, and as part of an internal appeals process, an insurer, ~~[or]~~ private review agent, or other registered UR entity shall:

(1) Allow a covered person, authorized person, or provider acting on behalf of a covered person to request an internal appeal at least sixty (60) days following receipt of a denial letter;

(2) Provide written notification of an internal appeal determination decision as required by KRS 304.17A-617(2)(a), (b), and (e), which shall include the:

(a) Title and, if applicable, the license number, state of licensure and specialty or subspecialty certifications of the person performing the review;

(b) Elements required in a letter of denial in accordance with 806 KAR 17:230, Sections 4 and 5, if applicable;

(c) Position and telephone number of a contact person who may provide information relating to the internal appeal;

(d) Date of service or preservice request date; and

(e) Date of the internal appeal decision;

(3) Maintain written records of an internal appeal, including the:

(a) Reason for the internal appeal;

(b) Date that the internal appeal was received by the insurer, ~~[or]~~ private review agent, or other registered UR entity, including the date any necessary or required authorizations were received;

(c) Date of the internal appeal decision;

(d) Internal appeal decision; and

(e) Information required by Section 4(1)(i)5 of this administrative regulation; and

(4) Retain a record of an internal appeal decision for five (5) subsequent years in accordance with 806 KAR 2:070.

Section 8. Internal Appeals for a Limited Health Service Benefit Plan.

(1) An insurer offering a limited health service benefit plan shall have an internal appeals process which shall:

(a) Be disclosed to an enrollee in accordance with KRS 304.17C-030(2)(g); and

(b) Include provisions, which:

1. Allow an enrollee, authorized person, or provider acting on behalf of the enrollee to request an internal appeal within at least sixty (60) days of receipt of a notice of adverse determination or coverage denial or if applicable, a step therapy exception denial; and

2. Require the limited health service benefit plan to provide a written internal appeal determination within thirty (30) days following receipt of a request for an internal appeal.

(2) A notice of adverse determination or coverage denial or if applicable, a step therapy exception denial shall include a disclosure of the availability of the internal appeals process.

Section 9. Internal Appeals for a Step Therapy Exception Denial. In addition to the requirements of KRS 304.17A-617, and as part of the internal appeals process for a step therapy exception denial, an insurer, private review agent, or pharmacy benefit manager shall:

(1) Allow a covered person or provider acting on behalf of a covered person to request an internal appeal of a step therapy exception denial;

(2) Require the insurer, private review agent, or pharmacy benefit manager to provide a written internal appeal determination within forty-eight (48) hours following receipt of a request for an internal appeal of a step therapy exception denial;

(3) Provide written notification of an internal appeal determination decision as required by KRS 304.17A-617(2)(a), (b), and (e) and KRS 304.17A-163(4)(a), which shall include the:

(a) Title and, if applicable, the license number, state of licensure and specialty or subspecialty certifications of the person performing the review;

(b) Elements required in a letter of denial in accordance with 806 KAR 17:230, Sections 4 and 5, if applicable;

(c) Position and telephone number of a contact person who may provide information relating to the internal appeal;

(d) Date of service or preservice request date; ~~[and]~~

(e) Date and time the step therapy exception internal appeal was received;

(f) Date and time of the step therapy exception internal appeal decision;

(g) Maintain written records of a **step therapy exception [an]** internal appeal, including the:

1. Reason for the **step therapy exception** internal appeal;
 2. Date that the **step therapy exception** internal appeal was received by the insurer, ~~or~~ private review agent, or other registered UR entity, including the date any necessary or required authorizations were received;
 3. [The] Clinical review criteria used to make the step therapy exception appeal determination;
 4. Date and time of the **step therapy exception** internal appeal decision;
 5. **Step therapy exception** internal appeal decision; and
 6. Information required by Section 4(1)(i)5. of this administrative regulation; and
- (4) Retain a record of a **step therapy exception [an]** internal appeal decision for five (5) years from the date of decision in accordance with 806 KAR 2:070.

Section 10.[Section-9:] Reporting Requirements. By March 31 of each calendar year, an insurer, ~~or~~ private review agent, or other registered UR entity shall complete and submit to the department a HIPMC-UR-2, and a HIPMC-STE-1[.] for the previous calendar year.

Section 11.[Section-10:] Maintenance of Records. An insurer, ~~or~~ private review agent, or other registered UR entity shall maintain documentation to assure compliance with KRS 304.17A-163, 304.17A-1631, 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147, 304.32-330, 304.38-225, and 304.47-050, including:

- (1) Proof of the volume of reviews conducted per the number of review staff broken down by staff answering the phone;
- (2) Information relating to the availability of physician consultation;
- (3) Information which supports that based on call volume, the insurer, ~~or~~ private review agent, or other registered UR entity has sufficient staff to return calls in a timely manner;
- (4) Proof of the volume of phone calls received on the toll-free phone number per the number of phone lines;
- (5) Telephone call abandonment rate; and
- (6) Proof of the response time of insurer, ~~or~~ private review agent, or other registered UR entity for returned phone calls to a provider if a message is taken.

Section 12.[Section-11:] Cessation of Operations to Perform Utilization Review.

(1) Upon a decision to cease utilization review operations in Kentucky, an insurer, ~~or~~ private review agent, or other registered UR entity shall submit the following to the department thirty (30) days or as soon as practicable prior to ceasing operations:

- (a) Written notification of the cessation of operations, including the proposed date of cessation and the number of pending utilization review decisions with projected completion dates; and
 - (b) A written action plan for cessation of operations, which shall be subject to approval by the department prior to implementation.
- (2) Annual reports required pursuant to Section 9 of this administrative regulation shall be submitted to the department within thirty (30) calendar days of ceasing operations.

Section 13.[Section-12:] Incorporated by Reference.

- (1) The following material is incorporated by reference:
 - (a) Form HIPMC-UR-1, "Utilization Review Registration Application", 01/2023[10/2022][09/2020] edition;
 - (b) Form HIPMC-UR-2, "Annual Utilization Review (UR) Report Form", 09/2020 edition; ~~and~~
 - (c) Form HIPMC-MD-1, "Medical Director Report Form", 09/2020 edition; and
 - (d) Form HIPMC-STE-1, "Step Therapy Annual Report", 01/2023[10/2022] edition.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street,

Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm. This material is also available on the department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

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PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life and Managed Care Division
(As Amended at ARRS, February 14, 2023)

806 KAR 17:290. Independent External Review Program.

RELATES TO: KRS 304.1-050, 304.2-100, 304.2-230, 304.2-310, 304.17A-005, 304.17A-505, 304.17A-600, 304.17A-617, 304.17A-621-304.17A-631, 304.17A-1631, 304.17A-168, 304.17A-535, 304.17A-607

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-629, 304.17A-163

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-629 requires the department to promulgate administrative regulations regarding the Independent External Review Program, and KRS 304.17A-1631 requires the commissioner to promulgate administrative regulations regarding step therapy protocols and exceptions. This administrative regulation establishes the insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions and step therapy exception request or step therapy internal appeal denials. This administrative regulation also establishes the disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.

Section 1. Definitions.

- (1) "Adverse determination" is defined by KRS 304.17A-600(1).
- (2) "Assign" or "assignment" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.
- (3) "Authorized person" is defined by KRS 304.17A-600(2).
- (4) "Commissioner" is defined by KRS 304.1-050(1).
- (5) "Coverage denial" is defined by KRS 304.17A-617(1).
- (6) "Covered person" is defined by KRS 304.17A-600(4).
- (7) "Department" is defined by KRS 304.1-050(2).
- (8) "External review" is defined by KRS 304.17A-600(5).
- (9) "Financial hardship" means the:
 - (a) Gross income of the covered person is below 200 percent of the federal poverty level based upon family size as shown by a federal income tax return for the previous year; or
 - (b) Covered person's participation in one (1) of the following programs:
 1. National Prescription Drug Patient Assistance;
 2. Kentucky Transitional Assistance Program (K-TAP);
 3. Kentucky Medical Assistance Program; or
 4. Unemployment Insurance.
- (10) "Health Care Provider" or "Provider" is defined by KRS 304.17A-005(23).
- (11) "Independent review entity" is defined by KRS 304.17A-600(7).
- (12) "Insurer" is defined by KRS 304.17A-600(8).
- (13) "Reviewer" means an individual selected by the independent review entity to conduct an external review and make a recommended decision to the independent review entity.
- (14) "Step therapy exception" is defined by KRS 304.17A-163(1)(f).
- (15) "Step therapy protocol" is defined by KRS 304.17A-

163(1)(g).

Section 2. Requirements of an Insurer.

(1) An insurer shall:

(a) Disclose to a covered person in a clear, concise, written format the following information concerning an external review:

1. At enrollment, the right to an external review in accordance with KRS 304.17A-505(1)(g);

2. The availability of an external review, including expedited external review, in the insurer's notice of an adverse determination in accordance with KRS 304.17A-623(1);

3. Instructions for initiating an external review in the internal appeal decision letter upholding an adverse determination, including:

a. Whether the appeal shall be in writing;

b. How to request and complete any necessary forms, including a medical records release form or written authorization of representation;

c. Applicable time frames;

d. The position and telephone number of a contact person who can provide additional information about an external review; and

e. Additional documentation that may be necessary to initiate the external review; and

4. The right of a covered person to request an external review within sixty (60) days of receiving notice that, pursuant to KRS 304.17A-617(3)(d), the insurer has elected to afford an opportunity for external review;

(b) Allow a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, to submit an oral request, followed by a brief written request, for an expedited external review;

(c) Provide the following information relating to an external review in the policy or certificate of coverage issued to a covered person and upon request:

1. The circumstances under which the following types of external review shall be provided:

a. Nonexpedited external review in accordance with KRS 304.17A-623(3), (4) and (6), and (13); and

b. Expedited external review in accordance with KRS 304.17A-623(10), (11) and (12);

2. The filing fee for requesting an external review in accordance with KRS 304.17A-623(5);

3. Notice that the cost of an external review by an independent review entity shall be paid by the insurer in accordance with KRS 304.17A-625(5);

4. The procedure for submitting:

a. An oral request followed up by a brief written request, or a written request for an expedited external review;

b. A written request for a nonexpedited external review; and

c. Any specific forms required by the insurer to initiate an external review, including a written authorization of personal representation or a consent to release medical records form;

5. The time frame for:

a. Submitting a request for external review in accordance with KRS 304.17A-623(4);

b. Rendering a decision by an independent review entity in accordance with KRS 304.17A-623(12) and (13); and

c. Implementation of a decision of the independent review entity in accordance with KRS 304.17A-625(11) through (13);

6. A statement relating to the confidential treatment of medical records and information relating to the external review; and

7. A statement of the availability of a complaint process through the department relating to:

a. A covered person's right to an external review in accordance with KRS 304.17A-623(8); and

b. The action of an independent review entity in accordance with KRS 304.17A-625(16);

(d) If an external review is requested by an authorized person or provider acting on behalf of a covered person, obtain the:

1. Written authorization of representation; and

2. Consent to release medical records to the independent review entity;

(e) Determine if an external review is warranted in accordance

with KRS 304.17A-623(3) and (10), and notify the person who requested the external review of its determination within the following time periods:

1. For expedited reviews, within twenty-four (24) hours of receipt of the request, pursuant to KRS 304.17A-623(11); or

2. For nonexpedited reviews, within five (5) business days of receipt of the request;

(f) Upon a determination that an expedited external review is warranted:

1. By telephone, request acceptance of assignment of the external review by an independent review entity, which was selected pursuant to KRS 304.17A-623(7) from a list of certified independent review entities maintained by the department at <http://insurance.ky.gov>; and

2. Notify the independent review entity by telephone that the following documents shall be forwarded to the independent review entity in accordance with KRS 304.17A-623(11):

a. The written consent of the covered person authorizing release of medical records as required by KRS 304.17A-623(4);

b. Information to be considered as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Face Sheet, HIPMC-IRE-6;

(g) Upon a determination that a nonexpedited external review is warranted:

1. By telephone, request acceptance of assignment of the external review by an independent review entity which was selected pursuant to KRS 304.17A-623(7) from the list of certified independent review entities as identified in paragraph (f)1 of this subsection; and

2. Within three (3) business days of assignment, deliver to the independent review entity the documentation as identified in paragraph (f)2 of this subsection;

(h) Upon assignment of an external review, complete and send to the department an Assignment of Independent Review Entity Form, HIPMC-IRE-2, within one (1) business day via email to DOI.UtilizationReview@ky.gov;

(i) Upon receipt of a decision relating to external review from an independent review entity, implement the decision in accordance with KRS 304.17A-625(11) through (13) and provide the department with a reprocessed explanation of benefits or other payment documentation showing the implementation of the overturned decision;

(j) Upon receipt of an invoice relating to an external review, pay the independent review entity within thirty (30) days;

(k) Maintain a written record of each external review for a period of not less than five (5) years pursuant to 806 KAR 2:070, Section 1; and

(l) Upon written notice of termination of an independent review entity pursuant to Section 3(21)(a) or (c) of this administrative regulation, reassign an external review in accordance with paragraphs (f) and (g) of this subsection.

(2)(a) If a request for external review is denied by an insurer, written notification shall be provided by the insurer to the person requesting the external review, which shall include:

1. The date the request for external review was received by the insurer;

2. A statement relating to the nature of the request;

3. The rationale of the insurer for denying the request;

4. A statement relating to the availability of review by the department if a dispute arises regarding the right to external review;

5. The toll-free telephone number of the department; and

6. The name and telephone number of a contact person who shall provide information relating to the denial of the request.

(b) If requested by the department, the insurer shall provide:

1. A copy of the written notification described in paragraph (a) of this subsection; and

2. Information or documentation that the insurer relied upon to deny the request for external review.

Section 3. Requirements of an Independent Review Entity. An independent review entity shall:

(1) Accept a request for assignment unless:

- (a) A conflict of interest exists;
- (b) Confidentiality issues exist; or
- (c) Due to circumstances beyond the control of the independent review entity, an appropriate reviewer becomes unavailable;

(2) Upon receipt of a request for assignment from an insurer determine if a condition of subsection (1)(a) through (c) of this section exists;

(3) Within twenty-four (24) hours of receipt of a request for assignment:

- (a) Immediately provide verbal notification, followed by written notification to the insurer and department of the rejection of an assignment if a condition of subsection (1)(a) through (c) of this section exists; or
- (b) Provide written notification to an insurer and the department via DOI.UtilizationReview@ky.gov of the acceptance of an assignment; and
- (4) Maintain a written record of:
 - (a) Whether the external review relates to an adverse determination or coverage denial, a step therapy exception denial, or step therapy internal appeal denial which requires resolution of a medical issue;
 - (b) The specific question or issue, as identified by the independent review entity, to be resolved by the external review; and
 - (c) Whether the external review is expedited or nonexpedited;
- (5) For each external review, obtain and maintain a signed statement of a reviewer that the reviewer has no conflict of interest;
- (6) Not limit the basis of an external review decision to the standards, criteria, and clinical rationale used by the insurer to make its decision pursuant to KRS 304.17A-625(1), (2), and (7);
- (7) Have a reviewer with expertise in:
 - (a) Health insurance benefits and contracts, who shall serve as a reviewer with a healthcare professional reviewer, in an external review of a coverage denial, step therapy exception request denial, or step therapy internal appeal denial which requires the resolution of a medical issue in accordance with KRS 304.17A-617(3)(d); and
 - (b) Health care, who shall:
 1. Conduct an external review of a step therapy exception request denial, step therapy internal appeal denial, or an adverse determination or coverage denial which requires resolution of a medical issue in accordance with the requirements of KRS 304.17A-623~~and an adverse determination which requires resolution of a medical issue~~; and
 2. Meet the following requirements:
 - a. Hold active licensure in a state of the United States;
 - b. Have recent experience or familiarity with current body of knowledge and applicable specialty or subspecialty practice;
 - c. Have at least five (5) years of experience in the specialty or subspecialty of the external review; and
 - d. Hold current board certification by:
 - (i) The American Board of Medical Specialties if the reviewer is a medical doctor;
 - (ii) The American Osteopathic Association if the reviewer is a doctor of osteopathic medicine;
 - (iii) The American Board of Podiatric Surgery if the reviewer is a doctor of podiatric medicine; or
 - (iv) Other recognized health professional board pursuant to KRS 304.17A-627;
 - (8) Establish criteria in accordance with KRS 304.17A-627 for:
 - (a) Selection of a qualified reviewer, including the initial verification and reverification every three (3) years of credentials of the reviewer;
 - (b) Ensuring that an appropriate:
 1. Reviewer performs the external review; and
 2. Number of reviewers are used for the external review; and
 - (c) Ensuring that at least one (1) reviewer qualified in each medical specialty and subspecialty is available for external review;
 - (d) Provide a listing of the reviewers to the department including each reviewer's name, date of licensure, license number and specialty, including any subspecialty in accordance with KRS 304.17A-627(5) and (6);

(9) Have a medical director or clinical director with professional postresidency experience in direct patient care who shall:

- (a) Hold a current license to practice medicine in a state of the United States;
- (b) Provide guidance for the medical aspects of the external review process; and
- (c) Oversee the medical aspects of the:
 1. Quality management program; and
 2. Reviewer credentialing program;
- (10) Establish and implement criteria for determination of the need for a time extension pursuant to KRS 304.17A-623(12) and (13);
- (11) Provide written notification of a decision as required by KRS 304.17A-625(6), which shall include the:
 - (a) Title, professional license number, state of licensure and specialty or subspecialty certifications, if any, of the reviewer;
 - (b) Date the decision was rendered; and
 - (c) A statement that:
 1. The decision shall be final and binding on the insurer; and
 2. If dissatisfied with the decision, a comment, question, or complaint may be submitted in writing to the department;
- (12) Within two (2) business days of rendering a decision, provide written notification of the decision to the:
 - (a) Covered person or authorized person, treating provider, and insurer; and
 - (b) Department via email at DOI.UtilizationReview@ky.gov by:
 1. Copying the department on the written notification to the covered person; and
 2. Completing an External Review Decision Notification Form, HIPMC-IRE-3;
- (13) Establish written policies and procedures for maintenance and the confidential treatment of external review records in accordance with KRS 304.17A-623(9), 806 KAR 3:210, and 806 KAR 3:230;
- (14) Maintain a written record of an external review for a minimum of five (5) years in accordance with 806 KAR 2:070, which shall include, as applicable:
 - (a) All documentation relating to the external review pursuant to KRS 304.17A 625(1)(a);
 - (b) The independent review entity's decision regarding each issue identified in the external review request;
 - (c) The name, credentials, and specialty or subspecialty of the reviewer;
 - (d) Medical records and information considered during the review;
 - (e) References to any medical literature, research data, or national clinical criteria upon which the independent review entity's decision was based;
 - (f) A copy of the covered person's health benefit plan;
 - (g) A copy of the adverse determination or coverage denial, the step therapy exception request denial, or the step therapy internal appeal denial which requires resolution of a medical issue, and the internal appeal decision; and
 - (h) A copy of all correspondence and communication between the independent review entity, reviewer, and any other person regarding the external review, including a copy of the final external review decision letter;
- (15) Provide toll-free telephone access that:
 - (a) Operates at a minimum from 9 a.m. until 5 p.m. of each business day in each time zone if the services under review are in dispute; and
 - (b) Allows for:
 1. Receiving after-hours requests for external review; and
 2. Acting upon expedited external review requests in accordance with KRS 304.17A-623(12);
- (16) If an external review function, or any portion of this function, is delegated or subcontracted to another person or organization, submit to the department:
 - (a) Policies and procedures relating to oversight activities to ensure compliance with requirements of an independent review entity as established in KRS 304.17A-623 and 304.17A-625, and this section; and
 - (b) A copy of the delegation or subcontract agreement;

(17) Establish and maintain a written quality assurance program in accordance KRS 304.17A-627, which shall be made available to the public upon request and shall include a written plan, which addresses:

- (a) Scope and objectives;
- (b) Program organization;
- (c) Monitoring and oversight mechanisms; and
- (d) Evaluation and organizational improvement of external review activities, including:

1. Objectives and approaches used in the monitoring and evaluation of external review activities, including the systematic evaluation of complaints for patterns and trends;

2. The implementation of an action plan to improve or correct an identified problem; and

3. The procedures to communicate the results of an action plan to its employees and reviewers, as applicable;

(18) Submit a copy of any change to information provided on the Application for Certification of an Independent Review Entity, HIPMC-IRE-1, in writing to the department for approval. A change shall not become effective until approved by the commissioner;

(19) Submit a new application for certification if requested by the department following notification of a material change in the application information as required by KRS 304.17A-627(2);

(20) Establish a fee structure, to be available upon request, for each type or level of external review, including at a minimum, a fee for:

- (a) A completed external review of:

1. A coverage denial, step therapy exception request denial, or step therapy internal appeal denial which requires resolution of a medical issue; and

- 2. An adverse determination; and

- (b) An incomplete external review;

(21) Immediately terminate an external review and provide notice by telephone, followed by a written notification to the department and, if appropriate, the insurer requesting the external review if:

(a) A conflict of interest or confidentiality issue is discovered at any time during the external review process;

(b) A reversal of a coverage denial, step therapy exception request denial, step therapy internal appeal denial, or adverse determination is received in writing from the insurer; or

(c) The independent review entity or a reviewer becomes unavailable for reasons beyond the control of the independent review entity, including acts of God, natural disasters, epidemics, strikes or other labor disruptions, war, civil disturbances, riots, or complete or partial disruptions of facilities;

(22) If more than one (1) reviewer is utilized in making a decision:

(a) Render an overall decision based upon the majority decision of the reviewers; or

(b) If the reviewers are evenly split as to whether the recommended or requested health care service or treatment shall be covered, request an additional reviewer to make a binding majority decision;

(23) Implement a written policy and procedure for each aspect of an external review process, including:

(a) Processing of the request for assignment of an external review from an insurer;

(b) Receipt and maintenance of medical records and information from insurer;

(c) Ensuring access to appropriate qualified reviewers pursuant to subsection (8) of this section;

(d) Ensuring the credentialing, selection, and notification of a reviewer who performs an external review;

(e) Rendering a timely decision and issuing notification of the decision;

(f) Ongoing monitoring and evaluation of the performance of a reviewer;

(g) Monitoring and oversight of a delegated external review function, if any;

- (h) Billing and collection of fees for external review, including:

- 1. Filing fee of the covered person; and
- 2. Cost of external review for the insurer;

(i) Collecting and reporting data;

(j) Termination of external review; and

(k) Response to a request for information relating to a complaint filed with the department; and

(24)

(a) Conduct annually, a program for training reviewers, which:

1. Provides information relating to the requirements of the Kentucky Independent External Review Program; and

2. Describes the policies and procedures of the independent review entity, as applicable; and

(b) Provide a written record of the training to the department, upon request.

Section 4. Application Process for Certification to Perform External Reviews.

(1) To perform an external review, an independent review entity shall be certified in accordance with requirements established in KRS 304.17A-627, and this administrative regulation.

(2) To be certified to perform an external review, an independent review entity shall:

(a) Complete and submit to the department, an Application for Certification of an Independent Review Entity, HIPMC-IRE-1;

(b) Submit a fee with the application for certification as required by Section 5 of this administrative regulation; and

(c) Enclose with the application for certification, written documentation which supports compliance with the requirements of an independent review entity established in KRS 304.17A-627 and Section 3 of this administrative regulation.

(3) In renewing a certification, an independent review entity shall submit an application for certification to the department at least ninety (90) days prior to expiration of the current certification.

Section 5. Fees.

(1) Department fees.

(a) An application for certification as an independent review entity shall be submitted with \$500.

(b) Pursuant to KRS 304.17A-627(2), a change in application information after certification shall be submitted with fifty (50) dollars.

(c) Fees submitted to the department shall be made payable to the Kentucky State Treasurer.

(2) Independent review entity fees.

(a) 1. Except for a fee which meets the criteria established in HIPMC-IRE-5, Approval of an External Review Fee in Excess of \$800, the total fee charged for an external review shall not exceed \$800; and

2. The fee proposed by the independent review entity in excess of \$800 shall be submitted to the department for approval prior to billing the insurer with the justification defined in HIPMC-IRE-5, Approval of an External Review Fee in Excess of \$800.

(b) The twenty-five (25) dollar filing fee to be paid by the covered person shall:

1. Be billed by the independent review entity upon assignment; or

2. Be waived if it creates a financial hardship pursuant to KRS 304.17A-623(5).

Section 6. Department Review of Application for Certification or Change in Information Provided on the Application.

(1) Upon review of an application for certification or a change in information provided on the application, the department shall:

(a) Notify the applicant of any missing or necessary information;

(b) Identify and request submission of the information identified in paragraph (a) of this subsection within thirty (30) days;

(c) If requested information is not provided to the department within the time frame established in paragraph (b) of this subsection:

1. Disapprove the application for certification or the change of information provided on the application; and

2. Not refund the applicable fee submitted in accordance with Section 5(1) of this administrative regulation; and

(d) Approve or deny certification or a change to information provided on the application of an independent review entity within ninety (90) days of submission.

(2) An independent review entity certification shall expire on the second anniversary of the certification date unless the certification is renewed by the independent review entity, which submits a new application for certification in accordance with Section 4(2) of this administrative regulation.

Section 7. Denial, Decertification, or Suspension Hearing Procedure. Upon the denial of certification, decertification, or suspension of a certification, the department shall:

(1) Give written notice of its action; and

(2) Advise the applicant or certificate holder that a request for a hearing may be filed in accordance with KRS 304.2-310.

Section 8. Independent Review Entity Complaint Process.

(1) A copy of the complaint filed pursuant to KRS 304.17A-625(16) and a letter from the department requesting a written response to the complaint shall be sent to the independent review entity.

(2) Within ten (10) business days of receipt of the letter from the department, the independent review entity shall submit a written response to the department, including the following:

(a) Information relating to the complaint;

(b) If applicable, corrective actions to address the complaint, including time frames for actions; and

(c) A mechanism to evaluate the corrective action, if applicable.

(3) Upon receipt of the written response of the independent review entity, the department shall:

(a) If applicable, take action pursuant to KRS 304.17A-625(16); and

(b) Notify the complainant of the department's findings and action taken, if any.

Section 9. Department Investigations. The commissioner may conduct an investigation of an independent review entity pursuant to KRS 304.2-100 and 304.2-230.

Section 10. Reporting Requirements. An independent review entity shall complete and submit to the department by March 31 of each year for the previous calendar year, the Annual Independent Review Entity Report Form, HIPMC-IRE-4.

Section 11. Cessation of Participation. Upon a decision to terminate participation in the independent external review program as established in KRS 304.17A-621, an independent review entity shall:

(1) Immediately notify the department in writing of its decision to cease accepting new assignments; and

(2) Except for reasons beyond its control, submit the following to the department for approval at least thirty (30) days prior to termination:

(a) Written notification of the termination, including:

1. Date of termination; and

2. Number of pending external reviews with corresponding assignment dates; and

(b) A written action plan for terminating participation.

Section 12. Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) Form HIPMC-IRE-1, "Application for Certification of an Independent Review Entity", 01/2023[10/2022] edition[09/2020 edition];

(b) Form HIPMC-IRE-2, "Assignment of Independent Review Entity Form", 10/2022 edition[09/2020 edition];

(c) Form HIPMC-IRE-3, "External Review Decision Notification Form", 09/2020 edition;

(d) Form HIPMC-IRE-4, "Annual Independent Review Entity Report Form", 10/2022 edition[09/2020 edition];

(e) Form HIPMC-IRE-5, "Approval of an External Review Fee in Excess of \$800", 09/2020 edition; and

(f) Form HIPMC-IRE-6, "External Review Information Face Sheet", 10/2022 edition[09/2020 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

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**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(As Amended at ARRS, February 14, 2023)**

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:~~

~~(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:

~~(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.
- (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>].

Section 21. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on February 14, 2023.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(As Amended at ARRS, February 14, 2023)**

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, 1457.310, 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.

Section 10. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on February 14, 2023.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(As Amended at ARRS, February 14, 2023)**

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[Service] 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>].

Section 15. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on February 14, 2023.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, February 14, 2023)**

907 KAR 1:680. Vaccines for Children Program.

RELATES TO: KRS 205.520, 42 U.S.C. 1396s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a, b, d, s[~~2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~]The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to vaccines provided through the Vaccines for Children Program.

Section 1. Definitions. (1) "Immunization" means an inoculation against a vaccine preventable disease.

(2) "Program registered provider" means a health care provider that is:

(a) Licensed or otherwise authorized for administration of pediatric vaccines; and

(b) Enrolled in the Vaccines for Children Program.

(3) "Recipient" means a person age eighteen (18) or under who has been determined eligible to receive benefits under the Medicaid program or Kentucky Children's Health Insurance Program (KCHIP)[state's Title XIX or Title XXI program] in accordance with Title 907 KAR[Chapters 4 through 4].

(4) "Vaccines for Children Program" means the program for distribution of pediatric vaccines administered by the Department for Public Health and described in 42 U.S.C. 1396s.

Section 2. Obtaining Vaccines. (1) A program registered provider may[shall] obtain a vaccine for the administration of a childhood immunization to an eligible recipient from the Vaccines for Children Program.

(2) ~~[The Medicaid Program shall not make payment to a provider for the cost of a vaccine available through the Vaccines for Children Program.]~~

(3) A fee for administering a vaccine obtained through the Vaccines for Children Program may be paid by the department through the appropriate provider program.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(As Amended at ARRS, February 14, 2023)

907 KAR 20:050. Presumptive eligibility.

RELATES TO: KRS 205.520(3), 205.5375[205.5375(7)], 205.592, 45 C.F.R. 164, 42 U.S.C. 1396a(a)(47), r-1, 42 U.S.C. 9902

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 205.5375(7)

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 secretary to promulgate administrative regulations necessary to qualify for federal funds by compliance with any requirement that may be imposed or opportunity that may be presented by federal law. KRS 205.5375(7) requires the department to promulgate administrative regulations in accordance with KRS Chapter 13A that are necessary to administer this statute, including a thorough presumptive eligibility application form to be used by qualified hospitals when making presumptive eligibility determinations using information provided and attested to by an individual.[KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. KRS 205.592 establishes Medicaid eligibility requirements for pregnant women and children up to age one (1).] This administrative regulation establishes requirements for the determination of presumptive eligibility and the provision of services to individuals deemed presumptively eligible for Medicaid-covered services.

Section 1. Providers Eligible to Grant Presumptive Eligibility.

(1) A determination of presumptive eligibility regarding:

(a) A pregnant woman shall be made by a qualified provider who is:

1. A family or general practitioner;
2. A pediatrician;
3. An internist;
4. An obstetrician or gynecologist;
5. A physician assistant;
6. A certified nurse midwife;
7. An advanced practice registered nurse;
8. A federally-qualified health care center;

9. A primary care center;
10. A rural health clinic; or
11. A local health department; or

(b) An individual whose income standard for Medicaid eligibility purposes is a modified adjusted gross income shall be made by an inpatient hospital participating in the Medicaid Program.

(2) An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be an individual identified in 907 KAR 20:100 as having a modified adjusted gross income as the Medicaid income eligibility standard.

Section 2. Provider Responsibilities. (1) A qualified provider who determines that an individual is presumptively eligible for Medicaid based on criteria established in Section 3 of this administrative regulation shall:

(a) Complete the paper or electronic application approved by the department pursuant to Section 8 of this administrative regulation;

(b) Enter the data into the department's Integrated Eligibility and Enrollment System (IEES) self-service portal for a real-time eligibility determination;

(c) ~~1. [Notify the department and obtain an authorization number;~~

(d) ~~Inform the individual at the time the determination is made that the individual is required to make an application for Medicaid benefits through the individual's local DCBS office or via the IEES self-service portal; and~~

2. Inform the individual of any other requirements pursuant to KRS 205.5375(2)(b);

(d) ~~(e)~~ Inform the individual of the location of the individual's local DCBS office;

(e) ~~(f)~~ Issue presumptive eligibility identification to the presumed eligible individual; ~~and~~

(f) ~~(g)~~ Maintain a record of the presumptive eligibility screening for each applicant for at least five (5) years; and

(g) Complete and securely submit the form described in Section 8(3) of this administrative regulation to the department or the department's designee.

(2) If an individual is determined not to be presumptively eligible, the qualified provider shall inform the individual of the following in writing:

- (a) The reason for the determination;
- (b) That the individual may file an application for Medicaid if the individual wishes to have a formal determination made; and
- (c) The location of the individual's local DCBS office.

(3) A qualified provider shall, as appropriate, assist the patient with a full Medicaid application pursuant to KRS 205.5375(2)(e).

Section 3. Eligibility Criteria. Presumptive eligibility shall be granted to:

- (1) A woman if she:
 - (a) Is pregnant;
 - (b) Is a Kentucky resident;
 - (c) Does not have income exceeding 218[195] percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2) and as consistent with 907 KAR 4:030;
 - (d) Does not currently have a pending Medicaid application on file with the DCBS;
 - (e) Is not currently enrolled in Medicaid;
 - (f) Has not been previously granted presumptive eligibility for the current pregnancy; and
 - (g) Is not an inmate of a public institution, except as established in 907 KAR 20:005, Section 7(2); or
- (2) An individual whose Medicaid income eligibility standard is a modified adjusted gross income if the individual:
 - (a) Is a Kentucky resident;
 - (b) Does not have income exceeding:
 1. 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2); or
 2. 218[150] percent of the federal poverty level established annually by the United States Department of Health and Human

Services pursuant to 42 U.S.C. 9902(2), if the individual is a targeted low-income child, as consistent with 907 KAR 4:020;

(c) Does not currently have a pending Medicaid application on file with the DCBS;

(d) Is not currently enrolled in Medicaid; and

(e) Is not an inmate of a public institution except as established in 907 KAR 20:005, Section 7(2).

Section 4. Presumptive Eligibility Period. (1) Presumptive eligibility for an individual shall begin on the date on which a qualified provider[:

(a)] determines that the individual is presumptively eligible based on the criteria specified in Section 3 of this administrative regulation[if the qualified provider obtains an authorization number from the department on:

1. That day; or

2. If the department is closed, the next business day the department is open; or

(b) Obtains an authorization number from the department if it is not the day specified in paragraph (a) of this subsection].

(2) The presumptive eligibility period shall end on:

(a) The day preceding the date the presumptively-eligible individual is granted full eligibility in the Medicaid Program by the DCBS; or

(b) The last day of the month following the month in which a qualified provider made the presumptive eligibility determination if the presumed eligible individual:

1. Does not apply for the full Medicaid benefit package; or

2. Applies for and is found ineligible for the full Medicaid benefit package.

(3) To illustrate the presumptive eligibility period, if an individual became presumptively eligible on July 7, 2014, the individual shall remain presumptively eligible through August 31, 2014.

(4) For a woman who gains presumptive eligibility by being pregnant, only one (1) presumptive eligibility period shall be granted for each episode of pregnancy.

Section 5. Covered Services. (1)(a) Payment for a covered service provided to a presumptively-eligible individual shall be in accordance with the current Medicaid reimbursement policy for the service unless the service is provided to an individual who is enrolled with a managed care organization.

(b) A managed care organization:

1. Shall not be required to reimburse in the same manner or amount as the department reimburses for a Medicaid-covered service provided to a presumptively eligible individual; or

2. May elect to reimburse in the same manner or amount as the department reimburses for a Medicaid-covered service provided to a presumptively eligible individual.

(2) Covered services for a presumptively-eligible:

(a) Pregnant woman shall be limited to ambulatory prenatal care services delivered in an outpatient setting and shall include:

1. Services furnished by a primary care provider, including:

a. A family or general practitioner;

b. A pediatrician;

c. An internist;

d. An obstetrician or gynecologist;

e. A physician assistant;

f. A certified nurse midwife; or

g. An advanced practice registered nurse;

2. Laboratory services provided in accordance with 907 KAR 10:014 and 907 KAR 1:028;

3. Radiological services provided in accordance with 907 KAR 10:014 and 907 KAR 1:028;

4. Dental services provided in accordance with 907 KAR 1:026;

5. Emergency room services provided in accordance with 907 KAR 10:014;

6. Emergency and nonemergency transportation provided in accordance with 907 KAR 1:060;

7. Pharmacy services provided in accordance with 907 KAR 23:010;

8. Services delivered by rural health clinics provided in

accordance with 907 KAR 1:082;

9. Services delivered by primary care centers, federally-qualified health centers, and federally-qualified health center look-alikes provided in accordance with 907 KAR 1:054; or

10. Primary care services delivered by local health departments provided in accordance with 907 KAR 1:360; or

(b) Individual who is not a pregnant woman shall include:

1. Services furnished by a primary care provider, including:

a. A family or general practitioner;

b. A pediatrician;

c. An internist;

d. An obstetrician or gynecologist;

e. A physician assistant;

f. A certified nurse midwife; or

g. An advanced practice registered nurse;

2. Laboratory services provided in accordance with 907 KAR 10:014 and 907 KAR 1:028;

3. Radiological services provided in accordance with 907 KAR 10:014 and 907 KAR 1:028;

4. Dental services provided in accordance with 907 KAR 1:026;

5. Emergency room services provided in accordance with 907 KAR 10:014;

6. Emergency and nonemergency transportation provided in accordance with 907 KAR 1:060;

7. Pharmacy services provided in accordance with 907 KAR 23:010;

8. Services delivered by rural health clinics provided in accordance with 907 KAR 1:082;

9. Services delivered by primary care centers, federally-qualified health centers, and federally-qualified health center look-alikes provided in accordance with 907 KAR 1:054;

10. Primary care services delivered by local health departments provided in accordance with 907 KAR 1:360; or

11. Inpatient or outpatient hospital services provided by a hospital.

Section 6. Appeal Rights. (1) The appeal rights of the Medicaid Program shall not apply if an individual is:

(a) Determined not to be presumptively eligible; or

(b) Determined to be presumptively eligible but fails to file an application for Medicaid with the DCBS before the individual's presumptive eligibility ends and therefore loses presumptive eligibility at the end of the presumptive eligibility period[is determined to be ineligible for Medicaid benefits].

(2) The appeal rights of the Medicaid Program shall apply if an individual is:

(a) Determined to be presumptively eligible; and

(b) Files an application with the DCBS but is determined ineligible for Medicaid benefits.

(3) Except as specified in subsection (1) of this section, an appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with:

(a) 907 KAR 1:563 if the individual is:

1. Not enrolled with a managed care organization; or

2. Enrolled with a managed care organization and the individual has exhausted the MCO internal appeal process in accordance with 907 KAR 17:010 and requests an appeal of an adverse decision by the MCO; or

(b) 907 KAR 17:010 if the individual is enrolled with a managed care organization.

(4) Except as specified in subsection (1) of this section, an appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(5) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 7. Quality Assurance and Utilization Review.

(1) The cabinet shall evaluate, on a continuing basis, access, continuity of care, health outcomes, and services arranged or provided by a Medicaid provider to a presumptively eligible individual in accordance with accepted standards of practice for medical service.

(2) A hospital's determination that an individual does not meet criteria for presumptive eligibility shall be consistent with KRS 205.5375 and Section 2 of this administrative regulation.

Section 8. Department Established Training and Presumptive Eligibility Form.

(1)(a) As required by KRS 205.5375, and in collaboration with the Kentucky Hospital Association and each academic medical center, the department shall institute and conduct a training at least once every twelve (12) months that addresses current state and federal laws related to presumptive eligibility for all qualified hospitals.

(b) The training may include a component that demonstrates and clarifies use of the most current presumptive eligibility application form that is designated by the department for use by the qualified hospitals.

(c)1. The training required pursuant to this subsection shall be available in an on-demand format for review by all interested qualified hospital staff.

2. At the request of the department, the Kentucky Hospital Association, or any of the academic medical centers the training may also be conducted virtually or in-person.

3. The most current on-demand version of the training shall be hosted on the department's Web site at:

a. <https://chfs.ky.gov/agencies/dms/Pages/training.aspx>; or

b. <http://www.kymmis.com/kymmis/provider%20relations/PresumptiveEligibility.aspx>.

(2) The department, in consultation with the Kentucky Hospital Association and any academic medical center, shall establish a comprehensive and thorough presumptive eligibility application form for use by each qualified hospital when making presumptive eligibility determinations.

(a) The form shall be:

1. Updated within thirty (30) days of a relevant or substantial change in applicable state and federal law relating to presumptive eligibility;

2. A current and comprehensive document that assists a hospital contractor, employee, or volunteer in completing and making an accurate determination relating to the presumptive eligibility status of an individual; and

3. Available on the department's Web site at:

a. <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/hospital.aspx>; or

b. <http://www.kymmis.com/kymmis/provider%20relations/PresumptiveEligibility.aspx>

(b) The form may be utilized by a qualified hospital as a paper application or within an eligibility application as allowable pursuant to current state and federal law.

(3)(a) In accordance with KRS 205.5375(2)(a), the department, in consultation with the Kentucky Hospital Association and any academic medical center, shall establish a notification form for a qualified hospital to use to notify the department, or designee, of a determination that an individual is presumptively eligible for Medicaid.

(b) The form shall be:

1. Updated within thirty (30) days of a relevant or substantial change in applicable state and federal law relating to notifications of presumptive eligibility; and

2. Available on the department's Web site at: <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/hospital.aspx>

(4) The department and a qualified hospital shall observe appropriate privacy and confidentiality standards of state and federal law, including 45 C.F.R. Part 164, in transmitting a completed form that is determined to contain protected health information. This may include:

(a) Use of encrypted email;

(b) Use of other encrypted electronic file transfer systems; or

(c) Any other department approved secure method of sharing personally identifiable health information that is allowable pursuant to state and federal law.

Section 9. Incorporation by Reference.

(1) "Presumptive Eligibility Hospital Patient Information Form", February 2023, 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 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or at www.chfs.ky.gov/agencies/dms/Pages/default.aspx.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Behavioral Health, Developmental and Intellectual Disabilities Division of Program Integrity (As Amended at Senate Standing Committee on Health Services on February 15, 2023, and House Standing Committee on Health Services on February 16, 2023)

908 KAR 1:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.

RELATES TO: KRS 198B.260, 218A.180, 218A.202, 222.231, 222.462, 21 C.F.R. 1301.72, 1301.74, 1301.75, 1301.91, 1301.92, 42 C.F.R. Part 8, 15 U.S.C. 1471

STATUTORY AUTHORITY: KRS 222.231(2), (12), 222.462

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.231(2) requires the cabinet to promulgate administrative regulations to establish requirements and standards for treatment programs, including health and safety standards, patient care standards, and classification of alcohol and other drug use[abuse] programs according to type, range of services, and level of care provided. KRS 222.231(12) requires the cabinet to promulgate administrative regulations to establish standards of operation for narcotic treatment programs. KRS 222.462 requires the cabinet to develop enhanced licensure and quality standards for substance use disorder treatment and recovery. This administrative regulation establishes standards for nonhospital-based alcohol and other drug treatment entities (AODE) that provide ambulatory withdrawal management, outpatient treatment services, intensive outpatient services, partial hospitalization, or office-based opiate treatment services. This administrative regulation further establishes standards for the operation of narcotic treatment programs in accordance with KRS 222.231(12) and 42 C.F.R. Part 8.

Section 1. Definitions. (1) "Approved controlled substance" means the drugs methadone, buprenorphine, or other FDA-approved **medication for opioid use disorder (MOUD)**[drug] used in the treatment of **opioid**[narcotic] addiction in a Narcotic Treatment Program.

(2) "CHFS" or "cabinet" means the Cabinet for Health and Family Services.

(3) "Central Registry" means a cabinet-approved electronic system used to register patients at a licensed narcotic treatment program (NTP) for the purpose of preventing simultaneous enrollment in other NTPs, gathering program-compliance information, and monitoring performance data.

(4) "Correctional Facility" means a jail, prison, or other place of incarceration by a government official.

(5)[(3)] "CSAT" means the Center for Substance Abuse Treatment.

(6)[(4)] "DEA" means the Drug Enforcement Administration.

(7)[(5)] "Dose" means a one (1) day quantity of an approved controlled substance[, administered on site at a narcotic treatment program[, in not less than one (1) fluid ounce of an oral solution, formulated to minimize misuse by injection].

(8)[(6)] "Drug screening" means the process by which a program determines the presence or the absence of drugs in the body fluids.

(9) [(7)] "Main program" means the location where all administrative and medical information related to a narcotic treatment program is retained for the purpose of on-site reviews by federal agencies or the state narcotic authority.

(10) [(8)] "Medication station" means any dosing location that ~~[obtains its drug supply from the main program site and retains all records (except dosing, drug screens) at the main location]~~ is defined and authorized as a medication unit in 42 C.F.R. 8. Medication stations are not extension sites as established in 908 KAR 1:370 Section 2(1)(c).

(11) "Mobile unit" means means a narcotic treatment program (NTP) operating from a motor vehicle that:

(a) Serves as a mobile component for an existing licensed NTP;

(b) Operates under the registration of the NTP; and

(c) Engages in maintenance or detoxification treatment with narcotic drugs in schedules II-V at a location or locations remote from its registered and licensed location in Kentucky.

(12) "Program prescriber" means:

(a) A practitioner as defined in KRS 218A.010(40); and

(b) Is authorized to prescribe Schedule II–V controlled substances by state and federal requirements;

(13) [(9)] "SNA" means the state narcotic authority and is synonymous with state opioid treatment authority (SOTA). The Department for Behavioral Health, Developmental and Intellectual Disabilities is the SNA, or SOTA, for Kentucky.

(14) [(10)] "Take-home dose" means a quantity of an approved controlled substance, which the patient[client] is eligible to take off the premises of a narcotic treatment program.

(15) [(11)] "Treatment phase" means a stage in the patient's[client's] progress through a narcotic treatment program's sequential treatment system.

(16) [(12)] "Voluntary withdrawal management" means a medically supervised withdrawal from the approved controlled substance requested by a patient[client] of a narcotic treatment program.

Section 2. Ambulatory Withdrawal Management. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that provides ambulatory withdrawal management or maintenance services shall accept and provide services only to patients[clients] meeting the:

(a) Diagnostic criteria for a substance-related disorder for alcohol, tobacco, and other drug use as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM); and

(b) Dimensional criteria for outpatient services as established in the most recent version of The American Society of Addiction Medicine (ASAM) Criteria.

(2) Ambulatory withdrawal management services shall:

(a) Be provided in regularly scheduled sessions;

(b) Be delivered in accordance with:

1. Clinical protocols established for ambulatory withdrawal management in the most recent version of The ASAM Criteria; or

2. Nationally recognized, evidence-based clinical protocols approved by the cabinet; and

(c) Include the following features:

1. Specialized psychological and psychiatric consultation and supervision for biomedical, emotional, behavioral, and cognitive problems as indicated;

2. Completion of a comprehensive medical history and physical examination of the patient[client] at admission;

3. Affiliation with other levels of care, including other levels of specialty addiction treatment for additional problems identified through the comprehensive biopsychosocial assessment required by 908 KAR 1:370, Section 18;

4. Appropriate laboratory and drug screening; and

5. Twenty-four (24) hour access to emergency medical consultation services if needed.

(3) Staff shall include:

(a) Physicians and licensed health practitioners acting within their scope of practice who, if not present on-site at the time of admission, shall be readily available to evaluate and confirm that

ambulatory withdrawal management is safe for the patient[client]; and

(b) Clinical staff who shall be knowledgeable about the biopsychosocial dimensions of alcohol, tobacco, and other substance use disorders, including the signs and symptoms of alcohol and other drug intoxication and withdrawal.

(4) Therapies offered by ambulatory withdrawal management services shall include:

(a) Individual assessment;

(b) Medication or non-medication methods of withdrawal management;

(c) Monitoring, assessment, and management of signs and symptoms of intoxication and withdrawal by a physician or licensed health practitioner acting within their[his or her] scope of practice;

(d) Patient education;

(e) Non-pharmacological clinical support;

(f) Involvement of family members or significant others in the withdrawal management process; and

(g) Discharge or transfer planning, including referral for counseling and involvement in community recovery support groups.

(5) A program shall establish an individualized treatment plan in accordance with 908 KAR 1:370, Section 19 that includes:

(a) Problem identification in dimensions two (2) through six (6) of the most recent version of The ASAM Criteria;

(b) Development of treatment goals and measurable treatment objectives;

(c) Activities designed to meet the treatment objectives and management of withdrawal syndrome;

(d) Daily assessment of:

1. Progress during withdrawal management; and

2. Any treatment changes;

(e) Transfer and discharge planning, beginning at the point of admission; and

(f) Referral and linkage arrangements for:

1. Counseling;

2. Medical care;

3. Psychiatric care; and

4. Continuing care.

(6) Progress notes shall:

(a) Be maintained in the patient[client] record in accordance with 908 KAR 1:370, Section 17(4)(h);

(b) Reflect implementation of the treatment plan;

(c) Document the patient's[client's] response to treatment; and

(d) Include each amendment of the treatment plan.

(7) Withdrawal rating scale tables and flow sheets that include tabulation of vital signs shall be used as needed.

(8) Treatment of a patient[client] shall continue until:

(a) Withdrawal signs and symptoms are sufficiently resolved so that the patient[client] can participate in:

1. Self-directed recovery; or

2. Ongoing treatment without the need for further medical or nursing withdrawal management monitoring;

(b) The patient's[client's] signs and symptoms of withdrawal have:

1. Failed to respond to treatment; and

2. Intensified so that transfer to a more intensive level of withdrawal management is indicated; or

(c) ~~Ambulatory~~ The client is unable to complete ambulatory withdrawal management is not adequate to meet the severity of the patient's substance use disorder despite an adequate trial, meaning the client is experiencing intense craving and evidencing insufficient coping skills to prevent continued alcohol or other drug use concurrent with the withdrawal management medication, indicating a need for more intensive service].

Section 3. Outpatient Treatment Services. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that offers outpatient treatment services:

(a) Shall provide alcohol and other drug use[abuse] counseling to each patient[client], with counseling provided to no more than twelve (12) patients[clients] per clinician if provided in a group;

(b) Shall provide each patient[client] with education regarding:

1. The disease of addiction;
2. The patient's[client's] diagnosis;
3. The effects of alcohol and other drug use[abuse];
4. The risks of exposure to human immunodeficiency virus (HIV), hepatitis, and other health consequences of substance use disorder;
5. Family issues related to substance use disorder; and
6. Relapse prevention;
- (c) Shall refer each patient[client] to ~~[recovery support-]services~~ specific to addiction treatment and recovery, which may include:
 1. Support groups;
 2. Peer support;
 3. Recovery housing;
 4. Community supports;
 5. Supported employment;
 6. Co-occurring disorders; and
 7. Medications for addiction treatment~~[Medication-assisted treatment]~~;
- (d) Shall have a direct affiliation with, or close coordination through referral to more intensive levels of care and medication management;
- (e) Shall have a procedure to inform patients[clients] of the availability of emergency services available twenty-four (24) hours a day, seven (7) days a week; and
- (f) May provide additional therapies including:
 1. Motivational enhancement;
 2. Occupational and recreational therapy;
 3. Psychotherapy; or
 4. Medications for addiction treatment~~[Medication-assisted therapy]~~.
- (2) Staff who provide outpatient treatment services:
 - (a) Shall be able to obtain and interpret information regarding the patient's[client's] biopsychosocial needs;
 - (b) Shall be knowledgeable about the biopsychosocial dimensions of alcohol, tobacco, and other substance use disorders, including assessment of the patient's[client's] stage of readiness to change;
 - (c) Shall be capable of monitoring stabilized mental health problems and recognizing any instability in a patient[client] with co-occurring disorders; and
 - (d) May include physicians and other licensed health care practitioners acting within their scope of practice on staff if medications for addiction treatment are~~[medication-assisted therapy is]~~ provided.
- (3) Progress notes shall:
 - (a) Be maintained in the patient[client] record in accordance with 908 KAR 1:370, Section 17(4)(h);
 - (b) Reflect implementation of the treatment plan;
 - (c) Document the patient's[client's] response to therapeutic interventions for all disorders treated; and
 - (d) Include each amendment of the treatment plan.
- (4) The patient's[client's] discharge summary shall be completed within thirty (30) calendar days of discharge.

Section 4. Intensive Outpatient Program. (1) In addition to the licensing requirements of 908 KAR 1:370 and Section 3 of this administrative regulation, an outpatient AODE that offers intensive outpatient services shall ensure that the program provides a multi-modal, multi-disciplinary structured approach to services that:

- (a) Are more intensive than outpatient treatment services; and
- (b) Provide a minimum of services:
 1. For adults:
 - a. Nine (9) hours per week; and
 - b. Given on no less than three (3) days per week; or
 2. For adolescents:
 - a. Six (6) hours per week; and
 - b. Given on no less than two (2) days per week.
- (2) Services shall include:
 - (a) Individual outpatient therapy;
 - (b) Group outpatient therapy;
 - (c) Family outpatient therapy, unless contraindicated;
 - (d) Crisis intervention; and
 - (e) Psycho-education during which the patient or

patient's[client or client's] family member shall be provided with information regarding:

1. The patient's[client's] diagnosis;
2. Reasons why a particular treatment might be effective for reducing symptoms; and
3. How to cope with the patient's[client's] diagnosis or condition in a successful manner.
- (3) A program shall:
 - (a) Maintain a patient[client]-to-staff ratio of no more than ten (10) patients[clients] to one (1) staff;
 - (b) Establish an individualized treatment plan for each patient[client] in accordance with 908 KAR 1:370, Section 19 that focuses on stabilization and transition to a lower level of care;
 - (c) Provide access to a:
 1. Board-certified or board-eligible psychiatrist for consultation, which may be delivered through the use of telehealth technology; and
 2. Psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and
 - (d) Provide each patient[client] with a schedule of all planned therapeutic activities or otherwise ensure that the schedule is conspicuously posted in a public area of the facility.
- (4)(a) If the program prepares meals on-site for a patient[client] who receives services for at least five (5) or more consecutive hours, the program shall be subject to inspection in accordance with 902 KAR 45:005.
- (b) If patients[clients] prepare their own meals on-site or are otherwise responsible for their meals, a food service permit shall not be required.

Section 5. Partial Hospitalization. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that offers partial hospitalization services shall be fully accredited by at least one (1) of the following:

- (a) Joint Commission;
- (b) Commission on Accreditation of Rehabilitation Facilities;
- (c) Council on Accreditation; or
- (d) Other nationally recognized accrediting organization with comparable standards.
- (2) Partial hospitalization services shall:
 - (a) Be short-term, four (4) to six (6) weeks on average;
 - (b) Meet the same standards required for intensive outpatient services, except for Section 4(1)(b) of this administrative regulation;
 - (c) Be provided at least five (5) hours a day and at least four (4) days per week; and
 - (d) Provide access to educational services for adolescent patients[clients].
- (3) An AODE program that provides partial hospitalization shall comply with 902 KAR 45:005 if the program provides meals directly to its patients[clients].

Section 6. Office-based Opioid~~[Opiate]~~ Treatment Services. (1) Excluding methadone-based treatment, a facility shall be licensed as an outpatient AODE that provides office-based opioid~~[opiate]~~ treatment (OBOT) services if:

- (a) Any individual with ownership interest in the facility is not a Kentucky-licensed physician; and
- (b) The facility employs or has an affiliation with a physician, physician assistant, or advanced practice registered nurse who prescribes ~~[products containing buprenorphine or other]~~ FDA-approved medications~~[drugs]~~ for the treatment of opioid use disorder to fifty (50) percent or more of the facility's patients.
- (2) In addition to the licensing requirements of 908 KAR 1:370, an OBOT shall:
 - (a) Designate a medical director who shall:
 1. Be responsible for the supervision of all medical staff and the administration of all medical services at the facility, including compliance with all federal, state, and local laws and administrative regulations regarding the medical treatment of opioid use disorder;
 2. Be physically present at the facility at least twenty-five (25) percent of the time the facility is open to the public each week;
 3. Conduct a monthly review of ten (10) percent of the medical

charts for patients currently admitted at the facility and document each chart review; and

4. Not serve as medical director of more than three (3) OBOT facilities;

(b) Have sufficient medical staff on-site to provide the medical treatment and oversight necessary to serve patient needs, including a practitioner authorized to prescribe ~~[products containing buprenorphine or other]~~ FDA-approved ~~medications[drugs]~~ for the treatment of opioid use disorder on-site during **fifty (50) percent of clinic weekly[all]** hours of operation;

(c) Ensure that each practitioner authorized to prescribe ~~[physician or advanced practice registered nurse]~~ complies with the prescribing and dispensing standards in accordance with 201 KAR 9:270 or 201 KAR 20:065 respectively for FDA-approved ~~medications[drugs]~~ used for the treatment of opioid addiction;

(d) Ensure that a practitioner authorized to prescribe ~~[physician or advanced practice registered nurse]~~ documents in the patient's record whether or not the patient is compliant with prescribed dosing as evidenced by the results of:

1. A KASPER report released in accordance with KRS 218A.202(7)(e); and

2. Drug screening;

(e) Offer individual and group outpatient therapy;

(f) Monitor compliance with recommended non-medication therapies;

(g) Provide case management or care coordination services; and

(h) Implement pre-employment and ongoing random drug screening of all facility employees.

(3) Admission and discharge.

(a) ~~Each~~ Prior to admission to the OBOT facility, each prospective patient shall be evaluated to determine and document whether or not the patient meets the diagnostic criteria for an opioid use disorder as defined in the most recent version of the DSM. ~~[A prospective patient shall not be admitted unless he or she meets those criteria.]~~

(b) The OBOT facility shall use evidence-based assessment and evaluation tools that have been peer reviewed and validated, including the most recent edition of:

1. ASAM placement criteria;

2. Addiction Severity Index;

3. Substance Abuse and Mental Health Services Administration (SAMHSA) Treatment Improvement Protocol; or

4. Any other equivalent assessment and evaluation tool.

(c) Prior to receiving treatment at the facility, the patient shall acknowledge in writing having received education on:

1. Treatment options, including withdrawal management, and the benefits and risks associated with each treatment option;

2. The risk of neonatal abstinence syndrome and use of voluntary long-acting reversible contraception for all female patients of child-bearing age and potential;

3. Prevention and treatment of chronic viral illnesses, such as HIV and hepatitis;

4. Expected therapeutic benefits and adverse effects of treatment medication;

5. Risks for overdose, including drug interactions with central nervous system depressants, and return to use ~~[relapse]~~ after a period of abstinence from opioids; and

6. Overdose prevention and reversal agents.

(d) An OBOT facility shall not provide any type of reward to a third party for referral of potential patients to the clinic.

(4) Comprehensive assessment. The facility shall complete a comprehensive assessment in accordance with 908 KAR 1:370, Section 18 and in accordance with peer-reviewed opioid use disorder ~~[medication-assisted]~~ treatment guidelines developed by nationally recognized organizations, such as SAMHSA and the American Society of Addiction Medicine.

(5) Treatment planning. An OBOT facility shall complete an individualized treatment plan for each patient in accordance with 908 KAR 1:370, Section 19, featuring a plan for aftercare that includes the development of a list of appropriate treatment resources available to the patient in their ~~[his or her]~~ community.

(6) Discharge.

(a) A discharge plan shall be completed at the time of the patient's discharge by the staff person who has primary responsibility for coordinating or providing for the care of the patient, including a final assessment of the patient's status at the time of discharge.

(b) If applicable, a parent, guardian, family member, or responsible person may participate in aftercare and discharge planning.

(c) The reason for any patient not participating in aftercare and discharge planning shall be documented in the patient's record.

(d) The OBOT facility shall document if a patient discontinues services.

(e) Determination of the events that constitute a patient's discontinuation of services at an OBOT shall be at the discretion of the facility.

Section 7. Narcotic Treatment Programs. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that operates a narcotic treatment program (NTP) using an FDA-approved medication ~~[methadone]~~ to treat individuals with substance use disorder shall comply with:

(a) 42 C.F.R. Part 8; ~~and~~

(b) The requirements of this section; and

(c) Submit and maintain all required data to:

1. The ~~[in the]~~ Central Registry; and

2. KASPER as required by KRS 218A.202 and 902 KAR 55:110.

(2) An NTP requesting a change of location shall:

(a) Comply with 908 KAR 1:370, Section 4; and

(b) Provide information regarding any:

1. Dosing procedural changes; and

2. Drug distribution problems that could occur due to the relocation.

(3) Organization and operation.

(a) In addition to meeting the requirements of 908 KAR 1:370, Section 9, an NTP shall develop and comply with policies and procedures that include:

1. Waiting list criteria;

2. Data collection for participation in the program in accordance with 908 KAR 1:300;

3. A protocol that ensures the integrity of the chain of custody for all drug screens;

4. A protocol for voluntary and involuntary termination of a patient's ~~[client's]~~ participation in the program, including reasons for termination for cause;

5. Requirements for the preparation and labeling of patient ~~[client]~~ doses in accordance with the requirements of subsection (10) of this section;

6. Quality assurance and utilization review;

7. A patient ~~[client]~~ identification system;

8. A system to prevent multiple program registrations;

9. Inventory maintenance;

10. A protocol for daily dosing schedules; and

11. Drug screening procedures that utilize random selection or unannounced collection.

(b) An NTP shall order approved controlled substances from the manufacturer or approved wholesalers in accordance with 42 C.F.R. Part 8.

(c) Policies for voluntary withdrawal management and involuntary termination from NTP treatment shall be in accordance with 42 C.F.R. Part 8.12.

(d) An NTP shall have and follow policies that prohibit recruitment of new patients ~~[clients]~~ into the program by offering:

1. A bounty;

2. Monetary, equipment, or merchandise rewards; or

3. Free services for individuals.

(e) An NTP shall implement the system of treatment phases established in subsection (12) of this section.

(f) An NTP shall be open for dosing services at least six ~~[seven (7)]~~ days a week with the optional exception of:

1. New Year's Day, January 1;

2. Presidents Day;

3. Martin Luther King Day;

4. Easter Sunday;
5. Memorial Day, last Monday in May;
6. Independence Day, July 4;
7. Labor Day, first Monday in September;
8. Thanksgiving Day, fourth Thursday in November; [and]
9. Christmas Day, December 25; and
10. Any **observed** federal holiday.

(g) An NTP shall have dosing times sufficient to meet the needs of its ~~patients~~[clients].

(h) An NTP shall have a written emergency plan that complies with 908 KAR 1:370, Section 9, establishing the course of action in the event of a natural or manmade disaster or any sudden closing. The plan shall also include:

1. Alternate providers for each payment type that the NTP accepts; and

2. A communication plan to reach each ~~patient~~[client] and provide information and instructions.

(i) The initial drug screens and confirmatory tests for drugs tested on behalf of the NTP shall meet ~~federal~~[the following] standards for the following:

1. [Marijuana metabolites:

a. Initial screen 50ng/ml; and

b. Confirmation test 15ng/ml;

2. Cocaine metabolites;]:

a. Initial screen 300ng/ml; and

b. Confirmation test 150ng/ml;]

2.[3.] Opioid[Opiates] metabolites;]:

a. Initial screen 300ng/ml; and

b. Confirmation test 300ng/ml;]

3.[4.] Amphetamines;]:

a. Initial screen 1000ng/ml; and

b. Confirmation test of amphetamine—500ng/ml—and methamphetamine confirmation test 500ng/ml;]

4.[5.] Barbiturates;]:

a. Initial screen 300ng/ml; and

b. Confirmation test 300ng/ml; and]

5.[6.] Benzodiazepines;]:

a. Initial screen 300ng/ml; and

b. Confirmation test 300ng/ml;]

(j) An NTP that dispenses buprenorphine shall:

1. Have sufficient medical ~~providers~~[staff] on-site to provide the medical treatment and oversight necessary to serve patient needs, **including a practitioner authorized to prescribe FDA-approved medications for the treatment of opioid use disorder on-site during fifty (50) percent of clinic weekly**[all] **hours of operation**];

2. Ensure that each practitioner authorized to prescribe or dispense complies with the prescribing and dispensing standards in accordance with 201 KAR 9:270 or 201 KAR 20:065 respectively for FDA-approved medications used for the treatment of opioid use disorder;

3. Ensure that a practitioner authorized to prescribe or dispense documents in the patient's record whether or not the patient is compliant with prescribed dosing as evidenced by the results of:

a. A KASPER report released in accordance with KRS 218A.202(7)(e); and

b. Drug screening;

c. Provide patient dosing of buprenorphine which is exempt from treatment protocol phasing as outlined in subsection (12) of this section.

(4) Medication stations.

(a) Medication stations shall not require a separate license.

(b) To establish a medication station, the NTP shall submit to the SNA, an Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) form incorporated by reference in 908 KAR 1:370.

(c) ~~A medication station shall be located between forty-five (45) miles and ninety (90) miles from the main NTP.~~

(d) The medication station shall obtain its supply of approved controlled substances from the stocks of the main NTP.

(e) The medication station shall provide the following services:

1. Dosing; and

2. Drug screen collection.

(d)[(f)] The program director shall develop a system to prevent ~~patients~~[clients] from dosing at both the main NTP and the medication station.

~~[(g) Other services shall not be provided at the medication station without prior approval of the CSAT and SNA.]~~

(5) Personnel.

(a) An NTP shall have a program director who shall:

1. Have at least two (2) years of experience in the treatment of addiction; and

2.a. Be certified by the Board of Certification of Alcohol and Drug Counselors;

b. Hold at least a master's degree in the field of addiction or a related field; or

c. Be a physician, registered nurse, physician assistant, pharmacist, or nurse practitioner certified by the licensing subspecialty.

(b) The program director may be the program sponsor as required by 42 C.F.R., Part 8.

(c) The program director shall:

1. Be responsible for ensuring compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility;

2. Provide onsite supervision of employees;

3. Ensure the laboratory performing the testing required under this administrative regulation is approved by the SNA and is certified by the Centers for Medicare and Medicaid Services as a Clinical Laboratory Improvement Amendments (CLIA) certified laboratory; and

4. Ensure that initial drug screens and confirmatory tests for drugs tested on behalf of the program meet the standards in subsection (3)(i) of this section.

(d) An NTP shall have a medical director who shall be:

1. Licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth; and

2.a. A board eligible psychiatrist with at least three (3) years of experience in the provision of services to persons who have a substance use disorder; or

b. Board-certified as an addiction medicine specialist.

(e) The medical director shall function autonomously within an NTP free from any protocol imposed by an NTP, director, or any other entity except under the guidelines established in 42 C.F.R. Part 8 and this administrative regulation.

(f) The medical director shall be responsible for the NTP's adherence to federal, state, and local laws and administrative regulations pertaining to the operation of the facility.

(g) An NTP may have a program ~~physician~~[prescriber][physician]. If an NTP has a program ~~physician~~[prescriber][physician], the ~~physician~~[prescriber][physician] shall be:

1. Licensed by the Commonwealth of Kentucky to ~~prescribe controlled substances~~ [practice medicine within the Commonwealth]; and

2.a. Board-certified as an addiction medicine specialist; or

b. A person who has at least one (1) year of experience in providing service to individuals with a substance use disorder.

(h) A program ~~physician~~[prescriber][physician] shall be under the supervision of the medical director and shall function autonomously within the NTP free from any protocol imposed by any NTP, director, or any other entity except under the guidelines imposed by 42 C.F.R. Part 8 and this administrative regulation.

(i) **An NTP may have a program prescriber. If an NTP has a program prescriber, the program prescriber shall be:**

1. Licensed by the Commonwealth of Kentucky to prescribe controlled substances;

2. A person who has at least one (1) year of experience in providing services to individuals with a substance use disorder; and

3. Under the supervision of the medical director or program physician[A program prescriber[physician] shall be responsible for the NTP's compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility].

(j) The medical director may be the program physician~~[prescriber]~~~~[physician]~~.

(k) ~~There shall be a minimum of one (1) medical director, program physician, or program prescriber [physician] on staff for every 300 patients [clients], or fraction thereof, enrolled in an NTP; and~~

2. The medical director, program physician, or program prescriber shall not be responsible for more than 300 total patients, which includes all patients of the NTP nationally.

(l) The medical director, ~~or~~ program physician or prescriber~~[physician]~~ shall:

1. Ensure ~~[there is evidence of physiologic dependence on narcotics for]~~ all patients~~[clients]~~ admitted to the NTP meet the most recent version of DSM criteria for opioid use disorder;

2. Ensure ~~[there is a history of addiction, or]~~ that any exceptions to admissions criteria are approved by the SNA and documented in the patient's~~[client's]~~ record before the first dose is administered;

3. Ensure that appropriate medical histories and physical examinations have been performed before the first dose shall be administered;

4. Ensure that appropriate laboratory studies have been performed;

5. Review all laboratory testing results and documents;

6. Document, sign, or cosign all medical orders, within forty-eight (48) hours, including the first dose of an approved controlled substance;

7. Document, sign, or cosign all subsequent medication orders within forty-eight (48) hours, including dose increases and decreases, changes in frequency of take-home doses, emergency situations, or special circumstances;

8. Ensure that a review and cosignature of all telephone or other verbal orders are documented within forty-eight (48) hours of the order;

9. Supervise staff responsible for preparation and administration of the approved controlled substances;

10. Ensure compliance with program procedures and administrative regulations; and

11. Order through the licensed NTP all:

a. Initial doses; and

b. Increases or decreases.

(m) An NTP shall hire dosing personnel who shall:

1. Hold a license as a registered nurse, licensed practical nurse, or pharmacist; and

2. Not be dually assigned as clinicians.

(n) An NTP shall provide dosing personnel in sufficient numbers to meet the needs of the patients~~[clients]~~ during dosing hours.

(o) Dosing prescribers~~[physicians]~~ and pharmacists shall comply with KRS 218A.180 related to labeling if preparing doses to be taken outside the program site.

(p) An NTP shall hire clinicians who meet the requirements of 908 KAR 1:370, Section 11.

(q) There shall be at least one (1) clinician for every fifty-five (55)~~[fifty (50)]~~ patients~~[forty (40) clients]~~ in the program.

(6) Security and control.

(a) The program director and dosing nurse supervisor or pharmacist shall conduct quarterly reviews to ensure compliance with this subsection and 42 C.F.R. Part 8.12.

(b) Security of the controlled substance~~[narcotic]~~ safe and the building perimeter shall be checked at least quarterly with the contracted security company.

(c) The safe shall be locked at all times while staff are not obtaining, restocking, or inventorying controlled substances.

(d) 1. Inventory reconciliation shall be conducted at least quarterly;

2. All reconciliation documents shall be retained by the program for at least five (5) years; and

3. All DEA and federal regulations concerning~~[Five (5) percent or more of any]~~ inventory discrepancies shall be followed, and any inventory discrepancy required to be reported to the [SNA and the] DEA offices shall also be reported to the SNA within forty-eight (48) hours of reconciliation.

(e) Dosing personnel shall count all new bottles of controlled substance~~[narcotic]~~ tablets before removing any for patient~~[client]~~ doses.

(f) Any discrepancies in controlled substance~~[narcotic]~~ tablet count shall be reported to the SNA, DEA, CSAT, and the cabinet within forty-eight (48) hours of the event.

(g) A system shall be in place to assure the NTP completes the DEA biennial inventory of controlled substance~~[narcotic drugs]~~ on hand.

(h) Order forms for controlled substances, the dosing records, and inventory reconciliation records shall conform with 42 C.F.R. Part 8.12 and shall be maintained in a locked, secured area separate from the storage site of the controlled substances.

(i) Quarterly, the program director or designee shall review a ten (10) percent random sample of patient~~[client]~~ records for:

1. A consent to treatment form signed by the patient~~[client]~~; and

2. A release of information form signed by the patient~~[client]~~ that includes:

a. A description of the specific type of confidential information to be obtained or released; and

b. The specific dates that the release is to cover.

(j) If the program director serves as a clinician, the medical director shall review a ten (10) percent random sample of the program director's patient~~[client]~~ records for inclusion of the documents listed in paragraph (i) of this subsection.

(k) An NTP shall retain on file documentation that quarterly reviews were conducted, which shall be available for review by regulatory agencies for at least five (5) years.

(7) Admission policies.

(a) The admitting physician or licensed health practitioners acting within their scope of practice for the NTP shall comply with the admission requirements of 42 C.F.R. Part 8.12.

(b) When a patient~~[client]~~ applies for admission to an NTP, the patient~~[client]~~ shall be required to sign a release of information that authorizes a program to release or solicit information regarding the patient's~~[client's]~~ status in any other substance use disorder treatment ~~[abuse]~~ program.

(c) In addition to complying with the requirements of 908 KAR 1:370, Section 16, an NTP shall:

1. Provide each patient~~[client]~~ written information describing all facets of the program in a manner that the patient~~[client]~~ understands; and

2. Explain the contents of all required federal forms to the patient~~[client]~~ before he or she is asked to sign.

(d) At admission, readmission, and at six (6) month intervals for the first two (2) years of treatment, and as indicated clinically after two (2) years, an NTP shall give the patient~~[client]~~ information on communicable diseases including:

1. Tuberculosis;

2. Hepatitis;

3. Sexually transmitted diseases; and

4. HIV/AIDS.

(e) A patient~~[client]~~ shall have access to voluntary HIV testing at admission and if clinically indicated thereafter and shall receive HIV/AIDS pre-test and post-test counseling if the patient~~[client]~~ elects to be tested.

(f) In order for an NTP to admit or continue to treat a patient~~[client]~~ who is pregnant, the medical director, program physician, or program prescriber~~[physician]~~ shall determine and document in the patient's~~[client's]~~ record that the patient~~[client]~~ is medically able to participate in the program.

(g) Pregnant individuals with an opioid~~[opiate]~~ use disorder shall be given priority for admission and services if the NTP has a waiting list.

(8) Patient~~[client]~~ transfers and guest dosing.

(a) An NTP may accept patients~~[clients]~~ transferring from another NTP if the patient~~[client]~~ meets the criteria for admission in subsection (7) of this section and in accordance with this subsection.

(b) The program prescriber, program physician, ~~[physician]~~ or medical director at the receiving NTP shall review the patient's~~[client's]~~ records on an individual basis to determine the

patient's[client's] placement on the receiving program's patient[client] listing. Reviews for proposed transfers shall determine the patient's[client's]:

1. Need;
2. Program placement availability; and
3. Circumstances for the transfer request.

(c) If a patient transfers[client] from an existing narcotic[out-of-state, medication-assisted] treatment program[transfers to an NTP located in Kentucky], the NTP shall ensure, if clinically indicated, the patient remains in their confirmed current phase from the sending NTP[designate the client as a new admission or "entry phase" as established in subsection (12) of this section unless other phase levels are approved by the SNA].

(d) The sending NTP shall:

1. Forward all relevant patient[client] records to the receiving NTP within seventy-two (72) hours of receipt of a request to transfer, excluding any day the NTP is closed; and
2. Continue dosing until the patient[client] is enrolled at the receiving NTP.

(e) The receiving NTP shall:

1. Contact the sending NTP to confirm the patient's[client's] enrollment prior to administering the patient's[client's] initial dose at the receiving NTP; and
2. Include documentation in the patient's[client's] medical record of the:

- a. Date of receipt of the patient's[client's] records from the sending NTP, including reason for transfer; and
- b. Verification that the patient[client] meets the admission criteria in subsection (7) of this section.

(f) An NTP may provide guest dosing to patients who are not eligible for take home doses.

(g) The NTP may develop policies based upon [national] federal guidelines and best practices.

(h) The NTP shall check the individual's enrollment in the central registry.

(i) The NTP shall confirm and provide the correct guest dosing arrangement with the home NTP.

(9) Drug screens.

(a) Drug screen sample collection policies intended to prevent falsification shall be developed and followed.

(b) Drug screens shall be analyzed for the following drugs:

1. Approved controlled substance;
2. Cocaine;
3. Opioids[Opiates];
4. Amphetamines;
5. Barbiturates;
6. Tetrahydrocannabinol;
7. Benzodiazepines;

7.[8.] Any other drug or drugs that has been determined by the NTP or the SNA to be misused[abused] in that program's locality; and

8.[9.] Any other drugs that could have been misused[abused] by the patient[client].

(c) Drug screens shall be reviewed by the treatment team monthly to determine the patient's[client's] reduction in the use of unauthorized medications.

(d) Controlled substance medications shall be considered unapproved usage if they are being used by the patient[client] without a valid prescription.

(e) A drug screen that is negative for the approved controlled substances allowed to be used in the NTP shall be considered positive for unauthorized drug use.

(f) An NTP shall not use drug screens as the sole criteria for involuntarily terminating a patient's[client's] participation in the program.

(g) When drug screening results are used, presumptive laboratory results shall be distinguished in the patient[client] record from results that are definitive.

(h) Samples used for drug screening purposes shall be handled in a manner that ensures patient[client] confidentiality.

(10) Dosing requirements.

(a) The dose prepared for a patient[client] shall be the quantity of approved controlled substances that is indicated on the

patient's[client's] narcotic sheet within the medical record.

(b) The dose shall be labeled with the exact quantity of narcotic drug ordered.

(c) Take-home doses shall be formulated in a manner that reduces the likelihood of injecting the dose.

(d) Take-home doses of the approved controlled substances shall be packaged in containers in accordance with 15 U.S.C. 1471.

(e) The label of take-home doses shall include the:

1. Name of the program;
2. Address and telephone number of the program;
3. Name of the controlled substance;
4. Name of the patient[client];
5. Name of the prescriber[physician] ordering the substance;
6. Quantity of the controlled substance, unless the patient[client] has requested in writing that the quantity of the substance not be revealed to him or her;
7. Date of filling order; and
8. Instructions for medicating, including dosage amount and dates medication is to be taken.

(f) Dosing personnel shall not alter patient[client] doses without the medical director, program physician, or program prescriber's[physician's] order.

(g) Verbal dosing orders shall be reduced to writing and signed by the medical director, program physician, or program prescriber[physician] within forty-eight (48) hours of the order's receipt.

(h) The medical record shall indicate any reason for dose changes and shall be signed by the medical director, program physician, or program prescriber[physician] within forty-eight (48) hours of the order's receipt.

(11) Patients[Patient][Clients] who are pregnant.

(a) If the medical director, program physician, or program prescriber[physician] does not accept the responsibility for providing prenatal care for the term of the patient's[client's] pregnancy, then the medical director, program physician, or program prescriber[physician] shall refer the patient[client] to:

1. A primary care physician who practices obstetrics; or
2. An obstetrician.

(b) The medical director, program physician, or program prescriber[physician] shall inform the prescriber[physician] accepting the referral of the patient's[client's] participation in the NTP.

(c) The medical director, program physician, or program prescriber[physician] shall ensure that appropriate arrangements have been made for the medical care of both the patient[client] and the child following the birth of the child.

(d) The medical director, program physician, or program prescriber[physician] shall notify the pregnant patient's[client's] primary care physician or obstetrician of any changes in the patient's[client's] treatment.

(e) The program shall ensure that the following services are available for pregnant individuals and are a part of the treatment plan:

1. Nutritional counseling; and
2. Parenting training that includes information about:
 - a. Newborn care;
 - b. Handling a newborn;
 - c. Newborn health; and
 - d. Newborn safety.

(12) Treatment protocol phases.

(a) In accordance with 42 C.F.R. Part 8.12, NTPs shall comply with the treatment phase system as outlined in paragraphs (e) through (j) of this subsection for the dosing of methadone for treatment of opioid use disorder[to achieve the goals of:

1. Reduced health problems;
2. Reduced criminal activity;
3. Increased productivity;
4. Stabilization of family life; and
5. Eventual drug-free living].

(b) Program infractions shall include:

1. [Failed drug screens;
2. Disruptive behavior at the clinic site; or
- 2.[3.] Threats to staff or other patients[clients]; or

4. Failure to attend scheduled dosing or counseling appointments].

(c) Program non-compliance shall include:

1. Non-compliant drug screens; or

2. Failure to attend scheduled dosing or counseling appointments.

(d) Patient[Client] treatment plans shall be:

1. **Established[established]**, reviewed, and updated in accordance with 908 KAR 1:370, Section 19; **and**

2. **Reflect a patient's current needs for:**

a. Medical, social, and psychological services; and

b. Education, vocational rehabilitation, and employment services.

(e)[(d)] The medical director, **program physician**, or program prescriber [physician] shall sign the treatment plan within thirty (30) days.

(f)[(e)] A patient shall successfully complete current treatment protocol phase before entering the subsequent treatment protocol phase with no non-compliance issues, unless excused pursuant to paragraph (n) of this subsection, for at least ninety (90) consecutive days.

(g) Phase one (1). Days one (1) to ninety (90) in treatment[Entry Phase. During the first 90 days of treatment], all patients[clients] shall:

1. Attend clinic six (6)[seven (7)] times each week for observed ingestion of an approved controlled substance at the clinic site;

2. Be eligible to receive a one (1) day take-home dose of an approved controlled substance[sub-stance];

3. Be provided [weekly-]counseling sessions to support the implementation of their treatment plan as clinically indicated;

4.[3.] Be informed about appropriate support groups; and

5.[4.] Provide a[an-observed] drug screen sample one (1) time per month[week] on a random basis.

(h)[(f)] Phase two (2). Days ninety-one (91) to 180.[Phase one (1)-]

[1.] [In order for a client to enter phase one (1), the client shall:

a. Have participated in the "entry phase" for at least ninety (90) consecutive days; and

b. Not have committed any program infractions for at least ninety (90) consecutive days.

2. Once the patient[client] enters phase two (2)[one (1)] the patient[client] shall:

1.[a.] Attend clinic five (5)[six (6)] times each week for observed ingestion of an approved controlled substance;

2.[b.] Be eligible to receive a two (2)[one (1)] day take-home dose of an approved controlled substance;

3.[c.] Be provided [weekly] counseling sessions to support the implementation of their treatment plan as clinically indicated;

4.[d.] Provide a[an-observed] drug screen sample on a random basis at least monthly or more frequently if their treatment plan requires[every other week]; and

5.[e.] Be encouraged to attend [an] appropriate support groups [group].

(i)[(g)] Phase three (3). Days 181 to 270.[Phase two (2)-]

1. In order for a patient[client] to enter phase three (3)[two (2)], the patient[client] shall have successfully completed phase two (2).[be:]

[a. Have participated in phase one (1) for at least ninety (90) consecutive days;

b. Not have committed any program infractions for at least ninety (90) consecutive days;

e.-Be]:

a.][(i)] [Pursuing or engaged in gainful employment;

b.][(ii)] [Pursuing vocational training;

c.][(iii)] [Attending school;

d.][(iv)] [Engaged in volunteer work;

e.][(v)] [Attending parenting classes if they are a parent at home with children; or

f.][(vi)] [A patient[client] with disabilities or other circumstances that might make compliance with this clause unattainable, if the patient[client] submitted a written waiver request to the SNA justifying specific reasons for the request that was not denied; and

2.][(d.) [Have a treatment plan to meet any special needs, including disabilities.]

2.[3.][2.] Patients[Clients] in phase three (3)[two (2)] shall:

a. Attend clinic four (4)[five (5)] times each week for observed ingestion of an approved controlled substance;

b. Be eligible to receive up to three (3)[two (2)] days of take-home doses of an approved controlled substance;

c. Provide a[an-observed] drug screen sample randomly on a monthly basis, or more frequently if their treatment plan requires;

d. Be provided [monthly-]counseling sessions, [or more frequently if their treatment plan requires,]as clinically indicated; and

e. Be encouraged to attend appropriate support groups outside the clinic.

(j)[(h)] Phase 4. Days 271 to 365.[Phase three (3)-]

1. In order for the patient[client] to enter phase four (4)[three (3)], the patient[client] shall:

a. Have completed phase 3; and[participated in phase two (2) for at least ninety (90) consecutive days;

b. [Not have committed any program infractions for at least ninety (90) consecutive days; and

c.] Have met the same entry criteria requirements as established in phase three (3)[two (2)].

2. Patients[Clients] in phase four (4)[three (3)] shall:

a. Attend clinic one (1) time[three (3) times] each week for observed ingestion of an approved controlled substance;

b. Be eligible to receive up to six (6)[two (2)] days of take-home doses of an approved controlled substance;

c. Provide eight (8) random drug screen samples within a twelve (12) month period[an observed drug screen sample randomly on a monthly basis], or more frequently if their treatment plan requires;

d. Be provided [monthly] counseling sessions, [or more frequently if their treatment plan requires,]as clinically indicated; and

e. Be encouraged to attend appropriate support groups outside the clinic.

(k)[(i)] Phase 5. Days 365 to 730.[Phase three (4)-]

1. In order for the patient[client] to enter phase five (5)[four (4)], the patient[client] shall have:

a. Successfully completed phase four (4)[three (3)]; and

b. Adhered to the requirements of the maintenance treatment program for at least 365 days[twelve (12) consecutive months].

2. Patient[Clients] in phase five (5)[four (4)] shall:

a. Be dosed at the clinic site at least once every fifteen (15) days[two (2) days per week] for observed ingestion of an approved controlled substance;

b. Be eligible for up to fourteen (14)[three (3)] days of take-home doses of an approved controlled substance;

c. Be provided an appropriate number of counseling sessions, which shall be based[

(i)-Based] on the clinical judgement of the program physician and program staff; and

[(ii)-No less than one (1) per month; and]

d. Provide eight (8) random drug screen samples within a twelve month period[an observed drug screen sample randomly on a monthly basis], or more frequently if their treatment plan requires.

[3. Prior to successful completion of phase four (4), a plan shall be developed that shall assist the client toward a drug free treatment regimen for continued support.]

(l)[(j)] Phase 6. Days 731 and up.[Phase three (5)-]

1. In order for the patient[client] to enter phase six (6)[five (5)], the patient[client] shall have:

a. Successfully completed phase five (5)[four (4)]; and

b. Adhered to the requirements of the maintenance treatment program for at least 731 days[two (2) consecutive years].

2. Patients[Clients] in phase six (6)[five (5)] shall:

a. Be dosed at the clinic site at least one (1) day per month[per week] for observed ingestion of an approved controlled substance;

b. Be eligible for up to thirty one[six (6)] days of take-home doses of an approved controlled substance;

c. Be provided an appropriate number of counseling sessions,

which shall be based:

(i) Based on the clinical judgement of the program prescriber[physician] and program staff; and

(ii) No less than one (1) per month; and

d. Provide eight (8) random drug screen samples within a twelve month period[an observed drug screen sample randomly on a monthly basis], or more frequently if their treatment plan requires.

(m) The medical director may excuse a non-compliance issue on a case-by-case basis focusing on the following:

1. The interactions between a positive drug screen and the medication used for treatment;

2. Past history of non-compliance issues;

3. Employment issues; and

4. Length of time in program.

(n) If the medical director excuses a non-compliance issue, as specified in paragraph (m) of this subsection, the non-compliance issue excused shall not be used to:

1. Move a patient out of a phase; or

2. Keep a patient from advancing phases.

(o) The medical director shall document the non-compliance excuse in the patient's medical record.

(13) Take home dose restrictions and terminations.

(a) In determining the patient's[client's] take-home medications, the medical director, program physician, or program prescriber[physician] shall act in accordance with 42 C.F.R. Part 8.12 and subsections (7) through (12) of this section.

(b) ~~An NTP shall restrict a client's take-home dosage privileges by moving the client back at least one (1) phase level on the schedule for take-home dosages if the client's drug screening results disclose the unauthorized presence any substance established in subsection (9)(b) of this section.~~

(c) An NTP shall restrict a patient's[client's] take-home dosage by moving the patient[client] back on the take-home dosage schedule if the medical director, program physician, or program prescriber[physician] concludes that the patient[client] is no longer a suitable candidate for take-home privileges as presently scheduled.

(c)[(d)] An NTP shall revoke a patient's[client's] take-home privileges for not less than thirty (30) days and shall require the patient[client] to ingest each dosage at the facility for any of the following reasons:

1. The patient's[client's] drug screening discloses an absence of the controlled substance prescribed by the program;

2. The patient[client] is discovered to be misusing medication, as established in subparagraph 5. of this paragraph;

3. The patient[client] attempts to enroll in another NTP;

4. The patient[client] alters or attempts to alter a drug screen; or

5. The patient[client] is not satisfactorily adhering to the requirements of the NTP by the following:

a. The patient[client] has not complied with the rules of the NTP;

b. ~~There is indication that the client has repeatedly used drugs improperly;~~

c. The patient[client] is sharing, giving away, selling, or trading their [his or her] approved controlled substance dosage; or

c.[d.] The patient[client] is not ingesting their [his or her] approved controlled substance dose in accordance with treatment program rules;

e. ~~There is indication that the client is selling, distributing, or otherwise involved with illicit drugs and their use; or~~

f. ~~The client is not participating in an educational, vocational, or home-making activity.~~

(d)[(e)] A patient[client] whose daily dosage is twenty-five (25) milligrams or less shall be exempt from paragraph (c)[(d)]4. of this subsection.

(e)[(f)] A patient[client] whose take-home privileges were revoked or restricted may regain take-home privileges according to the following schedule:

1. Phase one (1) – satisfactory adherence for at least thirty (30) days;

2. Phase two (2) – satisfactory adherence for at least thirty (30) days after regaining phase one (1) privileges;

3. Phase three (3) – satisfactory adherence for at least thirty (30) days after regaining phase two (2) privileges;

4. Phase four (4) – satisfactory adherence for at least thirty (30) days after regaining phase three (3) privileges; ~~and~~

5. Phase five (5) – satisfactory adherence for at least thirty (30) days after regaining phase four (4) privileges; and

6. Phase six (6) - satisfactory adherence for at least thirty (30) days after regaining phase five (5) privileges.

(f)[(g)] This subsection shall not be used to circumvent the requirements of this administrative regulation. A patient[client] shall not be advanced to a phase level pursuant to this subsection unless the patient[client] has previously been at that phase level after having satisfied the requirements of each phase.

(g)[(h)] Treatment shall be continued as long as it is medically necessary based upon the clinical judgment of the medical director, program physician, or program prescriber [physician] and staff.

(h)[(i)] Scheduled withdrawal shall be under the immediate direction of the medical director, program physician, or program prescriber[physician] and shall be individualized.

(i)[(j)] A patient[client] may voluntarily terminate participation in an NTP even if termination is against the advice of the NTP.

(j)[(k)] Except as established in subsection (15)(e) of this section, either voluntary or involuntary termination shall take place over a period of time not less than fifteen (15) days, unless:

1. The medical director, program physician, or program prescriber[physician] deems it clinically necessary to terminate participation sooner and documents the reason in the patient's[client's] record; or

2. The patient[client] requests in writing a shorter termination period.

(k) Patients who are voluntarily and involuntarily terminated shall be offered the following prior to discharge:

1. Overdose education;

2.a. A Federal Drug Administration approved opioid overdose reversal agent; or

b. A Federal Drug Administration approved opioid overdose reversal agent prescription; and

3. Referral with appointment to the level-of-care appropriate and accessible to the patient.

(14) Exceptions.

(a) The medical director, program physician, or program prescriber[physician] may grant an exception to the criteria for take-home dosages for any of the following reasons:

1. The patient[client] has a serious physical disability that would prevent frequent visits to the program facility; or

2.a. The patient[client] is subject to an exceptional circumstance such as acute illness, family ~~add~~ crisis, or necessary travel; and

b. Hardship would result from requiring exact compliance with the phase level schedule established in subsection (12) of this section.

(b) Exception to the criteria for take-home dosages shall:

1. Be subject to the limitations in this administrative regulation; and

2. Have written approval from the SNA that shall be filed in the patient[client] record.

(c) If a patient[client] is required to travel out of the program area, the medical director, program physician, or program prescriber [physician] shall attempt to arrange for the patient's[client's] daily dosage to be received at another program in lieu of increasing take-home dosages.

(d) The medical director, program physician, or program prescriber[physician] shall document in the patient's[client's] record the granting of any exception and the facts justifying the exception.

(e) Each program shall maintain a separate record for all exceptions granted.

(f) The SNA shall not grant additional exceptions, except in cases of medical emergency or natural disaster, such as fire, flood, or earthquake.

(g) Patient take home exceptions shall be entered into the Substance Abuse and Mental Health Services Administration's system in accordance with the system's requirements.

(h) Emergency Dosing.

1. Under emergency conditions a program may issue take-home doses in accordance with this subsection.

2. Within forty-eight (48) hours after administration of the first emergency dose, an NTP shall:

- a. Notify the SNA in writing;
- b. Submit justification of the emergency dose or doses; and
- c. Request permission for any subsequent dose after the first two (2) doses.

3. Subsequent emergency doses shall not be given unless permission is received by the SNA.

4. This request shall include the:

- a. Number of take-home doses requested;
- b. Reason for the request;
- c. Patient's[Client's] standing in program phases;
- d. Patient's[Client's] adherence to program policies; and
- e. Total length of time the patient[client] has been enrolled at the NTP.

(15) Patient[Client] program compliance and infractions.

(a) If a patient has a non-compliance issue as described in section 7(12)(c) of this administrative regulation[client commits a program infraction], the counseling staff shall review and modify the treatment plan to assist the patient[client] in complying with program policies.

(b) If a patient[client] continues to have non-compliance issues[commit infractions] and the medical director, program physician, or program prescriber[physician] determines additional intervention is warranted, the director, program physician, or prescriber[physician] may:

1. Move the patient[client] back to an earlier treatment phase; [or]
2. Limit or revoke the patient's[client's] take-home privileges;
3. Increase the frequency of counseling sessions;
4. Increase the frequency of drug screen samples; or
5. Increase the medication dose to reduce cravings.

(c) If a patient commits a program infraction as described in section 7(12)(b) of this administrative regulation[the client continues to commit program infractions], the patient[client] may be involuntarily terminated from the program based on the recommendation of the medical director, program physician, or program prescriber[physician].

(d) A patient's[client's] participation in an NTP may be involuntarily terminated for cause. Cause shall include:

1. Polydrug use if risk of co-use outweighs risk of overdose death following termination of methadone treatment[abuse];
2. Diversion of an approved controlled substance;
3. Violence or threat of violence to program staff or other patients[clients] in the program; or
4. Dual enrollment in another NTP.

(e) If the medical director, program physician, or program prescriber[physician] determines that the patient's[client's] continued participation in the program creates a physically threatening situation for the staff or other patients[clients], the patient's[client's] participation may be terminated immediately.

(f) A patient[client] shall be given written notice of a decision to terminate their[his or her] participation in the program, which shall include the reasons for the termination.

(16) Program monitoring. If an NTP fails to comply with the requirements in this administrative regulation, the SNA may take action in accordance with 908 KAR 1:370, Sections 5 and 20. In addition to the authority to deny, suspend, or revoke a license in accordance with 908 KAR 1:370, the SNA may:

(a) Order the NTP to discontinue all or part of the take-home doses of any approved controlled substance used in the NTP;

(b) Restrict the NTP's take-home procedures to the provision of emergency take-home doses in accordance with subsection (14) of this section; or

(c) Order the NTP to discontinue the utilization of any drug approved for use in narcotic treatment programs.

(17) Waivers and Exemptions. (1) The cabinet may grant a waiver to any part of this administrative regulation if:

(a) The governor declares a state of emergency; or

(b)(2) An NTP may request a waiver[an exemption] in

accordance to 42C.F.R. 8.11(h)[a waiver] from the SNA from any requirement of this administrative regulation.

(18)(2)(a) This application for a waiver[an exemption][a waiver] shall:

1. Be in the form of a letter to the SNA;
2. Identify the specific sections of this administrative regulation for which a waiver[an exemption][a waiver] is being sought; and
3. Give the rationale for the request.

(b) If a waiver[an exemption] [a waiver] pertains to a client, a copy of a waiver[an exemption][the waiver] request and response shall become part of the client's permanent record.

(c) An application for a waiver[an exemption][a waiver] request shall be mailed to: Kentucky State Narcotic Authority Department for Behavioral Health, Developmental and Intellectual Disabilities, 275 East Main Street, Frankfort, Kentucky 40621.

(d) Approval or denial of a waiver[an exemption][a waiver] shall be based upon a review of the merits of the request, taking into consideration:

1. Public safety;
2. Practicality; and
3. The purpose of the requirement for which a waiver[an exemption][waiver] is requested.

(e) A waiver[an exemption] [waiver] shall expire twelve (12) months from the date the waiver[an exemption][waiver] is granted unless the SNA gives an earlier expiration date.

[(f) A waiver given prior to January 1, 2020 shall expire on January 1, 2020.]

Section 8. In-home services. (1) An outpatient AODE may provide the following services in person, in a patient's home:

(a) One (1) or more of the outpatient services established by Sections 2 through 5 of this administrative regulation; or

(b). Medications for addiction treatment, excluding methadone-based treatment, under the direction of a Kentucky-licensed;

1. Physician who complies with the prescribing and dispensing standards of 201 KAR 9:270; or

2. Advanced practice registered nurse who complies with the prescribing and dispensing standards of 201 KAR 20:065.

(2) An outpatient AODE that provides in-person, in-home services exclusively shall be exempt from the physical environment requirements of Section 9 of this administrative regulation if the AODE has a business office located in Kentucky.

Section 9. Physical Environment. (1) Accessibility. An outpatient AODE shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities in accordance with KRS 198B.260 and 815 KAR 7:120.

(2) Fire safety. An outpatient AODE shall be approved by the State Fire Marshal's office prior to initial licensure or if the AODE changes location.

(3) Physical location and overall environment.

(a) An outpatient AODE shall:

1. Comply with building codes, ordinances, and administrative regulations that are enforced by city, county, or state jurisdictions;
2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;
3. Have a publicly listed telephone number;
4. Have a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day or use encrypted electronic messaging technology;
5. Have a reception and waiting area;
6. Provide a restroom for patient[client] use; and
7. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of patients[clients], personnel, and visitors shall be assured.

(4) Additional requirements for NTPs.

(a) The building used for the NTP shall meet the requirements of 21 C.F.R. 1301.74(j).

(b) The waiting area shall be separated from the dosing area to

permit each patient[client] privacy and confidentiality at the time of dosing.

(c) The dosing area shall be clean and sanitary and shall contain:

1. A sink;
2. Hot and cold running water; and
3. Pill-counting trays if tablets are being used.

(d) The security and floor plan of the dosing area shall be in accordance with 21 C.F.R. 1301.72.

(e) The facility shall have two (2) restrooms, which shall be accessible to patients[clients] with disabilities.

(f) Restrooms available to patients[clients] to provide urine specimens shall be:

1. Secure;
2. Clean; and
3. Sanitary.

(g) The building shall be secured by a local security company approved by the DEA and the SNA.

(h) There shall be a minimum of two (2) panic buttons or similar devices for each NTP with:

1. One (1) in the reception area; and
2. One (1) in the dosing area.

(i) There shall be a telephone with an outside line accessible in the dosing area.

(j) Internal security shall meet the requirements of 21 C.F.R. 1301.74(b), (h), (i), (j), (k); 1301.91; 1301.92 and shall be installed only after consultation with the DEA and the SNA.

(k) Parking spaces at the clinic site shall be adequate to accommodate the maximum number of patients[clients] expected to be at the clinic site at one (1) time.

Section 10.[Section 9.] Incarcerated Individuals. (1) An NTP may provide FDA-approved medications for opioid use disorder for incarcerated individuals.

(2) The NTP shall:

(a) Submit a waiver application to the SNA identifying the services the NTP can and cannot provide directly to the incarcerated individual in accordance with Section (7); or

(b) Facilitate the transfer of the incarcerated individual to a corrections based NTP, if available.

(3) Document in the incarcerated individuals record:

(a) The program physician or program director's coordination efforts with the jail; and

(b) The date(s) of incarceration, reason(s), and circumstances involved.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office for Children with Special Health Care Needs
Children with Special Health Care Needs Services
(As Amended at ARRS, February 14, 2023)**

911 KAR 1:060. Medical staff.

RELATES TO: KRS 45A, 200.460, 313.035

STATUTORY AUTHORITY: KRS 194A.030(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(5) authorizes the Office for Children with Special Health Care Needs to promulgate administrative regulations to implement and administer its responsibilities under KRS 200.460 to 200.490. This administrative regulation establishes requirements relating to the Office for Children with Special Health Care Needs Medical Staff.

Section 1. Definitions. (1) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(2) "Dentist" is defined by KRS 313.010(10).

(3) "MAC" means the Medical Advisory Committee, which is an

internal OCSHCN committee that consists of thirteen (13) members and advises OCSHCN on issues pertaining to medical staff qualification, credentialing, quality, and other related issues.

(4) "OCSHCN" means Office for Children with Special Health Care Needs.

(5) "Physician" is defined by KRS 311.550(12).

(6) "Physician assistant" is defined by KRS 311.840(3).

(7) "Psychologist" is defined by KRS 319.010(9).

Section 2. Qualifications for Acceptance to OCSHCN Active Medical Staff. (1) In order to be eligible for acceptance to the OCSHCN active medical staff, an individual shall be:

(a) Licensed to practice in Kentucky as a:

1. Physician;
2. Dentist;
3. Advanced practice registered nurse;
4. Physician assistant; or
5. Psychologist; and

(b) Able to document:

1. Background, experience, training, and competence;
2. Adherence to the ethics of the individual's profession;
3. Professionalism; and
4. Interpersonal skills.

(2) A physician or dentist shall be:

(a)1. Eligible for membership in the national medical or dental society; or

2. Enrolled as a member of the national medical or dental society; and

(b) Enrolled as a participating provider in the Kentucky Medicaid program, in accordance with 907 KAR 1:672.

(3) For specific medical specialties, for which there is a generally recognized certification by a board giving examinations in the field, the individual shall be:

(a) Eligible to sit for the examination of the board; or

(b) Board certified.

(4) ~~[The OCSHCN executive director, upon advice of the MAC, may exempt an individual from the requirements established in subsection (3) of this section if the individual:~~

~~(a) Agrees to provisional status for twelve (12) months; and~~

~~(b) Agrees to provide the MAC at the completion of twelve (12) months, with three (3) references, including:~~

~~1. Two (2) peer reference letters that:~~

~~a. Are written by Kentucky physicians, dentists, or psychologists as appropriate; and~~

~~b. Are completed on the:~~

~~(i) OCSHCN-60g, Peer Reference Letter Medical or Dental; or~~

~~(ii) OCSHCN-60h, Peer Reference Letter Psychologist; and~~

~~2. One (1) reference letter that:~~

~~a.(i) Is written by the medical director of a Kentucky children's hospital where the individual is~~

~~(ii) If not on medical staff at a children's hospital, is written by the medical director at the Kentucky hospital where the individual is on medical staff and admits the majority of the individual's patients; and~~

~~b. Is completed on the OCSHCN-60j, Facility Recommendation Letter.~~

~~(5)] For initial appointment to the medical staff in a dental specialty area, the individual shall be licensed in the specialty area, in accordance with KRS 313.035 and 201 KAR 8:532.~~

Section 3. Categories of Medical Staff. The medical staff shall consist of the following categories:

(1) Temporary active status, pursuant to Section 6 of this administrative regulation;

(2) Active status, pursuant to Sections 2, 4, and 5 of this administrative regulation; and

(3) ~~[Provisional status, pursuant to Sections 2, 4, 5, and 7 of this administrative regulation; and~~

~~(4)] Contracted status, pursuant to Section 7[8] of this administrative regulation.~~

Section 4. Initial Application Process for Active Medical Staff.

(1) An individual seeking initial appointment to the medical staff

shall submit to OCSHCN a completed application packet containing:

- (a) A completed and signed:
 1. a. OCSHCN-60a, Application for Active Medical or Dental Staff, if the individual is a dentist or physician;
 - b. OCSHCN-60b, Application for Active Medical APRN Staff, if the individual is an advanced practice registered nurse;
 - c. OCSHCN-60c, Application for Active Psychology Staff, if the individual is a psychologist; or
 - d. OCSHCN-60d, Application for Active Medical Physician Assistant Staff, if the individual is a physician assistant;
 2. OCSHCN-60e, Authorization, Attestation, and Release; and
 3. OCSHCN-60f, Anti-Harassment and Discrimination Acknowledgment;
 4. Two (2) OCSHCN- 60g, [Two] Peer Reference Letter/Letters Medical or Dental;
- (b) A copy of the individual's current Council for Affordable Quality Healthcare (CAQH) application;
- (c) A current curriculum vitae;
- (d) A copy of the individual's malpractice insurance endorsement; and
- (e) The applicable information required by subsections (2) ~~through (4)~~ (5) of this section.
- (2) If the individual is a dentist or physician, the following attachments shall be included:
 - (a) A copy of the individual's license to practice, issued by the Kentucky:
 1. Board of Dentistry; or
 2. Board of Medical Licensure; and
 - (b) If applicable, a copy of the individual's current Form DEA-223, Controlled Substance Registration Certificate issued by the United States Department of Justice, Drug Enforcement Administration.
- (3) If the individual is an advanced practice registered nurse, the following attachments shall be included:
 - (a) A copy of a signed Collaborative Practice Agreement between the physician and the individual, as submitted to the Kentucky Board of Nursing; and
 - (b) A copy of the individual's current credentialing from the:
 1. American Nurses Credentialing Center (ANCC); or
 2. American Academy of Nurse Practitioners (AANP).
- (4) If the individual is a psychologist, the application packet shall include a copy of the individual's license to practice, issued by the Kentucky Board of Examiners of Psychology.
- (5) If the individual is a physician assistant, the following attachments shall be included:
 - (a) A copy of the individual's license to practice, issued by the Kentucky Board of Medical Licensure;
 - (b) A copy of the initial and any applicable Supplemental Application for Physician to Supervise Physician Assistant, as submitted to the Kentucky Board of Medical Licensure; and
 - (c) A copy of the National Commission on Certification of Physician Assistants (NCCPA) certification.

Section 5. Procedures for Application Review and Appointment. (1) Within seven (7) working days of receipt of the application pursuant to Section 4 of this administrative regulation, designated OCSHCN staff shall request that:

- (a) Individuals listed as references complete the[
~~1.] OCSHCN 60g, Peer Reference Letter Medical or Dental[; or~~
~~2. OCSHCN 60h, Peer Reference Letter Psychologist, if the individual is a psychologist]; and~~
- (b) An individual submit missing information or other required documents necessary to an evaluation of the individual's qualifications.
- (2) If the documentation requested pursuant to subsection (1) of this section is not received by OCSHCN within forty-five (45) working days from the date of the request, designated OCSHCN staff shall notify the individual in writing that:
 - (a) The individual shall be responsible for following up to obtain missing information and ensuring receipt by OCSHCN within twenty (20) working days of written notice;
 - (b) Failure to submit the missing information within twenty (20)

working days of written notice under paragraph (a) of this subsection shall result in the application being placed in closed status without further review;

(c) Reapplication for staff appointment shall not be considered for a period of six (6) months from the date of the notice that the application has been closed pursuant to paragraph (b) of this subsection; and

(d) Reapplication for staff appointment shall be processed as an initial application.

(3) Upon receipt of documentation requested pursuant to subsection (1) of this section, designated OCSHCN staff shall make the application and other documentation available to the MAC chair, who shall present the application at the next meeting of the MAC.

(4) The MAC shall:

(a) Ensure that all necessary documents and investigations have been validated with objectivity, fairness, and impartiality, and that recommendations are soundly based and compatible with the objectives of OCSHCN;

(b) Determine if the individual meets all necessary qualifications for the category of staff membership and clinical privileges requested;

(c) If the MAC determines that the individual meets all necessary qualifications for the category of staff membership and clinical privileges requested, recommend to designated OCSHCN staff:

1. Appointment to the appropriate staff category; and
2. Granting of privileges according to the specialty to which the individual shall be assigned; and

(d) If the MAC determines that the individual does not meet all necessary qualifications for the category of staff membership and clinical privileges requested:

1. Defer consideration of the application, if clarifying information is needed; or
2. Reject the application.

(5) Upon the MAC approving the individual, designated OCSHCN staff shall add the individual approved in accordance with this section to OCSHCN's active medical staff for a period of three (3) years.

(6) An individual aggrieved by an adverse decision pursuant to subsection (4)(d) of this section may request to address the MAC to seek reconsideration pursuant to Section ~~12~~[43] of this administrative regulation.

Section 6. Temporary Active Medical Staff. (1) The executive director or designee may make a temporary active medical staff appointment if necessary to provide clinical coverage. This type of staff appointment shall be:

- (a) Emergency in nature;
- (b) Made based on information currently available that may reasonably be obtained as to the competence and ethical standing of the individual; and
- (c) Reviewed by the MAC within six (6) months following the appointment.

(2) A temporary active medical staff appointment shall last no longer than six (6) months, at which time the appointment shall be eligible for conversion to the active medical staff pursuant to the processes established in Sections 4 and 5 of this administrative regulation.

(3) Each appointee to the temporary active medical staff shall have an assigned member of the active medical staff review performance during clinic and make recommendations to the MAC as necessary regarding conversion to the active medical staff.

(4) An appointee to temporary active medical staff status shall be compensated in accordance with Section ~~10~~[44] of this administrative regulation.

~~[Section 7. Provisional Staff. (1) In accordance with Section 2(4) of this administrative regulation, the executive director may make a provisional staff appointment if an individual meets the requirements of Sections 2, 4, and 5 of this administrative regulation.~~

~~(2) An appointment to provisional status shall be effective for~~

twelve (12) months.

(3) Prior to the end of the twelve (12) months, the MAC shall:

(a) ~~Review reference letters submitted in accordance with Section 2(4) of this administrative regulation; and~~

(b) ~~Make a recommendation to designated OCSHCN staff at its next meeting as to whether to:~~

1. ~~Move the appointee to active status; or~~

2. ~~Terminate provisional status.~~

(4) ~~An appointee aggrieved by a recommendation to terminate provisional status may be heard by the MAC pursuant to Section 13 of this administrative regulation.]~~

Section 7.~~[Section 8.]~~ Contracted Staff. (1) In accordance with KRS Chapter 45A, OCSHCN may contract with medical or dental specialists to provide services to children outside of OCSHCN offices and clinics.

(2) OCSHCN-enrolled children may be referred to contracted staff by a member of the active OCSHCN medical staff or the OCSHCN medical director.

Section 8.~~[Section 9.]~~ Annual Review and Reappointment Process. (1) OCSHCN shall, on an annual basis, verify for each member of the active medical staff:

(a) Current state license; and

(b) Current malpractice insurance.

(2) Each member of the active medical staff shall undergo a re-credentialing process every three (3) years. Required documents to be submitted to OCSHCN shall include:

(a) OCSHCN-60i, Renewal Application for Active Medical or Dental Staff; and

(b) All documents requested by OCSHCN-60i, Renewal Application for Active Medical or Dental Staff.

(3) The reappointment evaluation shall include:

(a) Review of required forms and documents;

(b) Timely completion and preparation of medical and other required patient records;

(c) Satisfactory evidence of compliance with ethics;

(d) Compliance with OCSHCN procedures;

(e) General cooperation and ability to work with others;

(f) Results of quality assurance audits, if conducted; and

(g) Reports of disciplinary action requested, or proceedings initiated against a provider at any institution.

(4) At each regularly scheduled meeting, the MAC shall complete a review of the active medical staff that are due for a three (3) year re-credentialing appraisal. The review shall include:

(a) OCSHCN-60i, Renewal Application for Active Medical or Dental Staff; and

(b) Any other information pertinent to continuation on the medical staff.

(5) After the review, the MAC shall make a determination to re-credential or not re-credential based on the information requested in this section.

Section 9.~~[Section 10.]~~ Duties and Responsibilities of Medical Staff. (1) Each member of the medical staff shall assume the same responsibility for care and treatment of the staff member's assigned patients as in private practice.

(2) A resident physician or dentist in training may assist in the care of patients, if a member of the active medical staff:

(a) Remains entirely responsible for the care of each patient;

(b) Examines and, if indicated, recommends treatment for each new patient under the staff member's care;

(c) Remains present in the surgical suite at all operations and other procedures in which general anesthesia is used;

(d) Directs the examination of all patients assigned to the active staff member for discharge from the hospital and designates follow-up care; and

(e) Maintains oversight of the resident physician or dentist.

(3) Active medical staff members assigned to OCSHCN clinics shall be present to conduct an assigned clinic. If an active medical staff member cannot be present to conduct an assigned clinic, the staff member shall:

(a) Make arrangements with another member of the OCSHCN

medical staff to serve in the staff member's place, if the staff member advises the assigned OCSHCN staff of this change; or

(b) Request that assigned OCSHCN staff reschedule the clinic, if the request is timely enough to allow OCSHCN staff to notify patients of the rescheduling.

(4) For a clinic with more than one (1) provider representing different specialties, if an active medical staff member cannot be present to conduct an assigned clinic, the staff member shall:

(a) Make arrangements with another member of the OCSHCN medical staff to serve in the staff member's place, if the staff member advises the assigned OCSHCN staff of this change; or

(b) Make arrangements with the other active medical staff members assigned to the clinic to reschedule the entire clinic, if the request is timely enough to allow OCSHCN staff to notify patients of the rescheduling.

(5) If an active medical staff member who has responsibility for a clinic fails to attend two (2) clinics during a twelve (12) month period and does not comply with subsection (3) or (4) of this section, the active medical staff member shall be:

(a) Removed from the active medical staff; and

(b) Advised in writing of:

1. The removal; and

2. Right to be heard by the MAC pursuant to Section ~~12~~~~[13]~~ of this administrative regulation.

(6) Medical staff members participating in OCSHCN onsite clinics shall document a summary of each patient visit. Documentation shall be completed:

(a) On the day of the visit; or

(b) Within seventy-two (72) hours of the visit if it cannot be finished on the day of the visit.

(7) Medical staff members participating in OCSHCN onsite clinics shall:

(a) Not remove patient medical records from OCSHCN premises; and

(b) Authenticate their medical record entries regarding diagnosis, findings, and recommendations for treatment, by:

1. Signature; or

2. Initials.

(8) If a medical staff member elects to initial the medical record pursuant to subsection (7) of this section, OCSHCN shall maintain a legend for purpose of identity, which shall include the typed or printed name of the medical staff member, followed by hand signed initials.

(9) A medical staff member may see OCSHCN patients in the staff member's private office, as deemed necessary by the medical staff member. Office visit records shall be:

(a) Completed; and

(b) Forwarded to the assigned OCSHCN office within three (3) working days of the visit.

(10) To the extent possible, total care for the child shall be considered while the specific condition for which treatment is sought is being cared for. Coexistent diseases, disabilities, or anomalies shall be investigated and treated if:

(a) The referring physician or dentist, if any, approves and consents; and

(b) The services fall within the categories eligible for treatment by OCSHCN in accordance with 911 KAR 1:010.

(11) A program of total care for the child shall be developed by a team approach. There shall be discussion of all phases of the problem of each child by all medical personnel concerned with the child's care, including therapists and other professional personnel. Team care shall be provided within the context of a multidisciplinary clinic.

(12) Contracted staff shall be available for consultation and treatment if indicated. Arrangements for contracts shall be made through the assigned OCSHCN office on an individual basis.

Section 10.~~[Section 11.]~~ Compensation. (1) A member of the medical staff shall be compensated for services provided during ~~[onsite]~~ OCSHCN clinics in accordance with a contract agreed to pursuant to the provisions of KRS Chapter 45A.

(2) If OCSHCN staff refer patients to a member of the active medical staff for services outside of an OCSHCN clinic, information

needed to bill the appropriate insurance carrier shall be included.

Section 11.~~[Section 12.]~~ **Corrective Action.** (1) The following parties may request corrective action be directed toward a member of the medical staff:

- (a) Any member of the medical staff;
- (b) The chair of the MAC;
- (c) OCSHCN staff; or
- (d) A member of the family of an OCSHCN-enrolled child.

(2) The basis for a request for corrective action shall include activities or professional conduct that are considered to be:

- (a) Contrary to the standards or aims of the medical staff; or
 - (b) Disruptive to OCSHCN operations, programs, or clinics.
- (3) A request for corrective action shall be:

- (a) In writing;
- (b) Addressed to the executive director; and
- (c) Supported by references to the specific activities or conduct that constitutes grounds for the request.

(4) Within ten (10) working days of receipt of a request for corrective action, the executive director or designee shall:

- (a) Initiate an investigation of the facts and circumstances surrounding the grounds for the requested corrective action;
- (b) Interview the member of the medical staff against whom the corrective action is requested;
- (c) Document the interview in writing; and
- (d) Submit a report and recommendation to the MAC for consideration.

(5) Within ninety (90) working days following the receipt of the recommendation by the executive director, the MAC shall make recommendations on the request.

(6) In accordance with subsection (5) of this section, the MAC may:

- (a) Reject the request for corrective action;
- (b) Issue a warning, letter of admonition, or letter of reprimand;
- (c) Impose terms of probation or a suspension from the medical staff; or
- (d) Recommend that the affected member's medical staff membership be suspended or revoked.

(7) The executive director shall have the authority to summarily suspend or dismiss a member of the medical staff if action is needed immediately in the interest of patient care. Grounds for summary suspension or dismissal from the medical staff shall include:

- (a) Action by the governing Board of Medical Licensure, Board of Dentistry, Board of Nursing, or Board of Examiners of Psychology, in which a member's license is revoked or suspended;
- (b) Loss of hospital privileges; or
- (c) Behavior that creates a risk of harm to children or OCSHCN staff.

Section 12.~~[Section 13.]~~ **Request for Reconsideration.** (1) A provider may request to appear before the MAC to advocate for reconsideration if the provider:

(a) Was denied appointment to the medical staff pursuant to Section 5 of this administrative regulation;

(b) ~~[Had provisional status terminated pursuant to Section 7 of this administrative regulation;~~

(c) ~~[Was removed from the active medical staff pursuant to Section 9(5)(40(5)) of this administrative regulation; or~~

(d) ~~[Has been the subject of corrective action pursuant to Section 11(42) of this administrative regulation.]~~

(2) A provider who is aggrieved pursuant to subsection (1) of this section shall complete form OCSHCN-60k, Request for Reconsideration by Medical Advisory Committee, to include:

- (a) Name of provider;
- (b) Specialty;
- (c) Address;
- (d) Telephone;
- (e) E-mail address, if available;
- (f) Justification for reconsideration;
- (g) Supporting documentation, if available, including:
 1. Verification of training or work history; and
 2. Provider statements or recommendations; and

(h) Dated signature of the provider.

(3) The MAC shall review the completed form and supporting documentation.

(4) The MAC may request additional pertinent information, as needed, within five (5) working days of the review date.

(5) The provider shall return the information requested pursuant to subsection (4) of this section within ten (10) working days.

(6) The MAC shall communicate to the provider:

- (a) The date to appear before the MAC; and
- (b) Within five (5) working days of the receipt of all information requested.

(7) Following the provider's appearance at the MAC, the MAC shall communicate within five (5) working days to the provider:

- (a) The decision made; and
- (b) A brief explanation.

Section 13.~~[Section 14.]~~ **Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) OCSHCN-60a, "Application for Active Medical or Dental Staff," 06/2022[04/2019];

(b) OCSHCN-60b, "Application for Active Medical APRN Staff," 06/2022[04/2019];

(c) OCSHCN-60c, "Application for Active Psychology Staff," 06/2022[04/2019];

(d) OCSHCN-60d, "Application for Active Medical Physician Assistant Staff," 06/2022[04/2019];

(e) OCSHCN-60e, "Authorization, Attestation, and Release," 01/2019;

(f) OCSHCN-60f, "Anti-Harassment and Discrimination Acknowledgment," 01/2019;

(g) OCSHCN-60g, "Peer Reference Letter Medical or Dental," 06/2022[04/2019];

(h) ~~[OCSHCN-60h, "Peer Reference Letter Psychologist," 04/2019;~~

(i) OCSHCN-60i, "Renewal Application for Active Medical or Dental Staff," 06/2022[04/2019]; and

(j) ~~OCSHCN-60j, "Facility Recommendation Letter," 01/2019; and]~~

(k) OCSHCN-60k, "Request for Reconsideration by Medical Advisory Committee," 06/2022[04/2019].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office for Children with Special Health Care Needs, 310 Whittington Parkway, Suite 200, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the agency's Web site at <https://chfs.ky.gov/agencies/ccshcn/Pages/Incorporated.aspx>.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office for Children with Special Health Care Needs
Children with Special Health Care Needs Services
(Amendment)

911 KAR 1:085. Early Hearing Detection and Intervention Program.

RELATES TO: KRS 13B.050, 194A.030(5), 200.460-200.499, 211.645(5), 211.647, 213.046(16), 216.2970, 334A-.020(5)]

STATUTORY AUTHORITY: KRS 194A.030(5), 194A.050(1), 211.647(3), 216.2970(1)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 194A.030 authorizes the Office for Children with Special Health Care Needs (OCSHCN) to promulgate administrative regulations as may be necessary to implement and administer its responsibilities under KRS 200.460 to 200.490.** KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations

necessary to operate the programs and fulfill the responsibilities vested in the cabinet, to implement programs mandated by federal law, or to qualify for federal funds. KRS 211.647(3) authorizes OCSHCN to promulgate administrative regulations establishing~~[requires the Office for Children with Special Health Care Needs to identify and refer for treatment infants at risk for hearing loss and establish]~~ standards for infant audiological assessment and diagnostic centers. KRS 216.2970(1) requires the OCSHCN to promulgate administrative regulations establishing approved methods for auditory screening for all infants born in hospitals offering obstetric services and alternative birthing centers with at least forty (40) births per year. This administrative regulation establishes standards, eligibility criteria, application processes, reporting requirements, and appeal rights for entities seeking designation as approved infant audiological assessment and diagnostic centers, and identifies approved methods for auditory screening for newborn infants in hospitals and alternative birthing centers.

Section 1. Definitions. (1) "AAA Guidelines" means the "Clinical Guidance Document Assessment of Hearing in Infants and Young Children"~~["Audilogic Guidelines for the Assessment of Infants and Young Children"]~~ published by the American Academy of Audiology.

(2) "ASHA Guidelines" means the "Guidelines for the Audiologic Assessment of Children from Birth to 5 Years of Age"~~[.]~~ published by the American Speech-Language-Hearing Association.

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

(4) "Audiology extern" means a student engaged in the clinical experience component of an audiology doctoral degree program.

(5) "Auditory brainstem response" or "ABR" means an objective electrophysiologic measurement of the brainstem's response to the ear when stimulated with a click sound or tone burst.

(6) "Automated auditory brainstem response" or "AABR" means an automatic ABR resulting in a pass/refer outcome.

(7) "JCIH Guidelines" means~~[the]~~ "Year 2019~~[2007]~~ Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs"~~[.]~~ published by the Joint Committee on Infant Hearing.

(8) "Office~~[for Children with Special Health Care Needs]~~" or "OCSHCN" is defined by KRS 211.645(2).

(9) "Otoacoustic emissions" means an objective physiological test method for measuring responses elicited directly from the cochlea.

Section 2. Eligibility Criteria for Centers. (1) In order to be eligible for designation as a Level 1 infant audiological assessment and diagnostic center, an entity located in Kentucky shall:

(a) Employ at least one (1) audiologist who:

1. Is currently licensed pursuant to KRS Chapter 334A;
2. Has experience testing children in the age range newborn to three (3) years; and

3.a. Performs all evaluations; or

b. Directly supervises audiology externs performing evaluations;

(b) ~~Possessess~~Possess the capacity to complete the following tests:

1. Otoscopic examination;
2. Tympanometry;
3. Ipsilateral acoustic reflex measurement;
4. Contralateral acoustic reflex measurement;
5. Ear-specific behavioral observation audiometry;
6. Speech awareness threshold;
7. Speech recognition or reception threshold;
8. Play audiometry; and
9. Either:

a. Otoacoustic emissions with diagnostic or screening capabilities; or

b. ABR screening;

(c) Annually calibrate all measuring and testing equipment; and

(d) Submit a complete application and assurance packet in accordance with Section 3 of this administrative regulation.

(2) In order to be eligible for designation as a Level 2 infant audiological assessment and diagnostic center, an entity located in Kentucky shall:

(a) Meet the requirements specified in subsection (1) of this section; and

(b) Possess the capacity to complete:

1. Otoacoustic emissions with diagnostic or screening capabilities;

2. Frequency-specific ABR;

3. Bone conduction ABR; and

4. Real ear measures.

Section 3. Application Process. (1) An entity seeking designation as an infant audiological assessment and diagnostic center shall submit to OCSHCN a completed application packet containing:

(a) Completed and signed form OCSHCN-E106~~[CASHCN-E106]~~, Potential Infant Audiological Assessment and Diagnostic Center Questionnaire;

(b) Copies of current professional licenses for audiologists performing evaluations;

(c) Copies of current calibration certificates for audiological testing equipment; and

(d) Copies of policies and procedures for tests and measures requested on the OCSHCN-E106~~[CASHCN-E406]~~, Potential Infant Audiological Assessment and Diagnostic Center Questionnaire.

(2) OCSHCN shall review an entity's application within thirty (30) calendar days of receiving a complete packet submitted in accordance with subsection (1) of this section.

(3) Upon review of an entity's application packet, OCSHCN's executive director or designee shall approve the entity as a Level 1 Infant Audiological Assessment and Diagnostic Center if:

(a) The entity meets the requirements specified in Section 2(1) of this administrative regulation; and

(b) OCSHCN determines that the entity's policies and procedures conform to best practice standards as described in JCIH Guidelines and:

1. AAA Guidelines; or

2. ASHA Guidelines.

(4) Upon review of an entity's application packet, OCSHCN's executive director or designee shall approve the entity as a Level 2 Infant Audiological Assessment and Diagnostic Center if:

(a) The entity meets the requirements specified in Section 2(2) of this administrative regulation; and

(b) OCSHCN determines that the entity's policies and procedures conform to best practice standards as described in JCIH Guidelines and:

1. AAA Guidelines; or

2. ASHA Guidelines.

(5) If OCSHCN's executive director or designee determines that the entity does not meet the requirements specified in Section 2 of this administrative regulation, OCSHCN shall:

(a) Advise the entity and request clarifying information; or

(b) Deny the designation as an Infant Audiological Assessment and Diagnostic Center and notify the entity of appeal rights pursuant to Section 8 of this administrative regulation.

(6) Approvals shall expire on December 31 of odd-numbered years. All entities seeking continued approval shall re-apply by December 1 of that year in accordance with this section.

Section 4. Publication of Approved List. (1) In accordance with KRS 211.647, OCSHCN shall maintain a current listing of all approved Infant Audiological Assessment and Diagnostic Centers, with contact information.

(2) OCSHCN shall make the listing public through the following methods:

(a) Posting on its agency Web site, <http://chfs.ky.gov/agencies/ccshcn>;

(b) Providing to the Cabinet for Health and Family Services, Office of Administrative and Technology Services, for inclusion on the KY-CHILD electronic information system used by birthing hospitals and centers;

(c) Enclosing as an attachment to correspondence with

parents; and

(d) Mailing a listing to birthing hospitals and centers upon request.

Section 5. Removal from Approved List and Updates Required.

(1) OCSHCN shall remove an entity from the approved list and notify the entity of the removal if the entity requests removal.

(2) If OCSHCN receives a complaint that an entity no longer meets the requirements of Section 2 of this administrative regulation, OCSHCN shall:

- (a) Advise the entity of the complaint;
- (b) Request clarifying information from the entity;
- (c) Review any information received; and
- (d) Determine whether the entity meets the eligibility requirements of Section 2 of this administrative regulation.

(3) If OCSHCN determines that the entity no longer meets the eligibility requirements, the office[commission] shall:

(a) Notify the entity of appeal rights pursuant to Section 8 of this administrative regulation; and

(b) Remove the entity from the approved list.

(4) Following approval, an Infant Audiological Assessment and Diagnostic Center shall provide documentation via form OCSHCN-E107[CCSHCN-E407], Infant Audiological Assessment and Diagnostic Center Program Modification, if the [following-]changes in circumstances occur:

- (a) Employment or termination of employment of an audiologist;
- (b) Change in licensure status of an audiologist;
- (c) Relocation of agency, name change, or addition of a location; or
- (d) Modification to policy or procedure with regard to evaluations described in Section 2 of this administrative regulation.

Section 6. Reporting Requirements. (1) Upon completion of diagnostic testing of an infant or child aged birth to three (3) years described in KRS 211.647(5), an approved Infant Audiological Assessment and Diagnostic Center shall report to OCSHCN via form OCSHCN-E3:

- (a) Identifying and demographic information;
- (b) Results of the follow-up audiological evaluation; and
- (c) Documentation of the referral required by KRS 211.647(5).

(2) An approved Infant Audiological Assessment and Diagnostic Center shall submit information specified in subsection (1) of this section electronically via the KY-CHILD electronic information system for permanent hearing loss, within forty-eight (48) hours[within seven (7) calendar days] of evaluation, in accordance with KRS 211.647, via form OCSHCN-E3.

(3) Scheduled appointments which are not kept by families shall be marked in the KY-CHILD electronic information system as no-show within four (4) calendar days if not rescheduled.

Section 7. Resource and Informational Materials. OCSHCN shall make available to families of all newborns and children ages birth to three (3) years identified as having permanent hearing loss information provided by the Kentucky Commission on the Deaf and Hard of Hearing.

Section 8. Appeal Rights. An entity denied designation as an Infant Audiological Assessment and Diagnostic Center or which has been removed from the approved list may request an administrative hearing in accordance with 911 KAR 1:090[KRS 13B.050].

Section 9. Approved Methods of Auditory Screening for Newborn Infants and Children Ages Birth to Three (3) Years.

(1) Auditory screenings pursuant to KRS 216.2970(1) shall include at least one (1) of the following physiological tests:

- (a) AABR; or
 - (b) Otoacoustic emissions.
- (2) Auditory screening reports shall:
- (a) Document the results of physiological tests conducted;
 - (b) Document the presence of any risk factors pursuant to KRS 211.645(5); and

(c) Be submitted via the KY-CHILD electronic information system.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Clinical Guidance Document Assessment of Hearing in Infants and Young Children", 1/2020["Audiologic Guidelines for the Assessment of Infants and Young Children August 2012"];

(b) "OCSHCN-E106[CCSHCN-E406], Potential Infant Audiological Assessment and Diagnostic Center Questionnaire", 6/2022[2009];

(c) "OCSHCN-E107[CCSHCN-E407], Infant Audiological Assessment and Diagnostic Center Program Modification", 6/2022[2009];

(d) "Guidelines for the Audiologic Assessment of Children From Birth to 5 Years of Age"[.] 2004 American Speech-Language-Hearing Association;[and]

(e) "Year 2019[2007] Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs"[.] 2007 Joint Committee on Infant Hearing; and[.]

(f) "OCSHCN-E3 Audiology Update Form (AUF) Worksheet", 6/2022.

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CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office for Children with Special Health Care Needs
(As Amended at ARRS, February 14, 2023)**

911 KAR 1:090. Appeals.

RELATES TO: KRS [~~Chapter~~]13B, 194A.030, 200.460 - 200.499, 200.654(13), 205.520(3), 205.5606(1), 205.6317, 211.645, 211.647, 213.046(16), 216.2970, [Chapters] 311, 319, 334A, 42 C.F.R. 435.603, 42 U.S.C. 9902[., 42 C.F.R. 435.603, KRS 194A.030, 200.460 - 200.499, 205.520(3), 205.5606(1), 200.654(13), 205.6317, 211.645, 211.647, 213.046(16), 216.2970, 334A.020(5)]

STATUTORY AUTHORITY: ~~KRS [Chapter 13B, and]~~ 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet, to implement programs mandated by federal law, or to qualify for federal funds. KRS 194A.030 authorizes the Office for Children with Special Health Care Needs (OCSHCN) to promulgate administrative regulations as may be necessary to implement and administer its responsibilities under KRS 200.460 to 200.490. This administrative regulation establishes appeal rights for eligibility, procedures for application, assignment of pay category, minimum monthly payments, fees, and reporting requirements for OCSHCN patients and diagnostic centers.

Section 1. Appeal Rights. An individual, provider, or entity who is affected by an adverse action in KAR ~~Title[Chapter]~~ 911, except those actions heard according to 911 KAR 1:060, may request an administrative hearing with the Cabinet for Health and Family Services Office of the Ombudsman and Administrative Review. A request for an administrative hearing shall be:

(1)(a) Mailed to the Office of the Ombudsman and Administrative Review, Quality Advancement Branch, 275 E. Main Street, 2 E-O, Frankfort, Kentucky 40621.~~[.]~~

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(b) Emailed to CHFS Listens Inbox at CHFS.Listens@ky.gov;~~if~~ or

(c) FAXED to (502) 564-9523;~~if~~ and

(2) Received within thirty (30) calendar days from the date of the written notice of the adverse action.

(3) The administrative hearing shall~~will~~ be conducted in accordance with KRS Chapter 13B.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
Board of Social Work
(Amended After Comments)

201 KAR 23:051. Renewal, Expiration, Termination,
Reinstatement of license.

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

STATUTORY AUTHORITY: KRS ~~[39A.180,]~~ 335.070~~[(1), (3),~~
~~(6), (7), 335.190,]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070
~~[39A.180 and 39A.190 allow agencies] authorizes the board to~~
promulgate administrative regulations ~~[necessary for disaster~~
~~and emergency response purposes during a state of~~
~~emergency. KRS 335.070(1) requires the board to evaluate and~~
~~approve the qualifications of the applicants for licensure. KRS~~
~~335.070(3) authorizes the board to promulgate administrative~~
~~regulations. KRS 335.070(6) authorizes the board to renew~~
~~licenses and set requirements for continued~~
~~education.] establishing requirements for license renewal. KRS~~
~~335.130 authorizes fees. This administrative regulation~~
~~establishes the requirements for [renewals, reinstatements, and~~
~~terminations of licenses to engage in the practice of social~~
~~work.] license renewal.~~

Section 1. Definitions~~[Definition].~~

(1) "Expiration" means the license has not been renewed.

(2) "Grace period" means the time allowed to renew after
the expiration date of the license;

(3) "Licensee" means a person licensed under KRS 335.010
through 335.160~~[-460]~~ as:

(a) [(1)] A certified social worker;

(b) [(2)] A licensed social worker; or

(c) [(3)] A licensed clinical social worker.

(4) "Reinstatement" means the reinstatement of a license
due to an action of the board.

(5) "Renewal" means renewing by the expiration date of
the license.

(6) "Termination" means the expiration of the license
because of disciplinary action in accordance with 201 KAR
23:150.

Section 2. Renewal.

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

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

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

(3) A licensee shall ~~[file the licensee's current mailing~~
~~address] update their contact information~~ with the board within
ten (10) days of such change(s) by USPS; email; by hand; or
via the self-service portal via the board Web site; and [shall
immediately notify the board in writing if the address
changes.]

(4) All licensees are required to maintain current contact
information with the board, which includes, name, physical
address, phone number (business or personal), and email
address (business or personal).

Section 3. Grace Period. If a licensee reapplies after the date
of expiration and before the three (3) months, [month] the
licensee shall:

(1) Cease and desist the practice of social work
immediately; [Pay a penalty of 100 dollars;]

(2) [Cease and desist the practice of social work

immediately;

(3)] Submit a renewal form along with documentation of
completed continuing education requirements per 201 KAR
23:075, Section 2; [-and]

(3) Pay a penalty of 100 dollars;

(4) Submit official documentation of employment beginning
with the date of expiration of the license and the job description
with an affirmation that the practice of social work had not
taken place during or after the end date of the license and
ceased when discovered during the grace period of the
renewal of the license;

(5) When reimbursement for services occurred during the
grace period, the licensee shall reconcile the matter with their
employer or each specific payer; and

(6) Upon payment of the license renewal fee and the late
renewal penalty, the date of the license will be retroactive to
the date of expiration.

Section 4. Expiration and Termination.

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

(2) Section 3(e) is applicable to this section; and

(3) If a licensee is subject to disciplinary action and the
result of that action is revocation of the license or an
agreement to surrender the license as if revoked, the
licensee's license will be terminated effective the date of such
action.

Section 5. Reinstatement.

(1) The board may reinstate a license from disciplinary
action in accordance with 201 KAR 23:150. [Upon payment of
the renewal fee and the late renewal penalty, the date of the
license shall be retroactive to the date of expiration.]

(2) The board's reinstatement is based on:

(a) The request by the former licensee;

(b) The length of time the license was inactive;

(c) Any extenuating circumstance creating the need for
reinstatement can be made in writing to the board by the
licensee but cannot be related to disciplinary action or
renewal of the license;

(d) The board may require an application fee in
accordance with existing requirements for initial applicants
under KRS Chapter 335 and 201 KAR Chapter 23 at the time of
reinstatement; and

(3) The board shall set the date of reinstatement for
license renewal.

Section 6. Incorporation by Reference.

(1) "Application For Renewal", 01/2023[05/2022], is
incorporated by reference.

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

WHITNEY CASSITY-CAYWOOD, Board Chair

APPROVED BY AGENCY: February 8, 2023

FILED WITH LRC: February 13, 2023 at 4:10 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is being promulgated pursuant to KRS 335.010-335.160, 335.990 to meet an imminent threat to public health, safety, or welfare. This regulation is necessary to mitigate the shortage of social work professionals in the Commonwealth of Kentucky at this time. The need for care continues to increase while the availability of practitioners to provide that care lags behind. Specifically, this regulation allows individuals that meet the appropriate educational requirements to practice social work under a license. Access to licensure would maintain the current access to services to the citizens of the Commonwealth and provide social workers access to current employment opportunities. This regulation will replace the emergency regulation in due course.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out of the provisions of KRS 335.010 to 335.160 and KRS 335.990. KRS 335.070(7) authorizes the board to establish requirements for a license to practice social work.

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

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

(a) How the amendment will change this existing administrative regulation: The amendment after comments version of this administrative regulation includes the methods for applying for a renewal or reinstatement and how terminations are handled. It clarifies the definitions of each section in section 1; it separates each section and provides a better description within each section; it allows the sections to be put in a better order within the regulation; it clarifies items within the sections with bullet points for the items; and it allows for new sections within the regulation and provides better clarification with a new title and additional information related to the title of that section.

(b) The necessity of the amendment to this administrative regulation: The amended after comments version is necessary in order to provide clarification on the regulation. It will allow the sections within the regulation to separate each of the sections and provide more descriptions within those sections and ensure the methods of applying for a renewal or reinstatement; as well as, how terminations are handled at the Board.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out provisions of KRS 335.010 to 335.160 and KRS 335.990. KRS 335.070(7) authorizes the board to establish requirements for a license to practice social work.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment will assist the Board in addressing the ability of individuals who meet certain educational requirements to practice social work under licensure pursuant to KRS 335.080, 335.090 or 335.100.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 6,000 licensed social workers, licensed clinical social workers, and certified social workers in Kentucky, public schools, hospitals, community mental health centers, public and private agencies.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals meeting the appropriate educational and testing requirements will be able to apply for a renewal or reinstatement immediately upon the filing of the administrative regulation or will have their prior license validated.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board believes that the entities will benefit from the ability to provide services to clients more efficiently and quickly without any disruptions.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: None

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

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

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutes are KRS 335.070.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

regulation. N/A

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. 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. None.

Cost Savings (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

(Amended After Comments)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Penitentiary.

Section 1. Incorporation by Reference. (1) Kentucky State Penitentiary policies and procedures, **February 14, 2023**~~November 14, 2022~~ [May 11, 2017], are incorporated by reference. Kentucky State Penitentiary policies and procedures include:

KSP 01-02-01	Public Information and Media Communications (Amended 11/14/22[11/8/2005])
KSP 02-01-02	Inmate Canteen (Amended 11/14/22[3/14/17])
KSP 02-12-02	Inmate Funds (Amended 11/14/22[11/14/12])
KSP 03-01-02	Tobacco Free (Amended 5/11/17)]
KSP 06-01-02	Inmate File [Master Records] (Amended 11/14/22[11/14/12])
KSP 10-02-01	Restrictive Housing [Special Management] Unit Operating Procedures, Living Conditions and Classification (Amended 2/14/23[11/14/22][11/14/12])
KSP 10-02-05	Special Security Unit[Death Row] (Amended 11/14/22[5/11/17])
KSP 10-04-04	Special Needs Inmates (Amended 11/14/12)]

KSP 13-01-01	Pharmacy Procedures (Amended 11/14/22[3/14/17])
KSP 13-02-01	Health Services (Amended 11/14/22[11/8/2005])
KSP 13-02-03	Continuity of Care (Amended 11/14/22[5/11/17])
KSP 13-02-04	Levels of Care and Staff Training (Amended 11/14/22[11/8/2005])
KSP 13-02-05	Consultations (Amended 11/14/22[9/14/2005])
KSP 13-02-08	Health Records (Amended 11/14/22[12/12/06])
KSP 13-02-09	Psychiatric and Psychological Services (Amended 2/14/23[11/14/22][3/14/17])
KSP 13-02-13	Optometric Services (Amended 11/14/22[1/7/13])
KSP 13-06-02	Informed Consent (Amended 11/14/22[11/8/2005])
KSP 14-03-01	Marriage of Inmates (Amended 5/11/17)
KSP 14-04-01	Legal Services (Amended 11/14/22[3/14/17])
KSP 14-06-01	Inmate Grievance Procedure (Amended 11/14/22[3/14/17])
KSP 15-06-01	Adjustment Procedures (Amended 11/14/22[5/11/17])
KSP 16-01-01	Visiting Program (Amended 11/14/22[3/14/17])
KSP 16-02-01	Inmate Correspondence (Amended 11/14/22[5/11/17])
KSP 16-03-02	Inmate Telephone Access (Amended 11/14/22[3/14/17])
KSP 16-04-01	Inmate Packages (Amended 2/14/23[11/14/22][3/14/17])
KSP 17-01-01	Inmate Personal Property (Amended 11/14/22[9/14/2005])
KSP 17-01-02	Disposition of Unauthorized Property (Amended 11/14/22[11/8/2005])
KSP 17-01-03	Procedures for Providing Clothing, Linens, and Other Personal Items (Amended 11/14/22[3/14/17])
KSP 17-01-04	Property Room, Clothing Storage and Property Inventory Control (Amended 11/14/22[11/8/2005])
KSP 17-01-06	Missing or Stolen Inmate Personal Property (Added 11/14/22)
KSP 17-02-01	Inmate Reception and Orientation (Amended 11/14/22[11/14/12])
KSP 18-01-01	Classification Committee (Amended 11/14/22[5/11/17])
KSP 18-01-02	Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) (Added 5/11/17)]
KSP 18-01-05	Meritorious Housing Unit (Amended 11/14/22[Added 5/11/17])
KSP 18-06-01	Classification Document and Case Planning (Amended 11/14/22[3/14/17])
KSP 18-10-04	Preparole Progress Report (Amended 3/14/17)]
KSP 18-15-01	Protective Custody Unit (Amended 11/14/22[3/14/17])
KSP 19-04-01	Inmate Work Programs and Safety Inspections of Inmate Work Locations (Amended 11/14/22[3/14/17])
KSP 19-04-02	Unit Classification Committee and Inmate Work Assignments (Amended 11/14/22[3/14/17])
KSP 19-05-01	Correctional Industries (Amended 11/14/22[5/11/17])
KSP 20-04-01	Educational Courses [Programs] (Amended 11/14/22[5/11/17])
KSP 22-04-01	Arts and Crafts Program (Amended 11/14/22[12/12/06])
KSP 23-01-03	Religious Services (Amended 11/14/22[3/14/17])
KSP 25-01-01	Release Preparation Program (Amended 11/14/22[3/14/17])
KSP 25-01-02	Inmate Release Procedure (Amended

	11/14/22[3/14/17])
KSP 25-10-01	Discharge of Inmates by Shock Probation (Amended 11/14/22[11/14/12])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, Department of Corrections, 275 E. Main Street, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site at <https://corrections.ky.gov/About/Pages/lrcfilings.aspx>.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 2, 2023

FILED WITH LRC: February 2, 2023 at 9:30 p.m.

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 governing the operation of the Kentucky State Penitentiary (KSP).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 196.035 and 197.020 and meets American Correctional Association (ACA) policy requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement practices or procedures to ensure the safe and efficient operation of the institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to KSP employees and inmates concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the institution into compliance with ACA expected practices and updates the procedures for the institution.

(b) The necessity of the amendment to this administrative regulation: The amendment meets the requirements of KRS 196.035 and 197.020 and updates practices for the institution in part to maintain accreditation with the ACA.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the institution.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 286 employees of the correctional institution, 851 inmates, and all visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and

procedures. They will have to change their actions to comply with the operational changes made by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase in cost is not anticipated from the changes in operations made in the amendment. An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: An exact cost of implementation is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of implementation is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Corrections budgeted funds for the institution for the biennium.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Penitentiary

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.870-61.884, 196.035, 197.020, 197.025, 197.170, 439.510, 532.120

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the institution operates but does not increase costs from what was previously budgeted.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the institution operates but does not increase costs from what was previously budgeted.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings are not anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the institution operates, but does not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the institution operates, but does not increase costs from what is budgeted for the biennium.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Prevention and Quality Improvement
(Amended After Comments)**

902 KAR 20:470. Kentucky heart attack response and treatment recognition process.

RELATES TO: KRS 211.340, 211.341, 211.342, 211.343

STATUTORY AUTHORITY: KRS 194A.050, 211.343

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.343 requires the Department for Public Health to promulgate administrative regulations in accordance with KRS Chapter 13A to implement a statewide system for heart attack response and treatment by recognizing licensed hospitals according to an assigned level of cardiac care, and to establish and implement a plan for achieving continuous quality improvement in the quality of care provided under a statewide system for heart attack response and treatment. This administrative regulation establishes the hospital recognition process for Kentucky's cardiac care system.

Section 1. Definition. "Department" is defined by KRS 211.340.

Section 2. Hospital Level of Heart Attack Response and Treatment Recognition. (1) A hospital seeking recognition in the statewide system for heart attack response and treatment shall complete and submit to the department the Step-by-Step Guide for Recognition in the Kentucky Statewide System for Heart Attack Response and Treatment.

(2) The application shall include a copy of the hospital's approval documentation [certificate or certification letter] from a nationally recognized guidelines-based organization that provides certification or accreditation for heart attack response and treatment, and that includes the:

(a) Name of the certifying or accrediting organization;

(b) Type of [Name of the] certification or accreditation received;

(c) Date of certification or accreditation; and

(d) Expiration date of certification or accreditation.

~~(3) [A hospital that holds a current certificate of need (CON) for percutaneous coronary intervention (PCI) or open-heart surgery may submit an application for recognition in the statewide system for heart attack response and treatment. The application shall include:~~

~~(a) A copy of the hospital's accreditation by a nationally recognized organization; and~~

~~(b) Evidence of the current certificate of need.~~

~~(4)] A hospital's application for recognition in the statewide system for heart attack response and treatment by the department is voluntary.~~

~~(4)](5)] Upon receipt of the information required by subsection (2) [or (3)] of this section, the department shall list the hospital according to the designated level of cardiac care.~~

~~(5)](6)] A recognized hospital shall annually verify continuation of[:~~

~~(a)] certification or accreditation by a nationally recognized guidelines-based organization[; or~~

~~(b) State issued CON for PCI or open-heart surgery].~~

~~(6) A hospital that has obtained a state certificate of need for percutaneous coronary intervention or open-heart surgery may submit an application for recognition in the statewide system for heart attack response and treatment. The application shall include:~~

~~(a) A copy of the hospital's accreditation by a nationally recognized organization; and~~

~~(b) Evidence of the approved certificate of need.~~

Section 3. Revocation of Recognition. (1) A recognized hospital that is unable to maintain current designation as a Level I Comprehensive Cardiac Center, Level II Primary Heart Attack Center, or Level III Acute Heart Attack Ready in accordance with KRS 211.341 shall notify the department within twenty (20) business days of knowledge they will not be maintaining their current designation.

(2) If the department becomes aware of a significant change in the status of the hospital that may potentially affect recognition status, the department may request confirmation of current certification or accreditation~~[certificate of need]~~ from the hospital.

(3) If the hospital is unable to provide the documentation requested, the department may revoke the hospital's recognition.

(4) If the recognition is revoked, the hospital may reapply for recognition by providing the information required by Section 2 of this administrative regulation.

(5) Following the re-application required by subsection (4) of this section, the department shall reinstate the recognition.

Section 4. Incorporation by Reference. (1) The "Step-by-Step Guide for Recognition in the Kentucky Statewide System for Heart Attack Response and Treatment," 1/2023[9/2022], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and is available at <https://chfs.ky.gov/agencies/dph/dpqi/cdpb/Pages/heartdiseasestro ke.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner]

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 2, 2023

FILED WITH LRC: February 8, 2023 at 8:05 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application process for a hospital to be recognized in the statewide system for heart attack response and treatment.

(b) The necessity of this administrative regulation: KRS 211.341 requires the department to establish and implement a plan for achieving continuous quality improvement in the quality of care provided under a statewide system for heart attack response and treatment. Hospitals may seek recognition by the department based on their level of cardiac care by a nationally recognized guidelines-based organization. KRS 211.343 requires the department to promulgate administrative regulations to implement the requirements of KRS 211.340 to 211.343.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the hospital recognition process, including the recognition revocation process, and incorporates by reference the application form.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure all hospitals who seek recognition by the department are aware of the application requirements.

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

(a) How the amendment will change this existing administrative regulation: The amended after comments version of this new administrative regulation revises the language regarding recognition based on a state approved certificate of need for clarity.

(b) The necessity of the amendment to this administrative regulation: The amendment to this new administrative regulation is in response to comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.341 defines the levels of cardiac care a hospital can achieve from a nationally recognized guidelines-based organization. The state approved certificate of need will allow a hospital to be recognized by the department but does not qualify for recognition in one of the three levels.

(d) How the amendment will assist in the effective administration of the statutes: The amended after comments version of this new administrative regulation will ensure the department is in full compliance with the statute. By listing hospitals according to the level of certification or accreditation from the nationally recognized guidelines-based organization and having a list of state approved certificate of need hospitals, consumers will have the resources necessary to make informed healthcare decisions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 118 hospitals in the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hospitals who want to be recognized according to their designated level of cardiac care will need to submit an application and required documentation to the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost for a hospital to submit an application for recognition to the department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hospitals will be recognized

according to the designated level of cardiac care.

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

(a) Initially: The initial costs of the department to implement this administrative regulation will be approximately \$100,000.

(b) On a continuing basis: The ongoing costs to the department to implement this administrative regulation will be approximately \$100,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. While hospitals will be recognized based on their level of certification, the application for recognition process will be applied equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Heart Disease and Stroke Prevention Program in the Division of Prevention and Quality Improvement, Department for Public Health.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.343.

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

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

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

(c) How much will it cost to administer this program for the first year? The initial costs of the department to implement this administrative regulation will be approximately \$100,000.

(d) How much will it cost to administer this program for subsequent years? The ongoing costs to the department to implement this administrative regulation will be approximately \$100,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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*.

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(Amendment)

16 KAR 4:060. Certificate renewals and teaching experience.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board (EPSB). KRS 161.020 provides that the validity and terms for the renewal of a certificate shall be determined by the laws and administrative regulations in effect at the time the certificate was issued. This administrative regulation establishes certificate renewal provisions and the requirements for successful teaching experience for certificate issuance and renewal.

Section 1. Certificate Renewals.

(1) If the renewal of a teaching certificate requires the completion of additional academic course work in lieu of teaching experience, the credits shall be selected from a nationally or regionally accredited postsecondary institution~~[the Planned Fifth-Year Program]~~.

(2) Except as provided in KRS 161.030(3), a teaching certificate shall be issued for a duration period of five (5) years, with provision for subsequent five (5) year renewals.

(3)

(a) A certificate shall be renewed for subsequent five (5) year periods upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and proof of the completion of:

1. Three (3) years of successful teaching experience as established in Section 2 of this administrative regulation; or

2. At least six (6) semester hours of credit~~[or the equivalent in professional development defined in 16 KAR 8:020]~~.

(b) The requirements of this subsection shall apply to teachers who have completed the Fifth Year Program renewal requirements established in 16 KAR 8:020 and 16 KAR 2:010, Section 3.

(4) The renewal requirements shall be completed by September 1 of the year of expiration of the certificate.

(5)

(a) Upon expiration, a regular certificate shall be extended for one (1) time for the one (1) year period immediately following the expiration date if:

1. The educator submits an application to the EPSB and complies with 16 KAR 2:010, Section 3(1);

~~[a. Until December 31, 2014, an application for the extension is submitted using Form TC-2; or~~

~~b. Beginning January 1, 2015, an application for the extension is submitted using Form CA-2;]~~

2. The certificate holder has completed at least one-third (1/3) of the renewal requirements; and

3. The extension is requested~~[recommended]~~ by the employing school superintendent.

(b) If the requirements of paragraph (a) of this subsection are met, the remainder of the renewal requirements shall be completed within the one (1) year period of reinstatement.

(6)

(a) Experience in the armed forces of the United States of America shall be accepted toward the renewal of a teaching certificate in lieu of required teaching experience as established in Section 2 of this administrative regulation, if the applicant held a valid certificate prior to entering military service.

(b) The validity period of a certificate held by a person at the

time of entry into the armed forces of the United States of America shall be extended for the same period of time for which it was valid at the time of entry, beginning from the date of discharge.

(7) For a certificate requiring teaching experience for renewal, experience as a substitute teacher shall be accepted in lieu of required teaching experience as established in Section 2 of this administrative regulation if the holder of the certificate:

(a) Was employed officially by the local board of education;

(b) Was paid through the board of education; and

(c) Substituted in a certified position~~[his or her certification area]~~ no less than thirty (30) teaching days per semester or sixty (60) teaching days per school year.

(8) Work experience at the Education Professional Standards Board, Kentucky Department of Education, or other state or federal educational agency with oversight for elementary and secondary education shall be accepted toward the renewal of a teaching certificate in lieu of teaching experience as established in Section 2 of this administrative regulation.

(9) Teaching or administrative experience at a regionally- or nationally-accredited institution of higher education in the area of educator preparation or the academic subject area for which the teacher holds certification shall be accepted toward the renewal of a teaching certificate in lieu of teaching experience as established in Section 2 of this administrative regulation.

~~[(10)(a) Until December 31, 2014, application for certification renewal shall be made on Form TC-2.~~

~~(b) Beginning January 1, 2015, application for certification renewal shall be made on Form CA-2.]~~

Section 2. Teaching Experience for Certificate Issuance and Renewal.

(1) Teaching experience shall be in a position directly corresponding to the type of teaching certificate for which the application is being made.

(2) A full year of experience shall include at least 140 teaching days of employment performed within the academic year.

(3) A half year of experience shall include at least seventy (70) teaching days of employment performed within an academic semester.

(4) The experience shall include employment on at least a half-time basis as defined in 16 KAR 7:010.

(5) Except as provided by Section 1(7), (8), or (9) of this administrative regulation, the experience shall include employment in either a public school or a regionally- or nationally-accredited nonpublic school.

(6) Experience as a home school teacher shall not be accepted as teaching experience.

(7) The

~~[(a) Until December 31, 2014, the] superintendent of the employing district or chief school officer of the employing nonpublic school shall verify teaching experience [on the certification application, Form TC-1, which is incorporated by reference in 16 KAR 2:010, for initial certification or Form TC-2 for certificate renewal.~~

~~(b) Beginning January 1, 2015, the superintendent of the employing district or chief school officer of the employing nonpublic school shall verify teaching experience on the Form CA-1, which is incorporated by reference in 16 KAR 2:010, for initial certification or Form CA-2 for certificate renewal.~~

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Form CA-2", 03/2014; and

(b) "Form TC-2", rev. 10/03.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky

40602, Monday through Friday, 8 a.m. to 4:30 p.m.]

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: February 13, 2023

FILED WITH LRC: February 15, 2023 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on April 26, 2023, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes certificate renewal provisions and the requirements for successful teaching experience for certificate renewal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish certificate renewal provisions and the requirements for successful teaching experience for certificate renewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.020 and KRS 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.020 also requires that the validity and terms for the renewal of any certificate shall be determined by the laws and regulations in effect at the time the certificate was issued.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the requirements for certificate renewal.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the reference to outdated applications and expands the substitute teaching experience and higher education experience that qualifies for certificate renewal.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove the reference to outdated applications and expand the substitute teaching and higher education experience that qualify for certificate renewal.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by setting the requirements for maintaining a teaching certificate in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will expand the experience that may count toward certificate renewal.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, 31 Institutions of Higher Education with and approved educator preparation programs, and those holding a Kentucky teaching certificate.

(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: Those holding Kentucky teaching certificates will have expanded options for certificate renewal through substitute teaching experience or experience at the higher education level. Expanded renewal options will result in more certified educators to fill positions at the district level. The amendment will also allow more higher education staff to renew their teaching certificates.

(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: Districts and educator preparation providers will not have to take any action to comply with this amendment. Those wishing to renew a teaching certificate on substitute teaching experience will have to complete sixty (60) teaching days per school year for three years. Those wishing to renew on experience at the higher education level will have to be in a teaching or administrative position in the area of educator preparation or the academic subject area for which they hold certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no fee established by the Education Professional Standards Board in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those holding Kentucky teaching certificates will have expanded options for certificate renewal through substitute teaching experience or experience at the higher education level. Expanded renewal options will result in more certified educators to fill positions at the district level. The amendment will also allow more higher education staff to renew their teaching certificates.

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

(a) Initially: There are no costs expected with to implement this amendment.

(b) On a continuing basis: There are no expected continuing costs with this amendment.

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

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

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

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public-school districts, and public institutions of higher education with approved educator preparation programs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

(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? It is unknown how many will pursue renewal through the expanded substitute teaching and higher education experience. Applicants for renewal are required to pay the certification fee established in 16 KAR 4:040. Those fees are used to offset the costs of renewing the certificate.

(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? It is unknown how many will pursue renewal through the expanded substitute teaching and higher education experience. Applicants for renewal are required to pay the certification fee established in 16 KAR 4:040. Those fees are used to offset the costs of renewing the certificate.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs expected with this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: At this time, it is unknown how many will pursue renewal through the expanded substitute teaching and higher education experience. Applicants for renewal are required to pay the certification fee established in 16 KAR 4:040. The certification fees collected for these applications will offset the costs of renewal.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None anticipated.

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

(c) How much will it cost the regulated entities for the first year? There are no costs created by this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs created by this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs.

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.111 requires nursing programs to be approved by the board. This administrative regulation establishes evaluative standards to assure that the programs of nursing provide the necessary instruction and services to prepare graduates for licensure eligibility [as registered]nurses or as practical nurses.

Section 1. Program of Nursing Accredited by a National Nursing Accrediting Body.

(1)(a)1. A prelicensure registered nursing or licensed practical nursing program that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall be deemed to be in compliance with the standards of 201 KAR 20:260 through ~~201 KAR 20:~~360.

2. A national nursing accrediting body shall include:

- a. The Accreditation Commission for Education in Nursing (ACEN);
- b. The Commission for Nursing Education Accreditation (CNEA);
- c. The Commission on Collegiate Nursing Education (CCNE);

or

d. Any other national nursing accrediting body recognized by the United States Department of Education.

3. The accredited program shall comply with Sections 3 through 10 of this administrative regulation.

(b) The board shall retain jurisdiction over accredited programs and may conduct site visits or other investigations into any allegation that may constitute a violation of 201 KAR 20:260 through 201 KAR 20:360. The board may also conduct site visits in accordance with Section 5 of this administrative regulation or when a national nursing accreditation board visits the program.

(2) A prelicensure program of nursing that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall submit all correspondence and reports to and from the accrediting body to the board within thirty (30) days of submission or receipt.

Section 2. Programs of Nursing Not Accredited by a National Nursing Accrediting Body. (1) A program of nursing that is not accredited by a national nursing accrediting body on the effective date of this administrative regulation shall:

(a) Obtain candidacy status with a national nursing accrediting body within three (3) years; and

(b) Obtain full accreditation within four (4) years of the effective date of this administrative regulation.

(2) A program of nursing that is not accredited by a national nursing accrediting body on the effective date of this administrative regulation shall submit a copy of all correspondence and reports to and from the national nursing accrediting body within thirty (30) days of submission or receipt.

(3) A program of nursing that does not obtain or maintain accreditation from a national nursing accrediting body may have its approval withdrawn by the board pursuant to Section 7 of this administrative regulation.

Section 3. Reports and Evaluation. (1) A program of nursing shall submit the Annual Report of the Program of Nursing to the board regarding its compliance with 201 KAR 20:260 through 201 KAR 20:360. It shall also submit the benchmarks set out in Section 5(2)(f) of this administrative regulation.

(2) To verify continued compliance with 201 KAR 20:260

through 201 KAR 20:360, the program of nursing shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other related documents as requested by the board.

(3) Pursuant to 201 KAR 20:260, Section 2(7)(a), the faculty shall engage in an evidence based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation report that is submitted to the board.

(4) Data collection for the evaluation report shall be on-going and shall reflect aggregate analysis and trending.

(5) The evaluation report shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program:

- (a) Organization and administration of the program of nursing;
- (b) Curriculum;
- (c) Resources, facilities, and services;
- (d) Teaching and learning methods including distance education;
- (e) Faculty evaluation;
- (f) Student achievement of program outcomes;
- (g) Graduation rates;
- (h) Licensure examination pass rates;
- (i) Employment rates of graduates; and
- (j) Clinical resources, including laboratory and simulation.

(6) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education program is substantially comparable to a campus based program.

(7) The evaluation report shall provide evidence that the outcomes of the evaluation process are used to improve the quality and strength of the program.

Section 4. Benchmarks. The board shall utilize the following benchmarks to evaluate a program of nursing. Except for the pass rate, the benchmarks shall be calculated annually from July 1 to June 30. The board shall calculate the pass rate for a program of nursing on an annual basis from January 1 to December 31 for all first time takers of the NCLEX.

(1) The pass rate for first time takers of the NCLEX who tested within twelve (12) months of the program completion date as reported on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates incorporated by reference in 201 KAR 20:070;

(2) The faculty turnover rate. A faculty member whose employment ends on or before June 30 of any year shall be counted in that year's calculation;

- (3) The program administrator turnover rate;
- (4) The graduation rate;
- (5) The faculty grievance rate; and
- (6) The student grievance rate.

Section 5. Site Visits. (1) The board may conduct site visits at any time.

(2) The following situations may be cause for a site visit to determine if the standards of 201 KAR 20:260 through 201 KAR 20:360 are being met:

- (a) Denial, withdrawal, or change of status by a national nursing accrediting agency;
- (b) Providing false or misleading information to students or the public concerning the program;
- (c) A written complaint received from faculty, students, or the general public relating to a violation of 201 KAR 20:260 through 201 KAR 20:360;
- (d) A change in physical facilities;
- (e) Information received by the board that may indicate a violation of 201 KAR 20:260 through 201 KAR 20:360;
- (f) A change in any of the benchmarks listed in Section 4 of this administrative regulation as follows:

1. A pass rate as calculated by Section 4 of this administrative regulation that:

a. Is less than an average of eighty (80) percent for three (3) consecutive years; or

b. Varies above and below eighty (80) percent from year to year over the previous five (5) years;

2. A faculty turnover rate greater than thirty (30) percent for two (2) consecutive years;

3. A program administrator turnover rate of more than three (3) individuals in five (5) years;

4. A graduation rate of less than sixty (60) percent of the original admitted cohort of newly-enrolled students within the standard length of the program of nursing ~~within the maximum time frame allowed for completion. The maximum time frame shall be determined by multiplying the standard program length for normally progressing students by one and five-tenths (1.5). Calculation of] The graduation rate shall [include]be calculated by comparing the number of students who started in each graduating cohort within the reporting period to those who graduated on time from the cohort [are enrolled for the first time in the first nursing course of the nursing program curriculum. All students admitted within the original cohort shall be included in the calculation regardless of whether a student may be excluded from the calculation utilized by a national nursing accrediting body]. The graduation rate calculation may exclude students who have left the program of nursing due to documented extenuating circumstances, such as hospitalization, long-term illness, family obligations, relocation, financial barriers, or decisions to change major or transfer to another institution;~~

5. Twenty-five (25) percent or more of the total number of nursing faculty who file grievances or appeals that are substantiated; or

6. Substantiated student grievances and appeals of more than ten (10) percent of the student population enrolled in the nursing program each year; or

(g) Failure to submit reports as required by 201 KAR 20:260 through 201 KAR 20:360.

(3) A program of nursing that fails to meet one (1) or more benchmarks for a year shall submit a report that examines the factors that contributed to the failure to meet and shall provide a description of the corrective measures to be implemented.

(4)(a) The board shall annually compile information on how the programs of nursing met the benchmarks. This information shall be published on the board's Web site[at www.kbn.gov].

(b) A program of nursing shall post a link to the information compiled pursuant to paragraph (a) of this subsection on the program of nursing's Web site. The link shall be easy to locate on the program's home page.

Section 6. Action Following Site Visit.

(1)(a) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(b) The program administrator shall be available during the discussion of the report at the board committee to provide clarification.

(c) If the site visit results in a finding of non-compliance with 201 KAR 20:260 through 201 KAR 20:360 by the program of nursing, a letter shall be sent to the program administrator regarding any requirements to be met.

(d) The board shall notify the program of nursing of the time frame within which it shall meet the requirements. The board shall verify that the requirements have been met.

(2)(a) If the program of nursing is unable to meet the requirements in the time set by the board, it may request additional time. The board, in its discretion, may grant or deny this request based on the rationale for the request.

(b) If the board denies the request for additional time, it shall begin the process established in Section 7 of this administrative regulation.

Section 7. Withdrawal of Approval. (1) If, in the opinion of the board, the standards established by 201 KAR 20:260 through 201 KAR 20:360 are not being met, the board shall send notice to the program administrator of the affected program of nursing of its

intent to withdraw approval. The notice shall be sent return receipt requested.

(2) When making this determination, the board shall consider the following factors:

- (a) The number and severity of the deficiencies;
- (b) The length of time in which the deficiencies have existed; and
- (c) Any exigent circumstances.

(3) Within thirty (30) days of receipt of the notice, the program administrator of the affected program may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, program approval shall be withdrawn and the program shall be closed. A closed program shall comply with subsection (5) of this section.

(4)(a) If a program of nursing requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The hearing shall be held before a hearing officer or before the full board.

(5)(a) A program of nursing whose approval has been withdrawn by the board shall be removed from the official approved status listing upon the effective date of the decision. Students currently enrolled in the last semester or quarter of the program may complete the program. If the student graduates, he or she may apply for licensure and make take the licensure examination. Any other student shall not be allowed to apply for licensure or take the licensure examination, unless the student graduates from another approved program of nursing.

(b) The program of nursing that has been closed shall assist a currently enrolled student to transfer to an approved program of nursing.

Section 8. Voluntary Closure of a Program. (1) A governing institution seeking to close a program of nursing shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) A governing institution may choose one (1) of the following procedures for closing a program of nursing as established in paragraph (a) or (b) of this subsection.

(a) The governing institution shall continue the program of nursing until the last class enrolled has graduated.

1. The program shall continue to meet the standards until all students enrolled in nursing courses have graduated or transferred.

2. The official closing of the program shall be the date on the degree, certificate, or diploma of the last graduate.

3. The governing institution shall notify the board in writing of the official closing date.

(b) The governing institution shall close the program following the transfer of students to other approved programs.

1. The program shall continue to meet the standards until all students have transferred.

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the governing institution.

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records. (a) The governing institution that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The governing institution that ceases to exist shall transfer the academic transcript of each student and graduate to a third party vendor approved by the Council for Postsecondary Education for safekeeping.

Section 9. Change in Ownership or Organization of the Governing institution. (1) The governing institution shall notify the board in writing of any intent to transfer administrative authority or ownership. The new administrative authority or owner shall inform the board of its plans for immediate and future operation.

(2) The board shall conduct a site visit to ensure adherence by the program of nursing to 201 KAR 20:260 through 201 KAR

20:360.

(3) Following this site visit, approval of the program of nursing shall continue under the new ownership or administrative authority if the approval standards continue to be met.

Section 10. Incorporation by Reference. (1) "Annual Report of the Program of Nursing", 10/22[10/48], Kentucky Board of Nursing, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx>.

AUDRIA DENKER, Board President

APPROVED BY AGENCY: January 30, 2023

FILED WITH LRC: February 10, 2023 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 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 April 17, 2023, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: It sets standards for continued approval of programs of nursing.

(b) The necessity of this administrative regulation: It is required by KRS 314.111.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

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

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

(a) How the amendment will change this existing administrative regulation: It updates the Annual Report and how the on-time graduation rate will be calculated by prelicensure programs of nursing.

(b) The necessity of the amendment to this administrative regulation: To bring the annual reporting requirements into alignment with other compact states and the National Council of State Boards of Nursing (NCSBN).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.111 requires the Board to set standards and the annual report provides data regarding those standards.

(d) How the amendment will assist in the effective administration of the statutes: By streamlining and standardizing reporting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 80 approved

pre-licensure nursing programs in the state of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The form of reporting is being updated, but the reporting requirement is the same.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The new report will streamlined and simplify the reporting process.

(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: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency general funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It will not.

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, 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 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. Cannot be determined.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cannot be determined.

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

(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: Difficult to estimate, but working time, materials, and energy spent producing annual report should be reduced.

(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.

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:390. Nursing Incentive Scholarship Fund.

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 authorize the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026(1) requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. This administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program.

Section 1. Definitions. (1) "Academic year" means:

(a) For a registered nursing or graduate nursing program, a twelve (12) month period beginning with a fall session; and

(b) For a practical nursing program, the completion of the required program.

(2) "Board" is defined by KRS 314.011(1).

(3) "Graduate nursing education" means the pursuit of a master's degree, post-master's certificate, or doctoral degree.

(4) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(10).

(5) "Program of nursing" means a prelicensure, BSN completion, graduate nursing program.

(6) "Successful academic progression" means, except during the last academic year preceding graduation:

(a) For a prelicensure or BSN completion nursing program, the completion of a minimum of twelve (12) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in a program of nursing; or

(b) For a graduate nursing program, the completion of a minimum of nine (9) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident; and

(b) Have been accepted for admission to a program of nursing.

(2) An applicant shall submit:

(a) A completed Nursing Incentive Scholarship Fund Application [form for agency receipt] on or before June 8;

(b) A copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year, if requesting preference for financial need;

(c) A copy of the program of nursing acceptance letter verifying

initial enrollment;

(d) For newly enrolled nursing applicants an official transcript from the last academic institution in which the applicant was enrolled for verification of GPA or copy of a GED; and

(e) For applicants enrolled in a program of nursing, a copy of an official transcript to verify continued enrollment.

Section 3. Criteria for Awards. The board shall consider the following criteria in evaluating an application and shall award points as follows:

(1) Preference categories as specified in KRS 314.025(2):

(a) Licensed practical nurses, fifteen (15)~~twenty (20)~~ points;

(b) Registered nurses pursuing a bachelor's degree or graduate nursing education, fifteen (15)~~twenty (20)~~ points; ~~and~~

(c) Prelicensure nursing students will be awarded ten (10) points;

(d) Financially-needy Kentucky residents, up to thirty-five (35) points. Financial need shall be determined by the estimated Federal Expected Family Contribution (EFC) as calculated by the annual FAFSA and points will be awarded based on need-based aid eligibility as follows:

1. EFC of \$0 to \$5000, thirty-five (35) points;

2. EFC of \$5001 to \$10,000, thirty (30) points; and

3. EFC of \$10,001 to \$20,000, twenty-five (25) points.

(2) Potential for academic success, as follows: high school, vocational school, college, or university grade point average for whichever institution the applicant most recently attended:

(a) Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;

(b) Three (3) to three and four-tenths (3.4), twenty (20) points; and

(c) Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points;

(3) Potential for academic success when GED is earned in place of a high school diploma:

(a) A GED score of 601 to 800, twenty-five (25) points;

(b) A GED score of 501 to 600, twenty (20) points; and

(c) A GED score of 401 to 500, fifteen (15) points.

Section 4. Amount of Award. (1) The board shall be notified by the board's fiscal officer as to the current fund balance prior to making an award.

(2)(a) The board shall first make awards to those recipients who:

1. Received an award in the previous year; and

2. Remain eligible to receive an award pursuant to Section 6 of this administrative regulation in the current year.

(b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the board shall make an award to other eligible applicants.

Section 5. Procedure for Disbursement of Awards. (1) Disbursement of funds shall be made directly to the recipient.

(2) Disbursement shall be made annually.

(3) Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:

(a) Has enrolled; and

(b) Is in good standing in the nursing program.

Section 6. Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient:

(a) Maintains successful academic progression through the program; and

(b) Submits to the board a completed Nursing Incentive Scholarship Fund Application ~~[form for agency receipt]~~ on or before June 8.

(2) The educational institution shall immediately notify the board of a change in a recipient's enrollment status.

(3) An award recipient in a practical nursing program shall not be eligible for further awards from the Nursing Incentive

Scholarship Fund while enrolled in that program.

Section 7. Disbursement Contract. (1) Prior to disbursement of initial funds, the recipient shall sign a Nursing Incentive Scholarship Fund Contract.

(2) The recipient shall sign a Nursing Incentive Scholarship Fund Promissory Note for each year in which funds are disbursed.

Section 8. Repayment and Deferral. (1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:

(a) Nursing program in which he or she is enrolled within the time specified by the program of nursing; or

(b) Required employment as specified in the contract.

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing.

(a) The board may agree to accept repayment in installments in accordance with a schedule established by the board.

(b) Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness, or accident that prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.

(4) A student enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression.

(a) This deferment shall apply for one (1) academic year.

(b) If the student fails to achieve successful academic progression after that time, repayment shall be due.

(c) If the student achieves successful academic progression within the allotted time, he or she may apply for a continuation award pursuant to Section 6 of this administrative regulation.

(5)(a) If a deferment is requested, the recipient shall submit the request to the board on a Nursing Incentive Scholarship Fund Request for Deferral form.

(b) If the request for deferment is submitted pursuant to subsection (3) of this section, the Nursing Incentive Scholarship Fund Request for Deferral form shall be accompanied by a statement by a physician, advanced practice registered nurse, or physician's assistant.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.

(7) If a court of competent jurisdiction determines that the recipient has defaulted and the funds are due and owing to the board, then the provisions of 201 KAR 20:370, Section 1(5), shall apply.

(8) An individual who has defaulted on a scholarship shall not be eligible to receive another scholarship until the defaulted scholarship has been repaid.

(9) The board may utilize the services of a third party for collection of sums owed pursuant to a Nursing Incentive Scholarship Fund Contract and Nursing Incentive Scholarship Fund Promissory Note, including reasonable attorney fees.

(10) After the board refers a debt to a third party for collection, a recipient shall not be eligible for deferment or to otherwise cure the recipient's breach, other than through payment of all sums owed to the board.

Section 9. Verification. (1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) A recipient shall notify the board immediately of a change of name or address or enrollment status in school.

Section 10. Incorporation by Reference. (1) The following ~~[forms]~~ are incorporated by reference:

VOLUME 49, NUMBER 8– MARCH 1, 2023

(a) "Nursing Incentive Scholarship Fund Application", 12/22[12/04];

(b) "Nursing Incentive Scholarship Fund Request for Deferral", 10/96;

(c) "Nursing Incentive Scholarship Fund Contract", 10/13; and

(d) "Nursing Incentive Scholarship Fund Promissory Note", 10/13.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:30 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>.

AUDRIA DENKER, President

APPROVED BY AGENCY: January 30, 2023

FILED WITH LRC: February 10, 2023 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 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 April 17, 2023, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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, email 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: It sets application processes, award criteria, required terms, deferral requirements, and remedies in the event of breach by an award recipient for a Kentucky Nursing Incentive Scholarship (NISF).

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting processes and standards for NISF applications, awards, required terms, deferral requirements and remedies in the event of breach by an award participant.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting the processes and criteria applicable to awards, the terms required of recipients, and the procedures and standards applicable to deferral as well as breach by an award recipient.

(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 awards points to encourage new prelicensure students when ranking students. The application is also updated to conform with the online application process.

(b) The necessity of the amendment to this administrative regulation: It is required by statute.

(c) How the amendment conforms to the content of the authorizing statutes: The modifications provide greater opportunities for LPN and RN students who have financial need but no background in healthcare.

(d) How the amendment will assist in the effective administration of the statutes: By providing a ranking system for NISF prelicensure students and expediting the application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The number of Kentucky Nursing Incentive Scholarships awarded each year depends upon funding levels: (a) FY22, 149; (b) FY21, 97 (c) FY20, 148; (d) FY19, 165; (d) FY18, 196.

(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 actions required of scholarship applicants and recipients are not changed by the 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 does not alter the cost imposed upon award recipients. The only cost to scholarship recipients occur in instances of breach or default, and the amendment does not alter such costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliant scholarship applicants may be eligible for scholarship funds.

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

(a) Initially: The amendment will not alter the cost of implementation and enforcement of the regulation. Last fiscal year, the operating costs of the regulation was approximately eleven thousand dollars (\$11,000) and the personnel costs were twenty-one thousand dollars (\$21,000).

(b) On a continuing basis: Unknown.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted funds under KRS 314.027.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None necessary.

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

(9) TIERING: Is tiering applied? None. Tiering is applied equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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 314.026 and 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? Last fiscal year, the operating costs of the regulation was approximately eleven thousand dollars (\$11,000) and the personnel costs were twenty-one thousand dollars (\$21,000).

(d) How much will it cost to administer this program for subsequent years? The amendment will not alter the cost of implementation and enforcement of the regulation in subsequent years.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

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? The costs will not change.

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

(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 2:015. Feeding of wildlife.

RELATES TO: KRS 150.015

STATUTORY AUTHORITY: 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015 requires the department to protect and conserve the wildlife of this Commonwealth. KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150. This administrative regulation establishes restrictions on the feeding of wildlife that will serve to protect wildlife from disease and toxic substances that may cause harm to the wildlife population if left unregulated.

Section 1. Definitions.

(1) "Captivity" means confinement by fence or other structure, or restraint intended to prevent escape.

(2) "Curtilage of the home" means the area encompassing the grounds immediately surrounding any home or group of homes used in the daily activities of domestic life, and may or may not be enclosed by a fence or other barrier, and includes areas occupied by captive cervids as established in 301 KAR 2:083 and wildlife held in captivity for rehabilitation purposes as established in 301 KAR 2:075 or held in captivity as established in 301 KAR 2:081 and 2:082.

(3) "Feeding" means willingly, wantonly, or knowingly depositing, distributing, or scattering of shelled, shucked, or unshucked corn, millet, milo, safflower seed, sunflower seed, ~~salt, mineral, or other attractants,~~ thistle, wheat, or other grain, or any manufactured feed or food product to be consumed by wildlife, but shall not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting practices or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under

normal agricultural practices.

Section 2. Recreational Feeding of Wildlife.

(1) Wildlife shall not be fed from March 1 through July 31 except as provided in subsections (2) and (3) of this section.

(2) Wildlife may only be fed year-round:

(a) In public areas that is not open to legal hunting or trapping, unless otherwise prohibited by statute, administrative regulation, or municipal ordinance;

(b) Within the curtilage of the home; and

(c) In a zoo or other facility that lawfully keeps or exhibits wildlife for rehabilitation, rescue, or public viewing.

(3) Fish may be fed year-round.

Section 3. Chronic Wasting Disease. In a department-designated Chronic Wasting Disease Surveillance Zone or Management Zone county, specified on the department's Web site at fw.ky.gov, persons shall not bait or feed using grain, salt, mineral, or other ingested attractants, except that the following shall be exempted:

(1) Normal agricultural practices;

(2) Wildlife food plots or plantings;

(3) Bird feeders within the curtilage of the home; and

(4) Furbearer trapping, except that trappers shall not use grain, salt, or mineral.

RICH STORM, Commissioner

APPROVED BY AGENCY: February 14, 2023

FILED WITH LRC: February 15, 2023 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 28, 2023, at 9:00a.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 April 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes restrictions on the feeding of wildlife that will serve to protect wildlife from disease and toxic substances that may cause harm to the wildlife population if left unregulated.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage wildlife populations in Kentucky while protecting them from disease concerns.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.015 requires the department to protect and conserve the wildlife of this Commonwealth. KRS 150.025(l)(h) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing requirements for feeding of wildlife.

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

(a) How the amendment will change this existing administrative regulation: This amendment will correct language that was filed to establish specific feeding and baiting restrictions in the CWD zone and inadvertently added to the broader definition.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform with the original intent of the amendment filed in the fall of 2022.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone using salt, mineral, or other attractants outside of the Chronic wasting disease surveillance or maintenance zones.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be necessary.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals using salt, minerals, or other attractants will not need to clean salt, mineral, or other attractants that may be remaining on the landscape outside of the Chronic wasting disease surveillance or maintenance zones prior to each March 1.

(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 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.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the terms of the amendment will apply to all individuals 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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025

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

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

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

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

year? There will be no cost to administer the amendments.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the amendments.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. There will be no effect on the expenditures or cost savings for regulated entities.

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] These amendments will not have a major economic impact as no revenue will be generated for any agency and no costs will be incurred by any regulated entity.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:090. Means by which migratory game birds may be taken.

RELATES TO: KRS 150.010, 150.025(1), 150.305(3), (4), 150.330, 150.360(2)

STATUTORY AUTHORITY: 150.025(1), 150.305(3), (4), 150.360(2), 150.600, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department of Fish and Wildlife to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to implement or carry out the purposes of KRS Chapter 150. KRS 150.305(1) authorizes the department to promulgate administrative regulations concerning possession of wildlife protected by KRS Chapter 150. KRS 150.305(3) requires the possession of migratory birds to be governed by federal regulations. KRS 150.305(4) authorizes the commissioner, or his or her designee, to inspect commercial frozen food lockers. KRS 150.360(2) authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions.

(1) "Baited area" means any area where shelled, shucked, or unshucked corn; wheat or other grain; salt; or other feed capable of

luring, attracting, or enticing migratory game birds is directly or indirectly, placed, exposed, deposited, distributed, or scattered.

(2) "Baiting" means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn; wheat or other grain; salt; or other feed so as to constitute for migratory game birds a lure, attraction, or enticement to, on, or over any areas where hunters are attempting to take them.

Section 2. Prohibited Hunting Methods.

(1) Migratory birds for which open seasons are prescribed may be taken by any method except those prohibited in this section.

(2) Migratory game birds and migratory waterfowl shall not be taken:

(a) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than ten (10) gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(b) With a shotgun of any description capable of holding more than three (3) shells, unless it is plugged with a one (1) piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three (3) shells, except that this restriction shall not apply during the light geese conservation order season;

(c) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;

(d) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind;

(e) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off or the sails furled, and its progress has ceased, except that a craft under power may be used to retrieve dead or crippled birds. Crippled birds shall not be shot from a craft under power;

(f) By the use or aid of live birds as decoys;

(g) On an area where tame or captive live ducks or geese are present, unless the birds are and have been for a period of ten (10) consecutive days prior to the taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals the birds from the sight of wild migratory waterfowl;

(h) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds, except that this restriction shall not apply during the light geese conservation order season;

(i) By the means or aid of any motor-driven land, water, or air conveyance or any sailboat used for the purpose of or resulting in the concentration, driving, rallying, or stirring up of any migratory bird; or

(j) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited, except that this paragraph shall not prohibit:

1. The taking of all migratory game birds, including waterfowl, on or over standing crops or flooded standing crops, including:

a. Aquatics;

b. Flooded harvested croplands;

c. Grain crops properly shocked on the field where grown; or

d. Grains found scattered solely as the result of normal agricultural planting or harvesting; and

2. The taking of all migratory game birds, except waterfowl, on or over any lands where baiting has occurred as the result of:

a. Bona fide agricultural operations or procedures; or

b. Manipulation of a crop or other feed on the land where grown for wildlife management purposes, if manipulation for wildlife management purposes does not include the distribution or scattering of grain or other feed once it has been removed from or stored on the field where grown.

(3) A baited area shall remain a baited area for ten (10) days following complete removal of all corn, wheat or other grain, salt, or other feed.

Section 3. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 4.[Section-3:] Transporting, Importing and Exporting.

(1) Migratory game birds lawfully killed and possessed in accordance with the hunting laws and administrative regulations of any foreign country, any state in the United States, or subdivision of a state, shall be imported, exported, or transported in accordance with the provisions specified in 50 C.F.R. Part 20.

(2) A person shall not transport within the United States any migratory game birds, except doves, unless the head or one (1) fully feathered wing remains attached to each bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or a commercial preservation facility.

Section 5.[Section—4:] Tagging and Recordkeeping Requirements.

(1) A person shall not put or leave any migratory game birds at any place, other than at his or her personal abode, or in the custody of another person, for picking, cleaning, processing, shipping, transportation, or storage, including temporary storage, or for the purpose of having taxidermy services performed, unless the birds have a tag attached, signed by the hunter, stating his:

(a) Address;

(b) The total number and species of birds; and

(c) The date the birds were killed.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

(3) A person shall not receive, or have in custody, any migratory game birds belonging to another person unless the birds are tagged as required under subsection (1) of this section.

(4) A person shall not transport migratory game birds belonging to another person unless the birds are tagged as required under subsection (1) of this section.

Section 6.[Section-5:] Commercial Frozen Food Lockers.

(1) A commercial frozen food locker shall receive or have in custody any migratory game birds unless the birds are tagged as required in Section 5[4](1) of this administrative regulation.

(2) A commercial frozen food locker shall not:

(a) Receive or have in custody any migratory game birds unless accurate records are maintained showing:

1. The number of each species;

2. The date the birds were received;

3. The name and address of the person from whom the birds were received;

4. The date the birds were disposed of; and

5. The name and address of the person to whom the birds were delivered.

(b) Destroy any records required to be maintained under this section for a period of one (1) year following the last entry on the record.

(c) Prevent any person authorized to enforce this administrative regulation from entering the facility at all reasonable hours and inspecting the records and the premises where the operations are being carried on.

Section 7.[Section-6:] Wanton Waste Law. A person shall not kill or cripple any migratory game bird pursuant to this administrative regulation without making a reasonable effort to retrieve the bird and include it in his daily bag limit.

RICH STORM, Commissioner

APPROVED BY AGENCY: February 14, 2023

FILED WITH LRC: February 15, 2023 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 28, 2023, at 11 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 April 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes means by which migratory game birds may be taken. These means are consistent with federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the possession, transportation, importation, exportation, tagging and commercial handling of legally taken migratory game birds. It prohibits the wanton waste of harvested migratory game birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the means by which migratory birds may be harvested in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360(2) authorizes the department to restrict methods for the taking of wildlife. KRS 150.305(3) and (4) authorize the department to regulate the possession of harvested migratory birds and facilitates the inspection of commercial preservation facilities. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the means by which migratory bird harvest may occur and how harvested birds are handled consistent with state, national, and international management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will add descriptions of the type of shotgun shells which may be used to harvest waterfowl. This section, with no changes, is being moved from 301 KAR 2:222. It is more appropriate here because the rules apply to all waterfowl hunting not just hunting on public lands.

(b) The necessity of the amendment to this administrative regulation: This amendment clarifies Department regulations by placing all specific regulations on waterfowl hunters in one regulation.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 40,000 migratory bird hunters in Kentucky who are impacted by this regulation.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Waterfowl hunters will see no difference in hunting regulations.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The only benefit is clarity of regulations and ability to find the regulations governing waterfowl hunting.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.360(2), 150.305(3) and (4), 150.600, and 50 C.F.R. Parts 20 and 21.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation

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generate for the regulated entities for the first year? n/a

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? n/a

(c) How much will it cost the regulated entities for the first year? There will be no cost for the regulated entities in the first full year of this administrative regulation is in effect.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost for the regulated entities in subsequent years this administrative regulation is in effect.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

(2) State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons and methods by which migratory birds may be harvested within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

(3) Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag, possession limits and means by which migratory birds may be legally harvested. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during, and after periods open for hunting and allows for the harvest and means of harvest of light geese under a conservation order season.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 4:110. Administration of drugs to wildlife.

RELATES TO: KRS 150.015, 150.025, 150.061, 150.105, 150.275, 150.280

STATUTORY AUTHORITY: KRS[2008 Ky. Acts ch.133, sec.5.] 150.025(1)(h), 150.061(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to regulate any method of taking wildlife and any other regulation reasonably necessary to implement or carry out the purposes of KRS Chapter 150. [2008 Ky. Acts ch.133, sec.5 requires the department to promulgate administrative regulations that restrict a person from administering drugs to noncaptive

wildlife.]This administrative regulation prohibits the administration of drugs to wildlife and creates the necessary exceptions.

Section 1. Definitions.

(1) "Captive wildlife":

(a) Means wildlife [legally]kept in confinement, for any time period, by cage, enclosure, fence or other structure or restraint intended to prevent escape; and

(b) Does not mean fish.

(2) "Drug" means any chemical substance, other than food or mineral supplements, that affects the health, structure or normal biological functions[function] of any wildlife.

(3) "Noncaptive wildlife":

(a) Means wildlife living unrestrained in the wild and not [legally]kept in confinement, for any time period, by cage, enclosure, fence or other structure or restraint intended to prevent escape; and

(b) Does not mean fish.

Section 2. Commissioner Authorization for Administration of Drugs to noncaptive wildlife.[Except as established in Section 4 of this administrative regulation.]

(1) A[a] person shall not administer drugs to noncaptive wildlife without written authorization from the commissioner pursuant to this section[Section-3] of this administrative regulation.

[Section-3.-Petitions.]

(2)[(4)] A party shall petition the commissioner in writing for authorization to administer drugs to noncaptive wildlife. Written petitions shall include:

(a) A biological or sociological justification for the need to administer a drug to noncaptive wildlife;

(b) A literature review of the known and potential effects of the drug on individual animals, the wildlife population, and potential consumers of wildlife; and

(c) A detailed plan and timeline for administration of the drugs including anesthetic monitoring plans and withdrawal time data for species and potential human consumption risk.

(3)[(2)] The commissioner may issue a waiver for the petition requirement for authorization to administer drugs to noncaptive wildlife for specific situations involving:

(a) Public safety; or

(b) Wildlife disease outbreaks, or biological or chemical emergencies or events.

(4) This section shall not apply to state or federal wildlife agencies' personnel in the performance of their official duties.

Section 3.[Section-4.] Administration of Drugs to Captive Wildlife.[Exemptions.] This administrative regulation allows the administration of drugs for:[shall not apply to:]

(1) [The administration of drugs to]Legally possessed captive wildlife [including captive cervids]under the direction of a licensed Kentucky veterinarian in which a veterinarian-client-patient relationship is established pursuant to KRS 321.185; or

(2) The treatment of sick or injured captive wildlife by either:

(a) A licensed veterinarian treating non-commercial captive cervids as identified in 301 KAR 2:083, or critically ill or injured wildlife pursuant to 301 KAR 2:075;

(b) A holder of a valid wildlife rehabilitation permit in a wildlife rehabilitation facility under the direction of a licensed Kentucky veterinarian in which a veterinarian-client-patient relationship is established pursuant to KRS 321.185 and 301 KAR 2:075;[or]

[(c)-A holder of a valid scientific collection permit;]

(3) [The administration of drugs by]A holder of a valid commercial nuisance wildlife control operator[operators] permit [licensed]using dispatch methods[by the department as] established in 301 KAR 3:120; or

(4) Employees of federal or state government in the performance of their official duties related to public health, wildlife management, or wildlife removal.

Section 4.[Section-5.] Disposition of Wildlife. An officer of the department may take possession or dispose of any noncaptive wildlife if the officer has probable cause to believe the noncaptive

wildlife have been administered drugs in violation of this administrative regulation.

RICH STORM, Commissioner

APPROVED BY AGENCY: February 14, 2023

FILED WITH LRC: February 15, 2023 at 10:455 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 28, 2023, at 10 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 April 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

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 requirements for the administration of drugs to native wildlife.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a defined process for the administration of drugs to live native wildlife. These processes are necessary to provide for the health and welfare of native wildlife and the safety of Kentucky citizens.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.280 requires the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. KRS 150.015 requires the Department to protect and conserve wildlife of the Commonwealth and to promote their general welfare.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for administering drugs to native wildlife which protects and conserves native wildlife per the requirements in KRS 150.015.

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

(a) How the amendment will change this existing administrative regulation: Amendment will strengthen protections to wildlife and citizens of the Commonwealth by restricting administration of drugs to non-captive wildlife.

(b) The necessity of the amendment to this administrative regulation: This amendment improves Department oversight on parties administering drugs to wildlife, providing further protections to wildlife. This amendment also improves health and human safety in regard to non-captive native wildlife.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above. This amendment falls within the reach of the authorizing statute KRS 150.015.

(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: These regulations will restrict those who wish to administer drugs to live native wildlife to only include veterinarians, wildlife rehabilitators, nuisance wildlife control operators, and captive wildlife permit holders under the authority of a licensed veterinarian. Scientific collection permit holders and others have the option to request commissioner approval to

administer drugs to wildlife. These amendments are necessary for the health and safety of people and wildlife populations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions required for persons listed above. Scientific collection permit holders and others not listed above shall request Commissioner approval prior to administering drugs to wildlife.

(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 for other entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue.

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

(a) Initially: There will be no initial administrative cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no 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 any other fees or 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: No fees are established directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all permit holders are treated the 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 Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.015 requires the Department to protect and conserve wildlife of the Commonwealth and to promote their general welfare. 50 C.F.R 17, 21, and 22 establishes the federal standards for holding migratory birds, including raptors, and federally threatened and endangered wildlife.

(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 is expected to be generated by this administrative regulation during the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no 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 no administrative costs incurred in subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

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

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

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

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

Cost Savings (+/-):
Expenditures (+/-):
Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] There will be no major economic impact incurred.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:150. Eastern Kentucky Correctional Complex policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470(2), 439.590, 439.640(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470(2), 439.590, and 439.640(2) authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. 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 Eastern Kentucky Correctional Complex.

Section 1. Incorporation by Reference. (1) "Eastern Kentucky Correctional Complex Policies and Procedures", February 09, 2023[December 13, 2016], is incorporated by reference. Eastern Kentucky Correctional Complex Policies and Procedures include:

[EKCC 01-06-02	Crime Scene Camera]
EKCC 01-07-01	Institutional Tours and Group Visits of EKCC (Amended 2/09/23)
EKCC 01-07-03	Outside Consultation and Research (Amended 2/09/23[12/13/16])
[EKCC 01-10-02	Organization and Assignment of Responsibility
EKCC 01-10-03	Institutional Planning
EKCC 01-13-04	Organization of Operations Manual (Amended 8/13/02)
EKCC 01-13-02	Monitoring of Operations, Policies and Procedures
EKCC 01-13-03	Formulation and Revision of EKCC Operating Procedure (Amended 8/13/02)

EKCC 01-13-04	Meetings Conducted and Their Purpose]
EKCC 02-01-02	Inmate Canteen (Amended 2/09/23[12/13/16])
EKCC 02-02-01	Fiscal Management: Agency Funds (Amended 2/09/23[6/12/02])
[EKCC 02-05-01	Fiscal Management: Budget
EKCC 02-08-01	Property Inventory
EKCC 02-08-02	Warehouse Operation and Inventory Control
EKCC 02-08-03	Inventory Control, Nonexpendable Items
EKCC 02-08-04	Warehouse Policy and Procedure
EKCC 02-11-01	Purchase and Supply Requisition
EKCC 02-12-01	Fiscal Management: Audits]
EKCC 02-14-01	Screening Disbursements from Inmate Personal Accounts (Amended 2/09/23[6/12/02])
[EKCC 04-02-02	Advisory Training Committee]
EKCC 06-03-01	Case Record Management (Amended 2/09/23[12/13/16])
[EKCC 10-02-01	Special Management Unit: Operating Procedures and Living Conditions]
EKCC 10-02-04	Restrictive Housing Unit and Special Management Unit: Operating Procedures and Living Conditions (Added 2/09/23)
EKCC 11-02-01	Meal Planning (Amended 2/09/23[10/14/16])
EKCC 11-04-01	Food Service: Inspections and Sanitation (Amended 2/09/23)
EKCC 11-04-02	Medical Screening of Food Handlers (Amended 2/09/23)
EKCC 11-05-01	Food Service: Security (Amended 2/09/23[12/13/16])
EKCC 11-07-01	Dining Room Rules (Amended 2/09/23[12/13/16])
EKCC 12-01-01	Vermin and Insect Control (Amended 2/09/23)
EKCC 12-02-01	Inmate Dress and Use of Access Areas (Amended 2/09/23[10/14/16])
EKCC 13-01-01	Pharmacy Policy (Amended 2/09/23[12/13/16])
EKCC 13-01-02	Self-Administration of Medication (SAM) Program (Amended 2/09/23[12/13/16])
EKCC 13-02-03	Consultations (Amended 2/09/23[10/14/16])
EKCC 13-02-04	Medical Services (Amended 2/09/23[9/14/05])
EKCC 13-02-05	Health Evaluations (Amended 2/09/23[12/13/16])
EKCC 13-02-06	Sick Call, General, and Dental (Amended 2/09/23[9/14/05])
EKCC 13-05-01	HIV[Aids] and Hepatitis B: Precautions Against Infection (Amended 2/09/23[9/14/05])
EKCC 13-07-01	Serious Illness, Major Injuries, Death (Amended 2/09/23[9/14/05])
EKCC 13-08-01	Psychiatric and Psychological Services (Amended 2/09/23[12/13/16])
EKCC 13-08-02	Psychiatric and Psychological Services Team (Amended 2/09/23[10/14/16])
EKCC 13-08-03	Suicide Prevention and Intervention Program (Amended 2/09/23[12/13/16])
EKCC 13-08-04	Detoxification (Amended 2/09/23[10/14/16])
EKCC 13-08-05	Mental Health Services (Amended 2/09/23[Added 9/14/05])
EKCC 13-09-01	Dental Services (Amended 2/09/23[9/14/05])
EKCC 13-10-01	Optometric Services (Amended 2/09/23[9/14/05])
EKCC 13-12-02	Resident Transfer/Medical Profiles (Amended 2/09/23[9/14/05])
EKCC 13-13-01	Syringes, Needles and Sharps Control (Amended 2/09/23[9/14/05])
EKCC 13-15-01	Medical Department - General Housekeeping, Decontamination Procedures, and Biohazard Waste

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	Procedures (Amended 2/09/23[9/14/05])
EKCC 13-16-01	Medical Records (Amended 2/09/23[11/8/2005])
EKCC 14-02-01	Clothing, Bedding and Personal Hygiene Supplies: [Issuance and Replacement Schedule](Amended 2/09/23)
EKCC 14-03-01	Board of Claims (Added 2/09/23)
EKCC 14-04-01	Inmate Legal Services (Amended 2/09/23)
EKCC 14-05-01	Americans with Disabilities Act and Inmate Programs Access (Added 2/09/23)
EKCC 14-07-01	Inmate Rights and Responsibilities
EKCC 15-01-01	Hair and Grooming Standards: Inmate Barber Shop (Amended 2/09/23)
EKCC 16-01-01	Inmate Visiting (Amended 2/09/23)
EKCC 16-02-01	Inmate Correspondence (Amended 2/09/23)
EKCC 16-03-01	Inmate Telephone Procedures (Amended 2/09/23)
EKCC 16-05-01	Inmate Access to and Communication with EKCC Staff (Amended 2/09/23)
EKCC 16-05-02	Unit Bulletin Boards & Inmate TV Channel (Amended 2/09/23)
EKCC 17-01-02	Personal Property Control (Amended 2/09/23)
EKCC 17-02-01	Assessment and [f]Orientation (Amended 2/09/23)
EKCC 17-04-01	Inmate Reception Process (Amended 2/09/23)[at the EKCC]
EKCC 17-04-02	Provisional Assessment Center Operations and Reception Program (Added 2/09/23)
EKCC 18-01-01	Inmate Classification (Amended 2/09/23)
EKCC 18-02-01	Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Amended 2/09/23)
EKCC 18-10-01	Parole Progress Report
EKCC 18-13-01	Meritorious Housing (Amended 2/09/23)
EKCC 18-13-04	Minimum Security Unit: Operating Procedures and Living Conditions (Amended 2/09/23[Added 8/13/02])
EKCC 19-04-01	Inmate Work Program (Amended 2/09/23)
EKCC 20-01-01	Educational Courses (Amended 2/09/23)[Program]
EKCC 21-01-01	Library Services (Amended 2/09/23)
EKCC 22-02-01	Recreation and Inmate Activities (Amended 2/09/23)
EKCC 23-01-01	Religious Services (Amended 2/09/23)
EKCC 24-01-01	Social Services and Counseling Program (Amended 2/09/23)
EKCC 25-02-01	Inmate Discharge Procedure (Amended 2/09/23)
EKCC 25-03-01	Reentry[Pre-release] Preparation (Amended 2/09/23)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site at <https://corrections.ky.gov/About/Pages/Ircfilings.aspx>

COOKIE CREWS, COMMISSIONER

APPROVED BY AGENCY: January 24, 2023

FILED WITH LRC: February 9, 2023 at 9:20 a.m.

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

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & 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 governing the operation of the Eastern Kentucky Correctional Complex (EKCC).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 196.035 and 197.020 and American Correctional Association (ACA) policy requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement practices or procedures to ensure the safe and efficient operation of the institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to institutional employees and inmates concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the institution into compliance with ACA expected practices and updates the procedures for the institution.

(b) The necessity of the amendment to this administrative regulation: The amendment meets the requirements of KRS 196.035 and 197.020 and updates practices for the institution in part to maintain accreditation with the ACA.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the institution.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 400 employees of the correctional intuition, 1,900 inmates, and all visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with the operational changes made by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

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

entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: An exact cost of implementation is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of implementation is unknown, but it is not anticipated that the amendment to this administrative regulation will increase costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for the institution for the biennium.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment does not create or increase 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? The amendment to this administrative regulation impacts the operation of the Eastern Kentucky Correctional Complex.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.870-61.884, 196.035, 197.020, 197.025, 197.170, 439.510, 532.120

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

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

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

(c) How much will it cost to administer this program for the first year? New programs are not created. The amendment to this regulation impacts how the institution operates but does not increase costs from what was previously budgeted.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the institution operates but is not expected to increase costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings are not anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the institution operates, but does

not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the institution operates, but an increase in costs is not anticipated.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

TRANSPORTATION CABINET Department of Highways Office of Highway Safety (Amendment)

601 KAR 14:050. Motorcycle Safety Education Program.

RELATES TO: KRS 176.5061-176.5069, 186.401, 186.450, 186.531, 186.535

STATUTORY AUTHORITY: KRS 176.5061, 176.5062, 176.5063, 176.5064, 176.5068

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.5063 and 176.5064 authorizes the Secretary of the Transportation Cabinet to promulgate administrative regulations that are reasonable and necessary to carry out the provisions of 176.5061-176.5069. This administrative regulation establishes the criteria and procedures required for approval of instructors for motorcycle safety education training, instructor training course provider requirements and selection criteria, training course requirements, fees for enrollment in a motorcycle rider training course, and training provider requirements and selection criteria.

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 174.012.

(2) "Commission" means the Motorcycle Safety Education Commission established pursuant to KRS 176.5067.

(3) "Instructor" means a person recognized by the cabinet who conducts motorcycle rider training and may also be known as a rider coach.

(4) "Instructor training course" means a process recognized by the cabinet that prepares an individual to teach a motorcycle rider training course.

(5) "Instructor training course provider" means a person or entity recognized by the cabinet to conduct an instructor training course.

(6) "Instructor trainer" means a person approved by the cabinet to train instructors.

(7) "Program administrator" means the person designated or appointed by the secretary of the cabinet to administer the Motorcycle Safety Education Program.

(8) "Range" means a paved area approved for practicing motorcycle riding skills during a training course.

(9) "Training provider" means a person or entity approved by the cabinet to conduct a rider training course.

Section 2. Training, Approval, and Reporting Requirements of Instructors.

(1) To request approval to be an instructor, an individual shall:

(a) Meet the requirements of KRS 176.5063;

(b) Have a current motorcycle endorsement on the individual's driver's license;

(c) Provide a certified copy of the applicant's driving record for the previous five (5) years in Kentucky or other states[state] in

which the applicant ~~has held~~[holds] a driver's license;

(d) Not have been convicted of a felony sex offense in KRS Chapter 510;

(e) Be able to lift the motorcycle required to be used in the training of students;

(f) Be able to perform the motorcycle maneuvers required in the training to be provided;

(g) Complete the Instructor Application in full;

(h) ~~Participate in at least one (1) full novice class as a coach assistant~~[Successfully complete a recognized instructor training course listed on the Motorcycle Safety Education Commission Web site at www.ride.ky.gov];

(i) ~~Obtain a recommendation for approval from a current training provider~~[Provide a diploma, certificate of completion, or other similar documentation from the instructor training course to verify completion of one (1) of the recognized training courses];

(j) ~~Successfully complete a recognized instructor training course listed on the Motorcycle Safety Education Commission Web site at www.ride.ky.gov~~[Have ridden a motorcycle for at least 1,000 miles within the previous twelve (12) months; and]

(k) ~~Provide a diploma, certificate of completion, or other similar documentation from the instructor training course to verify completion of one (1) of the recognized training courses~~[Submit the application with all other required documents to the program administrator by mailing to Motorcycle Safety Education Commission, Program Administrator, Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40604.];

(l) ~~Have ridden a motorcycle for at least 1,000 miles within the previous twelve (12) months; and~~

(m) ~~Submit the application with all other required documents to the program administrator by electronic mail to program administrator inbox, available at www.ride.ky.gov, or mailing to Motorcycle Safety Education Commission, Program Administrator, Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622.~~

(2) If an instructor is currently approved and requests to be requalified as an instructor for another ~~biennium~~[year], the instructor shall:

(a) Not have had his driver's license suspended or revoked at any time during the preceding two (2) years or at any time within the preceding five (5) years for any alcohol or drug related offense; and

(b) Provide proof of teaching a minimum of two (2) motorcycle safety courses in the previous year; or

(c) Provide proof of teaching one (1) motorcycle safety course in the previous year; and

(d) Successfully complete in the previous year an approved instructor training course listed on the Motorcycle Safety Education Commission Web site; or

(e) Successfully complete in the previous year a teaching skills course provided by the cabinet or its designee.

(3) Instructor application review and processing.

(a) After review of the application:

1. If the application is missing information, the program administrator shall return the application to the applicant with a request for the missing information; or

2. If the application is missing required documentation, the program administrator shall send a request for the missing documentation to the applicant.

(b) Instructor Application Approval or Denial

1. If the application is complete, within thirty (30) days, the program administrator shall notify the applicant of:

a. Approval as an instructor if all [of] the requirements in this administrative regulation have been met in the application and the required documentation received; or

b. Denial of approval as an instructor if all [of] the requirements have not been met in the application.

2. Approval for an instructor shall be valid for one (1) year from the date of the approval notice.

(4) Instructor Required Notices. The instructor shall provide written notice with specific details concerning the matter to the program administrator:

(a) If the instructor's driver's license is suspended or revoked;

(b) If the instructor is convicted of a felony sex offense in KRS Chapter 510; or

(c) ~~Of any change in contact information~~[Of teaching one (1) or two (2) motorcycle safety courses each year; and

(d) ~~Any change in contact information.~~

Section 3. Instructor Training Course Provider Responsibilities.

(1) An instructor training course provider shall:

(a) Provide training facilities and equipment required by the approved curriculum;

(b) Provide all course materials including handouts, books, and other items required by the approved curriculum to each participant;

(c) Obtain and maintain all certifications required to teach and certify new instructors within the curriculum being taught;

(d) Coordinate with new and existing [instructor] training course providers to deliver training sessions in a specific region based on need and available instructors or candidates;

(e) Report the following participant and course data to the program administrator[;]:

1. Completion status of participants;

2. Contact information of participants; and

3. Instructor certification numbers, if available;

(f) Allow quality assurance inspections of its training courses at the request of the program administrator[; and]

(g) Conduct quality assurance visits at the request of the program administrator; and[;]

(h) Coordinate with the program administrator to provide continuing education programs for existing instructors.

(2) Instructor Training Course Provider Required Notices. The instructor training course provider shall notify the program administrator:

(a) If the instructor training course provider or its instructor trainer has lost certification from the appropriate curriculum governing body;

(b) If the instructor training course provider or its instructor trainer has lost his or her driver's license due to suspension or revocation;

(c) If the instructor training course provider or its instructor trainer is convicted of a felony sex offense in KRS Chapter 510; or[and]

(d) Of any change in contact information.

Section 4. Training Provider Responsibilities.

(1) A training provider shall:

(a) Follow a curriculum in compliance with the Model National Administrative Standards for State[Entry-Level] Motorcycle Rider Training Programs published by the National Highway Traffic Safety Administration and recognized by the commission as described in Section 9(4) and 17(1)(b) of this administrative regulation;

(b) Ensure a sufficient number of courses and instructors are available to meet demand in the local geographic area;

(c) Schedule classes and instructors as needed;

(d) Upon request provide a schedule of classes to the program administrator and any schedule updates throughout the training season;

(e) Not use participant data, such as contact information, for any purpose outside of the provision of the rider education course[Register students and take payment using the cabinet Web site or, if the Web site is unavailable, remit student tuition payments to the program administrator made payable to the Kentucky State Treasurer];

(f) Keep all participant information confidential and not share with any third parties without prior approval from the cabinet[Not use participant data, such as contact information, for any purpose outside of the provision of the rider education course];

(g) Obtain and maintain a training range, motorcycles, safety equipment, classroom, and other course equipment according to Sections 6 through 8 of this administrative regulation[Keep all participant information confidential and not share with any third parties without prior approval from the cabinet];

(h) Provide classroom materials such as books, handouts,

videos, and other items as needed for completion of the course[Obtain and maintain a training range, motorcycles, safety equipment, classroom, and other course equipment according to Sections 6 through 8 of this administrative regulation];

(i) Have access to a computer or other appropriate device with internet capability and printer for student and course management[Provide classroom materials such as books, handouts, videos, and other items as needed for completion of the course];

(j) Supervise and monitor adherence of instructors to course curriculum and course delivery[Have access to a computer or other appropriate device with internet capability and printer for student and course management and printing course completion certificates];

(k) Solicit student feedback and distribute course evaluations as prescribed by the cabinet[Supervise and monitor adherence of instructors to course curriculum and course delivery];

(l) Forward student feedback to the cabinet upon request[Solicit student feedback and distribute course evaluations];

(m) Maintain the following insurance: [Forward student feedback to the cabinet upon request];

1. General liability insurance in an amount not less than \$1,000,000 underwritten by an insurance carrier licensed and approved by the Kentucky Department of Insurance, which shall include personal injury insurance for students and instructors;

2. Any insurance, including workers compensation and unemployment insurance, required by federal, state, or local law.

(n) Submit student information as required by contract for the purpose of reimbursement of services: [Maintain the following insurance:

1. General liability insurance in an amount not less than \$1,000,000 underwritten by an insurance carrier licensed and approved by the Kentucky Department of Insurance, which shall include personal injury insurance for students and instructors;

2. Any insurance, including workers compensation and unemployment insurance, required by federal, state, or local law.]

(o) Issue a course completion certificate as described in Section 9(5) of this administrative regulation to a student who has successfully completed the course; and [Submit student information in a manner prescribed by the cabinet for the purpose of reimbursement of services];

(p) Establish and implement policies and procedures for delivery of instruction and maintenance of site location and equipment. The training provider shall submit its policies and procedures regarding maintenance of site locations and equipment for written approval or denial to the program administrator before it or any part of it becomes effective and enforceable. [Issue a course completion certificate as described in Section 9(5) of this administrative regulation to a student who has successfully completed the course; and

(q) Establish and implement policies and procedures for delivery of instruction and maintenance of site location and equipment. The training provider shall submit its policies and procedures regarding maintenance of site locations and equipment for written approval or denial to the program administrator before it or any part of it becomes effective and enforceable.]

(2) Training Provider Required Notices. The training provider shall notify the program administrator:

(a) If the training provider's range is no longer available or has lost certification from the appropriate curriculum governing body;

(b) Of loss or change in required insurance;

(c) If the training provider cannot deliver services due to availability of instructors or equipment;

(d) Of any accidents involving bodily injury that occur during course instruction;

(e) Of proposed changes to policy and procedures regarding maintenance of equipment or delivery of instruction prior to implementation; [;

(f) Of any breach involving student data within seven (7) days of discovery of the breach; or [and]

(g) Of any change in contact information.

Section 5. Student-Instructor Ratio. The instructor to student

ratio shall not exceed the following:

(1) An instructor shall not teach more than thirty-six (36) students during classroom instruction;

(2) An instructor shall not teach more than eight (8) students during range instruction if teaching alone; and

(3) Two instructors shall not teach more than twelve (12) students during range instruction.

Section 6. Training Course Range Requirements.

(1) A range shall include fifty-six (56) linear feet per student at the perimeter dimension and a minimum of twenty (20) feet paved run-off area on each side.

(2) A range shall be approved by the governing body of the recognized curriculum prior to use.

(3) Student range capacity shall be the total linear feet of the perimeter divided by fifty-six (56) and rounded down.

(4) A standard range shall be 120 feet by 220 feet with a minimum paved run-off area of twenty (20) feet on each side.

(5) A modified range may be used if it meets the requirements in subsections (1) through (3) of this section.

Section 7. Training Motorcycles.

(1) A training motorcycle shall be a 500cc motorcycle or smaller, three (3) wheel motorcycles shall be exempt from this requirement. [;]

(2) One (1) motorcycle shall be available for each student participating in the range session, three-wheel motorcycles may be shared in accordance with the curriculum's governing body guidelines. [;]

(3) A motorcycle shall be intended by the manufacturer for street use, but may have:

(a) The headlight disabled for use on the range; or

(b) A speed or RPM limiting device installed. [; and]

(4) A motorcycle used in the training course shall be maintained in safe operating condition according to the manufacturer's specifications.

Section 8. Training Course Range Equipment.

(1) Protective Equipment. A rider shall wear the following protective equipment during range instruction:

(a) A full face or three-quarter helmet certified by its manufacturer to meet US DOT Federal Motor Vehicle Safety Standard No. 218 in good condition;

(b) A face shield, goggles, or glasses;

(c) Leather or other abrasion-resistant, full-fingered gloves;

(d) A weather appropriate, long-sleeved shirt or jacket that fully covers the arms;

(e) Long pants that fully cover the legs; and

(f) Boots or other sturdy, over-the-ankle footwear.

(2) Safety equipment. A range shall have and maintain the following equipment in close proximity to the riding area during range instruction:

(a) Class A fire extinguisher;

(b) First aid kit; and

(c) An appropriate number of cones or other markers for the outline of riding exercises.

Section 9. Rider Training Courses for Novice Riders.

(1) A rider training course for novice riders shall:

(a) Meet the requirements of KRS 176.5062;

(b) Meet or exceed the Model National Standards for Entry-Level Motorcycle Rider Training published by the National Highway Traffic Safety Administration as incorporated by reference in Section 17(1)(a) of this administrative regulation;

(c) Follow a curriculum recognized by the commission as described in subsection (4) of this section;

(d) Not be less than eight (8) hours of hands-on instruction for a novice course;

(e) Be provided by instructors approved by the cabinet; and

(f) Meet the training course requirements in this administrative regulation.

(2) Course materials shall include the Kentucky Motorcycle Manual maintained by the Kentucky State Police

<http://kentuckystatepolice.org/driver-testing/> and a diagram of the motorcycle with basic parts for driving identified. Materials may also include those specific to the curriculum being taught and required by the governing body of the curriculum.

(3) ~~Novice course student~~[Student] evaluation shall include[-a]:

(a) A written exam that addresses:

1. Current traffic laws with a focus on motorcycles; and
2. Best practices of motorcycle operation; and

(b) A skills test that demonstrates safe operation of the motorcycle in numerous situations.

(4) Training courses for novice riders recognized by the cabinet shall be listed on the Motorcycle Safety Education Commission Web site at www.ride.ky.gov.

(5) Certificate of Completion.

(a) Upon successful completion of a course that meets the requirements in this section [~~of this administrative regulation~~] and is included on the list of training courses for novice riders recognized by the cabinet, the student shall be issued a certificate of completion in physical or electronic format that shall include:

1. Date of course completion;
2. Provider of course taken;
3. Curriculum used in course; [~~and~~]
4. Certificate number[.]; and

5. Designation if completing a three (3) wheel course.

(b) The student shall present this certificate to the Kentucky Transportation Cabinet Driver Licensing Regional Office[~~Circuit Clerk in his county of residence~~] to be used for an exemption of the skills portion of the motorcycle endorsement testing.

Section 10. Students.

(1) Enrollment and Registration Requirements. A student shall:

(a) Have a valid Kentucky driver's license or Kentucky motor vehicle instructional permit;

(b) Complete and sign a liability waiver form. A student under the age of eighteen (18) shall have a liability waiver from his or her parent or legal guardian, signed on-site or notarized, authorizing the student to take the course;

(c) Complete the registration process; and

(d) Pay any required fee.

(2) Course Completion. A student shall:

(a) Attend, participate in, and complete all required training sessions; [~~and~~]

(b) Achieve passing scores on required tests[.]; and

(c) Upon successful completion of the program, receive a course completion certificate as prescribed in Section 9(5) of this administration regulation.

Section 11. Approval of Courses for Exemption from the Licensing Skill Test.

(1) [~~In order~~]For a course to be approved for exemption from the licensing skill test pursuant to KRS 176.5062(5), a course shall:

(a) Meet the curriculum standards of and receive any approvals required by the Motorcycle Safety Foundation for motorcycle rider education or instructor training, but shall not include an online course without hands on training on a motorcycle;

(b) Meet the curriculum standards of and receive any approvals required by Total Control Training, Inc. for motorcycle rider education, but shall not include an online course without hands on training on a motorcycle;

(c) Be a rider education training course administered by an approved training provider in another state which is recognized for exemption from the motorcycle licensing skill test in that state; or

(d) Be submitted to and approved by the commission for inclusion on the list based on consideration of the following[-]:

1. Compliance with National Highway Traffic Administration (NHTSA) standards;

2. Reasonableness of enrollment fee for participants;

3. Availability of trainers;

4. Effectiveness data; and

5. Other similar criteria that are relevant to determining the course's safety and effectiveness.

(2) The courses approved for exemption by the commission

shall be published on the commission's Web site at www.ride.ky.gov.

Section 12. Data and Reporting.

(1) All reports shall be submitted electronically to the Cabinet [~~through the commission's Web site. If the program Web site is unavailable, reports shall be sent by electronic mail~~] or by mailing to Motorcycle Safety Education Program, Program Administrator, Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky ~~40622~~[40604].

(2) A training provider shall report to the program administrator:

- (a) Course schedules and updates;
- (b) Student attendance;
- (c) Student contact information;
- (d) Student driver's or permit license information;
- (e) Course completion date;
- (f) Whether student passed or failed course;
- (g) Skills waiver card number if issued;
- (h) Student feedback evaluations [~~when requested~~]; and
- (i) Evaluations of instructors and the instructor training course provider.

(3) An instructor training course provider shall report to the program administrator:

- (a) Student attendance;
- (b) Results and recommendations for instructor candidates upon completion of training; and
- (c) Results of quality assurance visits for both instructors and training providers.

Section 13. Quality Assurance.

(1) An instructor shall:

(a) Maintain all appropriate certifications required by the governing body of the recognized curriculum; and

(b) Participate in all required professional development activities as prescribed by the governing body of the recognized curriculum or cabinet.

(2) Instructor training course providers shall:

(a) Conduct periodic audits and provide feedback to instructors for the purpose of professional development at the request of the program administrator; and

(b) Maintain all appropriate certifications required by the governing body of the recognized curriculum.

(3) Portions of student evaluation form results may be made available for professional development to the following:

- (a) Instructors;
- (b) Instructor training course providers; and
- (c) Training providers.

(4) The cabinet program administrator or designee may conduct audits as needed to review quality of instruction, range condition, equipment condition, and compliance with financial and other reporting requirements.

Section 14. Fees.

(1) A fee shall not be required for an individual who is less than eighteen (18) years of age[-]:

(a) ~~At least sixteen (16) years of age;~~

(b) ~~Less than eighteen (18) years of age;~~

(c) ~~A Kentucky resident; and~~

(d) ~~Has a valid motor vehicle instructional permit or driver's license.~~

(2) A fee not to exceed \$200[\$450] may be required for an individual who is:

(a) At least eighteen (18) years of age; and

(b) Has a valid motor vehicle instructional permit or driver's license.[~~A Kentucky resident; and~~

(c) ~~Eligible for a motor vehicle instruction permit.~~

(3) Any fee shall be paid upon registration and shall not be refundable.

[~~(4) Any fee shall be paid by check or money order made payable to the Kentucky State Treasurer or other means established through the Transportation Cabinet Web site.~~]

Section 15. Training Provider Selection Criteria.

(1) To request to be a training provider, the applicant shall:
 (a) Complete the Training Provider Application in full;
 (b) Submit evidence showing the person or entity has the ability to meet the required responsibilities as prescribed in this administrative regulation. This shall include:

1. Description of expertise in offering this or a similar type of program;
2. Range approval certification or application for certification;
3. Schedule of range availability or proposed course schedule;
4. List of training motorcycles including VIN [number] or plan to acquire them;
5. Maintenance records of owned motorcycles, if available;
6. Copies of policies or quotes to obtain required insurance;
7. Business plan showing anticipated costs and revenues to determine viability; and
8. Policy and procedures manual for course delivery, site, and equipment maintenance.

(c) Submit the application with all other required documents to the program administrator by electronic mail or by mailing to Motorcycle Safety Education Program, Program Administrator, Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622[40604].

(2) Application review and processing.

(a) After review of the application:

1. If the application is missing information, the program administrator shall return the application to the applicant with a request for the missing information; or
2. If the application is missing required documentation, the program administrator shall send a request for the missing documentation to the applicant.

(b) Application approval or denial.

1. If the application is complete, within thirty (30) days, the program administrator shall notify the applicant of:

- a. Approval as a training provider if all [of] the requirements have been met in the application and send a certificate of approval. A contract between the cabinet and training provider shall also be sent for the training provider to sign and return to the cabinet within thirty (30) days of receipt; or
- b. Denial of approval as a training provider if all [of] the requirements have not been met in the application.

2. Approval for a training provider shall be valid for two (2) years from the date of the approval notice.

Section 16. Instructor Training Course Provider Selection Criteria.

(1) To request to be an instructor training course provider, the person or entity shall:

(a) Complete the instructor training course provider application in full;

(b) Provide a diploma, certificate of completion, or other similar documentation from the instructor training course to verify completion of one (1) of the approved training courses for each instructor trainer;

(c) Submit evidence showing the person or entity has the ability to meet the required responsibilities and course requirements in this administrative regulation. This shall include:

1. Description of expertise in offering this or a similar type of program;
2. Copies of policies or quotes to obtain all required insurance;
3. Business plan showing anticipated costs and revenues to determine viability;
4. Policy and procedure manual or plan for new instructor training, quality assurance, and existing instructor professional development; and
5. Cost schedule for each type of class including number of participants, if applicable, and quality assurance visits.

(d) Submit the application with all other required documents to the program administrator by electronic mail or by mailing to Motorcycle Safety Education Program, Program Administrator, Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622[40604].

(2) Application review and processing. After review of the application:

(a) If the application is missing information, the program administrator shall return the application to the applicant with a

request for the missing information; or

(b) If the application is missing required documentation, the program administrator shall send a request for the missing documentation to the applicant.

(3) If the application is complete, within thirty (30) days, the program administrator shall notify the applicant of: [Application approval or denial:]

(a) Approval as an instructor training course provider if all [of] the requirements have been met in the application and send a certificate of approval. A contract between the cabinet and instructor training course provider shall also be sent for the instructor training course provider to sign and return to the cabinet within thirty (30) days of receipt; or [If the application is complete, within thirty (30) days, the program administrator shall notify the applicant of:]

(b) Denial of approval as a trainer if all [of] the requirements have not been met in the application. [Approval as an instructor training course provider if all of the requirements have been met in the application and send a certificate of approval. A contract between the cabinet and instructor training course provider shall also be sent for the instructor training course provider to sign and return to the cabinet within thirty (30) days of receipt; or

(c) Denial of approval as a trainer if all of the requirements have not been met in the application.]

(4) Approval for instructor training course provider shall be valid for two (2) years from the date of the approval notice.

Section 17. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Model National Standards for Entry-Level Motorcycle Rider Training", NHTSA, DOT HS 811 503, August 2011.[-]

(b) "Model National Administrative Standards for State Motorcycle Rider Training Programs" NHTSA, November 2014, Report No. DOT HS 812 071.[-]

(c) "Training Instructor Application", viewed at <https://ride.ky.gov/Pages/Instructors.aspx>; [Motorcycle Safety Education Program, 2022.]

(d) "Instructor Training Course Provider Application", Motorcycle Safety Education Program, 2022; and[-]

(e) "Training Provider Application", viewed at <https://ride.ky.gov/Pages/Providers.aspx>; [Motorcycle Safety Education Program, 2022].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Motorcycle Safety Education Program, Office of the Secretary, 200 Mero Street, Frankfort, Kentucky 40622.[40604] phone (502) 564-1568, Monday through Friday, 8 a.m. to 4:30 p.m. The standards[applications] may also be obtained from the Motorcycle Safety Education Commission Web site at www.ride.ky.gov. The standards may also be obtained from the U.S. Department of Transportation, National Highway Traffic Safety Administration Web site in the Motorcycle Safety area at <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/811503.pdf> and [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812071-modelnatladmin\[-\]motorcycle.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812071-modelnatladmin[-]motorcycle.pdf).

JIM GRAY, Secretary

JAMES BALLINGER, State Highway Engineer

APPROVED BY AGENCY: February 9, 2022

FILED WITH LRC: February 14, 2023 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2023, at 10:00 a.m. EST, at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to

the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. EST on April 30, 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: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 782-8180, fax (502) 564-5238, email Jon.Johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation changes procedural components to KRS 176.5061, 176.5062, 176.5063, 176.5064.

(b) The necessity of this administrative regulation: This administrative regulation adopts changes necessitated by HB 125 from 2021 RS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute contained in KRS 176.5061, 176.5062, 176.5063, 176.5064.

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

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

(a) How the amendment will change this existing administrative regulation: This amendment will remove requirements to use a cabinet website.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because of HB 125 from 2021 RS.

(c) How the amendment conforms to the content of the authorizing statutes: The establishment will remove requirements to use a cabinet website and streamline procedures.

(d) How the amendment will assist in the effective administration of the statutes: The establishment will remove requirements to use a cabinet website and streamline procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It may impact motorcycle riders, site providers, training providers, and instructors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Training Providers will provide notice of taking a 3-wheel course in order to comply with the restrictions adopted under HB 125 of 2021 RS.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will streamline the safety training process.

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

(a) Initially: There are no costs associated with these amendments.

(b) On a continuing basis: There are no continuing costs associated with these amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. Due to increased costs associated with the program, ie: fuel, tires, motor fuel, parts for maintenance, etc., the amendment will allow the safety training providers to charge up to \$200 instead of \$150.

(9) TIERING: Is tiering applied? No tiering is applied to this amendment.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Highway Safety in the Kentucky Transportation Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.5061, 176.5062, 176.5063, 176.5064.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment should not have any effect on expenditures and revenues of a state or local government agency.

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

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

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

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

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

Revenues (+/-): n/a

Expenditures (+/-): n/a

Other Explanation: n/a

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for the first year will be negligible.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for subsequent years will be negligible.

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

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

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

Cost Savings (+/-): n/a

Expenditures (+/-): n/a

Other Explanation:

(5) Explain whether this administrative regulation will have a

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

FEDERAL MANDATE ANALYSIS COMPARISON

- (1) Federal statute or regulation constituting the federal mandate. n/a
- (2) State compliance standards. n/a
- (3) Minimum or uniform standards contained in the federal mandate. n/a
- (4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? n/a
- (5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. n/a

EDUCATION AND LABOR CABINET Kentucky Board of Education Department of Education (Amendment)

703 KAR 5:270. Kentucky's Accountability System.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.649, 160.346, 20 U.S.C. 6311

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement. This administrative regulation establishes the statewide system of accountability, and meets requirements set forth in the federal Every Student Succeeds Act of 2015 at 20 U.S.C. 6311.

Section 1. Definitions. (1) "English learner progress indicator" means the combination of individual student growth for status and the difference in school performance for change of English learners toward English language proficiency. For all other indicators, English learners means students currently identified and those who continue to be monitored as English learners.

(2) "Full academic year" means 100 or more instructional days of student enrollment within the school year.

(3) "Grade 12 non-graduates" means all students enrolled in grade 12 at the end of the school year who do not graduate.

(4) "Graduation rate" means the percentage of students who enter high school and receive a diploma based on their cohort in four (4) and five (5) years, adjusting for transfers in and out, émigrés, and deceased students.

(5) "Indicator performance rating" means one (1) of five (5) colored-coded performance levels on each state indicator that is determined by combining status and change.

(6) "Individual education program" or "IEP" means an individual education program as defined in 707 KAR 1:002.

(7) "Local education agency" or "LEA" for the purposes of this administrative regulation shall mean a local school district as provided in KRS 160.010[161.040] and KRS 160.020[161.020] or a charter school board of directors as provided in KRS 160.1590[161.1590].

(8) "Overall performance rating" means one (1) of five (5) color-coded performance levels that aggregates all available state indicator data that is determined by combining status and change.

(9) "Postsecondary readiness" means the attainment of the necessary knowledge, skills, and dispositions to successfully transition to the next level.

(10) "Proficient" or "proficiency" means reaching the desired level of knowledge and skills as measured on academic assessments.

(11) "Quality of school climate and safety indicator" means the measures of school environment.

(12) "State assessment results for reading and mathematics indicator" means the measure of academic performance for reading and mathematics on state assessments.

(13) "State assessment results for science, social studies, and writing indicator" means the measure of academic performance for science, social studies, and writing on state assessments.

(14) "State indicator" means a component of the accountability system as defined in KRS 158.6455.

(15) "Value table" means a set of numbers that are used to attribute scores to different performance levels.

(16) "Writing" means the content area that includes on-demand writing, and editing and mechanics.

Section 2. Kentucky's accountability system that is used to classify schools and LEAs shall include the state indicators of: state assessment results for reading and mathematics; state assessment results for science, social studies, and writing; English learner progress; postsecondary readiness; quality of school climate and safety; and graduation rate.

(1) The state assessment results for reading and mathematics indicator shall be measured by student performance on state assessments in reading and mathematics.

(2) The state assessment results for science, social studies, and writing indicator shall be measured by student performance on state assessments in science, social studies, and writing.

(3) The English learner progress indicator shall be measured by student performance on an English proficiency test. The English learner progress indicator shall be measured based on a growth value table. Additional tables shall incorporate the federal flexibilities of age upon entry to U.S. schools, initial English language proficiency level, and degree of interrupted schooling.

(4) The quality of school climate and safety indicator shall include perception data from surveys that measure insight to the school environment.

(5) The postsecondary readiness indicator shall be measured at high school for students meeting the following criteria:

(a) Earn a regular or alternative high school diploma plus grade 12 non-graduates; and

(b) Achieve academic readiness or career readiness.

1. A school shall receive credit for each student demonstrating academic readiness by:

a. Scoring at or above the benchmark score as determined by the Council on Postsecondary Education (CPE) on the college admissions examination or college placement examination; or

b. Completing a minimum of three (3) hours of credit in one (1)[two–(2)] Kentucky Department of Education approved dual credit course[courses] and receiving a grade of C or higher[~~in each course~~]; or

c. Completing one (1)[two–(2)] advanced placement (AP) course[courses] and receiving a score of three (3) or higher on the[each] AP assessment; or

d. Receiving a score of five (5) or higher on one (1)[two–(2)] examination[examinations] for an international baccalaureate course[courses]; or

e. Scoring at or above the benchmark on one (1)[two–(2)] Cambridge Advanced International examination[examinations]; or

f. ~~Completing a combination of academic readiness indicators listed above.~~

~~g. Demonstration of academic readiness listed in paragraph 5(b) 1 of this section shall include successful completion of one (1) quantitative reasoning or natural sciences course and one (1) written or oral communication course; or visual and performing arts course; or humanities course; or social and behavioral sciences learning outcomes course.]~~

2. A school shall receive credit for each student demonstrating

career readiness by:

a. Scoring at or above the benchmark on industry certifications as approved by the Kentucky Workforce Innovation Board on an annual basis; or

b. Scoring at or above the benchmark on the career and technical education end-of program assessment for articulated credit; or

c. Completing a minimum of three (3) hours of credit in one (1)[two-(2)] Kentucky Department of Education approved CTE dual credit course[courses], and receiving a grade of C or higher[in each course]; or

d. Completing a Kentucky Department of Education approved or labor cabinet-approved apprenticeship; or[-]

e. Successfully completing a cooperative or internship course that is aligned with a credential or associate degree and which provides a minimum of 300 hours of on-the-job work experience during days that school is in session within the district-approved regular school year.

3. Students participating in the alternate assessment program shall meet criteria based on academic or career alternate assessment requirements.

(6) The graduation rate indicator shall be measured for each high school using the four (4)-year and extended five (5)-year cohort rate. The graduation rate shall be reported for all students and student groups.

Section 3. Classification of Schools and LEAs in the State Accountability System. (1) Data shall be included in the overall performance rating for schools and LEAs for the following state indicators:

(a) State Assessment Results (reading and mathematics);
(b) State Assessment Results (science, social studies, and writing);

(c) English learner progress;

(d) Postsecondary readiness (high school);

(e) Quality of school climate and safety; and

(f) Graduation rate (high school).

(2) Data from individual student performance on state assessments administered as required in KRS 158.6451 and KRS 158.6453 shall be included in the overall performance rating of each school and LEA. This data shall include students with disabilities with IEPs who participate in the alternate assessment program.

(3) Data in the overall performance rating shall be attributed to grade level spans for schools and LEA as established in this subsection.

(a) Elementary schools shall include data from: state assessment results for reading and mathematics; state assessment results for science, social studies, and writing; English learner progress; and quality of school climate and safety.

(b) Middle schools shall include data from: state assessment results for reading and mathematics; state assessment results for science, social studies, and writing; English learner progress; and quality of school climate and safety.

(c) High schools shall include data from: state assessment results for reading and mathematics; state assessment results for science, social studies, and writing; English learner progress; postsecondary readiness; graduation rate; and quality of school climate and safety.

(d) LEAs shall include data from: school state assessment results for reading and mathematics; state assessment results for science, social studies, and writing; English learner progress; postsecondary readiness; graduation rate; and quality of school climate and safety.

Section 4. Calculations for Reporting Categories.

(1)(a) State assessment results for reading and mathematics shall be rated equally in elementary, middle and high schools and LEAs by awarding points as described in paragraph 2(b) of this section.

(b) State assessment results for science, social studies, and writing shall be rated equally in elementary, middle and high schools, and in LEAs by awarding points as described in

paragraph 2(b) of this section.

(2)(a) For any content area (reading, mathematics, science, social studies, and writing) where data are not available, the data of the remaining content areas shall be redistributed proportionally across state assessment results state indicators.

(b) The following value table shall be used to calculate the points for state assessment results in reading and mathematics and state assessment results in science, social studies, and writing:

Proficiency Levels	Points Awarded for Each Percent of Students
Novice	0
Apprentice	.5
Proficient	1
Distinguished	1.25

(3) Progress toward achieving English proficiency by English learners shall be calculated as follows:

(a) Individual growth shall be compared to prior year performance on an English proficiency exam.

(b) The exit benchmark and English learner growth value tables created involving Kentucky educators and advised by technical experts shall be utilized.

(c) Points for each English learner based on the English learner growth value table shall be averaged.

(d) The value tables shall be included in the Every Student Succeeds Act Consolidated State Plan and negotiated with the United States Department of Education.

(e) Kentucky shall modify the value table and its use to reflect factors that may impact English learners' progress toward language proficiency, including age upon entry to U.S. schools, initial English language proficiency level, and degree of interrupted schooling.

(4) The quality of school climate and safety indicator shall be rated for elementary, middle, high schools, and LEAs as established in this subsection. The Kentucky Board of Education shall approve the measures of quality of school climate and safety. Data collected for individual students shall be aggregated to calculate school and district level scores for climate, safety, and overall climate and safety indicator.

(5) Postsecondary readiness shall be calculated by dividing the number of high school graduates plus grade 12 non-graduates who have met measures of postsecondary readiness by the total number of graduates plus grade 12 non-graduates. Credit for students obtaining an industry-recognized certification, licensure, or credential in specialized career pathways in state and regional high demand sectors as approved by Kentucky's Workforce Innovation Board is one and one-quarter (1.25) points. Credit for students obtaining all other readiness indicators is one (1.0) point.

(6) Graduation rate is the percentage of students completing the requirements for a Kentucky high school diploma compared to the cohort of students beginning in grade 9. The accountability system shall include a four (4) year cohort rate and an extended five (5) year cohort rate. Each rate shall be weighted equally.

(7) The indicator performance rating shall be assigned as follows:

(a) Indicators identified in Section 3 shall have a rating of very low, low, medium, high, or very high by school and LEA for status.

(b) Indicators identified in Section 3 shall have a rating of declined significantly, declined, maintained, increased, or increased significantly by school and LEA for change.

(c) Each state indicator combines status and change and reports an indicator performance level using a color-coded table.

(8) The indicators for each school and LEA as identified in Section 3 of this administrative regulation shall contribute to the overall performance rating of schools and LEAs.

(9) A standard setting process shall be conducted involving Kentucky educators and advised by technical experts to recommend very low to very high performance levels for status and declined significantly to increased significantly for change on each indicator including state assessment results for reading and mathematics, state assessment results for science, social studies, and writing, English learner progress, postsecondary readiness, graduation rate, and quality of school climate and safety.

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(10) (a) An overall performance rating for elementary, middle, and high schools shall be reported using a color rating system to communicate performance of schools, with red being the lowest rating and blue being the highest rating. Color ratings shall include five (5) performance levels from highest to lowest: Blue, Green,

Yellow, Orange, and Red. Performance of schools, LEAs, and state shall be reported by level (elementary, middle, and high) as applicable. The School Report Card shall display the color ratings earned for each school, LEA, and state (by level).

Overall Accountability Weights						
	State Assessment Results (Reading and Mathematics)	State Assessment Results (Science, Social Studies, and Writing)	English learner progress	Quality of School Climate and Safety	Postsecondary Readiness	Graduation Rate(4 and 5 year cohort)
Elementary Schools	51	40	5	4	--	---
Middle Schools	46	45	5	4		
High Schools	45	20	5	4	20	6

(b) The performance on state indicators is combined using the amounts in the Overall Accountability Weights table to generate an overall performance.

(c) As a result of the standard setting process, the committee shall recommend the procedures for determining indicator and overall performance ratings, combining status and change and reflecting the indicator weights. The recommendation from the standards setting committee shall be approved as defined in KRS 158.6455.

(d) Kentucky shall identify schools to determine required federal designations as defined in KRS 160.346 based on the overall performance of the accountability system.

(e) If data cannot be calculated for an indicator, the weights shall be redistributed proportionally to remaining state indicators that shall be reported for the school or LEA.

(11) School accountability indicators shall be assigned as follows:

(a) Students enrolled for a full academic year shall be included in the calculations for state assessment results for reading and mathematics, state assessment results for science, social studies, and writing, English learner progress, quality of school climate and safety, and postsecondary readiness for a school and LEA.

(b) Graduation rate calculations shall be based on the students' final enrollment.

(c) Student demographic groups shall have a minimum of thirty (30) students to be included in school rating calculations.

(d) In accordance with KRS 158.6455, schools and districts shall be placed into one (1) of five (5) color ratings established by a standards-setting process utilizing results from the first operational administration of assessments. The process shall:

1. Be advised by the Kentucky Department of Education Technical Advisory Panel; the School Curriculum, Assessment and Accountability Council; Local Superintendent Advisory Council, and the Office of Education Accountability; and

2. Use accepted technical procedures and involve Kentucky school and district administrators and teachers.

Section 5. Additional Public Reporting Requirements. (1) The Kentucky Department of Education shall report disaggregated data for each state indicator of the state assessment and accountability system.

(2) Progress on long-term and interim goals shall be reported publicly as required by the federal Every Student Succeeds Act and submitted in Kentucky's Consolidated State Plan. Goals shall be developed for every student group, including all students, for academic achievement in each content area of reading, mathematics, science, social studies, and writing; graduation rate based on four (4) year and five (5) year adjusted cohorts; and progress on English proficiency for English learners.

(3) The goal for academic achievement operationalizes both the improvement of proficient and distinguished performance for all students and each student group and the reduction of achievement gaps as defined in KRS 158.649. Each student group of ten (10) or more students shall be reported on the School Report Card. The data shall be suppressed as necessary for reporting to meet the Family Educational Rights and Privacy Act (FERPA).

This is to certify that the chief state school officer has reviewed

and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON GLASS, Ed.D., Commissioner

LU S. YOUNG, Ed.D., Chairperson

APPROVED BY AGENCY: February 8, 2023

FILED WITH LRC: February 10, 2023 at 1:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 26, 2023 at 10:00 a.m., in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes state accountability requirements for Kentucky's public local education agencies (LEAs) and schools.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

KRS 158.6455 requires the Kentucky Board of Education (KBE) to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides specific details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: state assessment results (reading and mathematics), state assessment results (science, social studies and writing), English learner progress,

graduation rate (high school only), postsecondary readiness (high school only) and quality of school climate and safety. The multiple indicators incorporate the student test results and school quality measures. The regulation complies with state statute and the federal Every Student Succeeds Act of 2015 (ESSA), 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation establishes state accountability requirements for Kentucky's public local education agencies (LEAs) and schools. One indicator in the accountability system is Postsecondary Readiness. The regulation includes a variety of options students may use to demonstrate postsecondary readiness. Currently, many of the options students may use to demonstrate postsecondary readiness require meeting benchmarks in two learning outcomes, courses and/ or exams. The amendment to this regulation reduces the number of measures required for students to demonstrate postsecondary readiness to one measure and will add cooperative and internship measures to the system due to the passage of Senate Bill (SB) 59 (2022).

(b) The necessity of the amendment to this administrative regulation: Due to the changes to the statute in the recently passed legislation, Senate Bill 59 (2022), it is necessary to amend the accountability regulation to align with state statute.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation amendment reduces the number of measures required for students to demonstrate postsecondary readiness from two to one, as mandated in SB 59 (2022).

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment aligns details in the regulation to statute language in SB 59 (2022).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public LEAs and schools in Kentucky with schools grade 3 or higher and supporting staff in the Kentucky Department of Education (KDE).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulation amendment, based on changes mandated in SB 59 (2022), reduces the number of measures required by students to demonstrate postsecondary readiness in Kentucky's accountability system from two to one, and provides a new measure of work-based learning as an additional choice on the menu of options for demonstrating career readiness.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This change to the accountability system requires no additional direct costs to the KDE, LEAs or schools.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation amendment provides an additional option for students to demonstrate career readiness in Kentucky's accountability system that is of equal rigor to other existing options. Both career and technical education (CTE) pathway students and non-CTE students will be able to pursue career readiness through a work-based learning route.

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

(a) Initially: The amendment to the accountability system will require no additional cost to the KDE.

(b) On a continuing basis: Kentucky's accountability system is required by federal and state legislation and is implemented using state and federal funds.

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

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

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increased fees or funding are anticipated as a result of this regulation amendment.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and LEAs.

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? Public Local Education Agencies (LEAs) and schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453; KRS 158.6455; 20 U.S.C. secs. 6301 et seq.

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

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

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

(c) How much will it cost to administer this program for the first year? The accountability system requires no additional cost to the LEAs and schools.

(d) How much will it cost to administer this program for subsequent years? Kentucky's accountability system is required by federal and state legislation and is implemented using state and federal funds.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The accountability system regulation will not generate cost savings to the LEAs and schools.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The accountability system regulation will not generate cost savings to the LEAs and schools.

(c) How much will it cost the regulated entities for the first year? The accountability system requires no additional cost to the LEAs and schools.

(d) How much will it cost the regulated entities for subsequent years? The accountability system requires no additional cost to the LEAs and schools.

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

Cost Savings (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars

(\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation does not impose any required costs on regulated entities. As such, is not anticipated to have major economic impact on state or local government or regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Every Student Succeeds Act of 2015 (ESSA), 20 U.S.C. secs. 6301 et seq.

(2) State compliance standards. KRS 158.6453, KRS 158.6455 and 703 KAR 5:270

(3) Minimum or uniform standards contained in the federal mandate. ESSA requires accountability systems to use multiple measures of school success, including academic outcomes, student progress, and school quality.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation amendment will not impose stricter requirements or additional responsibilities than those required federally.

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

EDUCATION AND LABOR CABINET Kentucky Workers' Compensation Funding Commission (Amendment)

803 KAR 30:010. Special fund assessments.

RELATES TO: KRS 49.220, 342.0011, 342.122, 342.1221, 342.1222, 342.1223, 342.1231, 342.340, 342.650, 30 U.S.C. 901-945, 33 U.S.C. 901-950

STATUTORY AUTHORITY: KRS 342.1223(3)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.1223(3)(f) authorizes the Kentucky Workers' Compensation Funding Commission (KWFC) to promulgate administrative regulations. KRS 342.1223(2)(g) requires the KWFC to conduct periodic audits of all entities subject to the special fund assessments imposed by KRS 342.122. This administrative regulation establishes the proper calculation of assessment, establishes the procedures and forms to be used to report and remit special fund assessments, identifies audit expenses, establishes procedures for collection of assessments and expenses, and defines penalty and interest procedures.

Section 1. Definitions.

(1) "Actual physical receipt by the KWFC" means:

(a) Physical delivery to the Funding Commission office prior to January 1, 2020; or

(b) Electronic filing of the Quarterly Premiums Report, accompanied by:

1. Electronic fund transfer of an assessment due to the KWFC account; or

2. Prior to January 1, 2020, physical delivery of payment to the office of the Funding Commission.

(2) "Assessment Payer" is defined by KRS 342.1231(10).

(3) "Board" means, unless otherwise specified, the Board of Directors of the Kentucky Workers' Compensation Funding Commission.

(4) "Consideration" means premium, premium charges or premium modifications set forth on the face of a workers' compensation insurance policy, all of which are subject to the Special Fund assessment calculation.

(5)(4) "Engaged in severance or processing of coal" is defined by KRS 342.0011(23)(b).l

(6)(5) "Insurance carrier" is defined by KRS 342.0011(22).

(7)(6) "Insurance company" means a company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Employers Mutual Insurance

Authority.

(8)(7) "Insurance policy", for an insurance company or group self-insurer, is defined by KRS 342.0011(26).

(9)(8) "KWFC" or "Funding Commission" means the Kentucky Workers' Compensation Funding Commission.

(10)(9) "Premium", for each employer carrying one's own risk pursuant to KRS 342.340(1), is defined by KRS 342.0011(28).

(11)(40) "Premium", for every group of self-insurers, is defined by KRS 342.0011(24).

(12)(44) "Premium", for insurance companies, is defined by KRS 342.0011(25)(c).

(13)(42) "Premiums received":

(a) For group self-insurers, including group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies, means all assessments levied on its members by a group or contributed to it by the members, including premiums charged off or deferred;

(b) For insurance companies, is defined by KRS 342.0011(25)(a).

(14)(43) "Return premiums", for insurance companies, is defined by KRS 342.0011(25)(d).

(15)(44) "Self-insurance year", for a group self-insurer, is defined by KRS 342.0011(27).

(16)(45) "Severance or processing of coal" is defined by KRS 342.0011(23)(a).

(17)(46) "SIC code" is defined by KRS 342.0011(29) and is now known as the NAICS code.

(18)(47) "Special fund assessment" means the assessment established in KRS 342.122.

Section 2. Special Fund Assessment.

(1) Special fund assessment shall be imposed upon all premiums, including any premiums for coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. 901-945, for an insurance policy providing Kentucky workers' compensation coverage, except special fund assessments shall not be imposed upon premiums for the following:

(a) Excess, reinsurance, or coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. 901-945, for group or individual self-insurers;

(b) Contracts between insurance carriers and reinsurers;

(c) Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901-950 coverage defined as USL&H Manual Premium +/- the premium applicable of all rates/factors/and fixed expenses; and

(d) Coverage solely for persons for whom a rule of liability for injury or death is provided by the laws of the United States.

(2) For an insurance policy with provisions for deductibles effective on or after January 1, 1995, the premium upon which a special fund assessment is imposed for insurance companies shall not include schedule rating modifications, debits, or credits.

(3) Insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the effective date of the policy.

(4)(a) Insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the policy, regardless of the date the premium is actually received or returned.

(b) Additional premiums received for policies with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(5)(a) Group self-insurers shall report and pay special fund assessments every calendar quarter on premiums received or return premiums at the rate in effect on the effective date of the group self-insurance year for which the premium was received or returned, regardless of the date the premium is actually levied, received, or returned.

(b) A premium shall include any member assessments or contributions used to purchase excess insurance, reinsurance, or Black Lung coverage.

(6) Special fund assessment shall be imposed upon additional premiums received by group self-insurers for self-insurance years

effective prior to October 26, 1987 at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(7) Group self-insurers shall take credit for the return of special fund assessments at the rate in effect on the effective date of the group self-insurance year for which premiums are returned.

(8) Group self-insurers may elect to report their premiums and have their special fund assessments computed in the same manner as insurance companies, in accordance with KRS 342.122(4).

(a) Election by an existing group self-insurer to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission.

(b) Election by newly formed group self-insurers to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission within sixty (60) days following the effective date of the group's initial self-insurance year.

(c) Failure of a group self-insurer to elect in writing to report in the same manner as an insurance company in accordance with paragraphs (a) and (b) of this subsection shall constitute an election to report and pay special fund assessments as a group self-insurer in accordance with subsections (5), (6), and (7) of this section.

(d) The election made in accordance with paragraph (a), (b), or (c) of this subsection may not be rescinded for at least ten (10) years, in accordance with the provisions of KRS 342.122(4).

(e) Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the annual effective date of the individual member's policy year.

(f) 1. Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the individual member's policy year, regardless of the date the premium is actually received or returned.

2. Additional premiums received for policy years with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(9) (a) Employers self-insuring Kentucky workers' compensation liability under the provisions of KRS 342.340 shall pay special fund assessments on the premium calculated by the Commissioner of the Department of Workers' Claims in accordance with KRS 342.0011(28).

(b) One-fourth (1/4) of the total annual calculated premium shall be reported and the special fund assessments shall be paid to the KWCFC each calendar quarter.

(10) The premium calculated by the Commissioner of the Department of Workers' Claims for individual self-insurers shall be assessed at the rates in effect on January 1 of the calendar year for which the premium is calculated.

(11) (a) Special fund assessments shall be paid quarterly, in accordance with KRS 342.122(2).

(b) Prior to January 1, 2020, if the assessment due date falls on a weekend (Saturday or Sunday), assessments due and payable, if not postmarked in accordance with KRS 342.122(2), shall be sent to the KWCFC in advance so as to be received by the KWCFC no later than close of business, on the first business day immediately following the weekend due date. After January 1, 2020, the assessment shall be due and payable electronically in accordance with KRS 342.122 (2)(b).

(12)(a) If an insurance carrier collects from an insured a special fund assessment at a rate in excess of that established by KRS 342.122 and this administrative regulation, or collects for any reason from an insured an amount in excess of that established by KRS 342.122 and this administrative regulation, the insurance carrier shall refund the excess to the insured in accordance with KRS 342.1231(9) and (10).

(b) If, after good faith efforts, the excess cannot be returned to the insured in accordance with KRS 342.1231(9) and (10), the excess shall be remitted to the KWCFC.

(c) An insurance carrier shall not retain special fund assessments in excess of those established by KRS 342.122 and this administrative regulation.

(13) The assessment payer shall be notified if proof of refund to insured has not been timely provided or escheated to the KWCFC per KRS 342.1231.

(14) When proof of refund to insured is received late or refund to insured is not escheated to the KWCFC timely [When documentation is received by the KWCFC providing refund to insured information]:

(a) Penalty and interest shall be calculated; and

(b) The assessment payer shall be notified of the additional amount due.

Section 3. Special Fund Assessment Base.

(1) The Special Fund assessment shall be calculated in accordance with KRS 342.0011(25)(a) - (e).

(2) All consideration shall be included in the Special Fund assessment base as outlined on the face of the insurance policy or other evidence of coverage.

(3) The assessment may be collected by the insurance carrier from the insured. The carrier is responsible for proper assessment calculation and remittance.

(4) Each statement from an insurance carrier presented to an insured reflecting all premium elements and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments.

Section 4. Deductible Program Adjustment.

(1) The Special Fund assessment calculation shall be conducted in accordance with the deductible program adjustment. KRS 32.0011(25)(e).

(2) All consideration of the calculated cost of coverage shall be included in the Special Fund assessment base, on a gross basis.

(3) All consideration includes but is not limited to the following elements:

(a) Expense Constant

(b) Terrorism

(c) Catastrophe (other than Certified Acts of Terrorism)

(d) Audit Non-compliance Charge

(e) All other premium elements or other company-specific modifications as identified on the face of the policy

(4) The Special Fund assessment shall be determined independent of the regulations of any other agency or agencies, unless otherwise indicated.

(5) A visual guide on the calculation for assessment purposes is included in the Assessment Calculation Guide, or Form KWCFC-08. This form is not exhaustive but is intended to provide calculation guidance.

(a) This guidance mirrors the Kentucky Workers Compensation Premium Algorithm framework for premium charges and credits.

(b) Standard Premium is the premium before premium discount is applied, as identified by the National Council on Compensation Insurance, Inc. (NCCI) Basic Manual for Kentucky, effective date November 1, 2021.

(c) Premium Discount is any discount clearly identified on the face of the policy to reduce the premium. The premium discount can also be used to reduce the Special Fund assessment but shall not be modified for assessment calculation purposes.

Section 5. [Section 3.] Penalty and Interest; Late filing of Quarterly Premium Reports.

(1) The KWCFC Board [or its designee] may waive part or all of the penalty, but not the interest, in accordance with KRS 342.1221.

(a) [The] designee of the KWCFC Board may waive part or all of the penalty, if under \$5,000, in the absence of the KWCFC Board of Directors.

(b) Reasonable cause guidelines for the designee's consideration of waiver of audit penalty can include, but are not

limited to:

1. Whether the audit is the first such audit for the payer and covered an extended period of time;

2. Whether the penalty is reasonable in comparison to assessment owed;

3. Whether the payer provided timely and accurate information when requested;

4. Whether the payer impeded the audit process or delayed access to records that resulted in an unnecessary delay for completion of the audit;

5. Whether there have been prior waivers within the previous five (5) year period;

6. Whether payer's grounds for waiver are identical or similar to prior waiver requests;

7. Whether payer knowingly engaged in erroneous reporting;

8. Whether the payer should have known its reporting was in error; or

9. Whether there is any other unique issue or circumstance that reasonably warrants a waiver.

(c) Reasonable cause for designee's waiver of penalties on late filing of Quarterly Premium Reports include, but are not limited to the following:

1. Whether payer incurred an extraordinary event;

2. Whether KWCFC incurred an extraordinary event;

3. Whether good faith efforts were made to file in a timely fashion;

4. Whether there is a history of timely filing;

5. Whether the penalty is reasonable in comparison to assessment owed;

6. Whether there have been prior waivers within the previous five (5) year period; or

7. Whether there are any other reasonable causes to justify waiver.

(d)[(b)] If an assessment payer is not satisfied with the decision made by the designee, an appeal may be submitted within thirty (30) days from the date of mailing of the decision to the Board of Directors of the KWCFC for final ruling.

(e)[(c)] If an assessment payer is not satisfied with the decision made by the KWCFC Board of Directors, an appeal may be submitted to the Office of Claims and Appeals/Board of Tax Appeals[Kentucky Claims Commission] within thirty (30) days from the date of mailing of the final ruling.

(2) The assessment payer shall receive notification of past due additional assessment, penalty and interest, and expenses. When payment is received by the KWCFC:

(a) Penalty and interest shall be calculated; and

(b) Notification shall be sent to the assessment payer of the additional amount due.

(3) At the time of the audit, the Funding Commission shall include a review of any penalties and interest submitted by the payer and refund amounts paid if there was an overpayment of assessment during any quarter of the audit review period.

Section 6.[Section-4:] Refunds.

(1) Insurance carriers may take credit for the return of special fund assessments on their quarterly premiums reports, if:

(a) The credit is taken by the insurance carrier within four (4) years of the date the insurance carrier returns the assessment to the employer; and

(b) The assessment is returned to the employer in addition to the returned premium.

(2)(a) Assessment payers may submit a claim in writing for a refund of special fund assessments not taken as a credit on the quarterly premiums report.

(b) The assessment payer shall submit with the claim all documents required to support the claim.

(3) All refunds, including those made in accordance with subsection (2) of this section, shall be subject to audit by the Funding Commission.

Section 7.[Section-5:] Audits; General reimbursement of expenses.

(1) In accordance with KRS 342.1223(2)(g), the Kentucky

Workers' Compensation Funding Commission shall conduct audits independently or in cooperation with the Labor Cabinet or the Department of Revenue of all entities subject to the special fund assessments established by KRS 342.122.

(2) Until the initial audit has been completed, all records supporting reported premiums and special fund assessments, including refunds and credits, shall be maintained by the assessment payer per KRS 342.1231(8).

(3) All necessary and reasonable expenses incurred by the KWCFC in conducting an audit shall be reimbursed to the KWCFC by the assessment payer audited.

(4) Expenses to be reimbursed shall include:

(a) Travel Expenses:

1. Meals;

2. Lodging;

3. Transportation;

4. Parking; and

5. Incidentals; and

(b) Labor expenses:

1. Preparation for the audit;

2. Travel;

3. Finalizing of the audit; and

4. Preparation of written reports and correspondence.

(5) KWCFC employees shall be reimbursed for all out-of-pocket expenses they incurred while conducting audits.

(6) Except for air transportation, meals, and mileage, expenses shall be reimbursed at actual cost to employees.

(7) Air fare shall be reimbursed at a rate not to exceed the cost of coach class.

(8) Meals shall be reimbursed at actual cost not to exceed fifty-five (55) dollars per day.

(9) Mileage for the use of privately owned auto shall be reimbursed at the rate established in 200 KAR 2:006, Section 7(4)(a).

(10) KWCFC employees conducting KWCFC official business unrelated to audits shall follow the same reimbursement guidelines as set forth in this section.

Section 8.[Section-6:] Audits; Insurance Companies.

(1) Upon request, insurance companies shall provide the Funding Commission with data files containing complete policy level detail information for every policy containing workers' compensation coverage in Kentucky with transactions during the audit period, on Form KWCFC-05, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies.

(2) Insurance companies shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to the respective Page 14 totals on the Annual Reports to the Kentucky Department of Insurance, incorporated by reference in 806 KAR 52:010;

(c) A complete listing of:

1. Current filings with the Kentucky Department of Insurance;

2. Kentucky policies containing written premium written off as a bad debt;

3. Policies written by an association for which the insurance company is providing Kentucky workers' compensation coverage;

4. Sample policies requested by the Funding Commission;

5. Deductible policies written nationwide. This list shall contain at a minimum the policy number, insured's name, and policy effective date;

6. Deductible policies written with Kentucky coverage whose policy effective date is equal to or later than 5/6/93 but not later than 12/31/93. This list shall contain either Kentucky calculated premium, deductible credit, and net deductible premium, or a list of Kentucky claims reimbursed under the deductible plan along with the associated administrative costs; and

7. Deductible policies written with Kentucky coverage with policy effective dates on or after 1/1/94. This list shall contain Kentucky's standard premium, deductible credit, net deductible premium, any schedule rating credit, as well as all other identifying

information allowing a quarterly recalculation and reconciliation; and

(d) All other information necessary to support reported premiums and special fund assessments.

(3) For insurance policies effective prior to October 26, 1987, the Funding Commission shall be furnished with:

(a) A schedule identifying the assessment rates applied to these policies;

(b) The dates upon which these rates were first entered into the policy or premium management system;

(c) The dates upon which these rates became active in the policy or premium management system; and

(d) A copy of the Kentucky Workers' Compensation Tax and Assessment Excess Collections information.

(4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:

(a) Detailed examination of records by policy;

(b) Use of audit sampling techniques;

(c) Verification and reconciliation to NAIC reports; and

(d) Other procedures necessary because of the unique nature of the entity being audited.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to NAIC upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 9. ~~[Section 7.]~~ Audits; Group Self-insurers.

(1) Upon request, group self-insurers shall provide the Funding Commission with data files containing complete policy or member level detail information for all transactions during the audit period on Form KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer.

(2) Group self-insurers shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for each audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to reports filed with the Department of Workers' Claims;

(c) A listing of members to whom coverage was extended for which premium has been written off as a bad debt, along with an explanation of how these bad debts were handled in the reports to the Department of Workers' Claims;

(d) A complete list of sample policies or agreements requested by the Funding Commission; and

(e) All other documents necessary to support reported premiums and assessments.

(3) For insurance years effective prior to October 26, 1987, the Funding Commission shall be furnished:

(a) A schedule identifying the assessment rates applied to these self-insurance years;

(b) The dates upon which these rates were first entered into the policy or premium management system; and

(c) The dates upon which these rates became active in the policy or premium management system.

(4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:

(a) Detailed examination of records by policy or members' account;

(b) Detailed examination of members' agreements;

(c) Use of audit sampling techniques;

(d) Verification and reconciliation to Department of Workers' Claims' reports; and

(e) Other procedures necessary because of the unique nature of the entity being audited.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to the Department of Workers' Claims upon which the Funding

Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 10. ~~[Section 8.]~~ Audits; Individual Self-insurers.

(1) Upon request, self-insurers shall provide the Funding Commission with the following:

(a) Loss experience reports;

(b) Payroll records;

(c) All back up documentation request for each audit period; and

(d) Other information necessary because of the unique nature of the entity being audited.

(2) The Funding Commission shall utilize one (1) or more of the following procedures in completion of audits:

(a) Detailed examination of all required records;

(b) Use of audit sampling techniques; and

(c) Other procedures necessary because of the unique nature of the entity being audited.

(3) Upon completion of an audit the Funding Commission shall not re-audit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the information previously reported to the Department of Workers' Claims upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 11. ~~[Section 9.]~~ Audits; Invoice, Protest and Resolution.

(1) The Funding Commission shall send to the assessment payer a notice of any assessment assessed by the Funding Commission.

(2) A summarized invoice consisting of totals for "labor", "travel" and "all other" expenses shall be submitted to the assessment payer as soon as practicable after completion of the audit. An itemized invoice shall be available upon request.

(3)(a) The assessment shall be final if not protested in writing to the Funding Commission within thirty (30) days from the date of notice.

(b) The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.

(c)1. Upon written request, the Funding Commission shall extend the time for filing the supporting statement if it is determined that the delay is necessary and unavoidable.

2. The refusal of an extension may be reviewed in the same manner as a protested assessment.

(4) After a timely protest has been filed, the assessment payer may request a conference with the Funding Commission staff.

(a) The request shall be granted in writing stating the date and time set for the conference.

(b) The assessment payer may appear in person or by representative.

(c) Further conferences may be held by mutual agreement.

(5) For those issues not resolved during the conferences described in subsection (4) of this section, the assessment payer may request a conference with the Funding Commission's Board of Directors.

(a) The request shall be granted in writing stating the date and time set for the conference.

(b) The assessment payer may appear in person or by representative.

(6) After considering the assessment payer's protest, including any matters presented at the final conference, the Funding Commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the assessment payer. The ruling shall state:

(a) That it is the final ruling of the Funding Commission and shall generally state the issues in controversy;

(b) The Funding Commission's position; and

(c) The procedure for appeal to the Kentucky Claims Commission in accordance with KRS 49.220 and 802 KAR 1:010.

(7)(a) The assessment payer may request in writing a final

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ruling any time after filing a timely protest and supporting statement.

(b) If a final ruling is requested, the Funding Commission shall issue the ruling within sixty (60) days or at the next Board of Directors meeting whichever is later, from the date the request is received by the Funding Commission.

(8) After a final ruling has been issued, the assessment payer may appeal to the Kentucky Claims Commission pursuant to the provisions of KRS 49.220.

Section 12.[Section 10:] Reports.

(1) Insurance companies, group self-insurers, and individual self-insurers shall file an electronic[a] Quarterly Premiums Report accompanied by the assessment due and payable for each calendar quarter.

(a) The quarterly premiums report and assessment due and payable shall be received by the KWCFC no later than thirty (30) days following the end of the calendar quarter.

(b) Receipt of the Quarterly Premiums Report and assessment due and payable shall be considered timely through electronic filing and payment; and prior to January 1, 2020 actual physical receipt by the KWCFC or by postmark of the U.S. Postal Service.

(2) Insurance companies shall file Form KWCFC-01, Quarterly Premiums Report.

(3) Employers carrying their own risk shall file Form KWCFC-02, Quarterly Premiums Report.

(4) Group self-insurers shall file Form KWCFC-03, Quarterly Premiums Report.

~~[(5) Employers engaged in severance or processing of coal shall file KWCFC-08, Severed Coal Quarterly Assessment Report.]~~

~~[(5)][(6)](a)~~ Every insurance company, group self-insurer, and individual self-insurer providing workers' compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than ~~June[April]~~ 30th following the end of the calendar year.

(b) These reports shall be submitted to the KWCFC electronically and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instructions incorporated by reference in Form KWCFC-05, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies; Form KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer; or Form KWCFC-07, Annual Audit and Collections Report, Individual Self Insurer, as applicable.

~~[(6)][(7)]~~ An insurance company or group self-insurer that does not write, receive, or return any Kentucky workers' compensation insurance premium during the calendar year shall complete and return Form KWCFC-04 (Non-writer Statement) to the Kentucky Workers' Compensation Funding Commission, electronically or by mail, 42 Mill Creek Park, Frankfort, Kentucky 40601 no later than ~~June[April]~~ 30th following the end of the calendar year.

Section 13.[Section 14:] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "KWCFC-01, Quarterly Premiums Report", 02/2023[08/2018];

(b) "KWCFC-02, Quarterly Premiums Report", 02/2023[08/2018];

(c) "KWCFC-03, Quarterly Premiums Report", 02/2023[08/2018];

(d) "KWCFC-04, Nonwriter Statement", 02/2023[08/2018];

(e) "KWCFC-05, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies", 02/2023[08/2018];

(f) "KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer", 02/2023[08/2018];

(g) "KWCFC-07, Annual Audit and Collections Report, Individual Self-Insurer", 02/2023[08/2018];

(h) "KWCFC-08, Assessment Calculation Guide~~[Severed Coal Quarterly Assessment Report]~~", 02/2023[08/2018].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This

material is also available at the Kentucky Workers' Compensation Funding Commission Web site <http://www.kwfc.ky.gov/>.

This is to certify the Executive Director has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.

LISA GILREATH-KING, Executive Director

JUDY LONG, Chair, Board of Directors

APPROVED BY AGENCY: February 13, 2023

FILED WITH LRC: February 13, 2023 at 9:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2023, at 10:00 a.m. (EDT) at the Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. 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 April 30, 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: Marcus A. Roland, General Counsel, Kentucky Workers' Compensation Funding Commission, 421 Mill Creek Park, Frankfort, Kentucky 40601, phone (502) 782-1721, fax (502) 573-4923, email marcus.roland@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marcus A. Roland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines and clarifies the statutory requirements of the Kentucky Workers' Compensation Funding Commission with regard to the calculation of premium assessment.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.1223(3)(f), KWCFC has the power to promulgate administrative regulations. The funding commission has added language to address and clarify the commission's methodology pertaining to premium assessment calculations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Each amended and added section provides additional clarification to assessment payers relative to calculation of premium assessments per KRS 342.0011(25)(a)-(e), KRS 342.122 and KRS 342.1223.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have a clear explanation of the commission's methodology relative to the calculation of premium assessments.

(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 will clarify and expand upon the commission's calculation methodology relative to premium assessments.

(b) The necessity of the amendment to this administrative regulation: With this review the Funding Commission has added a new section relating to methodology for premium assessment calculations and updated related forms.

(c) How the amendment conforms to the content of the authorizing statutes: Each section provides information to assessment payers to include the proper methodology for calculation of premium assessments under KRS 342.0011(25)(a)-(e), KRS 342.122 and KRS 342.1223, *et seq.*

(d) How the amendment will assist in the effective

administration of the statutes: This amendment will expand transparency and clarify the calculation methodology for determining premium assessments.

(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 insurers, group self-insurers and self-insured employers, who provide workers' compensation benefits or self-insure for purposes of workers' compensation 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: No new actions are required of assessment payers, who will now more easily understand the calculation methodology for determining premium assessments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are being applied to assessment payers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assessment payers will benefit from greater clarity and transparency regarding the calculation of premium assessments.

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

(a) Initially: No initial costs

(b) On a continuing basis: No continuing costs

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No funding will be required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes no fees either directly or indirectly.

(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? The Uninsured Employers Fund, the Education and Labor Cabinet and various programs of the Education and Labor Cabinet (including the Department of Workers' Claims) and KWCFC.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 49.220, 342.0011, 342.122, 342.1221, 342.1222, 342.1231, 342.1223, 342.340, 342.650, 30 U.S.C. 901-945, 33 U.S.C. 901-980.

(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? As this regulation merely clarifies the premium assessment calculation methodology, no particular revenue will be generated, other than that already generated through application of KRS Chapter 342 and the previous version of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? As this regulation merely clarifies the premium assessment calculation methodology, no particular revenue will be generated, other than that already generated through application of KRS

Chapter 342 and the previous version of this regulation.

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

(d) How much will it cost to administer this program for subsequent years? There are no new administrative costs. As proposed, 803 KAR 30:010E does not establish a program which requires costs to administer.

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

Revenues (+/-): n/a

Expenditures (+/-): n/a

Other Explanation: n/a

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings generated as this regulation merely corrects any confusion or misunderstanding relative to the calculation of premium assessments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings generated as this regulation merely corrects any confusion or misunderstanding relative to the calculation of premium assessments.

(c) How much will it cost the regulated entities for the first year? There will be no costs as this regulation merely corrects any confusion or misunderstanding relative to the calculation of premium assessments.

(d) How much will it cost the regulated entities for subsequent years? There will be no costs as this regulation merely corrects any confusion or misunderstanding relative to the calculation of premium assessments.

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: See above.

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Quality Living (Amendment)

910 KAR 1:180. Homecare program for the elderly.

RELATES TO: KRS 13B.010-13B.170, 194A.700(1), (7), 205.010(6), 205.201, 205.203, 205.455-465, 209.030(2), (3), 42 U.S.C. Chapter 35

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(2)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. Chapter 35 authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050(1) authorizes the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the cabinet as the state agency to administer 42 U.S.C. Chapter 35 in Kentucky and promulgate administrative regulations for this purpose. This administrative regulation establishes the standards of operation for a homecare program for elderly persons in Kentucky.

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Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Area plan" means the plan that:

(a) Is submitted by a district for the approval of the department; and

(b) Releases funds under contract for the delivery of services within the planning and service area.

(3) "Assessment" means the collection and evaluation of information about a person's situation and functioning to determine the applicant's or recipient's service level and development of a plan of care utilizing a holistic, person-[]centered approach by a qualified case manager[~~independent care coordinator (ICC)~~].

(4) "Case management" means a process, coordinated by a case manager, for linking a client to appropriate, comprehensive, and timely home or community based services as identified in the plan of care by:

- (a) Planning;
- (b) Referring;
- (c) Monitoring;
- (d) Advocating; and
- (e) Following the timeline of the assessment agency to obtain:
 1. Service level; and
 2. Development of the plan of care.

(5) "Case management supervisor" means an individual meeting the requirements of Section 5(1)(a)[~~and (b)~~] of this administrative regulation and who shall have four (4) years or more experience as a case manager.

(6) "Case manager" means the individual employee responsible for:

(a) Coordinating services and supports from all agencies involved in providing services required by the plan of care;

(b) Completing the initial assessment, plan of care, and annual reassessment;

(c) Ensuring all service providers have a working knowledge of the plan of care; and

(d)[(e)] Ensuring services are delivered as required.

(7) "Case record" means the collection of information, documents, demographics and required information maintained in the Aging Services tracking data system.

(8) "Department" means the Department for Aging and Independent Living.

(9)[(8)] "District" is defined by KRS 205.455(4).

(10)[(9)] "Educational or experiential equivalent" means:

(a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and

(b) At least 400 documented hours of experience assisting aging or disabled individuals through:

1. Practicum placement;
2. Clinicals; or
3. Volunteerism.

(11)[(10)] "Extraordinary out of pocket expenses" means medical expenses not covered by insurance including:

- (a) Copays;
- (b) Deductibles;
- (c) Prescriptions;
- (d) Premiums for medical insurance; or
- (e) Other medical, dental, or vision cost incurred as a result of medically necessary treatments or procedures.

(12)[(11)] "Homecare services" means services that:

(a) Are:

1. Provided to an eligible individual who is functionally impaired as defined by KRS 205.455(7); and

2. Directed to the individual specified in subparagraph 1 of this paragraph toward:

- a. Prevention of unnecessary institutionalization; and
- b. Maintenance in the least restrictive environment, excluding residential facilities; and

(b) Include:

1. Chore services as defined by KRS 205.455(1);
2. Core services as defined by KRS 205.455(2);
3. Escort services as defined by KRS 205.455(5);
4. Home-delivered meals as defined by KRS 205.455(8);
5. Home-health aide services as defined by KRS 205.455(9);

6. Homemaker services as defined by KRS 205.455(10);

7. Home repair services as defined by KRS 205.455(11);

8. Personal care services as established in subsection (16) of this section;

9. Respite services as defined by KRS 205.455(12);

(12) "~~Independent care coordinator~~" or "~~ICC~~" means ~~the individual that completes the initial assessment, plan of care, and annual reassessment~~].

(13) "Informal support system" means any care provided to an individual which is not provided as part of a public or private formal service program;

(14) "Instrumental activities of daily living" is defined by KRS 194A.700(7).

(15) "Natural Supports" means a non-paid person or community resource who can provide, or has historically provided, assistance to the consumer or, due to the familial relationship, would be expected to provide assistance when capable.

(16) "Personal care services" means assistance with activities of daily living.

(17) "Person centered planning" means a process for selecting and organizing the services and supports that an older adult or person with a disability may need to live in the community and is directed by the person who receives the support. Most important, it is a process that is directed by the person who receives the support.

(18) "Reassessment" means reevaluation of the situation and functioning of a client.

(19)[(18)] "Service level" means the minimum contact required through face-to-face visits and telephone calls by the case manager or social service assistant.

(20)[(19)] "Social service assistant" means an individual who:

- (a) Has at least a high school diploma or equivalent;
- (b) Works under the direction of the case manager supervisor;
- (c) Assists the case manager with record keeping, filing, data entry, and phone calls;
- (d) Helps determine what type of assistance their clients need;
- (e) Assists the client in getting services to carry out the plan of care;
- (f) Coordinates services provided to the client;
- (g) Assists clients in applying for other services or benefits for which they may qualify; and
- (h) Monitors clients to ensure services are provided appropriately.

Section 2. Service Provider Responsibilities. A service provider contracting with a district to provide homecare services supported in whole or in part from funds received from the cabinet shall:

(1) Assure the provision of homecare services throughout the geographic area covered under its plan or proposal;

(2) Review the provision of homecare services to assure safety and consistency;

(3) Treat the client in a respectful and dignified manner and involve the client and caregiver in the delivery of homecare services;

(4) Permit staff of the cabinet and the district to monitor and evaluate homecare services provided;

(5) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the department;

(6) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;

(7) Develop and maintain written personnel policies and a wage scale for each job classification; and

(8) Designate a supervisor to assure that staff providing homecare services are provided supervision.

Section 3. Homecare Plan. For program approval, a district shall submit to the cabinet a proposal within its area plan to include at least the following:

(1) An assurance of access for the department to records of the district pertaining to its contract for delivery of homecare services; and

(2) A plan for the delivery of homecare services in the area to

be served by the district containing:

(a) Identification of services currently provided in the district; and

(b) The following assurances:

1. A justification of a decision not to fund a homecare service, including an assurance of adequate availability from another funding source;

2. A policy and procedure for assuring a client's:

a. Eligibility in accordance with Section 4 of this administrative regulation; and

b. Implementation of case management;

3. A policy and procedure for a client's referral for service to other appropriate programs and services as specified in paragraph (a) of this subsection;

4. A policy and procedure for volunteer programs to be utilized;

5. Identification of a service provider for each specific service;

6. A policy and procedure for the periodic monitoring of a client for the appropriateness of homecare services and to assure safety and consistency by:

a. In home visits; and

b. Review of records on site and electronically;

7. A number of proposed clients for homecare services to be provided directly or by contract;

8. A unit cost per service to be used as a basis for determining an applicable percentage for the fee schedule as established in Section 9(2) [8(2)] of this administrative regulation;

9. A policy and procedure for the acceptance of a voluntary contribution and assurance the contribution shall be used to maintain or increase the level of service;

10. A policy and procedure for the reporting of abuse, neglect, and exploitation consistent with KRS 209.030(2) and (3);

11. A policy and procedure for the manner in which delivery of homecare services shall be provided to an eligible individual;

12. A policy and procedure for monitoring a subcontract for delivery of direct homecare services; ~~and~~

13. A policy and procedure assuring that assessments ~~an assessment~~ and client information, as specified in Section 5(4) [5(3)] of this administrative regulation, shall include the following information submitted electronically to the department in the formats prescribed by the Aging Services Tracking System:

a. Demographic information, including family income;

b. Physical health;

c. Activities of daily living and instrumental activities of daily living;

d. Physical environment;

e. Mental and emotional status;

f. Assistive devices, sensory impairment, and communication abilities;

g. Formal and informal resources; and

h. Summary and judgment; ~~and~~

14. A policy and procedure assuring that training is provided or requested for issues found during sub-provider monitoring;

15. A policy and procedure for placing clients on hold including but not limited to:

a. Reasons a client;

b. How contact will be made while client is on hold;

c. Any exceptions to the hold policy; and

d. Length of time a client may be on hold; and

16. A policy and procedure for termination or reduction of services.

Section 4. Eligibility. (1) A prospective client for homecare services shall:

(a) ~~Verify~~ Demonstrate that the prospective client is a person sixty (60) years of age or older;

(b) Not be eligible for the same or similar services through Medicaid unless the individual is:

1. Considered inappropriate for person directed services due to:

a. An inability to manage his own services; and

b. A lack of availability of a person to act as his representative; or

2. Unable to access the Home and Community Based Waiver

through a traditional provider; and

(c) Meet one (1) of the following criteria:

1. Be functionally impaired in the performance of:

a. Two (2) activities of daily living;

b. Three (3) instrumental activities of daily living; or

c. A combination of one (1) activity of daily living and two (2) instrumental activities of daily living;

2. Have a stable medical condition requiring skilled health services; or

3. Be:

a. Currently residing in:

(i) A skilled nursing facility;

(ii) An intermediate care facility; or

(iii) A personal care facility; and

b. Able to be maintained at home if appropriate living arrangements and support systems are established.

(2) Eligibility shall be determined by a case manager that is qualified in accordance with Section 5(2) of this administrative regulation. ~~An ICC;~~

~~(a) Qualified in accordance with Section 5(1) and (2) of this administrative regulation; and~~

~~(b) In accordance with Section 5(3) of this administrative regulation.~~

(3) If a client meets eligibility requirements of subsection (1) of this section for homecare services, the client or caregiver shall be informed that the client shall be eligible for services ~~as long as he or she meets eligibility requirements~~.

(4) The case manager ~~An ICC~~ shall determine a prospective client's eligibility for:

~~(a) 1. [Adult day health services;~~

~~2. Alzheimer's respite care services;~~

~~3.] In-home services; or~~

2. [4.] Respite for the unpaid primary caregiver; and

(b) Service level of case management as determined on the DAIL-HC-01, Scoring Service Level.

(5)(a) The homecare program shall not supplant or replace services provided by the client's natural support system.

(b) If needs are being met by the natural support system, the client shall be deemed ineligible.

(c) An applicant who needs respite services shall not be deemed ineligible as a result of this subsection.

(6) Applicants who are eligible for services and funding is not available shall be placed on a waiting list for services.

Section 5. Case Management Requirements. (1) A district shall employ a case manager to assess the eligibility and needs for each client and provide case management.

(2) A case manager [and an ICC] shall:

(a) Meet one (1) of the following qualifications:

1. Possess a minimum of a bachelor's degree in one (1) of the following:

a. Social work;

b. Gerontology;

c. Psychology;

d. Sociology; or

e. A field related to geriatrics;

2. Possess a bachelor's degree in nursing with a current Kentucky nursing license;

3. Possess a bachelor's degree in a field not related to geriatrics with two (2) years of experience working with the elderly or a master's degree in a human services field will substitute for the required experience;

4. Having an associate's degree in a health or family services field and two years of experience working with the elderly may substitute for a bachelor's degree;

5. A Kentucky registered nurse with a current Kentucky license and two (2) years of experience working with the elderly; or

6. A Licensed practical nurse with a current Kentucky license and three (3) years of experience working with the elderly; ~~Possess a Bachelor's degree in a health or human services profession from an accredited college or university with:~~

a. One (1) year experience in health or human services; or

b. The educational or experiential equivalent in the field of

aging or physical disabilities;

2. Be a currently licensed RN as defined in KRS 314.011(5) who has at least two (2) years of experience as a professional nurse in the field of aging or physical disabilities;

3. Be a currently licensed LPN as defined in KRS 314.011(9) who has:

a. At least three (3) years of experience in the field of aging or physical disabilities; and

b. An RN to consult and collaborate with regarding changes to the Plan of Care; or

4. Have a Master's degree from an accredited college or university which serves as a substitute for the experience required by subparagraphs 1. through 3. of this paragraph;

(b) Be a department certified case manager beginning July 1, 2015; and

(b)[(c)] Be supervised by a case management supervisor.

(3)[(2)] Each client shall be assigned a case manager.:

(a) Case manager; or

(b) Social service assistant.]

(4)[(3)(a)] The case manager shall assess the eligibility and needs of individuals:

(a) Initially; and [A client shall be assessed initially and reassessed]

(b) At [at] least annually thereafter [by an ICC].

[(b) After each assessment or reassessment, the ICC shall determine eligibility and service level of each assessed individual.]

(c) If the client is ineligible, the case manager shall close the case, document the reason in the case record, provide a list of potential resources and notify the client or caregiver by mail [be closed with the reason documented in the case record and notification shall be mailed to the client or caregiver].

(5) Case management services shall not be provided to individuals on a waiting list for homecare.

(6)[(4)] The case manager shall:

(a) Be responsible for coordinating, arranging, and documenting those services provided by:

1. Any funding source; [or]

2. A volunteer; or

3. Formal or informal supports.

(b)1. Make a reasonable effort to secure and utilize informal supports for each client; and

2. Document the reasonable effort in the client's case record;

(c) Monitor each client by conducting a home visit according to the assessed service level and through a telephone contact between home visits. Clients shall be contacted at a minimum as follows:

1. Level 1, a home visit shall be conducted every other month;

2. Level 2, a home visit shall be conducted every four (4) months; and

3. Level 3, a home visit shall be conducted every six (6) months; and

(d) Document in the case record each contact made with a client, as specified in paragraph (c) of this subsection, or on behalf of the client.

(e) Practice cultural humility with awareness and respect for diversity and inclusion;

(f) Provide a copy of the Rights and Responsibilities form to the client, in his or her preferred language; and

1. Explain the rights and responsibilities to the client; and

2. Document receipt of form in the client record.

[(5)(a) A district shall employ an ICC to assess the eligibility and needs for each client.

(b) Clients assessed at a Level 1 or a Level 2 shall be assigned a case manager.

(c) Clients assessed at a Level 3 shall have a case manager or a social service assistant assigned to assist with meeting their needs.

(6) A client shall receive homecare services in accordance with an individualized Plan of Care developed through person-centered planning. The plan shall:

(a) Relate to an assessed problem;

(b) Identify a goal to be achieved;

(c) Identify a scope, duration and unit of service required;

(d) Identify a source of service;

(e) Include a plan for reassessment; and

(f) Be signed by the client or client's representative and case manager, with a copy provided to the client.]

(7) A social service assistant may be assigned to Level 3 clients to assist with meeting the assessed needs. [Case management services shall not be provided to individuals on a waiting list.]

Section 6. Service Planning. (1) The client shall participate in the assessment and development of a person-centered plan of care with the case manager, natural supports and other formal or informal service providers.

(2) Upon the receipt of a referral the case manager shall:

(a) Contact the client or client's representative and schedule the initial assessment;

(b) Perform the assessment through:

1. Interviews with the client, existing care givers, and natural supports;

2. Direct observation of the client's abilities and deficits; and

3. Discovery of the client's cultural preferences, practices, and beliefs;

(c) Determine the client's eligibility;

(d) Document all activities and determinations in the case record;

(e) Meet with the person-centered planning team and identify:

1. The assessed needs of the client;

2. The services that will address the identified needs; and

3. Goals that support the client's needs and preferences; and

(f) Compose the plan of care.

(3) The plan of care shall:

(a) Relate to an assessed problem;

(b) Identify a goal to be achieved;

(c) Identify a scope, duration and unit of service required;

(d) Identify a source of service;

(e) Include a plan for reassessment; and

(f) Be signed by the client or client's representative and case manager, with a copy provided to the client.

(4) The client shall be reassessed at least annually, and more frequently when there is a documented change in status that indicates a need for adjustment to the service level or plan of care.

Section 7. Quality Service. If a client is determined eligible for homecare services, the case manager shall:

(1) Read, or have read and explained to the client, the purpose of the DAIL-HC- 02, Quality Service Agreement;

(2) Document the client's acknowledgement of receipt in the case record;

(3) Maintain the original document in the client's case record;

(4) Provide a copy of the completed agreement to the client which shall contain the name, address, and telephone number of:

(a) The current case manager [or social service assistant];

(b) A designated representative of the district; and

(c) A representative of the department;

(5) Inform the client of his or her right to file a complaint regarding services and provide assistance as requested;

(6)[(3)] Ensure that a copy of a DAIL – HC- 03, Report of Complaint or Concern containing written complaints and detailed reports of telephoned or verbal complaints, concerns or homecare service suggestions is maintained in the client's case record [permanent file] and documented in a centralized log; [and]

(7) Keep the identity of a complainant confidential; and

(8) Document investigation and efforts at resolution or service improvement that shall be available for monitoring by the district and department staff.

Section 8. [Section 7.] Appeals. [Request for a Hearing.] A client may request an informal dispute resolution or an appeal [a hearing]:

(1) An informal dispute resolution shall be limited to the denial, reduction, or termination of services. [As provided by KRS 13B.010-170; and]

(2) An informal dispute resolution shall not be accepted when services are unavailable due to [Within thirty (30) days of any

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decision by the:

(a) The program not having funding to provide the services; or [Cabinet];

(b) The individual does not meet the eligibility requirements pursuant to Section 4 of this administrative regulation [District; or (c) Service provider].

(3) A request for an informal dispute resolution shall:

(a) Be submitted to the department's homecare program coordinator within thirty (30) days following the notification of an adverse decision; and

(b) Contain the following information:

1. Name, address, and telephone number of the client;

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 three (3) employees of the department's Division of Quality Living. One of which shall be the division director or his/her designee.

(5) The complainant shall be provided an opportunity to appear before the dispute resolution team to present facts or concerns about the denial, reduction or termination of services.

(6) The dispute resolution team shall inform the complainant, in writing, of the decision resulting from the dispute resolution within ten (10) business days of the review.

(7) A complainant may request an appeal for an administrative hearing conducted in accordance with KRS Chapter 13B:

(a) Within thirty (30) calendar days of the notice regarding the results of the dispute resolution; or

(b) Within thirty (30) calendar days of the notice regarding the adverse action by the cabinet.

(c) By submitting a written request for appeal to the Office of the Ombudsman and Administrative Review, Quality Advancement Branch, 275 E. Main St, 2 E-O, Frankfort, Kentucky 40621.

Section 9.[Section–8:] Fees and Contributions. (1) The case manager[ICC] shall be responsible for determining fee paying status, using the criteria established in this subsection.

(a) A fee shall not be assessed for the provision of assessment, case management services, or home-delivered meals.

(b) The case manager[ICC] shall:

1. Consider extraordinary out-of-pocket expenses to determine a client's ability to pay; and

2. Document in a case record a waiver or reduction of fee due to the extraordinary out-of-pocket expenses.

(c) A fee shall not be assessed to an eligible individual who meets the definition of "needy aged" as governed by KRS 205.010(6).

(d)1. SSI income or a food stamp allotment shall not be deemed available to other family members.

2. The applicant receiving SSI benefits or a food stamp allotment shall be considered a family of one (1) for the purpose of fee determination.

(2) An eligible person shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate based upon income and size of family using 130 percent the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services. Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract. The copayment amount shall be based on the household's percentage of poverty, as follows:

Percentage of Poverty	1 Person	2 Person	3 Person or More
0 – 129%	0%	0%	0%
130% - 149%	20%	0%	0%
150% - 169%	40%	20%	0%
170%-189%	60%	40%	20%
190%-209%	80%	60%	40%
210%-229%	100%	80%	60%
230%-249%	100%	100%	80%

250% and above	100%	100%	100%
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(3)(a) A contribution from an individual or family with a zero percent copay shall be encouraged.

(b) Suggested contribution or donation rates may be established; however, pressure shall not be placed upon the client to donate or contribute.

(c) Homecare services shall not be withheld from an otherwise eligible individual based upon the individual's failure to voluntarily contribute to support services.

(4) The district shall review and approve the procedure implemented by a service provider for the collecting, accounting, spending, and auditing of fees and donations.

Section 10.[Section–9:] Allocation Formula. The homecare program funding formula shall consist of a \$40,000 base for each district, with the remaining amount of funds distributed in proportion to the district's elderly (sixty (60) plus) population in the state.

Section 11.[Section–10:] Termination or Reduction of Homecare Services.

(1)(a) A case manager or client may terminate or reduce homecare services.

(b) Homecare services shall be terminated if:

1. The program can no longer safely meet the client's needs;

2. The client does not pay the copay for services as established in Section 9[8](2) of this administrative regulation;

3. The client refuses to follow the plan of care; or

4. The client or family member has exhibited abusive, intimidating, or threatening behavior and the client or representative is unable or unwilling to comply with the corrective action plan.

(2) Homecare services may be reduced if:

(a) The client's condition or support system improves;

(b) Program funding has been reduced; or

(c) The client refuses to follow the plan of care for a particular service.

(3) If homecare services are terminated or reduced, the case manager shall:

(a) Inform the client of the right to file a complaint;

(b) Notify the client or caregiver of the action taken; and

(c) Assist the client and family in making referrals to another agency if applicable.

(4) If homecare services are terminated or reduced due to reasons unrelated to the client's needs or condition, the designated district representative in conjunction with the case manager shall determine reduction or termination on a case-by-case basis.

Section 12.[Section–11:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-HC 01, Scoring Service Level", 4/2014;

(b) "DAIL –HC- 02, Quality Service Agreement", 4/2014;[and]

(c) "DAIL –HC- 03, Report of Complaint or Concern", 4/2014; and

(d) "Rights and Responsibilities", 1/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family 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/dail/Pages/default.aspx>.

VICTORIA ELDRIDGE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 13, 2023

FILED WITH LRC: January 19, 2023 at 11:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 24 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 April 17, 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 April 30, 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; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation updates definitions, establishes case managers instead of independent care coordinators and updates the qualifications for case managers, updates the required policy and procedures required to be in place by contractors, adds requirements for service planning and adds appeal rights including an informal dispute resolution process and where to submit a formal appeal.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to carry out the requirements of the homecare program as established to carry out KRS 205.201 and 205.203 by establishing in home services to the aging population. This administrative regulation sets out the eligibility for services and responsibilities of the provider agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of KRS 205.201 and 205.203 by establishing the homecare program for older adults and the minimum requirements for eligibility and service provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation assists in the effective administration of the statutes by establishing the minimum requirements for eligibility and service provision. This amendment updates definitions and requirement for the provider agencies to ensure appropriateness of services, safety of participants and consistency.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates definitions, changes the independent care coordinator to a case manager, updates the qualifications for a case manager, adds monitoring of the services for appropriateness and safety of the clients, establishes policy and procedures provider agency shall have in place to prevent the reduction or termination of services to a client without cause, adds requirement for service planning and to include the client in the planning and updates the appeal rights to include an informal dispute resolution and address to submit a request for an appeal.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the case management requirements and add protections for clients in the homecare program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides for in home services as authorized by KRS 205.203. The amendment establishes additional requirements for the provider agencies to ensure appropriate service planning and monitoring of safety

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation provides more planning for needed services and a higher level of case management. The homecare program provides needed services to aged individuals to assist them to remain in their own home for as long as possible and prevent premature placement in a long-term care facility.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation affects the fifteen (15) Area Agencies on Aging and Independent Living (AAAs), twenty (20) provider agencies under contract with the AAAs that provide homecare services and the 4,500 individuals enrolled in the homecare 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: In accordance with this administrative regulation, the title Independent Care Coordinator will need to be updated to Case Manager, this will not have an effect on the AAAs as they have already been utilizing the Case Manager title and the reason for the amendment. The AAAs will need to establish four (4) new policies to provide written details on staff, placing services on hold when clients are not able to receive services (i.e., in the hospital or away on vacation), and the termination or reduction of services to a client and service planning. AAAs and subcontractors will have to update policies on appeals to include the informal dispute resolution process and the address to submit an appeal should the informal dispute resolution not be successful. There are no new actions of the clients or applicants for the home care program, they will benefit from the amendments updating the case management and policy requirements and providing them with an official dispute resolution at the local level before determining that they need to file an official appeal. The amendment also includes information on where to send an appeal making the filing of an appeal easier.

(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 Department for Aging and Independent Living for implementation of this amended administrative regulation.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amended 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 homecare program is state general funds and matching funds from the provider agencies.

(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 as amended does not increase fees or funding necessary to operate the homecare program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation as amended does not modify the current fee structure. This administrative regulation establishes a fee for services based on income.

(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 the Area Development Districts, Area Agencies on Aging and Independent Living and the Cabinet for Health and Family Services, Department for Aging and Independent Living.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.700(1), (7), 205.010(6), 205.201, 205.203, 205.455-465, 209.030(2)(3) and 42 U.S.C. Chapter 35.

(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 amended administrative regulation establishes a sliding scale fee for service based on income. Because the fees are paid for a service rendered at less than the cost of service, 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 amended administrative regulation establishes a sliding scale fee for service based on income. Because the fees are paid for a service rendered at less than the cost of service, 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 Department for Aging and Independent Living for implementation of this amended administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to the Department for Aging and Independent Living for implementation of this amended 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? There are no cost savings with the implementation of this amended administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings with the implementation of this amended administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? There are no additional costs with the implementation of this amended administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? There are no additional costs with the implementation of this amended administrative regulation in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic

impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. There is no major economic impact with this amended administrative regulation. There is no change to the income or expenditures for the implementation of this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:100. Public agency adoptions.

RELATES TO: KRS 194A.060(1), 199.011(4), (10), 199.430(3), 199.520, 199.525, 199.570, 199.572, 199.575, 202B.010(12), 600.020(30), (52), (63), 605.090, 615.030, 620.050, 620.360, 625.045, 625.108, [Chapter 625,] 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary [Secretary] of the Cabinet for Health and Family Services to establish policies and operate programs to protect, develop, and maintain the health, dignity, integrity, and sufficiency [welfare] of the citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.472 requires the cabinet to establish criteria for the public agency adoption of children in the custody of the cabinet. This administrative regulation establishes the procedures for public agency adoptions.

Section 1. Definitions.

(1) "Approved adoptive parent" means a family approved in accordance with:

(a) 922 KAR 1:310;

(b) 922 KAR 1:350; or

(c) Section 6 of this administrative regulation.

(2) "Cabinet" is defined by KRS 199.011(3).

(3) "Child-focused recruitment model" or "C.F.R.M" means a program for the recruitment of an adoptive family in accordance with Section 2 of this administrative regulation by cabinet staff for a child in the custody of the cabinet whose adoptive placement has not been identified.

(4) [(3)] "Fictive kin" is defined by KRS 199.011(9).

(5) [(4)] "Foster family home" is defined by KRS 199.011(10) and 600.020(30).

(6) [(5)] "Home study" means an evaluation conducted in accordance with the requirements of the state where the home is located, to determine the preparation and suitability of a prospective adoptive parent, including the home environment, to receive a child for the purpose of adoption.

(7) "Inquiring adoptive parent" means an individual who has submitted an inquiry to potentially be considered as a specific child's adoptive parent.

(8) "Kentucky Adoption Profile Exchange" or "K.A.P.E." means a program administered by the cabinet to promote adoption awareness and child-specific recruitment for children legally free for adoption without an identified adoptive home.

(9) [(6)] "Open adoption" means an agreement between an adoptive parent and an adopted child's biological or legal parent regarding communication or contact with the child.

(10) [(7)] "Pre-adoptive placement" means a home, approved by the cabinet, where a child legally free for adoption is placed prior to adoption finalization.

(11) [(8)] "Pre-placement conference" means a meeting conducted by cabinet staff with a prospective adoptive parent that fulfills requirements specified in Section 4 of this administrative regulation.

(12) [(9)] "Prospective adoptive parent" means an individual

who has submitted an inquiry and been deemed by the cabinet to be a potential adoptive match for a child [applied with a Kentucky or an out-of-state public or licensed private child welfare agency to be approved as an adoptive parent].

(13)[(40)] "Qualified mental health professional" or "QMHP" is defined by KRS 600.020(52).

(14)[(41)] "Qualified professional in the area of intellectual disabilities" is defined by KRS 202B.010(12).

(15)[(42)] "Social service worker":

(a) Is defined by KRS 600.020(63); or

(b) Means a social or human service worker with an out-of-state public or licensed private child welfare agency who meets the requirements of that state to conduct a home study.

Section 2. Eligibility and Referral to the Child-Focused Recruitment Model. A child may be referred to C.F.R.M if the child:

(1) Is determined eligible, as special needs, in accordance with 42 U.S.C. [sec.] 673;

(2) Has a goal of planned permanent living arrangement or long-term foster care;

(3) Is on extended commitment and has had parental rights terminated; or

(4) Has adoption as the child's case plan goal and does not have an adoptive resource identified.

Section 3. Preparation of the Child for Adoptive Placement.

(1) A child prepared for adoptive placement by cabinet staff shall receive information regarding the following, with consideration given to the child's maturity and developmental stage:

(a) Relationship to the biological or legal parent;

(b) Entitlement to a parent;

(c) If applicable, relationship with the foster family home and the rights of a foster child established in KRS 620.363;

(d) Reason the foster placement may not become the adoptive placement;

(e) Role of the social service worker, other pertinent cabinet staff, and the child in the placement planning process;

(f) Meaning of adoption;

(g) Process of recruitment of a parent and how the child may be involved;

(h) Impending placement;

(i) Visitation process;

(j) Placement decision; and

(k) Cabinet staff responsible for the placement decision.

(2) Cabinet staff shall:

(a) Request the biological or legal parent to either consent or refuse to consent to the inspection of the adoption records by the adult adopted person when the child reaches twenty-one (21) years of age; and

(b) File with the circuit or family court in the county where the adoption was finalized the consent or refusal to consent to the inspection of the adoption records by the adult adopted person.

(3) If a child's permanency goal includes adoption and reunification with a sibling separated during foster care, the cabinet shall plan for the transition and coordinate increased visitation between siblings.

(4) A service region administrator or designee may make a determination that [If cabinet staff agree by consensus during a planning conference,] a sibling shall [may] be separated from another sibling in adoption upon consideration of:

(a) If age appropriate, each sibling's understanding of the facts of the relationship, feelings, wishes, and ideas regarding options for placement;

(b) The perception of the relationship of each child with the sibling; and

(c) The attachment to the current caregiver;

(d) Each child's permanency needs; and

(e) The recommendation of a:

1. QMHP; or

2. If applicable, a qualified professional in the area of intellectual disabilities.

(5) A planning committee shall convene annually for siblings who remain separated in out-of-home care to:

(a) Determine if reunification is possible; and

(b) Develop a plan for maintaining sibling connections.

(6) A QMHP, qualified professional in the area of intellectual disabilities, relative, social service worker, other pertinent cabinet staff, nonadoptive foster parent, or another individual approved by cabinet staff may assist with preparing the child for adoption.

(7) If the child's goal is changed to adoption, a child in the custody of the cabinet may be placed with an approved adoptive parent prior to the termination of parental rights to the child.

(8) If a prospective adoptive parent has not been identified for a child after the child's permanency goal has been changed to adoption in accordance with 922 KAR 1:140, the cabinet:

(a) Shall convene an adoption review committee to meet and discuss child-specific recruitment and the potential strengths and barriers of placement with an identified prospective adoptive parent;

(b) May invite an individual specified in subsection (6) of this section to a meeting in which the child's permanency plan is discussed; and

(c) Shall assess for a [refer the child to the] C.F.R.M. referral at the time of goal change in accordance with Section 2 of this administrative regulation.

(9) If a prospective adoptive parent has not been identified for a child at the time of termination of parental rights or thereafter, the cabinet shall refer the child to K.A.P.E. at that time; and

~~(d) Shall refer the child to the Adoption Services Branch in accordance with Section 7(1) of this administrative regulation].~~

Section 4. Selection of an Adoptive Family.

(1) Priority consideration for an adoptive placement shall be given to:

(a) A relative or fictive kin; or

(b) The current foster family home.

(2) The process of recruiting a prospective adoptive parent shall begin if:

(a) Parental rights of the child are terminated;

(b) A relative or fictive kin has not made a commitment to adopt the child;

(c) The child's foster family home has not made a commitment to adopt through a statement of intent;

(d) Both biological or legal parents of the child are deceased and the cabinet has been granted custody through the court; or

(e) The child's pre-adoptive placement is disrupted.

(3) Cabinet [Prior to placement, cabinet] staff shall consider an inquiring [the prospective] adoptive parent's acceptance of the child's behavior and characteristics.

(4)(a) The cabinet shall take the following into consideration regarding the number of children to be placed in an adoptive home:

1. The inquiring [prospective] adoptive parent's parental capacity and resources to meet the needs of all children in the home; and

2. The impact of all children involved, including the potential adoptive child.

(b) An inquiring [A prospective] adoptive parent may request review of a denial based upon the number of children in the home in accordance with 922 KAR 1:350, Section 8(2).

(5) The cabinet shall review:

(a) Review and obtain the inquiring [prospective] adoptive parent's signature on the DPP-171A, Verbal Exchange of Information Acknowledgement Form[Notice of Confidentiality Requirements Acknowledgement Cover Sheet; and

(b) Inform the prospective adoptive parent of:

1. Visitation and supervision requirements in accordance with KRS 605.090(1)(b); and

2. Detailed information about the child's history and services provided to the child, excluding any identifying information of the biological parent, including:

a. Health, background, and placement history;

b. Behavior, including behaviors in accordance with KRS 605.090(1); and

c. Personal characteristics].

Section 5. Preparation of the Prospective Adoptive Parent.

(1) Cabinet staff shall conduct a preplacement conference for a child available for adoption with the [child's]:

- (a) Foster parent, if applicable;
- (b) Prospective adoptive parent;
- (c) If applicable, a QMHP or qualified professional in the area of intellectual disabilities; and
- (d) Representative [A representative] from the cabinet or child-placing agency where the child is placed.

(2) During the pre-placement conference, cabinet staff shall:

(a) Review and obtain the prospective adoptive parent's signature on the DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet;

(b) Inform the prospective adoptive parent of:

1. Visitation and supervision requirements in accordance with KRS 605.090(1)(b); and

2. Detailed information about the child's history and services provided to the child, excluding any identifying information of the biological parent, including:

a. Health, background, and placement history;

b. Behavior, including behaviors in accordance with KRS 605.090(1); and

c. Personal characteristics;

(c) [Discuss the information provided in accordance with Section 4(5)(b) of this administrative regulation with the prospective adoptive parent;

(b)] Assist the prospective adoptive parent in reaching a decision regarding acceptance of placement;

(d) [(e)] Determine the method of presenting the prospective adoptive parent to the child; and

(e) [(d)] Discuss with the prospective adoptive parent acceptance of the child's plan for visitation and placement.

(3) If there is a planned foster parent adoption, the preplacement conference may occur at the same time the adoptive placement agreement is signed in accordance with KRS 199.555.

Section 6. Adoptive Placement. (1) The cabinet shall ensure the child transitions to the prospective adoptive placement by:

(a) Arranging contact between the child and prospective adoptive parent appropriate to the child's age, developmental needs, and understanding of the permanency plan;

(b) Incorporating recommendations of the child's QMHP or qualified professional in the area of intellectual disabilities;

(c) Encouraging current caregivers, siblings, the prospective adoptive family, and others identified to have a meaningful relationship with the child, as appropriate; and

(d) Ensuring all needed services are in place[Planned visitation between a child older than one (1) month and a prospective adoptive parent shall occur at least two (2) times prior to placement].

(2) After parental rights to the child are terminated, final placement with a prospective adoptive parent shall occur as quickly as possible upon concurrence of:

- (a) Cabinet staff;
- (b) The prospective adoptive parent;
- (c) The recommendation of a QMHP or qualified professional in the area of intellectual disabilities, if applicable; and
- (d) The child, to the extent the child's age and maturity permit the child's participation.

(3) Adoption assistance shall be provided in accordance with 922 KAR 1:050 or 922 KAR 1:060.

Section 7. Out-of-State Adoptive Placement.

(1) [If a prospective adoptive parent has not been identified after the child has been referred to the C.F.R.M., cabinet staff shall:

(a) Consider an out-of-state placement; and

(b) Refer the child to the Adoption Services Branch for referral on the adoption Web site if termination of parental rights has been granted.

(2) Placement of a Kentucky child with an out-of-state prospective adoptive parent may occur if:

- (a) The prospective adoptive parent is seeking a child through:
 - 1. An out-of-state public child welfare agency; or
 - 2. A licensed private child welfare agency; and

(b) A home study has been completed or updated within one (1) year by the out-of-state public child welfare agency or licensed private child welfare agency, in accordance with the requirements of the out-of-state agency.

(2) [(3)] If a prospective adoptive parent who resides out-of-state cannot pay the expense to attend a pre-placement conference or visit the child, the cabinet may pay travel expenses for the prospective adoptive parent, to the extent funds are available.

(3) [(4)] If the Kentucky and out-of-state deputy compact administrators agree to the child's visit in accordance with KRS 615.030, a child may visit and be placed with a prospective adoptive parent who resides in another state, in accordance with KRS 615.030.

(4) [(5)] Upon approval of the commissioner or designee, cabinet staff or another adult whom the child knows shall accompany a Kentucky child available for adoption on an out-of-state visit or placement with a prospective out-of-state adoptive parent.

Section 8. Open Adoption. The cabinet shall not prohibit an open adoption.

Section 9. Postplacement Service.

(1) The goal of a postplacement service shall be to:

- (a) Ensure the success of the placement; and
- (b) Prevent disruption of the placement.

(2) The cabinet shall coordinate support services for a child and a prospective adoptive parent prior to the legal adoption and through finalization of the adoption.

(3) Until the adoption judgment has been granted by a court of competent jurisdiction, the cabinet shall conduct an annual permanency review of a child placed with a prospective adoptive parent.

(4) Post-Adoption Placement Stabilization Services (PAPSS) shall be offered in accordance with 922 KAR 1:530.

Section 10. Closure of An Approved Adoptive Home. Unless an extension is approved by the service region administrator or designee [commissioner], closure of an approved adoptive home shall occur in accordance with:

- (1) 922 KAR 1:310; or
- (2) 922 KAR 1:350.

Section 11. Service Appeals. A service appeal may be requested in accordance with 922 KAR 1:320.

Section 12. Confidentiality of Records.

(1) A child's records shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, as established in [described by] KRS 194A.060(1), 199.430(3), 199.520, 199.525, 199.570, 199.572, 199.575, 620.050, 625.045, 625.108, and 922 KAR 1:510.

(2) If the child is not adopted, the prospective adoptive parent shall return all documentation pertaining to the child to the cabinet within ten (10) working days of the decision not to adopt.

Section 13. Request for Information from Adoption Records.

(1) Identifying information from the cabinet's record may be released only upon written order by the court upon application to the circuit court that granted the adoption by an adoptee, twenty-one (21) years of age or older.

(2) If the birth parent has not previously filed consent for release of identifying information with the circuit court, the judge may:

(a) Issue a court order requiring the cabinet to conduct a search for each birth parent as identified on the original birth certificate; and

(b) Determine the parent's desire concerning the release of identifying information from the record.

(3) Upon receipt of written request by the adult adoptee or the adoptive family, nonidentifying health and background information may be released by the cabinet from a closed adoption record.

(4) If a request is received from an adoptee, eighteen (18) years of age or older, for contact with an adult preadoptive birth sibling separated during finalization of a closed adoption, cabinet staff shall:

(a) Review the adoption record; and

(b) Release identifying information if a mutual request for contact is contained within the record.

(5) If a request is received from a birth relative seeking an adoptee, either adult or minor, information may be given that adoption did occur and reassurance of the well-being of the adoptee at last contact may be confirmed, but cabinet staff shall not contact an adoptee or adoptive family at the request of the birth family.

(6) If an adult adoptee seeks contact with the birth family, cabinet staff shall inform the adult adoptee of a birth relative's interest.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet", 01/23;

(b) "DPP-171A, Verbal Exchange of Information Acknowledgement Form", 01/23[9/18, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbcs/Pages/default.aspx>.

MARTA MIRANDA-STRAUB, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 26, 2023

FILED WITH LRC: February 8, 2023 at 8:05 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 24, 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 April 17, 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 April 30, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin, Staff Assistant

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for public agency adoptions.

(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to establish policies and operate programs to protect, develop, and maintain the health, dignity, integrity, and sufficiency of the citizens of the Commonwealth and necessary to

operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.472 requires the cabinet to establish criteria for the public agency adoption of children in the custody of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to implement programs mandated by federal law and to qualify for the receipt of federal funds, establishes the procedures for public agency adoptions, and implements the provision of KRS Chapter 625 relating to confidentiality.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation conforms to KRS 194A.050(1) and 199.472 by establishing the procedure for public agency adoptions.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes and clarifies provisions for public agency adoptions and the procedural steps for a referral of a child to the Kentucky Adoption Profile Exchange (KAPE), which contains photos and information on children who are available for adoption in Kentucky. The amendment includes actions that must be taken by a social service worker to promote adoption awareness and child-specific recruitment for children legally free for adoption without an identified adoptive home. This administrative regulation is being amended to clarify transitional requirements for inquiring and prospective adoptive parents. The DPP-171A is a new form being incorporated and utilized for the verbal exchange of information with inquiring adoptive parents. The previously incorporated material, the DPP-171, is being amended for consistency with the new form and to clarify that it is used with prospective adoptive parents.

(b) The necessity of the amendment to this administrative regulation: This amendment clarifies processes and requirements for inquiring adoptive parents and prospective adoptive parents, better establishing processes in the public adoption process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194.050(1) requires the secretary of the Cabinet for Health and Family Services to establish policies and operate programs to protect, develop, and maintain the welfare of the citizens of the Commonwealth. KRS 199.472 requires the cabinet to establish criteria for the public agency adoption of children in the custody of the cabinet. This administrative regulation establishes the processes for public agency adoptions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains, but better clarifies basic procedures for public agency adoptions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of September 2022, there were 1,555 children that were legally free for adoption. Nine hundred and thirty-six (936) of those children were planned to be adopted by their foster parents. However, 619 of those children were legally free for adoption and did not have an identified adoptive family. This administrative regulation establishes public adoption processes and how children are referred to KAPE, which contains photos and information on children who are available for adoption 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 cabinet is required to establish the procedures for public agency adoptions contained in KRS 194A.050(1) and KRS 199.472. This administrative regulation establishes the implementation of program models for children to be adopted through a public agency and preparation of the child for the adoptive placement. The KAPE, administered by CHFS, is utilized to promote adoption awareness and child-specific recruitment for children legally free for adoption without an identified adoptive home. A child may be referred to KAPE if a prospective foster parent has not been identified at the time of termination of parental rights, or thereafter.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will continue to facilitate permanency and adoption for Kentucky children.

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

(a) Initially: These programs have already been implemented and established. This amendment better clarifies processes. There is no cost to implement this.

(b) On a continuing basis: There are no ongoing costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds and Title IV-E funds are used in the administration of this program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

This amendment does not contain an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629 629i, 670-679b, 1996, 1996b.

2. State compliance standards. KRS 194A.050(1), 199.472.

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629 629i, 670-679b, 1996, 1996b.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Department for Community Based Services administers public adoptions.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629 629i, 670-679b, 1996, 1996b, KRS 194A.050(1), 199.472.

(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 for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This

administrative regulation will not generate revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? In SFY 2022, Kentucky spent approximately \$217 million on expenditures related to caring for children in the cabinet's custody. Approximately \$136 million was spent on adoption supports. As the department increases child welfare prevention expenditures and expands focus on supporting families upstream, these former expenses decrease. There are no costs associated with this specific amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this specific amendment.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

(c) How much will it cost the regulated entities for the first year? There are no costs associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:330. Child protective services.

RELATES TO: KRS 159.140, 194A.005(1), [194A.050(1), 202A.011, 211.684, 214.036, 431.600(1), (8), 503.110(1), 508.125(1), 529.010(5), 16][43], 532.045, 600.010, 600.020, 605.090(3), 605.130, ~~605.150(1)~~, 610.010(2)(d), (9), 620.010-620.050, 620.070, 620.072, ~~620.180(1)~~, 620.350, 620.990, 42 U.S.C. 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce 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 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620. KRS 620.029(2)(a) requires the cabinet, in

consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services. 42 U.S.C. 5106a(b) establishes eligibility requirements for a state to receive a grant for a child abuse and neglect prevention and treatment program. This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or assessment of abuse, neglect, or dependency.

Section 1. Definitions.

(1) "Alternative response" means a preventive, proactive approach through which the cabinet engages with a family and connects a family to community-based services as an alternative to conducting an investigation.

(2) "Assessment" means the collection and analysis of information to determine the strengths and needs of a family in order to provide appropriate services [inform decision-making about or service provision to a child or a family, including:

(a) An observable threat or threatening condition to the child's safety;

(b) A factor present that increases the likelihood of child abuse, neglect, or dependency; and

(c) Child or family strengths and protective capacities].

(3) [(2)] "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(4) [(3)] "Caretaker" means a parent, guardian, fictive kin, person in a position of authority or special trust as defined in KRS 532.045(1), or other person exercising custodial control or supervision of a child.

(5) [(4)] "Child fatality" is defined by KRS 211.684(1)(a).

(6) [(5)] "Child protective services" means preventive and corrective services directed toward:

(a) Safeguarding the rights and welfare of an abused, neglected, trafficked, or dependent child;

(b) Assuring for each child a safe and nurturing home;

(c) Improving the abilities of parents to carry out parental responsibilities;

(d) Strengthening family life; and

(e) Assisting a parent or other person responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of the child.

(7) [(6)] "Dependent child" is defined by KRS 600.020(20).

(8) [(7)] "Female genital mutilation" is defined by KRS 508.125(1).

(9) [(8)] "Human trafficking" is defined by KRS 529.010(7) [(5)].

(10) [(9)] "Initial determination" means an evaluation made [of risk factors] to determine the presence of [immediate] safety threats and risk factors [of harm] resulting in a decision whether to proceed with an:

(a) Investigation; or

(b) Assessment.

(11) [(10)] "Investigation" means a process of gathering facts and collecting information to evaluate risks and [evaluating risk factors to] determine a finding [if a child:

(a) Has been abused or neglected;

(b) Is dependent; or

(c) Is a victim of human trafficking].

(12) [(11)] "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(13) [(12)] "No finding" means that the information contained in a report that met criteria to open an investigation has been found to be false or erroneous and no longer meets acceptance criteria.

(14) [(13)] "Preponderance of evidence" means that evidence is sufficient to conclude that it is more likely than not that an alleged perpetrator committed an act of child abuse or neglect as defined by KRS 600.020(1).

(15) [(14)] "Prior involvement" means any assessment or investigation, of which the cabinet has record, with a child or family in the area of protection and permanency prior to the child's fatality or near fatality investigation.

(16) [(15)] "Services needed" means a low risk finding with no perpetrator that indicates a family needs to be linked to community services.

(17) [(16)] "Sexual abuse" is defined by KRS 600.020(61).

(18) [(17)] "Sexual exploitation" is defined by KRS 600.020(62).

(19) [(18)] "Substantiated" means:

(a) An admission of abuse or neglect by the person responsible;

(b) A judicial finding of child abuse or neglect; or

(c) A preponderance of evidence exists that abuse or neglect was committed by the caretaker.

(20) [(19)] "Unable to locate" means that:

(a) Identifying information about the family is insufficient for locating them; or

(b) The family has moved and their new location is not known.

(21) [(20)] "Unsubstantiated" means there is insufficient evidence, indicators, or justification present for substantiation of abuse or neglect.

(22) [(21)] "Victim of human trafficking" is defined by KRS 529.010(16) [(529.010(13))].

Section 2. A Report of Child Abuse, Neglect, Human Trafficking, Female Genital Mutilation, or Dependency.

(1) In accordance with 42 U.S.C. 5106a(b)(2)(B)(i), the cabinet shall accept reports of alleged child abuse, neglect, human trafficking, female genital mutilation, or dependency made pursuant to KRS 620.030.

(a) A twenty-four (24) hour on-call response system and the child abuse hotline, for the receipt of emergency reports after normal office hours, shall be made available to those in a community who may have information regarding:

1. Child abuse, neglect, or dependency; or

2. Human trafficking of a child.

(b) Cabinet staff or designee shall attempt to elicit from the person reporting suspected child abuse, neglect, dependency, female genital mutilation, or human trafficking as much information about the child's circumstances as possible, including:

1. Specific information as to the nature and extent of:

a. Abuse, neglect, or dependency;

b. Female genital mutilation; or

c. Human trafficking;

2. The cause of the abuse, neglect, or dependency;

3. The location of the child and family;

4. Knowledge or suspicion of a previous incident;

5. Identifying information regarding a witness to the alleged incident that resulted in the child's condition;

6. An action taken by the reporting person, if applicable;

7. Present danger or threat of danger to the child or cabinet staff; and

8. Information in accordance with KRS 620.030(2) through (4).

(c) The reporting person's identity shall remain confidential, unless ordered to be divulged by a court of competent jurisdiction.

(d) The cabinet shall investigate or accept as an assessment an anonymous report that provides sufficient information regarding an incident involving a child:

1. Who is alleged to be dependent; or

2. And alleged:

a. Abuse or neglect perpetrated by a caretaker;

b. Female genital mutilation, whether the person alleged to have caused it is a caretaker or not; or

c. Human trafficking of the child.

(e) Immunity from liability shall be in accordance with 42 U.S.C. 5106a(b)(2)(B)(vii) and KRS 620.050(1) and (2).

(2) The cabinet shall not undertake an investigation or assessment for a report of abuse or neglect allegedly perpetrated by a non-caretaker, with the exception of a report of human trafficking or female genital mutilation or a joint investigation with law enforcement pursuant to KRS 620.040(3), but shall refer the matter in compliance with KRS 620.030(1).

(3) Pursuant to KRS 620.040(1)(b) and (2)(b), if a report does not meet an acceptance criterion for an investigation or assessment, the cabinet shall:

(a) Not accept the report for investigation or assessment;

(b) Refer the caller to a community resource that may meet family needs if available; and

(c) Keep a record of the report in accordance with 42 U.S.C. 5106a(b)(2)(B)(xii).

(4) Acceptance criteria for an investigation or assessment. The cabinet shall:

(a) Investigate or conduct an assessment upon the receipt of a report of physical abuse if the report alleges:

1. An injury that is, or has been, observed on a child that was allegedly inflicted non-accidentally by a caretaker;
2. Physical abuse if no current observable injury is seen;
3. A child being hit in a critical area of the body, such as the head, neck, genitals, abdomen, or back;
4. Physical injury to a child, as defined by KRS 600.020(49), that is the result of an altercation between the child and the caretaker. The cabinet shall explore the following:
 - a. Age of the child;
 - b. Precipitating factors;
 - c. Degree of appropriateness of force used by the caretaker; and
 - d. Need for further services to assist in eliminating violent behavior in the home;
5. A situation in which a child is likely to be physically abused; or

6. Physical injury to a child involved in an incident of domestic violence;

(b) Investigate or conduct an assessment upon receipt of a report that alleges neglect of a child perpetrated by a caretaker that may result in harm to the health and safety of a child in the following areas:

1. Hygiene neglect if:
 - a. A child has physical symptoms that require treatment due to poor care; or
 - b. The child's physical health and safety are negatively affected due to an act or omission by the caretaker;
2. Supervision neglect if the individual reporting has reason to believe that the physical health and safety of the child is negatively affected by lack of necessary and appropriate supervision;
3. Food neglect if a child shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration; or
 - c. Not having been provided adequate food for a period of time that interferes with the health needs of the child, based on height or weight norms for the child's age;
4. Clothing neglect if a child suffers from:
 - a. Illness;
 - b. Exposure; or
 - c. Frostbite due to inadequate clothing provided to the child or the clothing provided is insufficient to protect the child from the elements;
5. Environmental neglect, if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;
6. Educational neglect if the:
 - a. School system has exhausted its resources to correct the problem and complied with its duties pursuant to KRS 159.140; and
 - b. Caretaker's neglect prevents the child from attending school or receiving appropriate education;
7. Medical neglect, in accordance with 42 U.S.C. 5106a(b)(2)(C), if a child has not received a medical assessment or is not receiving treatment for an injury, illness, or disability that if left untreated may:
 - a. Be life-threatening;
 - b. Result in permanent impairment;
 - c. Interfere with normal functioning and worsen; or
 - d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease, unless the child is granted an exception to immunization pursuant to KRS 214.036;
8. Neglect due to a caretaker's use of drugs or alcohol that results in:
 - a. A child born exposed to drugs or alcohol, as documented by a health care provider pursuant to:

(i) 42 U.S.C. 5106a(b)(2)(B)(ii); and

(ii) KRS 620.030(2);

b. A child's facilitated access to and use of drugs or alcohol that may result in a life-threatening situation for the child; or

9. Exploitation neglect if the caretaker has:

- a. ~~Used~~[Caretaker has used] a child or child's financial resources for personal gain; or
- b. ~~Enticed~~[Caretaker has enticed] a child to become involved in criminal activities; or
- c. ~~Child is a victim of human trafficking;~~

(c) Investigate or conduct an assessment upon the receipt of a report of sexual abuse if the report[:

4.] Alleges sexual abuse of a child committed or allowed to be committed by a caretaker. An investigation may be conducted without a specific allegation if a child:

1. Has a sexually transmitted disease; or
2. ~~Exhibits~~[Alleges a situation in which the factors provided in the report indicate that:
 - a. An act of sexual abuse, sexual exploitation, or prostitution involving a child may have occurred; or
 - b. The child exhibits] physical or behavioral indicators of sexual abuse;

(d) Investigate or conduct an assessment upon the receipt of a report that alleges emotional injury or risk of emotional injury to a child by a caretaker pursuant to KRS 600.020(26), for which the cabinet may contract directly if necessary to meet this requirement in a timely manner; and]

(e) Investigate upon the receipt of a report that alleges human trafficking of a child pursuant to KRS 620.029, whether the alleged perpetrator is a caretaker or not. This shall include:

1. Child sex trafficking when the report includes a sex act involving a child performed in exchange for something of value or the offer or intent to exchange a sex act involving a child for something of value; or
2. Child labor trafficking when the report includes:
 - a. Labor or services provided by a child; or
 - b. A child being subjected to involuntary servitude, debt, or slavery; and

(f) Investigate or conduct an assessment upon the receipt of a report that alleges dependency if the report alleges that a child is dependent pursuant to KRS 600.020(20).

(5) The following criteria shall be used in identifying a report of abuse, neglect, human trafficking, or dependency not requiring a child protective services investigation or assessment:

(a) The victim of the report of abuse, neglect, human trafficking, or dependency is age eighteen (18) or older at the time of the report;

(b) There is insufficient information to locate the child or to explore leads to locate;

(c) The problem described does not meet the statutory definitions of abuse, neglect, human trafficking, or dependency;

(d) The reporter notifies the cabinet that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;

(e) The report concerns custody changes, custody related issues, or lifestyle issues, without allegations of abuse, neglect, human trafficking, or dependency;

(f) Pursuant to KRS 503.110(1), corporal punishment appropriate to the age of the child, without an injury, mark, bruise, or substantial [risk of]harm; or

(g) An allegation of spouse abuse to a married youth under the age eighteen (18).

(6) An abandoned newborn infant pursuant to KRS 620.350 shall be determined to be dependent unless indicators of child physical abuse or child neglect are present.

Section 3. Initial Investigation or Assessment.

(1) Based upon an accepted report of child abuse, neglect, human trafficking, or dependency, the cabinet shall, in accordance with KRS 620.040(1)(b) or (2)(b), and 42 U.S.C. 5106a(b)(2)(B)(iv), make an initial determination as to the presence of safety threats and risk factors[immediate safety and risk of harm] to a child.

(2) The cabinet shall have face-to-face contact with the child

or, in the case of a child fatality, initiate the investigation within four (4) hours after acceptance of the report if a report of child abuse, neglect, human trafficking, or dependency:

(a) Includes a child who is:

1. The alleged victim of a fatality or near fatality; or

2. A surviving child in the care of the alleged perpetrator of a child fatality or near fatality; or

(b) 1. Involves a child who is:

a. Under four (4) years of age; or

b. Unable to verbally or nonverbally communicate the child's needs as provided by the reporting source; and

2. Indicates an immediate safety threat~~[a high-risk-of-harm]~~ to the child due to:

a. Physical abuse in accordance with Section 2(4)(a) of this administrative regulation;

b. Supervision neglect in accordance with Section 2(4)(b)2. of this administrative regulation; or

c. Sexual abuse in accordance with Section 2(4)(c) of this administrative regulation, and the alleged:

(i) Perpetrator has access to the child; or

(ii) Perpetrator's access to the child is unknown by the reporting source.

(3) The cabinet shall have face-to-face contact with the child within twenty-four (24) hours after acceptance of the report, if a report of child abuse, neglect, human trafficking, or dependency:

(a) 1. Indicates the presence of safety threats and risk factors~~[a high-risk-of-harm]~~ to the child; or

2. Alleges the child is the victim of human trafficking or female genital mutilation; and

(b) Criteria of subsection (2) of this section are not met.

(4) If the report of child abuse, neglect, human trafficking, or dependency indicates a moderate level of risk~~[risk-of-harm]~~ to a child, the cabinet shall have face-to-face contact with the child within forty-eight (48) hours after acceptance of the report.

(5) If the report of child abuse, neglect, human trafficking, or dependency indicates a low level of risk ~~[of-harm]~~ to a child, the cabinet shall have face-to-face contact with the child within seventy-two (72) hours after acceptance of the report.

(6) If the report of child abuse, neglect, or dependency is eligible for alternative response, the cabinet shall have face-to-face contact with the child within five (5) working days.

(7)~~[(6)]~~ Cabinet staff shall be permitted to interview an alleged victim of child abuse or neglect without obtaining the consent of the caretaker in accordance with KRS 620.072.

(8)~~[(7)]~~ Cabinet staff may~~[shall]~~ incorporate an unannounced home visit in accordance with ~~[provisions in-]~~KRS 620.072.

(9)~~[(8)]~~ Cabinet staff shall:

(a) Advise the individual under investigation of the complaints or allegations in accordance with 42 U.S.C. 5106a(b)(2)(B)(xviii); and

(b) Notify the parent or legal guardian of the child alleged to be abused, neglected, or dependent pursuant to KRS 620.050(5).

(10)~~[(9)]~~ A written assessment shall:

(a) Be completed by the cabinet on every report that meets acceptance criteria~~[investigation]~~; and

(b) Document efforts if the cabinet is unable to locate the family.

(11)~~[(10)]~~ The cabinet shall provide or make a referral to any community-based service:

(a) Available to a child, caretaker, or a child's family:

1. In accordance with 42 U.S.C. 5106a(b)(2)(B)(v), (vi), (ix), (xi), or (xxi); or

2. Pursuant to KRS 620.029 or 620.040(1)(b) or (2)(b); and

(b) Necessary to:

1. Reduce risk to a child; and

2. Provide family support.

(12)~~[(11)]~~ The cabinet shall make a referral for early intervention services pursuant to 42 U.S.C. 5106a(b)(2)(B)(xxi) for a child under the age of three (3) who is involved in a substantiated case of abuse or neglect.

(13)~~[(12)]~~(a) The cabinet may develop a plan for services at any point during an investigation or assessment to protect the health and safety of a child.

(b) The plan shall be:

1. Developed in conjunction with a family and the family's identified support system;

2. Agreed upon by the participants;

3. Signed by all parties identified to participate in the plan, unless a party is unwilling or unable to sign; and

4. Provided to all participants.

(14)~~[(13)]~~ If an investigation or assessment is conducted as a result of a child being referred pursuant to Section 2(4)(b)8. of this administrative regulation, the cabinet shall develop a plan in accordance with 42 U.S.C. 5106a(b)(2)(B)(iii).

(15)~~[(14)]~~ Collateral contact shall be made pursuant to KRS 620.030, 620.040, and 620.050.

(16)~~[(15)]~~(a) A medical or psychological examination may be required if a report of female genital mutilation; human trafficking; or child abuse, neglect, or dependency alleges that a child has suffered physical or sexual harm or emotional injury.

(b) A medical examination shall be conducted in accordance with KRS 620.050(14).

(17)~~[(16)]~~ Cabinet staff shall coordinate an investigation with a children's advocacy center governed by 922 KAR 1:580, in accordance with KRS 620.040(6) and (7).

(18)~~[(17)]~~ Pursuant to KRS 620.030(6), an agency, institution, or facility serving the child or family shall provide cooperation, assistance, and information necessary for the cabinet to conduct an investigation or assessment.

(19)~~[(18)]~~ Photographs may be taken of a child or a child's environment during a protective services investigation or assessment in accordance with KRS 620.050(14).

(20)~~[(19)]~~ An interview with a child shall be conducted pursuant to KRS 620.040(6).

(21)~~[(20)]~~(a) A child sexual abuse, female genital mutilation, or human trafficking investigation shall be conducted jointly with law enforcement and other multidisciplinary team members pursuant to KRS 431.600(1) and (8), 620.040(3), and 42 U.S.C. 5106a(b)(2)(B)(xi).

(b) The cabinet's primary responsibility shall be the protection of the child.

(22)~~[(21)]~~ If there is reason to believe a child is in imminent danger, or if a parent or caretaker of a child refuses the cabinet entry to a child's home or refuses to allow a child to be interviewed, the cabinet may request assistance:

(a) From law enforcement; or

(b) Through a request for a court order pursuant to KRS 620.040(5)(a).

(23)~~[(22)]~~(a) If the court issues a search warrant for execution by law enforcement, cabinet staff may accompany law enforcement officers.

(b) Except as provided in KRS 605.090(3), the cabinet shall not remove a committed child from the child's home without a court order.

(24)~~[(23)]~~ At the request of law enforcement, the cabinet shall, pursuant to KRS 620.040(3):

(a) Provide assistance in interviewing an alleged child abuse victim in a non-caretaker~~[noncaretaker]~~ report; and

(b) Not be the lead investigator in a non-caretaker~~[noncaretaker]~~ investigation.

Section 4. Alleged Perpetrators of Abuse or Neglect Age Twelve (12) to Eighteen (18).

(1) A report of child abuse or neglect involving alleged perpetrators in a caretaking~~[care-taking]~~ role age twelve (12) to eighteen (18) shall be subject to investigation or assessment.

(2) If substantiated, a child age twelve (12) to eighteen (18) shall be identified as the alleged perpetrator.

Section 5. Child Fatality or Near Fatality Investigations.

(1) The cabinet shall investigate a report of child fatality or near fatality alleged to be the result of abuse or neglect in accordance with KRS 620.040.

(2) If there is a surviving child in the care of the alleged perpetrator, the cabinet shall determine the safety of the surviving child through immediate assessment in accordance with this

administrative regulation.

(3) If a child fatality or near fatality allegedly due to abuse or neglect occurs, cabinet staff shall immediately notify the service region administrator or designee.

(4) If a fatality or near fatality occurs to a child in the custody of the cabinet in an out-of-home placement, the cabinet shall make an immediate effort to notify:

(a) The biological or legal parents; and

(b) The Office of the Director of the Division of Protection and Permanency.

(5) If parental rights have been terminated, and there are special circumstances including ongoing contact with the child, the cabinet shall notify a child's biological or legal parents of the child's fatality or near fatality.

(6) The cabinet shall notify the Department of Public Advocacy, Protection and Advocacy Division, in the Justice and Public Safety Cabinet if:

(a) 1. A child identified as a protection and advocacy client dies as a result of alleged abuse or neglect; and

2. The alleged perpetrator is a person exercising custodial control or supervision; or

(b) A child fatality has occurred as a result of:

1. Placement in [a]seclusion [room]pursuant to 922 KAR 1:300[4:390]; or

2. Physical management applied pursuant to 922 KAR 1:300.

(7) The cabinet shall notify the following persons, in writing, of a fatality of a child in the custody of the cabinet:

(a) Judge of the committing court; and

(b) Guardian ad litem for the deceased child.

(8) The cabinet may make public disclosure of a fatality or near fatality in accordance with:

(a) KRS 620.050(5) and (12); and

(b) 42 U.S.C. 5106a(b)(2)(B)(x).

(9) If the alleged perpetrator was not a caretaker, notification of the child fatality or near fatality shall be in accordance with KRS 620.030(1).

(10) The cabinet shall:

(a) Be in compliance with KRS 620.050(12) in cases where the cabinet has had prior involvement; and

(b) Provide annual reporting in accordance with 42 U.S.C. 5106a(d)(4)(5)(6)(11).

(11) If a child fatality or near fatality occurs in a licensed facility, the cabinet shall notify the licensing authority in accordance with 42 U.S.C. 5106a(b)(2)(B)(ix).

Section 6. Reports of Child Abuse, Neglect, Human Trafficking, or Dependency in Cabinet-approved Homes or Licensed Facilities.

(1) Pursuant to KRS 620.030(6), the cabinet shall have the authority to obtain necessary information to complete an investigation in a report of child abuse, neglect, human trafficking, or dependency in a:

(a) Child-caring facility licensed in accordance with 922 KAR 1:300 or its subcontractor;

(b) Child-placing agency licensed in accordance with 922 KAR 1:310 or its subcontractor;

(c) Child-care center licensed in accordance with 922 KAR 2:090;

(d) Family child-care home certified in accordance with 922 KAR 2:100;

(e) Child care provider registered in accordance with 922 KAR 2:180; or

(f) Foster, adoptive, or respite care provider home approved pursuant to 922 KAR 1:350.

(2) If a report of alleged child abuse, neglect, human trafficking, or dependency in a home approved pursuant to 922 KAR 1:310 or 922 KAR 1:350 is accepted, the designated cabinet staff shall:

(a) Immediately contact the service region administrator or designee; and

(b) Assign staff to conduct the investigation.

(3) If a report of alleged child abuse or neglect in a licensed child-care center, a certified family child-care home, or a registered child care provider is accepted, cabinet staff shall:

(a) Notify the cabinet's Division of Child Care to share

information and request assistance in locating alternate care if needed; and

(b) Conduct an investigation.

(4) If a report of alleged child abuse or neglect in a licensed child-caring facility, child-placing agency placement, certified family child-care home, or licensed child-care center is accepted, cabinet staff shall:

(a) Notify the Office of the Inspector General, Division of Regulated Child Care; and

(b) Conduct an investigation.

1. If possible, an investigation shall be coordinated and conducted jointly with the Division of Regulated Child Care. However, if not possible, the cabinet shall proceed with an investigation.

2.a. An entrance interview with the facility administrator or designee shall be conducted; and

b. The nature of the report shall be outlined without disclosing the name of the reporting source.

3. If the cabinet substantiates the report of child abuse or neglect and the alleged perpetrator is an employee of the facility, the cabinet shall notify the provider or program director within thirty (30) working days, unless a necessary extension is granted by the designated cabinet staff in a supervisory role.

(5) The cabinet shall share written findings of an investigation with the Division of Child Care for a:

(a) Licensed child-care center;

(b) Certified family child-care home; or

(c) Registered child care provider.

(6) The cabinet shall share written findings of an investigation with the Office of the Inspector General for a:

(a) Licensed child-care center;

(b) Certified family child-care home;

(c) Registered child care provider;

(d) Licensed child-caring facility; or

(e) Licensed child-placing agency.

(7) As soon as practical after a determination has been made that a child is in imminent danger or that a child needs to be removed, verbal or written notification shall be provided to the Division of Child Care or to the Office of the Inspector General.

Section 7. Interviewing a Child in a School Setting.

(1) Pursuant to KRS 620.030(6) and 620.072(4), the cabinet may, upon receipt of a report of child abuse or neglect, initiate an investigation or assessment at a school, which may include the review and copying of relevant school records pertaining to the child.

(2) If initiating an investigation or assessment at a school, the cabinet shall:

(a) Inform appropriate school personnel of the need to interview a child regarding the report; and

(b) Give necessary information concerning the allegation and investigation only to school personnel with a legitimate interest in the case.

Section 8. Investigation of an Employee of the School System.

If a report of child abuse or neglect involving school personnel is accepted, the following shall apply:

(1) An investigation shall be conducted;

(2) If the allegation is made about a school employee in a caretaker role of a child, the cabinet shall, if possible, conduct an interview away from the school grounds, with each of the following persons:

(a) The child;

(b) The parent or legal guardian;

(c) The alleged perpetrator; and

(d) Other collateral source, if any, in accordance with Section 3(15)[(14)] of this administrative regulation;

(3) The findings shall be shared with the custodial parent or guardian and the alleged perpetrator;

(4) The cabinet shall notify the appropriate supervisor of the alleged perpetrator, in writing, of the following:

(a) That an investigation has been conducted;

(b) The results of the investigation; and

(c) That the alleged perpetrator has the right to appeal pursuant to 922 KAR 1:480; and

(5) A person desiring other information shall employ the open records procedure, as described in 922 KAR 1:510.

Section 9. Written Notice of Findings of Investigation. The cabinet shall provide notification to specified government officials in accordance with KRS 620.040(1) or (2) and 42 U.S.C. 5106a(b)(2)(B)(ix).

Section 10. Substantiation Criteria and Submission of Findings.

(1) The cabinet shall use the definitions of "abused or neglected child" in KRS 600.020(1) in determining if an allegation is substantiated.

(2) A finding of an investigation or assessment shall be based upon the:

(a) Information and evidence collected by the cabinet during the report's investigation or assessment; and

(b) Condition that is present, rather than an action taken to remediate an issue or concern pertaining to a child's health, safety, or welfare.

(3) Cabinet staff may find and substantiate abuse or neglect, or make a services needed finding, at any point during an investigation or assessment or prior to case closure and aftercare planning in accordance with Section 12 of this administrative regulation, if preponderance of the evidence exists.

(4)(a) At the completion of an investigation or assessment involving a caretaker, the cabinet shall make a finding of:

1. Unsubstantiated child abuse or neglect;
2. Substantiated child abuse or neglect;
3. Child fatality or near fatality related to abuse or neglect;
4. Unable to locate the child;
5. Services needed for the child or child's family, which may include a dependent child;
6. No finding; or
7. Closed, which may include completed service provision.

(b) At the completion of an investigation involving human trafficking or female genital mutilation of a child by a non-caretaker, the cabinet shall make a finding of:

1. Confirmed;
2. Not confirmed; or
3. Unable to locate the child.

(5) A cabinet finding shall not be a judicial finding.

(6) The cabinet staff's supervisor or designee shall review and approve the final finding of the investigation or assessment.

(7) Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall send a notice of finding and notice of the perpetrator's right to appeal in accordance with 922 KAR 1:480, Section 2, to the alleged or substantiated perpetrator by certified mail to the last known address of the perpetrator.

(8) Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall:

(a) Send a notice of finding to the child's parent or guardian by certified mail; or

(b) Give a notice of finding to the parent or guardian, in person, with the parent or guardian and a witness signature to document receipt of the notice.

(9) The cabinet's notice of a substantiated finding of child abuse or neglect shall include:

- (a) The factual basis for the finding of child abuse or neglect;
- (b) The results of the investigation;

(c) Information about the perpetrator's right to appeal the substantiated finding in accordance with 922 KAR 1:480; and

(d) A statement informing the perpetrator that the perpetrator's name shall be added to the central registry in accordance with 922 KAR 1:470.

Section 11. Appeals.

(1) The perpetrator of a substantiated finding of child abuse or neglect may request a hearing in accordance with 922 KAR 1:480.

(2) A person may have additional hearing rights as specified in 922 KAR 1:320.

Section 12. Closure.

(1)(a) A decision to close a child protective services case shall be based on evidence that the factors resulting in the child abuse, neglect, human trafficking, or dependency have been resolved to the extent that the family is able to:

1. Protect the child; and
2. Meet the needs of the child.

(b) Prior to a case's closure in accordance with paragraph (a) of this subsection, designated cabinet staff in a supervisory role shall review and agree to the decision to close the child protective services case.

(2) If the cabinet does not have the authority to obtain court-ordered cooperation from a family, the cabinet shall close the child protective services investigation or assessment.

(3) Unless court-ordered cooperation from the family cannot be obtained in accordance in subsection (2) of this section, a child protective services case shall not be closed if withdrawal of services places a child at risk of abuse, neglect, or dependency.

(4) A family shall be:

(a) Notified in writing of the decision to close the protective services case; and

(b) Advised of the right to a fair hearing in compliance with 922 KAR 1:320, Section 2.

(5) Aftercare planning shall link a family to community resources for the purpose of continuing preventive measures if the cabinet discontinues services in accordance with this section.

(6) An aftercare plan shall be developed upon the completion of an investigation or assessment, if an issue or concern identified by the cabinet falls below the level that triggers a protection services case being opened.

(7)(a) When it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop the aftercare plan.

(b) The focus of the aftercare plan shall be to prevent a recurrence of abuse, neglect, or dependency to the child in the home.

(8) The cabinet may open a child protective services case in accordance with 922 KAR 1:140, 1:400, or 1:430.

(9) The cabinet may request the assistance of a court of competent jurisdiction to protect the child in accordance with KRS 620.070.

LESA DENNIS, Acting Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 26, 2023

FILED WITH LRC: February 2, 2023 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 24, 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 April 17, 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 April 30, 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: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or assessment of abuse, neglect, human trafficking, or dependency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish child protective services procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation assists with the effective administration of the statutes by establishing cabinet procedures for a child protection investigation or assessment of abuse, neglect, human trafficking, or dependency, consistent with KRS 620.180(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620, which relate to child abuse, neglect, human trafficking, dependency, and female genital mutilation. KRS 620.029(2)(a) requires the cabinet, in consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services.

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

(a) How the amendment will change this existing administrative regulation: This amendment elevates and improves the Department for Community Based Services (DCBS) response to human trafficking and moves reports of human trafficking from being considered as exploitation neglect to a separate, specific offense. The proposed administrative regulation clarifies that, for purposes of this administrative regulation, human trafficking includes child sex trafficking or child labor trafficking. This amendment also defines alternative response, a preventive and proactive approach through which the cabinet engages with a family and connects a family to community-based services as an alternative to conducting a child protective services investigation. DCBS intends to begin implementing alternative response over the next year.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to reflect the department's response to human trafficking reports related to child sex trafficking and child labor trafficking. Reports of alleged human trafficking of children continue to increase every year, with 344 reports received in the 2022 reporting period. Of these reports, 332 involved child sex trafficking and 12 involved child labor trafficking. The department has worked to improve report screening, investigative findings, and trainings related to human trafficking. Increased identification of human trafficking and assessment of victims' and families' needs support the development of a robust service array to meet the needs of these survivors.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes through its enhancement and clarity of cabinet procedures pertaining to the investigation and assessment of child abuse, neglect, human trafficking, and dependency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is necessary for consistency with related Kentucky Revised Statutes related to child protective services reports of human trafficking.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In State Fiscal Year 2022, the cabinet received 121,673 child protective services reports with nearly 98,518 meeting the screening acceptance criteria. Of those, 7,601

resulted in a substantiated finding of child abuse, neglect, or dependency. Also 1,884 reports resulted in a finding of services needed. DCBS received 344 reports of alleged human trafficking - child sex trafficking or child labor trafficking - in the 2022 reporting period. These reports involved 399 alleged child victims.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Child protective services will investigate or conduct an assessment upon the receipt of a report that alleges the human trafficking of a child pursuant to KRS 620.029, whether the alleged perpetrator is a caretaker or not. This amendment also provides minimal flexibility necessary for the department to implement alternative response for reports not requiring investigation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will not incur a new or additional cost. Costs to the department will be absorbed within current appropriations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who suspect that a child is a victim of human trafficking are able to make a report to the cabinet, and the cabinet is authorized to proceed in the case regardless of whether the person believed to have caused the human trafficking is the child's caretaker. The amendment will result in increased identification of human trafficking and assessment of victims' and families' needs to better support trafficking survivors.

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

(a) Initially: Costs to the department will be absorbed within current appropriations, but no new costs are anticipated.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's provision of child protective services is funded by the federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 5106a(b).

2. State compliance standards. KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1).

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a(b).

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 imposes stricter requirements than those

required by the federal mandate regarding human trafficking, but consistent with state law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirements relating to human trafficking reports are needed for compliance with state law.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, will be impacted 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. 42 U.S.C. 5106a(b), KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1).

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body, this program is administered with federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

(c) How much will it cost the regulated entities for the first year? There are no additional costs associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no additional costs associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a

major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation is not anticipated to have a major economic impact to regulated entities.

NEW ADMINISTRATIVE REGULATIONS

Public comment periods ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

GENERAL GOVERNMENT CABINET Board of Dentistry (New Administrative Regulation)

201 KAR 8:533. Licensure of dentists.

RELATES TO: KRS 39A.350-39A.366, 214.615, 218A.205, 304.040-075, 313.010(9), 313.030, 313.254

STATUTORY AUTHORITY: KRS 214.615(2), 218A.205, 313.021(1)(a), (b), (c), 313.035(1), (3), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.035 and 218A.205 require the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dentists. This administrative regulation establishes requirements and procedures for licensure of dentists.

Section 1. General Licensure Requirements. An applicant desiring dental licensure in the Commonwealth shall at a minimum:

- (1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, verified by testing as necessary;
- (2) Submit a completed, signed, and notarized Application for Dental Licensure with an attached applicant photo taken within the past six (6) months;
- (3) Pay the fee required by 201 KAR 8:520;
- (4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;
- (5) Complete and pass the board's jurisprudence exam;
- (6) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the American Heart Association Guidelines for CPR and ECC;
- (7) Submit to a nationwide state and federal criminal background check by fingerprint through the Department of Kentucky State Police;
- (8) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;
- (9) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental school or college or dental department of a university;
- (10) Provide proof that the applicant has successfully completed Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and
- (11) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination.

- (1) Each individual desiring initial licensure as a dentist by examination shall complete all of the requirements listed in Section 1 of this administrative regulation.
- (2) Each individual desiring initial licensure as a dentist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of the application. The board shall accept the following regional clinical examinations:
 - (a) The examination of the Council of Interstate Testing Agencies (CITA);
 - (b) The examination of the Central Regional Dental Testing Service (CRDTS);
 - (c) The examination of the Commission on Dental Competency Assessments (CDCA);
 - (d) The examination of the Southern Regional Testing Agency (SRTA); and
 - (e) The examination of the Western Regional Examining Board (WREB).
- (3) An individual desiring initial licensure as a dentist by

examination more than two (2) years after fulfilling all of the requirements of his CODA accredited dental education shall:

- (a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or
- (b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.
- (4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan approved by the board.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dentist by credentials shall:

- (1) Complete all of the requirements listed in Section 1 of this administrative regulation;
- (2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and
- (3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dentistry when he or she was legally authorized to practice dentistry in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. Requirements for Student Limited Licensure.

- (1) Each individual desiring a student limited license shall:
 - (a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (9) and (10);
 - (b) Provide a letter from the dean or program director of a postgraduate, residency, or fellowship program in the Commonwealth of Kentucky stating that the applicant has been accepted into the program and the expected date of completion;
 - (c) Submit a signed Statement Regarding Student Licensure Limitations; and
 - (d) Submit an official final transcript of the applicant's dental coursework with the degree posted.
- (2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a student and shall only provide professional services to patients of these programs.
- (3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a student.
- (4) A program enrolling an individual holding a student limited license shall notify the board in writing of the date the student graduates from or exits the program.
- (5) Nothing in this section shall prohibit:
 - (a) A student from performing a dental operation under the supervision of a competent instructor within the dental school, college, or department of a university or private practice facility approved by the board. The board may authorize a student of any dental college, school, or department of a university to practice dentistry in any state or municipal institution or public school, or under the board of health, or in a public clinic or a charitable institution. A fee shall not be accepted by the student beyond the expenses provided by the stipend;
 - (b) A student limited license holder from working under the general supervision of a licensed dentist within the confines of the postgraduate training program; and
 - (c) A volunteer health practitioner from providing services

under KRS 39A.350-39A.366.

Section 5. Requirements for Faculty Limited Licensure.

(1) Each individual desiring a faculty limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (9) and (10);

(b) Provide a letter from the dean or program director of the dental school showing a faculty appointment with one (1) of the Commonwealth's dental schools;

(c) Submit a signed Statement Regarding Faculty Licensure Limitations; and

(d) Submit an official final transcript of his or her dental coursework with the degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a faculty member and shall only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a faculty member.

(4) A program employing an individual holding a faculty limited license shall notify the board in writing of the date the licensee exits the program.

Section 6. Requirements for Licensure of Foreign Trained Dentists.

(1) Each individual desiring licensure as a dentist who is a graduate of a non-CODA accredited dental program shall successfully complete two (2) years of postgraduate training in a CODA accredited general dentistry program and shall:

(a) Provide proof of having passed the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service with a score of 650 on the paper-based test (PBT) or a score of 116 on the internet-based test (iBT), if English is not the applicant's native language;

(b) Submit a completed, signed, and notarized Application for Dental Licensure with an attached applicant photo taken within the past six (6) months;

(c) Pay the fee required by 201 KAR 8:520;

(d) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(e) Complete and pass the board's jurisprudence exam;

(f) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the American Heart Association Guidelines for CPR and ECC;

(g) Submit to a state and federal criminal background check by fingerprint through the Department of Kentucky State Police;

(h) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(i) Provide proof of having successfully completed two (2) years postgraduate training in a CODA accredited general dentistry program;

(j) Submit one (1) letter of recommendation from the program director of each training site;

(k) Provide proof of successful completion of Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations within the five (5) years preceding application for licensure;

(l) Provide proof of successfully completing within the five (5) years prior to application a clinical examination required by Section 2(2) of this administrative regulation; and

(m) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual desiring initial licensure as a dentist who is a graduate of a non-CODA accredited dental program and applies more than two (2) years after fulfilling all of the requirements of his or her postgraduate training in a CODA accredited general dentistry program shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

Section 7. Requirements for Charitable Limited Licensure.

(1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, verified by testing as necessary;

(b) Submit a completed, signed, and notarized Application for Charitable Dental Licensure with an attached applicant photo taken within the past six (6) months;

(c) Pay the fee required by 201 KAR 520;

(d) Not be subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(e) Have a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services that have met the requirements of KRS 313.254 and 201 KAR 8:581;

(b) Only perform procedures allowed by KRS 313.254(4) and (5) which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured under KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual, and without payment or reimbursement by any governmental agency or insurer;

(e) Have a charitable limited license that shall be valid for no more than two (2) years and shall expire during the regular dental renewal cycle; and

(f) Comply with reciprocity requirements if applicable.

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participating in a charitable clinic shall have a license to practice dentistry in the state in which the dentist practices.

(3) A dentist licensed under this section shall not be allowed to prescribe any medications while practicing in the Commonwealth.

Section 8. Requirements for Specialty Licensure. Each individual desiring initial licensure as a specialist as defined by KRS 313.010(9) shall:

(1) Submit a completed, signed, and notarized Application for Specialty Licensure with an attached applicant photo taken within the past six (6) months;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold an active Kentucky license to practice general dentistry prior to being issued a specialty license; and

(4) Submit satisfactory evidence of completing a CODA accredited graduate or postgraduate specialty program after graduation from a dental school.

Section 9. Minimum Continuing Education Requirements.

(1) Each individual desiring renewal of an active dental license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dentistry and would be useful to the licensee's practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Competence to diagnose oral pathology;

(d) Awareness of currently accepted methods of infection control;

(e) Knowledge of basic medical and scientific subjects including biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(f) Knowledge of clinical and technological subjects;

(g) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(h) Competency in assisting in mass casualty or mass immunization situations;

(i) Clinical skills through the volunteer of clinical charitable dentistry that meets the requirements of KRS 313.254;

(j) Knowledge of office business operations and best practices; or

(k) Participation in dental association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken that meet the requirements of subsection (2)(i) - (k) of this section.

(5) A minimum of three (3) hours of continuing education must be taken in the use of the Kentucky All Schedule Prescription Electronic Reporting System (KASPER), pain management, or addiction disorders.

(6) Dentists who hold a board-issued sedation permit shall also meet the continuing education requirements of 201 KAR 8:550, Section 8. All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of or verification by the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(7) It shall be the sole responsibility of the individual licensee to obtain documentation from the provider or sponsoring organization verifying participation as established in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(8) At license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(9) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 10. Requirements for Renewal of a Dental License.

(1) Each individual desiring renewal of an active dental license shall:

(a) Submit a signed, completed Application for Renewal of Dental Licensure;

(b) Pay the fee required by 201 KAR 8:520;

(c) Maintain, with no more than a thirty (30) day lapse, CPR certification that meets or exceeds the American Heart Association Guidelines for CPR and ECC unless a hardship waiver is approved by the board; and

(d) Meet the continuing education requirements as provided for in Section 9 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the biennial license period, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation; and

3. If the licensee graduated in the second year of the biennial license period, the licensee shall not be required to complete the continuing education requirements outlined in Section 9 of this administrative regulation.

(2) If a licensee has not actively practiced dentistry in the two

(2) consecutive years preceding the filing of the renewal

application, he or she shall complete and pass a board approved refresher course prior to resuming the active practice of dentistry.

Section 11. Retirement of a License.

(1) Each individual desiring retirement of a dental license shall submit a completed and signed Retirement of License Form.

(2) Upon receipt of this form, the board shall send written confirmation of retirement to the address provided by the licensee on the Retirement of License form.

(3) A licensee shall not retire a license that has a pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

Section 12. Reinstatement of a License.

(1) Each individual desiring reinstatement of a properly retired dental license shall:

(a) Submit a completed, signed, and notarized Application to Reinstatement of a Dental License with an attached applicant photo taken within the past six (6) months;

(b) Pay the fee required by 201 KAR 8:520;

(c) Show proof of having current certification in CPR that meets or exceeds the American Heart Association Guidelines for CPR and ECC;

(d) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(e) Submit to a nationwide state and federal criminal background check by fingerprint through the Department of Kentucky State Police; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual applies to reinstate a license within two (2) years of when the license was last active, the individual shall provide proof of having met the continuing education requirements as outlined in Section 9 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dentistry in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of the biennial license period, the licensee shall complete all of the continuing education requirements as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

(5) If a license is reinstated in the second year of the biennial license period, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

Section 13. Requirements for Verification of Licensure. Each individual desiring verification of a dental license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 14. Requesting a Duplicate License. Each individual desiring a duplicate dental license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 15. Issuance of Initial Licensure. If an applicant has completed all of the requirements for licensure within six (6) months of the date the application was received at the office of the board, the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 16. Incorporation by Reference.

VOLUME 49, NUMBER 8– MARCH 1, 2023

(1) The following material is incorporated by reference:

- (a) "Application for Charitable Dental Licensure," February 2023;
- (b) "Application for Dental Licensure," February 2023;
- (c) "Application for Renewal of Dental Licensure," February 2023;
- (d) "Application for Specialty Licensure," February 2023;
- (e) "Application to Reinstate a Dental License," February 2023;
- (f) "Duplicate License or Registration Request Form," February 2023;
- (g) "Retirement of License Form," February 2023;
- (h) "Statement Regarding Faculty Licensure Limitations," February 2023;
- (i) "Statement Regarding Student Licensure Limitations," February 2023;
- (j) "Verification of Licensure or Registration Form," February 2023; and
- (k) "2020 American Heart Association Guidelines for CPR and ECC," 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's website at <http://dentistry.ky.gov>.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: February 13, 2023

FILED WITH LRC: February 14, 2023 at 8:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 27, 2023 at 3:00 p.m., Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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 April 30, 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: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements to practice dentistry in Kentucky.

(b) The necessity of this administrative regulation: KRS 313.021(1)(a) requires the board to exercise the administrative functions of the Commonwealth in the regulation of dentists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the rules for obtaining a license to practice as a dentist in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for being licensed to practice dentistry in conformity with its authorizing statute.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will primarily affect the approximately 3,200 licensed dentists in Kentucky as well as any new applicants for licensure and the patients of licensed dentists.

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

(a) List the actions that each of the related entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual impacted will be required to apply for or renew their licensure in accordance with applicable law and administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question. This administrative regulation maintains existing fees which are already established in 201 KAR 8:520.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations by licensed dentists.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Licensure fees are used to fund the implementation 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: Fee amounts are already established in a separate administrative regulation (201 KAR 8:520) and no increase is needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation maintains existing fees which are already established in 201 KAR 8:520.

(9) TIERING: Is tiering applied? No; this administrative regulation impacts all similarly situated entities equally.

FISCAL NOTE

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.021.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to impact the existing revenue generated by dental licensure, which is approximately \$1,100,000 every fiscal biennium to the Board of Dentistry.

(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 expected to impact the existing revenue generated by dental licensure, which is approximately \$1,100,000 every fiscal biennium to the Board of Dentistry.

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

year? There will be no additional cost as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost as a result of this administrative regulation.

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

Revenues (+/-): This administrative regulation does not establish specific fees, which are contained in a separate administrative regulation; however, the revenue generated from dentist licensure is approximately \$1,100,000 every fiscal biennium.

Expenditures (+/-): Expenditures specifically related to this administrative regulation are difficult to determine due to indirect personnel and overhead costs; however, total agency expenditures are approximately \$1,400,000 every fiscal biennium.

Other explanation: Not applicable.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None

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

(c) How much will it cost the regulated entities for the first year? No additional cost as a result of this administrative regulation. This administrative regulation does not contain specific fees, which are provided for in a separate administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional cost as a result of this administrative regulation. This administrative regulation does not contain specific fees, which are provided for in a separate administrative regulation.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. This administrative regulation does not directly have a major economic impact as it does not contain specific fee amounts. When administered in conjunction with the current fees established elsewhere, it impacts the dental health community by just over \$500,000 per year, primarily from licensure fees.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(New Administrative Regulation)**

201 KAR 8:563. Licensure of dental hygienists.

RELATES TO: KRS 214.615, 304.40 - 075, 313.030, 313.040, 313.060, 313.080, 313.130, 313.254

STATUTORY AUTHORITY: KRS 214.615(2), 313.021(1)(a), (b), (c), 313.040(1), (2), (7), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.040 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dental hygienists. This administrative regulation establishes requirements and procedures for the licensure of dental hygienists.

Section 1. General Licensure Requirements. An applicant desiring licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, verified by testing as necessary;

(2) Submit a completed, signed, and notarized Application for Dental Hygiene Licensure with an attached applicant photo taken within the past six (6) months;

(3) Pay the fee required by 201 KAR 8:520;

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(5) Complete and pass the board's jurisprudence exam;

(6) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the American Heart Association Guidelines for CPR and ECC, incorporated by reference in 201 KAR 8:532;

(7) Submit to a nationwide state and federal criminal background check by fingerprint through the Department of Kentucky State Police;

(8) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dental hygiene held previously or currently in any state or jurisdiction;

(9) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental hygiene school or college or dental hygiene department of a university;

(10) Provide proof that the applicant has successfully completed the National Board Dental Hygiene Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(11) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination.

(1) Each individual desiring initial licensure as a dental hygienist by examination shall complete all of the requirements established in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dental hygienist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of his or her Application for Dental Hygiene Licensure. The board shall accept the following regional clinical examinations:

(a) The examination of the Council of Interstate Testing Agencies (CITA);

(b) The examination of the Central Regional Dental Testing Service (CRDTS);

(c) The examination of the Commission on Dental Competency Assessments (CDCA);

(d) The examination of the Southern Regional Testing Agency (SRTA); or

(e) The examination of the Western Regional Examining Board (WREB).

(3) An individual desiring initial licensure as a dental hygienist by examination more than two (2) years after fulfilling all of the requirements of his CODA accredited dental hygiene education shall:

(a) Hold a license to practice dental hygiene in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dental hygiene in good standing, complete a board-approved refresher course prior to receiving a license to practice dental hygiene in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan prescribed by the board based on the applicant's deficiencies.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dental hygienist by credentials shall:

(1) Complete all of the requirements established in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia;

and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dental hygiene while he or she was legally authorized to practice dental hygiene in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. Requirements for Charitable Limited Licensure.

(1) Each individual desiring a charitable limited license shall:

- (a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, verified by testing as necessary;
- (b) Submit a completed, signed, and notarized Application for Charitable Dental Hygiene Licensure with an attached applicant photo taken within the past six (6) month;
- (c) Pay the fee required by 201 KAR 8:520;
- (d) Not be subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;
- (e) Have a license to practice dental hygiene in good standing in another state; and
- (f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual licensed pursuant to this section shall:

- (a) Work only with charitable entities registered with the Cabinet for Health and Family Services that have met requirements of KRS 313.254 and 201 KAR 8:581;
- (b) Only perform procedures allowed by KRS 313.254, which shall be completed within the duration of the charitable event;
- (c) Be eligible for the provisions of medical malpractice insurance procured pursuant to KRS 304.40-075;
- (d) Perform these duties without expectation of compensation or charge to the individual and without payment or reimbursement by any governmental agency or insurer;
- (e) Have a charitable limited license that shall be good for two (2) years and expire during the regular dental hygiene renewal cycle; and

(f) Comply with reciprocity requirements if applicable.

- 1. A state that extends a reciprocal agreement shall comply with this section.
- 2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.
- 3. An individual conducting or participate in a charitable clinic shall have a license to practice dental hygiene in the state in which the dental hygienist practices.

Section 5. Minimum Continuing Education Requirements.

(1) Each individual desiring renewal of an active dental hygiene license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dental hygiene and would be useful to the licensee in his practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

- (a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental hygiene treatment;
- (b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;
- (c) Awareness of currently accepted methods of infection control;
- (d) Knowledge of basic medical and scientific subjects including, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;
- (e) Knowledge of clinical and technological subjects;
- (f) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;
- (g) Competency in assisting in mass casualty or mass immunization situations;
- (h) Clinical skills through the volunteer of clinical charitable dental hygiene that meets the requirements of KRS 313.254;
- (i) Knowledge of office business operations and best practices;

or

(j) Participation in dental or dental hygiene association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken that meet the requirements of subsection (2)(h) - (j) of this section.

(5) For dental hygienists registered to practice under general supervision, a minimum of three (3) hours must be taken in medical emergencies as described in Section 12(1)(d) of this administrative regulation in order to renew their registration.

(6) For dental hygienists registered to practice as public health hygienists, a minimum of three (3) hours must be taken in medical emergencies as described in Section 15(1)(d) of this administrative regulation in order to renew their registration.

(7) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

- (a) The signature of the provider;
- (b) The name of the licensee in attendance;
- (c) The title of the course or meeting attended or completed;
- (d) The date of attendance or completion;
- (e) The number of hours earned; and
- (f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(8) It shall be the sole responsibility of the individual dental hygienist to obtain documentation from the provider or sponsoring organization verifying participation as established in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(9) At license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(10) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 6. Requirements for Renewal of a Dental Hygiene License.

(1) Each individual desiring renewal of an active dental hygiene license shall:

- (a) Submit a completed, signed Application for Renewal of Dental Hygiene Licensure;
- (b) Pay the fee required by 201 KAR 8:520;
- (c) Maintain, with no more than a thirty (30) day lapse, CPR certification that meets or exceeds the American Heart Association Guidelines for CPR and ECC, incorporated by reference in 201 KAR 8:530, unless a hardship waiver is submitted to and subsequently approved by the board; and
- (d) Meet the continuing education requirements as established in Section 5 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the biennial license period, the licensee shall complete one-half (1/2) of the hours as established in Section 5 of this administrative regulation; and

3. If the licensee graduated in the second year of the biennial license period, the licensee shall not be required to complete the continuing education requirements established in Section 5 of this administrative regulation.

(2) If a licensee has not actively practiced dental hygiene in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board-approved refresher course prior to resuming the active practice of dental hygiene.

Section 7. Retirement of a License.

(1) Each individual desiring retirement of a dental hygiene license shall submit a completed and signed Retirement of License Form, incorporated by reference in 201 KAR 8:532.

(2) Upon receipt of Retirement of License Form, the board shall send written confirmation of retirement to the last known address of the licensee.

(3) A licensee shall not retire a license that has pending

disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

Section 8. Reinstatement of a License.

(1) Each individual desiring reinstatement of a properly retired dental hygiene license shall:

(a) Submit a completed, signed, and notarized Application to Reinstatement a Dental Hygiene License with an attached applicant photo taken within the past six (6) months;

(b) Pay the fee required by 201 KAR 8:520;

(c) Show proof of having current certification in CPR that meets or exceeds the American Heart Association Guidelines for CPR and ECC, incorporated by reference in 201 KAR 8:532;

(d) Provide verification within three (3) months of the date the Application to Reinstatement a Dental Hygiene License is received at the office of the board of any license to practice dental hygiene held previously or currently in any state or jurisdiction;

(e) Submit to a nationwide state and federal criminal background check by fingerprint through the Department of Kentucky State Police; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual applies to reinstate a license within two (2) years of when the license was last active, the individual shall provide proof of having met the continuing education requirements as established in Section 5 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dental hygiene in the two (2) consecutive years immediately preceding the filing of the Application to Reinstatement a Dental Hygiene License, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of the biennial license period, the licensee shall complete all of the continuing education requirements as established in Section 5 of this administrative regulation prior to the renewal of his license.

(5) If a license is reinstated in the second year of the biennial license period, the licensee shall complete one-half (1/2) of the hours as established in Section 5 of this administrative regulation prior to the renewal of his license.

Section 9. Requirements for Verification of Licensure. Each individual desiring verification of a dental hygiene license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form, incorporated by reference in 201 KAR8:532; and

(2) Pay the fee required by 201 KAR 8:520.

Section 10. Requesting a Duplicate License. Each individual desiring a duplicate dental hygiene license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form, incorporated by reference in 201 KAR8:532; and

(2) Pay the fee required by 201 KAR 8:520.

Section 11. Requirements for Local Anesthesia Registration.

(1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action who desires to administer local anesthesia shall:

(a) Complete the Application for Dental Hygiene Special Registrations;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Document successful completion of an educational program which meets or exceeds the requirements established in KRS 313.060(10).

(2) Individuals authorized to practice pursuant to this provision shall receive a license from the board indicating registration to administer local anesthesia.

(3) A licensed dental hygienist shall not administer local anesthesia if the licensee does not hold a local anesthesia registration issued by the board.

(4) A licensed dental hygienist holding a local anesthesia registration from the board who has not administered block anesthesia, infiltration anesthesia, or nitrous oxide analgesia for one (1) year shall complete a board-approved refresher course prior to resuming practice of that specific technique.

Section 12. Requirements for General Supervision Registration.

(1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action who desires to practice under general supervision shall:

(a) Complete the Application for Dental Hygiene Special Registrations;

(b) Meet the requirements of KRS 313.040(7)(a);

(c) Document through payroll records, employment records, or other proof that is independently verifiable, the dates and hours of employment by a dentist in the practice of dental hygiene that demonstrate the required two (2) years and 3,000 hours of experience; and

(d) During each biennial license period, successfully complete a live three (3) hour course approved by the board in the identification and prevention of potential medical emergencies that shall include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;

2. Recognition of common medical emergency situations, symptoms, and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments.

(2) An individual authorized to practice pursuant to these provisions shall receive a license from the board indicating registration to practice under general supervision.

(3) A dentist who employs a dental hygienist who has met the standards of this administrative regulation and who allows the dental hygienist to provide dental hygiene services pursuant to KRS 313.040(7) shall complete a written order prescribing the dental service or procedure to be done to a specific patient by the dental hygienist and shall retain the original order in the patient's dental record.

(4) The minimum requirements for the written order shall include:

(a) Medical history update;

(b) Radiographic records requested;

(c) Dental hygiene procedures requested;

(d) Name of the patient;

(e) Date of last oral examination;

(f) Date of the written order; and

(g) Signature of the dentist.

(5) The oral examination of the patient by the supervising dentist shall have been completed within the seven (7) months preceding treatment by the dental hygienist practicing under general supervision.

(6) The supervising dentist shall evaluate and provide to the board written validation of an employed dental hygienist's skills necessary to perform dental hygiene services established in KRS 313.040(7) as part of the Application for Dental Hygiene Special Registrations.

(7) The supervising dentist shall provide a written protocol addressing the medically compromised patients who may or may not be treated by the dental hygienist. The dental hygienist shall only treat patients who are in the ASA Patient Physical Status Classification of ASA I or ASA II as established in Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, as incorporated by reference in 201 KAR 8:550.

(8) A licensed dental hygienist shall not practice under general supervision if the licensee does not hold a general supervision registration issued by the board.

Section 13. Requirements for Intravenous Access Line Registration.

(1) An individual licensed as a dental hygienist in Kentucky and

not subject to disciplinary action who desires to start intravenous (IV) access lines shall:

(a) Submit a signed and completed Application for Dental Hygiene Special Registrations;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Submit documentation proving successful completion of a board-approved course in starting IV access lines.

(2) An individual authorized to practice pursuant to this provision shall receive a license from the board indicating registration to start IV access lines.

(3) A licensed dental hygienist shall not start an IV access line if the licensee does not:

(a) Hold a board-issued registration to start IV access lines; or

(b) Work under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board.

Section 14. Requirements for Laser Debridement Registration.

(1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action who desires to perform laser debridement shall:

(a) Submit a signed and completed Application for Dental Hygiene Special Registrations;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Submit documentation proving successful completion of a board-approved course in performing laser debridement.

(2) An individual authorized to practice pursuant to this provision shall receive a license from the board indicating registration to perform laser debridement.

(3) A licensed dental hygienist shall not perform laser debridement if the licensee does not:

(a) Hold a board-issued registration to perform laser debridement; or

(b) Work under the direct supervision of a dentist.

Section 15. Requirements for Public Health Registration.

(1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action who desires to practice as a public health registered dental hygienist shall:

(a) Submit a completed Application for Dental Hygiene Special Registration;

(b) Meet the requirements established in KRS 313.040(8);

(c) Document through payroll records, employment records, or other proof that is independently verifiable, the dates and hours of employment by a dentist in the practice of dental hygiene that demonstrate the required two (2) years and 3,000 hours of experience; and

(d) During each biennial license period, successfully complete a live three (3) hour course approved by the board in the identification and prevention of potential medical emergencies that shall include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;

2. Recognition of common medical emergency situations, symptoms, and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments.

(e) During each biennial license period, complete at least three (3) hours of continuing education in public health or public dental health.

(2) An individual authorized to practice pursuant to subsection (1) of this section shall receive a certificate from the board indicating registration to practice as a public health registered dental hygienist.

(3) Pursuant to KRS 313.040(8)(c), a public health registered dental hygienist may practice in a government-created public health program at the following sites:

(a) Local health departments;

(b) Public or private educational institutions that provide Head Start, preschool, elementary and secondary instruction to school-aged children under the jurisdiction of the State Board of Education, and that have an affiliation agreement with the health department of jurisdiction;

(c) Mobile and portable dental health programs under contract with a governing board of health; and

(d) Public or private institutions under the jurisdiction of a federal, state, or local agency.

(4) A public health registered dental hygienist shall perform dental hygiene services only under the supervision of the governing board of health, as required by KRS 313.040(3)(b), as established in KRS 313.040(8), and as identified by the Department for Public Health Practice Reference.

(a) These services shall be limited to preventative services.

(b) The public health registered dental hygienist shall only treat a patient who is in the ASA Patient Physical Status Classification of ASA I or ASA II as established in the current edition of Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, as incorporated by reference in 201 KAR 8:550.

(c) The informed consent shall be required prior to preventative services and shall include:

1. The name of the public health entity, including the name of the dentist, that assumes responsibility and control;

2. An inquiry as to the current dentist; and

3. A statement that services are provided by a dental hygienist without the direct supervision of a dentist.

(d) This administrative regulation shall not preclude a Kentucky-licensed dentist from directly participating in a public health program referenced in subsection (4)(a), (b), (c), or (d) of this section.

Section 16. Issuance of Initial Licensure. If an applicant has completed the requirements for licensure the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 17. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Charitable Dental Hygiene Licensure," February 2023;

(b) "Application for Dental Hygiene Licensure," February 2023;

(c) "Application for Dental Hygiene Special Registrations," February 2023;

(d) "Application for Renewal of Dental Hygiene Licensure," February 2023; and

(e) "Application to Reinstate a Dental Hygiene License," February 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: February 13, 2023

FILED WITH LRC: February 14, 2023 at 8:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 27, 2023 at 3:00pm, Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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 April 30, 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: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville,

Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements to practice dental hygiene in Kentucky.

(b) The necessity of this administrative regulation: KRS 313.021(1)(a) requires the board to exercise the administrative functions of the Commonwealth in the regulation of dental hygienists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the rules for obtaining a license to practice as a dental hygienist in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for being licensed to practice dental hygiene in conformity with its authorizing statute.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will primarily affect the approximately 2,900 licensed dental hygienists in Kentucky as well as any new applicants for licensure and the patients treated by licensed dental hygienists.

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

(a) List the actions that each of the related entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual impacted will be required to apply for or renew their licensure in accordance with applicable law and administrative regulations.

(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 maintains existing fees which are already established in 201 KAR 8:520.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations for licensed dental hygienists.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Licensure fees are used to fund the implementation 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: Fee amounts are already established in a separate administrative regulation (201 KAR 8:520) and no increase is needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation maintains existing fees which are already established in 201 KAR 8:520.

(9) TIERING: Is tiering applied? No; this administrative regulation

impacts all similarly situated entities equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.021.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to impact the existing revenue generated by dental hygiene licensure, which is approximately \$425,000 every fiscal biennium to the Board of Dentistry, an agency of the Commonwealth.

(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 expected to impact the existing revenue generated by dental hygiene licensure, which is approximately \$425,000 every fiscal biennium to the Board of Dentistry, an agency of the Commonwealth.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost as a result of this administrative regulation.

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

Revenues (+/-): This administrative regulation does not establish specific fees, which are contained in a separate administrative regulation; however, the revenue generated from dental hygienist licensure is approximately \$425,000 every fiscal biennium.

Expenditures (+/-): Expenditures specifically related to this administrative regulation are difficult to determine due to indirect personnel and overhead costs; however, total agency expenditures are approximately \$1,400,000 every fiscal biennium.

Other explanation: Not applicable.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None

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

(c) How much will it cost the regulated entities for the first year? There will be no additional cost as a result of this administrative regulation. This administrative regulation does not contain specific fee amounts, which are provided for in a separate administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional cost as a result of this administrative regulation. This administrative regulation does not contain specific fee amounts, which are provided for in a separate administrative regulation.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000)

or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. This administrative regulation does not directly have a major economic impact as it does not contain specific fee amounts. When administered in conjunction with the current fees established elsewhere, it still impacts the dental health community by less than \$500,000 per year.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(New Administrative Regulation)

907 KAR 3:190. Reimbursement for treatment related to clinical trials.

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 U.S.C. 1396d

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. 42 U.S.C. 1396d(gg) establishes federal requirements for reimbursement relating to a qualifying clinical trial. In keeping with that federal requirement, this administrative regulation establishes the department's coverage and reimbursement for routine patient costs relating to a qualifying clinical trial.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Qualifying clinical trial" has the same meaning as in 42 U.S.C. 1396d(gg)(2).

(3) "Routine patient costs" has the same meaning as in 42 U.S.C. 1396d(gg)(1).

Section 2. Policy. Consistent with 42 U.S.C. 1396d(gg), services related to qualifying clinical trials shall be reimbursable if:

(1) The services are covered services pursuant to Title 907 KAR;

(2) The services would otherwise be provided to a participant who is not participating in a clinical trial; and

(3) The services are not covered by the clinical trial sponsor.

Section 3. Qualifying Clinical Trial Treatment Related Expenses. (1) The department shall comply with 42 U.S.C. 1396d and provide coverage for routine patient costs associated with a qualifying clinical treatment.

(2) Any required coverage determination shall be expedited and completed within seventy-two (72) hours.

(3) In complying with this section, the provider shall not be:

(a) Required to provide the geographic location or network affiliation of a provider associated with a qualifying clinical trial and treating an enrolled Medicaid recipient.

(b) Required to submit:

1. Protocols of the qualifying clinical trial;

2. Proprietary documentation; or

3. Any information determined by the federal Health and Human Services cabinet to be burdensome to provide.

(4)(a) A provider and principal investigator shall attest to the appropriateness of the qualifying clinical trial by completion of the form located on the Medicaid.gov Web site at this link: <https://www.medicaid.gov/resources-for-states/downloads/medicaid-attest-form.docx>.

(b) The form established in paragraph (a) shall be submitted upon request and available for auditing purposes.

Section 4. Federal Approval and Federal Financial Participation. The department'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.

Section 5. Use of Electronic Signatures. The creation, transmission, storage, or other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 6. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 1, 2023

FILED WITH LRC: February 8, 2023 at 8:05 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 24, 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 April 17, 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 April 30, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott, Executive Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage and reimbursement requirements for routine patient costs as required by the federal Clinical Treatment Act. In addition, this administrative regulation will allow Medicaid beneficiaries to more fully participate in clinical trials.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the federal requirement to cover routine patient costs under the Clinical Treatment Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing reimbursement for allowable expenses related to clinical trials pursuant to the federal Clinical Treatment Act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing a reimbursement mechanism for clinical trial

expenses as required by federal law.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

(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 government affected by this administrative regulation: This will impact all recipients in Medicaid who are enrolled in a clinical trial, as well as primary care providers.

(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.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Enrollees and recipients should not experience any additional costs in complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Enrollees and recipients will be able to access a new Medicaid benefit.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no additional costs to implement this administrative regulation.

(b) On a continuing basis: The Department for Medicaid Services (DMS) anticipates no additional costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 funds from general fund appropriations.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. Part 11

2. State compliance standards. KRS 205.520(3) and KRS 194A.050(1).

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 11 establishes requirements relating to clinical trials. DMS has also been instructed to submit a state plan amendment by the federal government.

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 or different 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 this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. Part 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? DMS does not expect this administrative regulation to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates no additional costs as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services (DMS) anticipates no additional costs as a result of this administrative regulation.

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

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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of February 14, 2023

Call to Order and Roll Call

The February meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, February 14, 2023 at 8 a.m. in Room 171 of the Capitol Annex. Representative Lewis, 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 and Damon Thayer; and Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

LRC Staff: Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Dianna Barber, Kentucky Higher Education Assistance Authority; Stephen Humphress, Christopher Thacker, Office of the Attorney General; Stafford Easterling, Personnel Board; Jessica Beaubien, Carrie Bass, Kentucky Retirement Systems; Eden Davis, Christopher Harlow, Board of Pharmacy; Misty Stutz, Kentucky Pharmacists Association; Cory Meadows, Kentucky Medical Association; Jeffrey Allen, Ann-Tyler Morgan, Board of Dentistry; Leanne Diakov, Board of Medical Licensure; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Marc Kelly, Board of Social Work; Steven Fields, Jenny Gilbert, Rich Storm, Department of Fish & Wildlife Resources; Nathan Goens, Elisha Mahoney, Justice and Public Safety Cabinet; John Ghaelian, Duane Hammons, Department of Workplace Standards; Abigail Gall, Shaun Orme, Department of Insurance; Jonathan Scott, Department for Medicaid Services; Ivy Alexander, Emily Allen, Office for Children with Special Health Care Needs; Laura Begin, Todd Tripp, Department for Community Based Services; Lisa Lee, Department for Medicaid Services.

Administrative Regulations Reviewed by this Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY:
Division of Student and Administrative Services

011 KAR 004:080. Student aid applications. Dianna Barber, interim executive director, represented the division.

In response to questions by Co-Chair West, Ms. Barber stated that changes reflected federal PELL eligibility.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

KHEAA Grant Programs

011 KAR 005:001. Definitions pertaining to 011 KAR Chapter 005.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

011 KAR 005:037. CAP grant student eligibility.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

011 KAR 005:145. CAP grant award determination procedure.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

OFFICE OF THE ATTORNEY GENERAL: Department of Law:
Office of Consumer Protection

040 KAR 002:150. Cremation forms and inspections. Stephen Humphress, assistant attorney general, and Christopher Thacker, assistant deputy attorney general, represented the office.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4, 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Personnel Board

101 KAR 001:325. Probationary periods. Stafford Easterling, general counsel, represented the board.

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. Carrie Bass, staff attorney supervisor, and Jessica Beaubien, policy specialist, represented the systems.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for "wellness or wellbeing promise"; (2) to amend Section 10 to clarify procedures if enrollment is not mandatory; and (3) to amend the RELATES TO paragraph and Sections 1, 3, 5, and 7 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.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:360. Naloxone dispensing. Eden Davis, general counsel, and Christopher Harlow, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 through 6; and material incorporated by reference to change references to "naloxone" to "opioid antagonist" consistent with Senate Bill 56 from the 2022 Regular Session of the General Assembly; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 3 through 6; and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 1 to add a definition for a "pharmacy permit holder." Without objection, and with agreement of the agency, the amendments were approved.

Board of Dentistry

201 KAR 008:016. Registration of dental laboratories. Jeffrey Allen, executive director, and Anne-Tyler Morgan, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 008:520. Fees and fines.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 008:571. Registration of dental assistants.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 3 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.

201 KAR 008:601. Mobile dental facilities and portable dental units.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 2 through, 4, 6, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Medical Licensure

201 KAR 009:470. Standardized medical order for scope of treatment form. Leanne Diakov, counsel, represented the board.

Board of Nursing

201 KAR 020:370. Applications for licensure. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to restore the previous language of an application for licensure by endorsement lapsing within one (1) year from the date of the application form being filed with the board office; and (2) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Social Work

201 KAR 023:051E. Renewal, termination, reinstatement of license. Marc Kelly, executive director, represented the board.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 002:219. Repeal of 301 KAR 002:224 and 301 KAR 002:226. Jenny Gilbert, legislative liaison, and Steven Fields, staff attorney, represented the department.

301 KAR 002:221. Waterfowl seasons and limits.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 002:228. Sandhill crane hunting requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the

drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Office of the Secretary

500 KAR 016:010. Funds disbursement from the elder and vulnerable victims trust fund. Nathan Goens, staff attorney, and Elisha Mahoney, executive staff advisor, represented the office.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND LABOR CABINET: Department of Workplace Standards: Labor Standards; Wages and Hours

803 KAR 001:081. Board, lodging, gratuities and other allowances. John Ghaelian, general counsel, represented the department.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 017:280. Registration, utilization review, and internal appeal. Abigail Gall, executive advisor, and Shaun Orme, executive advisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 4, 6, 7, and 9 through 13 and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Sections 4 and 9 for clarification. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 017:290. Independent External Review Program.

A motion was made and seconded to approve the following amendments: to amend Section 12 and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services

907 KAR 001:680. Vaccines for children program. Lisa Lee, commissioner, and Jonathan Scott, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Payments and Services

907 KAR 003:010. Reimbursement for physicians' services.

Medicaid Eligibility

907 KAR 020:050. Presumptive eligibility.

A motion was made and seconded to approve the following amendments: (1) to add a new Section 9 incorporating the "Presumptive Eligibility Hospital Patient Information Form" by reference; (2) to amend Section 8 to insert Web site links; and (3) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office for Children with Special Health Care Needs

911 KAR 001:060. Medical staff. Ivy Alexander, executive director, and Emily Allen, regulation coordinator, 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, 12, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

Representative Frazier Gordon thanked the office because Kentucky was a model for the nation regarding early hearing detection and intervention.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

911 KAR 001:090. Appeals.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 002:006. Technical requirements for the Kentucky Transitional Assistance Program (KTAP). Laura Begin, regulation coordinator, and Todd Tripp, division director, represented the department.

At the November 9, 2022 meeting of this subcommittee, a motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, 5, 13, 15, and 16 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 002:500. Family Assistance Short Term (FAST).

921 KAR 002:510. Relocation Assistance Program (RAP).

921 KAR 002:520. Work Incentive (WIN).

Other Business: Co-Chair Lewis stated that several members had concerns about some administrative regulations that had been filed by the Department for Medicaid Services. This subcommittee considered these administrative regulations.

The subcommittee determined that the following administrative regulations were deficient pursuant to KRS 13A.030(2)(a):

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services

907 KAR 001:026E. Dental services' coverage provisions and requirements. Lisa Lee, commissioner, and Jonathan Scott, regulation coordinator, represented the department.

In response to a question by Co-Chair Lewis, Ms. Lee stated that communication among the department, MCOs, providers, and recipients had not been optimal. The department had been in contact with stakeholders, especially dental providers, in order to clear up some of the confusion.

In response to questions by Co-Chair West, Ms. Lee stated that this package of administrative regulations did not necessarily represent a large expansion of services. Several other states covered the same services, and this was an effort to offset future costs. Poor dental care was associated with heart disease and pre-term births. Studies had demonstrated that hearing aids helped reduce dementia. During the coronavirus (COVID-19) pandemic, the department was prohibited, except in certain circumstances, from exiting recipients from the program. Now that the public health emergency was expiring, there were those who needed these services who would soon be exiting the program. This package of

administrative regulations was intended to help those individuals find success after exiting the program in order to reduce recidivism. The department anticipated a cost of approximately \$89 million, which would be funded by federal and state monies and offset by savings from, for example, emergency room visits related to deferred adult dental care. The department viewed this as an investment in preventative care in order to reduce costs for more advanced diseases. Ms. Lee was unsure whether or not the department presented this proposal to the Medicaid Oversight Advisory Committee in November 2022. The department continued to work with stakeholders to develop specific reimbursement rates and codes related to preventative services. MCOs have agreed to increase costs to the Medicaid fee schedule. Ms. Lee stated that some legislators had expressed concerns about the department moving forward with this package of administrative regulations without input from the General Assembly. Co-Chair West stated that he understood that some legislators had objected to this package of administrative regulations, and that many providers were not participating due to low reimbursement rates.

Senator Raque Adams stated that most of the feedback she had received was from providers who had concerns about low reimbursement rates. Compensation was inadequate for the care that was currently provided. Expanding services, rather than raising reimbursement rates for existing services, seemed counterintuitive.

Co-Chair Lewis stated that, pertaining to Medicaid, many dental providers were breaking even at best and, in some cases, taking a loss. Transportation was also a major concern. Medicaid reimbursement rates, compared with standard and Medicare rates, were significantly lower. Rates had been stagnant for many years. While the department's goal was a sound one, there might be a more effective way to allocate these funds. Expanding coverage without providers was futile.

Representative Bridges stated that \$89 million was a great expansion. This seemed like an appropriation of funds, which was a legislative prerogative. While this package of administrative regulations seemed well-intentioned, it was prudent to consider adjusting reimbursement rates for existing services first.

Representative Frazier Gordon stated that, as a provider of hearing services, she appreciated the importance of addressing children's hearing needs and in preventing dementia in adults. As an example of problems with the Medicaid hearing component, the current process for providing a hearing aid took many months, and the provider always had a financial loss. This was a good initiative; however, current problems first needed to be addressed.

In response to questions by Co-Chair West, Ms. Lee stated that the department had twenty-two (22) technical advisory committees that held meetings to discuss specific policies and provide feedback. Most of the feedback pertained to reimbursement and administrative procedures. She was unaware if there was specific budget language regarding how cost savings from Senate Bill 50 were to be allocated. The department believed that the visual, hearing, and dental programs for adults were necessary on an emergency basis to prevent more serious diseases. Mr. Scott stated that he would get back with this subcommittee regarding what documentary evidence was submitted to justify the emergency nature of this administrative regulation. Co-Chair West stated that the documentary evidence submitted was the Governor's press release on this matter, the authorizing statute, the public notice, and pages from a federal form. This documentary justification seemed insufficient. This seemed like a massive expansion of the program, and the General Assembly should have input in developing these policies. This package of administrative regulations represented an appropriation of funds to a program that was already experiencing significant reimbursement complaints. The reimbursement complaints needed to be addressed first.

Senator Thayer stated that this was another example of Governor Beshear's dismissiveness toward the General Assembly.

Co-Chair West made a motion, seconded by Senator Thayer, to find these administrative regulations deficient. A roll call vote was conducted, and with six (6) votes to find these administrative regulations deficient and one (1) pass vote, these administrative regulations were found deficient.

Representative Bridges explained his vote to find these administrative regulations deficient. This was definitely an appropriation. The timing of these administrative regulations was odd because the General Assembly was currently in a legislative session.

Co-Chair Lewis explained his vote to find these administrative regulations deficient. He stated that he understood the department's intent and appreciated their efforts.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 21 was added to this administrative regulation to reflect the finding of deficiency.

907 KAR 001:026. Dental services' coverage provisions and requirements.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 21 was added to this administrative regulation to reflect the finding of deficiency.

907 KAR 001:038E. Hearing Program coverage provisions and requirements.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 10 was added to this administrative regulation to reflect the finding of deficiency.

907 KAR 001:038. Hearing program coverage provisions and requirements.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 10 was added to this administrative regulation to reflect the finding of deficiency.

907 KAR 001:632E. Vision program coverage provisions and requirements.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 15 was added to this administrative regulation to reflect the finding of deficiency.

907 KAR 001:632. Vision program coverage provisions and requirements.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 15 was added to this administrative regulation to reflect the finding of deficiency.

The following administrative regulations were deferred or removed from the February 14, 2023, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:380E. Board authorized protocols. Eden Davis, general counsel, and Christopher Harlow, executive director, represented the board. Misty Stutz, president, Kentucky Pharmacists and Physicians, and dean, Sullivan University School of Pharmacists, appeared in support of these administrative regulations. Cory Meadows, deputy executive vice-president, Kentucky Medical Association, appeared in opposition to these administrative regulations.

In response to a question by Senator Raque Adams, Ms. Stutz stated that these administrative regulations were necessary to expand medical access and to allow quick and efficient responses to emergent, acute, self-limiting public health crises. The medical system of care, including care provided by pharmacists, should be agile. The KRS Chapter 13A regulatory process was slow and did not function quickly enough to address emergent issues. Not all emergent public health issues met the criteria for an emergency administrative regulation, although these public health issues could still have devastating effects on the health of Kentuckians. Research demonstrated that there was an insufficient number of physicians for all patient care that was needed. Pharmacists were highly trained to collaborate with physicians to provide care for acute, minor ailments and to provide preventative care. These services were not intended to replace primary care physicians, but to address gaps in care and to respond to public health threats in a timely manner. Medical oversight was provided regarding the appropriateness of the protocols. Pharmacist care services also provided an entry-point into the medical system of care. These administrative regulations were filed upon request by the Department for Medicaid Services to

ensure that patients had access to PAXLOVID for the treatment of coronavirus (COVID-19). The board has eliminated the list of specific conditions for which protocols could be developed and strengthened oversight. These administrative regulations established a Protocol Review Committee and a Protocol Registry. Ms. Stutz requested that this subcommittee respectfully allow these administrative regulations to continue through the process without substantive changes.

In response to a question by Co-Chair Lewis, Mr. Meadows stated that Kentucky Medical Association (KMA) was opposed to board-authorized protocols. These administrative regulations, in any form, did not represent sound public health policy. Protocols should be specifically authorized by the General Assembly. These changes were unnecessary and did not reflect discussions between the board and the KMA. The board was circumventing the rulemaking process, which provided for emergency administrative regulations. These administrative regulations lacked proper parameters and did not establish transparency. The board was removing the specific list of conditions that could be treated through these protocols, leaving broad authority outside of the rulemaking process and thereby bypassing the General Assembly. These administrative regulations were also removing necessary subject matter training requirements for pharmacists participating in these protocols. Because changes to these administrative regulations was potentially expanding conditions that pharmacists may address, training requirements should be expanded, not deleted. The board should reinstate training requirements in the interest of quality of care and public safety. The Protocol Review Committee, which was to consist of four (4) pharmacists and only one (1) physician, seemed to be authorized only to address issues of process, rather than substance. While the board had referenced a public comment process pertaining to these protocols, that language had not been found in these administrative regulations.

In response to a question by Co-Chair Lewis, Mr. Harlow stated that the board's mission was to ensure public health and patient safety. The changes to these administrative regulations were necessary to improve oversight and ensure that pharmacists were working within their current scope of practice. The purpose of the Protocol Review Committee was to ensure compliance and that protocols were appropriate. Pharmacists were highly educated prior to implementing any protocols. Training was not addressed in these administrative regulations because it was a component of the protocols. Ms. Davis stated that the board's intent was not to bypass the rulemaking process, but to be able to respond nimbly to an urgent health crisis. A public health situation that was regional or did not affect the entire state might not qualify for an emergency administrative regulation, and the process for an ordinary administrative regulation to become effective took at least six (6) months.

In response to questions by Co-Chair West, Ms. Davis stated that coronavirus (COVID-19) would be an example of a statewide emergent public health crisis. A regional crisis, such as a localized outbreak of measles, might not reach the criteria for an emergency administrative regulation, but might still need a rapid response. Mr. Harlow stated that opioid and alcohol use disorders might also be examples. Mr. Meadows stated that the emergency administrative regulation process existed to address imminent public health threats. Anything that did not meet the criteria was not an emergency.

In response to a question by Senator Raque Adams, Ms. Davis stated it was unclear if a localized outbreak would qualify for an emergency administrative regulation. Senator Raque Adams stated that a specific outbreak seemed like an event that would comply with the emergency administrative regulation criteria. When the General Assembly authorized these protocols, there was significant debate regarding this matter. Going beyond the initially authorized health conditions and expanding to include a broad array of other conditions was far afield of the General Assembly's original intent for this program.

Co-Chair Lewis stated that, being from the pharmacy sector, he saw the need for this but also understood some of the members' concerns.

Co-Chair West stated that one (1) of the requirements for an emergency administrative regulation was "protect human health

and the environment.” That standard seemed broad enough to meet the needs of this program. The fact that an outbreak might be regional, rather than statewide, did not seem to preclude an administrative regulation from meeting the criteria for filing as an emergency administrative regulation. These new protocols seemed to be creating an intermediary step in rulemaking that lacked transparency and oversight.

In response to a question by Co-Chair West, Mr. Harlow stated that the board agreed to defer consideration of these administrative regulations to the March meeting of this subcommittee. Without objection, and with agreement of the agency, these administrative regulations were deferred.

In response to a question by Senator Raque Adams, Co-Chair Lewis stated that the goal of deferral was for stakeholders to meet and attempt to address some of the outstanding concerns regarding these administrative regulations.

201 KAR 002:380. Board authorized protocols.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for “protocol”; and (2) to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

Board of Social Work

201 KAR 023:016. Temporary permission to practice.

201 KAR 023:051. Renewal, termination, reinstatement of license.

JUSTICE AND PUBLIC SAFETY CABINET: 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 008:010. 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 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.

902 KAR 020:480. Assisted living communities.

Controlled Substances

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

Department for Medicaid Services

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

The subcommittee adjourned at 9:25 a.m. The next meeting of this subcommittee was tentatively scheduled for March 7, 2023, at 8 a.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

SENATE AND HOUSE STANDING COMMITTEES ON NATURAL RESOURCES

Meeting of February 2, 2023

The House and Senate Standing Committees on Natural Resources and Energy met jointly on February 2, 2023, and quorums were present for both committees. The following administrative regulations were available for consideration having been referred to the Committee on January 4, 2023, and February 1, 2023, pursuant to KRS 13A.290(6):

January 4, 2023

301 KAR 002:251
301 KAR 002:225
301 KAR 002:185

February 1, 2023

301 KAR 002:015
301 KAR 002:075
301 KAR 002:081
301 KAR 002:082

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

SENATE STANDING COMMITTEE ON FAMILIES AND CHILDREN

Meeting of February 14, 2023

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 2, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Families and Children for its meeting of February 14, 2023, having been referred to the Committee on December 7, 2022 and January 4, 2023, and February 1, 2023, pursuant to KRS 13A.290(6):

Referred on December 7, 2022

922 KAR 001:300 Proposed

Referred on January 4, 2023

922 KAR 001:350 Proposed
922 KAR 001:290 Proposed
921 KAR 002:370 Proposed
921 KAR 002:060 Proposed
921 KAR 002:050 Proposed
921 KAR 002:040 Proposed
921 KAR 002:035 Proposed
921 KAR 002:017 Proposed
921 KAR 002:016 Proposed

Referred on February 1, 2023

922 KAR 002:165 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the February 14, 2023 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 February 15, 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 February 15, 2023, having been referred to the Committee on January 4, 2023 and February 1, 2023, pursuant to KRS 13A.290(6):

January 4, 2023

900 KAR 001:050

February 1, 2023

907 KAR 003:160 Proposed
908 KAR 001:374 Proposed

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

908 KAR 001:374 Proposed

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the February 15, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

2/13/2023

Agency Amendment

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Behavioral Health, Developmental, and Intellectual Disabilities

Division of Program Integrity

908 KAR 1:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.

VOLUME 49, NUMBER 8– MARCH 1, 2023

Section 7(3)(j)1.

Line 20

After “medical”, insert “prescribers”

Delete “staff”

After “needs”, delete the following:

, including a practitioner authorized to prescribe FDA-approved medications for the treatment of opioid use disorder on-site during fifty (50) percent of clinic weekly hours of operation.

Page 23

Section 7(5)(k)1.

Line 13

After “(k)”, delete “1.”.

After “staff”, delete the following:

for every 300 patients or fraction thereof, enrolled in an NTP; and
2. The medical director, program physician, or program prescriber shall not be responsible for more than 300 total patients, which includes all patients of the NTP.

HOUSE STANDING COMMITTEE ON HEALTH SERVICES

Meeting of February 16, 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 February 16, 2023, having been referred to the Committee on January 4, 2023 and February 1, 2023, pursuant to KRS 13A.290(6):

January 4, 2023

900 KAR 001:050

February 1, 2023

907 KAR 003:160

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

908 KAR 001:374

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity regarding the review of the above-referenced administrative regulations is reflected in the minutes of the February 16, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

2/13/2023

Agency Amendment

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Behavioral Health, Developmental, and Intellectual Disabilities

Division of Program Integrity

908 KAR 1:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.

Page 19

Section 7(3)(j)1.

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Page 23

Section 7(5)(k)1.

Line 13

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for every 300 patients or fraction thereof, enrolled in an NTP; and
2. The medical director, program physician, or program prescriber shall not be responsible for more than 300 total patients, which includes all patients of the NTP.

HOUSE STANDING COMMITTEE ON FAMILIES AND CHILDREN

Meeting of February 16, 2023

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Families & Children for its meeting of February 16, 2023, having been referred to the Committee on December 7, 2022, January 4, 2023, and February 1, 2023, pursuant to KRS 13A.290(6):

December 7, 2022

922 KAR 001:300

January 4, 2023

921 KAR 002:016

921 KAR 002:017

921 KAR 002:035

921 KAR 002:040

921 KAR 002:050

921 KAR 002:060

921 KAR 002:370

922 KAR 001:290

922 KAR 001:350

February 1, 2023

922 KAR 002:165

Committee activity regarding the review of the above-referenced administrative regulations is reflected in the minutes of the February 16, 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

I - 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

I - 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

I - 26

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this Register year.

Technical Amendment Index

I - 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

I - 29

A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of <i>Register</i> year 49. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another Register year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior Registers, please visit our online <i>Administrative Registers of Kentucky</i> .					
SYMBOL KEY:			Expired		
* Statement of Consideration not filed by deadline			200 KAR 017:111E	49 Ky.R. 247	6-21-2022
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			201 KAR 002:106E	48 Ky.R. 1997	12-14-2021
*** Withdrawn before being printed in Register			Replaced	2116	6-2-2022
IJC Interim Joint Committee			201 KAR 002:380E	49 Ky.R. 523	8-8-2022
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.			201 KAR 002:412E	48 Ky.R. 1466	10-11-2021
			Withdrawn		6-27-2022
			201 KAR 002:413E	49 Ky.R. 250	6-27-2022
			201 KAR 012:030E	49 Ky.R. 253	7-12-2022
			Replaced	1042	1-31-2023
			201 KAR 012:060E	49 Ky.R. 257	7-12-2022
			Replaced	1045	1-31-2023
			201 KAR 012:082E	49 Ky.R. 259	7-12-2022
			Replaced	1046	1-31-2023
			201 KAR 012:190E	49 Ky.R. 264	7-12-2022
			Replaced	1050	1-31-2023
			201 KAR 012:230E	49 Ky.R. 266	7-12-2022
			Replaced	410	1-31-2023
			201 KAR 012:260E	49 Ky.R. 267	7-12-2022
			Replaced	1050	1-31-2023
			201 KAR 012:290E	49 Ky.R. 269	7-12-2022
			Replaced	1051	1-31-2023
			201 KAR 015:030E	48 Ky.R. 2689	4-7-2022
			Replaced	2836	11-1-2022
			201 KAR 015:040E	48 Ky.R. 2692	4-7-2022
			Replaced	2838	11-1-2022
			201 KAR 015:050E	48 Ky.R. 2693	4-7-2022
			Replaced	49 Ky.R. 322	11-1-2022
			201 KAR 015:110E	48 Ky.R. 2697	4-7-2022
			Replaced	2843	11-1-2022
			201 KAR 015:125E	48 Ky.R. 2700	4-7-2022
			Replaced	2846	11-1-2022
			201 KAR 020:070E	48 Ky.R. 2702	4-6-2022
			As Amended	49 Ky.R. 14	6-17-2022
			Replaced	325	8-25-2022
			201 KAR 020:260E	48 Ky.R. 2168	1-11-2022
			Amended	2948	5-10-2022
			201 KAR 020:480E	48 Ky.R. 2367	2-2-2022
			Amended	2951	5-10-2022
			Replaced	2959	7-20-2022
			201 KAR 023:016E	49 Ky.R. 976	10-3-2022
			201 KAR 023:051E	49 Ky.R. 1239	11-15-2022
			201 KAR 026:175E	49 Ky.R. 977	9-30-2022
			Withdrawn		11-7-2022
			201 KAR 026:225E	49 Ky.R. 981	9-30-2022
			Withdrawn		11-7-2022
			201 KAR 046:020E	48 Ky.R. 2172	12-21-2021
			202 KAR 007:545E	48 Ky.R. 2704	3-30-2022
			Replaced	2851	11-1-2022
			202 KAR 007:560E	48 Ky.R. 2926	5-3-2022
			Replaced	3036	9-28-2022
			202 KAR 007:701E	49 Ky.R. 272	7-12-2022
			As Amended	751	
			Replaced	1059	11-15-2022
			300 KAR 001:020E	49 Ky.R. 525	7-25-2022
			Withdrawn		8-25-2022
			300 KAR 001:021E	49 Ky.R. 727	8-25-2022
			300 KAR 006:011E	48 Ky.R. 2929	4-29-2022
			Replaced	49 Ky.R. 1062	1-31-2023
			503 KAR 001:140E	49 Ky.R. 277	7-13-2022
			Replaced	1074	1-31-2023
			503 KAR 003:130E	49 Ky.R. 732	8-18-2022
			505 KAR 001:120E	49 Ky.R. 1567	1-13-2023
			505 KAR 001:140E	49 Ky.R. 1569	1-13-2023
016 KAR 009:011E	49 Ky.R. 240	7-13-2022			
031 KAR 002:030E	49 Ky.R. 718	9-1-2022			
031 KAR 003:031E	48 Ky.R. 2902	4-28-2022			
Replaced	1026	1-31-2023			
031 KAR 004:071E	48 Ky.R. 2904	4-28-2022			
Replaced	1027	1-31-2023			
031 KAR 004:131E	48 Ky.R. 2906	4-28-2022			
Replaced	1027	1-31-2023			
031 KAR 004:141E	48 Ky.R. 2909	4-28-2022			
Replaced	1029	1-31-2023			
031 KAR 004:195E	48 Ky.R. 256	6-23-2021			
Expired		3-20-2022			
031 KAR 004:196E	48 Ky.R. 2911	4-28-2022			
Replaced	1029	1-31-2023			
031 KAR 004:200E	48 Ky.R. 258	6-23-2021			
Expired		3-20-2022			
031 KAR 004:201E	48 Ky.R. 2913	4-28-2022			
Replaced	1030	1-31-2023			
031 KAR 004:210E	48 Ky.R. 2914	4-28-2022			
Replaced	1030	1-31-2023			
031 KAR 005:011E	48 Ky.R. 2916	4-28-2022			
Replaced	1030	1-31-2023			
031 KAR 005:025E	48 Ky.R. 259	6-23-2021			
Expired		3-20-2022			
031 KAR 005:026E	48 Ky.R. 2918	4-28-2022			
Replaced	1031	1-31-2023			
040 KAR 009:010E	49 Ky.R. 1563	1-6-2023			
040 KAR 009:020E	49 Ky.R. 1565	1-6-2023			
101 KAR 002:095E	48 Ky.R. 2684	4-15-2022			
Replaced	2795	9-27-2022			
101 KAR 002:210E	49 Ky.R. 719	9-15-2022			
101 KAR 006:020E	48 Ky.R. 2687	4-15-2022			
Replaced	2878	9-27-2022			
102 KAR 001:360E	48 Ky.R. 2167	12-28-2021			
103 KAR 001:361E	49 Ky.R. 974	9-22-2022			
103 KAR 043:340E	49 Ky.R. 6	6-2-2022			
105 KAR 001:415E	49 Ky.R. 243	6-28-2022			
Am Comments	748				
Am Comments	1241				
105 KAR 001:450E	48 Ky.R. 2921	5-5-2022			
Withdrawn	#	8-15-2022			
105 KAR 001:451E	49 Ky.R. 722	8-19-2022			
Am Comments	1243				
200 KAR 017:110E	48 Ky.R. 5	6-2-2021			
As Amended	1098	9-14-2021			

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601 KAR 002:233E	47 Ky.R. 2335	4-12-2021	Replaced	1273	1-12-2023
Replaced	48 Ky.R. 429	11-30-2021	907 KAR 004:030E	49 Ky.R. 535	7-19-2022
603 KAR 010:011E	48 Ky.R. 736	7-30-2021	Replaced	1275	1-12-2023
701 KAR 008:010E	49 Ky.R. 984	10-13-2022	907 KAR 020:020E	49 Ky.R. 538	7-19-2022
701 KAR 008:020E	49 Ky.R. 989	10-13-2022	Replaced	648	1-12-2023
701 KAR 008:030E	49 Ky.R. 998	10-13-2022	907 KAR 020:100E	49 Ky.R. 542	7-19-2022
701 KAR 008:040E	49 Ky.R. 1001	10-13-2022	Replaced	651	1-12-2023
701 KAR 008:050E	49 Ky.R. 1005	10-13-2022	907 KAR 023:020E	49 Ky.R. 9	6-1-2022
702 KAR 001:192E	48 Ky.R. 1999	12-8-2021	Replaced	49 Ky.R. 820	10-26-2022
Am Comments	2374	2-11-2022	908 KAR 003:010E	48 Ky.R. 2550	2-21-2022
As Amended		3-7-2022	Replaced	49 Ky.R. 370	8-25-2022
787 KAR 001:090E	49 Ky.R. 1571	12-22-2022	921 KAR 004:122E	48 Ky.R. 2005	12-1-2021
787 KAR 001:100E	49 Ky.R. 1575	12-22-2022	Replaced	2146	6-2-2022
787 KAR 001:360E	48 Ky.R. 2937	4-28-2022	922 KAR 001:360E	48 Ky.R. 2176	12-28-2021
Replaced	49 Ky.R. 563	12-6-2022	Replaced	3014	7-20-2022
800 KAR 001:020E	48 Ky.R. 2174	12-17-2021	922 KAR 002:160E		
Am Comments	2554	3-15-2022	As Amended	49 Ky.R. 1015	
803 KAR 002:182E(r)	47 Ky.R. 2531	5-13-2021	922 KAR 002:260E	49 Ky.R. 296	7-1-2022
	48 Ky.R. 2531	11-2-2021			
803 KAR 002:321E	48 Ky.R. 2001	11-23-2021			
Replaced	2141	7-5-2022			
803 KAR 002:330E	48 Ky.R. 753	7-20-2021			
803 KAR 002:426E	48 Ky.R. 2003	11-23-2021	009 KAR 001:070	48 Ky.R. 2529	
Replaced	2143	7-5-2022	As Amended	2955	7-19-2022
803 KAR 025:089E	49 Ky.R. 284	6-24-2022	011 KAR 004:080		
As Amended	754		Amended	48 Ky.R. 2779	
803 KAR 025:195E	48 Ky.R. 2710	4-15-2022	As Amended	49 Ky.R. 309	11-1-2022
Am Comments	49 Ky.R. 15		Amended	1330	
Replaced	49 Ky.R. 813	1-3-2023	As Amended	1741	
803 KAR 025:305E	48 Ky.R. 1473	9-28-2021	011 KAR 005:001		
Expired		6-25-2022	Amended	49 Ky.R. 1332	
807 KAR 005:001E	49 Ky.R. 734	9-14-2022	As Amended	1741	
900 KAR 005:020E	48 Ky.R. 2368	1-27-2022	011 KAR 005:037	49 Ky.R. 1370	
Am Comments	2715	4-15-2022	As Amended	1743	
As Amended	49 Ky.R. 306		011 KAR 005:145		
Replaced	347	8-25-2022	Amended	48 Ky.R. 2781	
900 KAR 006:075E	48 Ky.R. 2370	1-27-2022	As Amended	49 Ky.R. 309	11-1-2022
Am Comments	2716	4-15-2022	Amended	1335	
As Amended	49 Ky.R. 306		As Amended	1744	
Replaced	347	8-25-2022	011 KAR 015:090		
900 KAR 012:005E	49 Ky.R. 530	8-8-2022	Amended	48 Ky.R. 2783	
Replaced	49 Ky.R. 640	1-12-2023	As Amended	49 Ky.R. 310	11-1-2022
900 KAR 014:010E	48 Ky.R. 2548	2-21-2022	011 KAR 016:020		
As Amended	2556	3-7-2022	Amended	48 Ky.R. 2788	
Am Comments	48 Ky.R. 2952		As Amended	49 Ky.R. 314	11-1-2022
As Amended	49 Ky.R. 308		011 KAR 022:010	48 Ky.R. 2875	
Replaced		8-25-2022	As Amended	49 Ky.R. 315	11-1-2022
901 KAR 005:120E	49 Ky.R. 286	6-30-2022	011 KAR 023:010	48 Ky.R. 2877	
Am Comments	755		As Amended	49 Ky.R. 316	11-1-2022
Replaced	1429	1-12-2023	013 KAR 003:050		
902 KAR 002:020E	48 Ky.R. 2939	4-26-2022	Amended	49 Ky.R. 856	
902 KAR 002:230E	48 Ky.R. 1474	10-1-2021	As Amended	1411	
Expired		6-28-2022	016 KAR 003:080		
902 KAR 002:240E	48 Ky.R. 1476	10-1-2021	Amended	48 Ky.R. 2614	10-4-2022
As Amended	2014	12-9-2021	016 KAR 004:060		
Expired		6-28-2022	Amended	49 Ky.R. 1810	
902 KAR 002:250E	48 Ky.R. 1477	10-1-2021	016 KAR 009:100	49 Ky.R. 479	
Expired		6-28-2022	As Amended	1023	1-31-2023
902 KAR 020:490E	49 Ky.R. 1576	12-29-2022	016 KAR 009:110	49 Ky.R. 481	
907 KAR 001:026E	49 Ky.R. 1579	12-29-2022	As Amended	1024	
	1731		As Amended	1248	
907 KAR 001:038E	49 Ky.R. 1586	12-29-2022	017 KAR 003:020		
	1736		Amended	49 Ky.R. 1469	
907 KAR 001:065E	49 Ky.R. 288	7-1-2022	030 KAR 002:010		
Replaced	1313	1-12-2023	Amended	48 Ky.R. 2111	
907 KAR 001:632E	49 Ky.R. 1590	12-29-2022	As Amended	2558	7-5-2022
	1738		030 KAR 009:010	49 Ky.R. 1198	
907 KAR 003:160E	49 Ky.R. 1008	9-30-2022	As Amended	1590	
Replaced	1622	2-16-2023	031 KAR 002:030	49 Ky.R. 937	
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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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164.7894	011 KAR 004:080	200.460	911 KAR 001:060
165A.330	806 KAR 009:025	200.460-200.499	911 KAR 001:085
174.020	603 KAR 005:350		911 KAR 001:090
176.010	603 KAR 005:155	200.654	911 KAR 001:090
176.050	603 KAR 005:155	202A.011	907 KAR 001:044
176.5061-176.5069	601 KAR 014:050		922 KAR 001:330
177.106	603 KAR 005:155	202B.010	922 KAR 001:100
177.830	603 KAR 005:155	205	921 KAR 002:040
177.990	603 KAR 005:155	205.010	910 KAR 001:180
186.401	601 KAR 014:050		921 KAR 002:006
186.450	601 KAR 014:050	205.170	921 KAR 002:060
186.531	601 KAR 014:050	205.175	921 KAR 002:035
186.535	601 KAR 014:050	205.177	921 KAR 002:035
189.125	922 KAR 001:300	205.193	921 KAR 002:050
189.281	603 KAR 005:350	205.200	921 KAR 002:016
189.390	603 KAR 005:350		921 KAR 002:017
189.515	603 KAR 005:350		921 KAR 002:035
189.520	603 KAR 005:350		921 KAR 002:050
194.540	201 KAR 020:620		921 KAR 002:370
194A.005	922 KAR 001:330		921 KAR 002:500
	922 KAR 001:350		921 KAR 002:520
194A.030	911 KAR 001:085	205.201	910 KAR 001:180
	911 KAR 001:090	205.203	910 KAR 001:180
194A.060	907 KAR 001:044	205.2001	921 KAR 002:016
	921 KAR 002:035	205.2003	921 KAR 002:017
	922 KAR 001:100		921 KAR 002:500
	922 KAR 001:350	205.2005	921 KAR 002:006
	922 KAR 002:160	205.210	921 KAR 002:016
194A.700	910 KAR 001:180	205.211	921 KAR 002:016
194A.700-194A.729	902 KAR 020:480		921 KAR 002:017
196	501 KAR 006:040		921 KAR 002:500
	501 KAR 006:050		921 KAR 002:510
	501 KAR 006:080		921 KAR 002:520
	501 KAR 006:130	205.232	921 KAR 002:050
	501 KAR 006:150	205.240	921 KAR 002:035
196.700-196.736	500 KAR 010:001	205.245	921 KAR 002:035
	500 KAR 010:020		921 KAR 002:050
	500 KAR 010:030	205.455	910 KAR 001:090
	500 KAR 010:040	205.455-465	910 KAR 001:180
197	501 KAR 006:040	205.510	900 KAR 012:005
	501 KAR 006:050	205.510-205.647	907 KAR 004:020
	501 KAR 006:080	205.520	907 KAR 001:008
	501 KAR 006:130		907 KAR 001:026E
	501 KAR 006:150		907 KAR 001:026
198B.050-198B.090	922 KAR 001:300		907 KAR 001:038E
198B.260	908 KAR 001:374		907 KAR 001:038
199	300 KAR 001:020		907 KAR 001:632E
	300 KAR 001:021E		907 KAR 001:632
199.011	922 KAR 001:100		907 KAR 001:680
	922 KAR 001:300		907 KAR 003:190
	922 KAR 001:350		907 KAR 020:020
199.430	922 KAR 001:100		907 KAR 020:050
199.520	922 KAR 001:100		907 KAR 020:100
199.525	922 KAR 001:100		911 KAR 001:090
199.555	106 KAR 002:031	205.5375	907 KAR 020:050
199.570	922 KAR 001:100	205.5510-205.5520	907 KAR 023:020
199.572	922 KAR 001:100	205.557	907 KAR 003:160E
199.575	922 KAR 001:100		907 KAR 003:160
199.640	922 KAR 001:300	205.559	900 KAR 012:005
199.642	922 KAR 001:300	205.5591	900 KAR 012:005
199.650	922 KAR 001:300	205.560	907 KAR 001:008
199.660	922 KAR 001:300		907 KAR 003:010
199.670	922 KAR 001:300		907 KAR 003:160E
199.881-888	922 KAR 002:165		907 KAR 003:160
199.894	922 KAR 002:160		907 KAR 023:020
199.8943	922 KAR 002:165	205.5605	907 KAR 003:190
199.896	922 KAR 002:160	205.5606	907 KAR 003:190

KRS SECTION	REGULATION	KRS SECTION	REGULATION
205.5607	911 KAR 001:090	213.991	901 KAR 005:140
205.561	907 KAR 003:190	214.034	922 KAR 001:300
205.5631	907 KAR 023:020	214.036	922 KAR 001:330
205.5632	907 KAR 023:020	214.615	922 KAR 002:160
205.5634	907 KAR 023:020		201 KAR 008:533
205.5636	907 KAR 023:020		201 KAR 008:563
205.5638	907 KAR 023:020	216.2970	201 KAR 008:571
205.5639	907 KAR 023:020		911 KAR 001:085
205.565	907 KAR 003:010	216.380	911 KAR 001:090
205.592	907 KAR 020:050	216.515	907 KAR 001:065
205.622	907 KAR 001:026E	216.530	902 KAR 020:480
	907 KAR 001:026	216.532	902 KAR 020:480
	907 KAR 001:038E	216.595	902 KAR 020:480
	907 KAR 001:038	216.718	902 KAR 020:480
	907 KAR 001:044	216.718-216.728	906 KAR 001:210
	907 KAR 001:632E	216.765	902 KAR 020:480
	907 KAR 001:632	216.785-216.793	906 KAR 001:210
	907 KAR 023:020	216.789	902 KAR 020:480
205.6316	907 KAR 023:020	216B.015	902 KAR 020:365
205.6317	911 KAR 001:090		902 KAR 020:480
205.6481-205.6497	907 KAR 004:020	216B.020	902 KAR 020:480
	907 KAR 004:030	216B.105	902 KAR 020:365
205.703	921 KAR 002:006		902 KAR 020:480
205.705	921 KAR 001:380	216B.160	902 KAR 020:480
205.710-205.802	921 KAR 001:380	216B.165	902 KAR 020:480
	921 KAR 001:400	216B.200-216B.210	902 KAR 020:365
205.720	921 KAR 002:006	216B.400	201 KAR 020:411
205.8451	907 KAR 001:026E	217.015	907 KAR 023:020
	907 KAR 001:026	217.177	201 KAR 016:550
	907 KAR 001:038E	217.186	201 KAR 002:360
	907 KAR 001:038	217.211	806 KAR 017:280
	907 KAR 001:044	217B	302 KAR 026:010
	907 KAR 001:632E		302 KAR 026:020
	907 KAR 001:632		302 KAR 026:030
205.900-205.925	910 KAR 001:090		302 KAR 026:040
205.990	921 KAR 001:400		302 KAR 026:050
205.992	921 KAR 001:380		302 KAR 026:060
206.10	921 KAR 002:035		302 KAR 026:070
209.005	500 KAR 016:010		302 KAR 026:080
209.030	910 KAR 001:180		302 KAR 026:090
209.032	902 KAR 020:480		302 KAR 026:100
210.366	201 KAR 026:175E		302 KAR 027:011
210.370-210.485	907 KAR 003:010		302 KAR 028:011
211.090	902 KAR 021:040	217B.120	302 KAR 029:011
211.1751	902 KAR 008:160		302 KAR 026:150
211.180	902 KAR 021:040		302 KAR 027:011
211.332	900 KAR 012:005	217B.190	302 KAR 028:011
211.340	902 KAR 020:470	217B.515	302 KAR 029:011
244.341	902 KAR 020:470	217B.520	302 KAR 029:011
211.342	902 KAR 020:470	217B.525	302 KAR 029:011
211.350-211.380	922 KAR 001:300	217B.545	302 KAR 029:011
211.461-211.466	907 KAR 004:030	217B.550	302 KAR 026:150
211.645	911 KAR 001:085		302 KAR 029:011
	911 KAR 001:090	217B.585	302 KAR 029:011
211.647	911 KAR 001:085	218A.010	902 KAR 055:110
	911 KAR 001:090	218A.180	908 KAR 001:374
211.684	922 KAR 001:330	218A.200	902 KAR 020:480
212.230	902 KAR 008:160	218A.202	902 KAR 055:110
212.240	902 KAR 008:160		908 KAR 001:374
212.245	902 KAR 008:160	218A.205	201 KAR 008:533
212.890	902 KAR 008:160	218A.240	902 KAR 055:110
213.011	901 KAR 005:130	222.231	908 KAR 001:374
213.046	911 KAR 001:085	222.462	908 KAR 001:374
	911 KAR 001:090	224.10-100	401 KAR 063:060
	921 KAR 001:380	224.20-110	401 KAR 063:060
	921 KAR 001:400	224A.011	200 KAR 017:111
213.081	040 KAR 002:150	224A.020	200 KAR 017:111
	901 KAR 005:140	224A.035	200 KAR 017:111
213.096	901 KAR 005:130	224A.040	200 KAR 017:111
213.098	040 KAR 002:150	224A.050-224A.314	200 KAR 017:111
213.101	901 KAR 005:120	238.500	820 KAR 001:001
213.106	901 KAR 005:120	238.505	820 KAR 001:032

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238.510	820 KAR 001:130	304.1-050	806 KAR 006:072
238.515	820 KAR 001:005		806 KAR 017:290
	820 KAR 001:130		806 KAR 037:010
238.525	820 KAR 001:005	304.2-100	806 KAR 017:290
238.530	820 KAR 001:005	304.2-140	806 KAR 017:280
	820 KAR 001:025	304.2-230	806 KAR 017:290
	820 KAR 001:130	304.2-290	806 KAR 006:072
238.535	820 KAR 001:005	304.2-310	806 KAR 017:280
238.540	820 KAR 001:005		806 KAR 017:290
238.545	820 KAR 001:032	304.3-240	806 KAR 006:072
238.550	820 KAR 001:025	304.6	806 KAR 006:072
238.555	820 KAR 001:005	304.14-110	900 KAR 010:120
	820 KAR 001:025	304.15-410	806 KAR 006:072
	820 KAR 001:130	304.17-412	806 KAR 017:280
238.560	820 KAR 001:025	304.17A-005	806 KAR 017:280
	820 KAR 001:130		806 KAR 017:290
238.570	820 KAR 001:025		900 KAR 012:005
238.995	820 KAR 001:130		907 KAR 004:020
257.160	201 KAR 016:560		907 KAR 004:030
	201 KAR 016:562	304.17A-138	900 KAR 012:005
258.005	902 KAR 008:160	304.17A.163	806 KAR 017:280
258.015	922 KAR 001:350	304.17A.1631	806 KAR 017:280
258.035	922 KAR 001:350		806 KAR 017:290
258.065	301 KAR 002:081	304.17A.167	806 KAR 017:280
	301 KAR 002:082	304.17A-168	806 KAR 017:280
258.085	301 KAR 002:081		806 KAR 017:290
	301 KAR 002:082	304.17A-243	900 KAR 010:120
260.020	302 KAR 040:010	304.17A-245	900 KAR 010:120
260.030	302 KAR 040:010	304.17A-505	806 KAR 017:290
260.038	302 KAR 040:010	304.17A-535	806 KAR 017:280
271B	922 KAR 001:300		806 KAR 017:290
273.161	922 KAR 001:300	304.17A-600	806 KAR 017:280
275.206	808 KAR 010:450		806 KAR 017:290
278.010	807 KAR 005:001E	304.17A-607	806 KAR 017:280
278.020	807 KAR 005:001E		806 KAR 017:290
278.100	807 KAR 005:001E	304.17A-617	806 KAR 017:290
278.180	807 KAR 005:001E	304.17A-619	806 KAR 017:280
278.300	807 KAR 005:001E	304.17A-621-304.17A.-631	806 KAR 017:290
278.410	807 KAR 005:001E	304.17A-623	806 KAR 017:280
281.010	907 KAR 004:030	304.17B-021	806 KAR 017:351
286.4	808 KAR 001:170	304.17B-023	806 KAR 017:351
286.8-010	808 KAR 001:170	304.17C-010	806 KAR 017:280
286.8-020	808 KAR 001:170	304.17C-030	806 KAR 017:280
286.8-030	808 KAR 001:170	304.18-045	806 KAR 017:280
286.8-032	808 KAR 001:170	304.24-390	806 KAR 037:010
286.8-034	808 KAR 001:170	304.24-400	806 KAR 037:010
286.8-036	808 KAR 001:170	304.24-415	806 KAR 037:010
286.8-060	808 KAR 001:170	304.3-750	806 KAR 003:250
286.8-070	808 KAR 001:170	304.3-768	806 KAR 003:250
286.8-080	808 KAR 001:170	304.32-147	806 KAR 017:280
286.8-090	808 KAR 001:170	304.32-330	806 KAR 017:280
286.8-140	808 KAR 001:170	304.33	806 KAR 037:010
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	304.40-075	201 KAR 008:533
286.9-073	808 KAR 001:170		201 KAR 008:563
286.9-080	808 KAR 001:170	304.40-320	900 KAR 012:005
286.12-030	808 KAR 016:010	304.5-040	907 KAR 004:020
286.12-040	808 KAR 016:010		907 KAR 004:030
286.12-050	808 KAR 016:020	304.6	806 KAR 037:010
286.12-060	808 KAR 016:010	304.9-030	806 KAR 009:025
286.12-070	808 KAR 016:010	304.9-105	806 KAR 009:025
286.12-080	808 KAR 016:020	304.9-130	806 KAR 009:025
292	808 KAR 010:450	304.9-150	806 KAR 009:025
292.337	808 KAR 010:440	304.9-160	806 KAR 009:025
292.480	808 KAR 010:440	304.9-230	806 KAR 009:025
304	900 KAR 010:120	304.9-260	806 KAR 009:025

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304.9-295	806 KAR 009:025	311A.195	202 KAR 007:330
304.9-320	806 KAR 009:025	312.207	201 KAR 016:572
304.9-430	806 KAR 009:025	313.010	201 KAR 008:533
304.9-642	806 KAR 009:025		907 KAR 001:026E
304.39-110	603 KAR 005:350		907 KAR 001:026
304.47-050	806 KAR 017:280	313.021	201 KAR 008:016
311	911 KAR 001:090		201 KAR 008:601
311.530-311.620	201 KAR 009:470	313.022	201 KAR 008:016
311.595	901 KAR 005:120		201 KAR 008:601
311.5975	900 KAR 012:005	313.030	201 KAR 008:533
311.621-311.643	201 KAR 009:470		201 KAR 008:563
311.720	901 KAR 005:120		201 KAR 008:571
	902 KAR 020:365	313.035	911 KAR 001:060
	922 KAR 001:350	313.040	201 KAR 008:563
311.732	901 KAR 005:140		907 KAR 001:026E
311.7731	902 KAR 020:365		907 KAR 001:026
311.7733	902 KAR 020:365	313.045	201 KAR 008:571
311.7734	902 KAR 020:365	313.050	201 KAR 008:571
311.774	901 KAR 005:120	313.060	201 KAR 008:563
311.781	901 KAR 005:120	313.080	201 KAR 008:563
311.782	901 KAR 005:120		201 KAR 008:571
311.783	901 KAR 005:120	313.130	201 KAR 008:563
311.840	907 KAR 003:010		201 KAR 008:571
	922 KAR 001:350	313.254	201 KAR 008:533
311.901	201 KAR 009:305		201 KAR 008:563
311.905	201 KAR 009:305	313.550	201 KAR 008:016
311.909	201 KAR 009:305	314.011	201 KAR 020:390
311.990	201 KAR 009:470		201 KAR 020:411
311A.010	202 KAR 007:201		201 KAR 020:490
	202 KAR 007:301		907 KAR 003:160E
	202 KAR 007:330		907 KAR 003:160
311A.020	202 KAR 007:330		922 KAR 001:350
311A.025	202 KAR 007:201		922 KAR 002:160
	202 KAR 007:301	314.021	201 KAR 020:478
	202 KAR 007:330	314.025	201 KAR 020:390
	202 KAR 007:401	314.026	201 KAR 020:390
311A.030	202 KAR 007:201	314.027	201 KAR 020:390
	202 KAR 007:401	314.035	201 KAR 020:472
	202 KAR 007:555		201 KAR 020:476
311A.050	202 KAR 007:330		201 KAR 020:478
	202 KAR 007:601	314.041	201 KAR 020:260
311A.050-311A.100	202 KAR 007:401		201 KAR 020:370
311A.060	202 KAR 007:201	314.042	201 KAR 020:370
	202 KAR 007:301	314.051	201 KAR 020:370
311A.090	202 KAR 007:330	314.071	201 KAR 020:370
311A.095	202 KAR 007:201	314.089	201 KAR 020:478
	202 KAR 007:301	314.091	201 KAR 020:370
	202 KAR 007:330		201 KAR 020:478
311A.100	202 KAR 007:330	314.103	201 KAR 020:370
311A.120	202 KAR 007:401		201 KAR 020:411
	202 KAR 007:601		201 KAR 020:476
311A.130	202 KAR 007:301		201 KAR 020:478
	202 KAR 007:601	314.111	201 KAR 020:260
311A.135	202 KAR 007:401		201 KAR 020:310
	202 KAR 007:701		201 KAR 020:360
311A.140	202 KAR 007:201	314.131	201 KAR 020:260
	202 KAR 007:301		201 KAR 020:472
	202 KAR 007:330		201 KAR 020:476
	202 KAR 007:701	314.137	201 KAR 020:472
311A.142	202 KAR 007:401		201 KAR 020:476
311A.145	202 KAR 007:201		201 KAR 020:478
	202 KAR 007:301	314.142	201 KAR 020:411
	202 KAR 007:330	314.400-314.414	201 KAR 020:620
311A.150	202 KAR 007:330	314.404-314.416	201 KAR 020:650
311A.160	202 KAR 007:201	314.475	201 KAR 020:310
	202 KAR 007:701		201 KAR 020:370
311A.165	202 KAR 007:301		201 KAR 020:411
	202 KAR 007:701	314.991	201 KAR 020:478
311A.170	202 KAR 007:401	315.010	201 KAR 002:380
	202 KAR 007:701		201 KAR 002:413E
311A.175	202 KAR 007:701	315.020	201 KAR 002:413E
311A.185	202 KAR 007:401	315.025	201 KAR 002:450
311A.190	202 KAR 007:401	315.030	201 KAR 002:450

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315.0351	201 KAR 002:450		201 KAR 031:050
	201 KAR 002:460	325.261	201 KAR 001:190
315.050	201 KAR 002:030	325.270	201 KAR 001:190
	201 KAR 002:413E	326	907 KAR 001:632E
315.065	201 KAR 002:413E		907 KAR 001:632
315.121	201 KAR 002:450	326.030	907 KAR 001:632E
315.131	201 KAR 002:450		907 KAR 001:632
315.135	201 KAR 002:413E	326.040	907 KAR 001:632E
315.191	201 KAR 002:030		907 KAR 001:632
	201 KAR 002:380	326.060	201 KAR 005:002
	201 KAR 002:460		201 KAR 005:038
315.205	201 KAR 002:413E	327.300	201 KAR 022:170
315.210	201 KAR 002:030	334.010	907 KAR 001:038E
317A.020	201 KAR 012:030		907 KAR 001:038
	201 KAR 012:082	334A	911 KAR 001:090
	201 KAR 012:290	334A.020	907 KAR 001:038E
317A.050	201 KAR 012:030		907 KAR 001:038
	201 KAR 012:082		911 KAR 001:085
	201 KAR 012:260		911 KAR 001:090
	201 KAR 012:290	334A.030	907 KAR 001:038E
317A.060	201 KAR 012:030		907 KAR 001:038
	201 KAR 012:060	335.010-335.160	201 KAR 023:051E
	201 KAR 012:230		201 KAR 023:051
	201 KAR 012:290	335.080	201 KAR 023:016E
317A.062	201 KAR 012:260		201 KAR 023:016
317A.070	201 KAR 012:190	335.090	201 KAR 023:016E
317A.090	201 KAR 012:082		201 KAR 023:016
317A.140	201 KAR 012:060	335.100	201 KAR 023:016E
	201 KAR 012:190		201 KAR 023:016
317A.145	201 KAR 012:030	335.990	201 KAR 023:051E
	201 KAR 012:190		201 KAR 023:051
319	911 KAR 001:090	337	803 KAR 001:006
319.032	201 KAR 026:175E	337.275	803 KAR 001:081
319.050	201 KAR 026:175E		922 KAR 002:160
319.053	201 KAR 026:175E	337.285	803 KAR 001:081
319.064	201 KAR 026:175E	337.355	201 KAR 002:450
319.071	201 KAR 026:175E	337.365	201 KAR 002:450
	201 KAR 026:225E	341.350	787 KAR 001:090E
320	907 KAR 001:632E		787 KAR 001:090
	907 KAR 001:632	341.360	787 KAR 001:090E
320.230	201 KAR 005:002		787 KAR 001:090
320.295	201 KAR 005:002	341.370	787 KAR 001:090E
320.300	201 KAR 005:002		787 KAR 001:090
320.310	201 KAR 005:002	341.380	787 KAR 001:090E
320.295	201 KAR 005:038		787 KAR 001:090
320.310	201 KAR 005:045		787 KAR 001:100E
	201 KAR 005:105		787 KAR 001:100
321.185	301 KAR 002:075	342.0011	803 KAR 025:089
321.190	201 KAR 016:610		803 KAR 030:010
321.207	201 KAR 016:550	342.019	803 KAR 025:089
	201 KAR 016:552	342.020	803 KAR 025:089
	201 KAR 016:560	342.035	803 KAR 025:089
	201 KAR 016:562	342.122	803 KAR 030:010
321.235	201 KAR 016:550	342.1221	803 KAR 030:010
	201 KAR 016:552	342.1222	803 KAR 030:010
	201 KAR 016:560	342.1223	803 KAR 030:010
	201 KAR 016:562	342.1231	803 KAR 030:010
	201 KAR 016:610	342.340	803 KAR 030:010
321.351	201 KAR 016:550	342.650	803 KAR 030:010
	201 KAR 016:552	362	202 KAR 007:601
	201 KAR 016:560	363.900-363.908	302 KAR 079:009
	201 KAR 016:562	365	202 KAR 007:601
	201 KAR 016:610	365.015	807 KAR 005:001E
321.353	201 KAR 016:610	367.93103	040 KAR 002:150
321.360	201 KAR 016:610	367.93105	040 KAR 002:150
322.340	807 KAR 005:001E	367.93115	040 KAR 002:150
322A.030	201 KAR 031:031	367.93117	040 KAR 002:150
	201 KAR 031:040	367.97501	040 KAR 002:150
322A.040	201 KAR 031:040	367.97504	040 KAR 002:150
322A.045	201 KAR 031:040	367.97507	040 KAR 002:150
322A.050	201 KAR 031:010	367.97511	040 KAR 002:150
322A.060	201 KAR 031:010	367.97514	040 KAR 002:150
	201 KAR 031:050	367.97517	040 KAR 002:150
322A.070	201 KAR 031:010	367.97521	040 KAR 002:150

KRS SECTION	REGULATION	KRS SECTION	REGULATION
367.97524	040 KAR 002:150		501 KAR 006:080
367.97527	040 KAR 002:150		501 KAR 006:050
369.101-369.120	907 KAR 001:026E		501 KAR 006:150
	907 KAR 001:026	440.40	907 KAR 001:632E
	907 KAR 001:044		907 KAR 001:632
	907 KAR 001:632E	440.50	907 KAR 003:010
	907 KAR 001:632	440.60	907 KAR 001:632E
369.102	807 KAR 005:001E		907 KAR 001:632
	907 KAR 001:026E	440.120	907 KAR 023:020
	907 KAR 001:026	446.400	202 KAR 007:401
381.280	500 KAR 016:010	447	907 KAR 001:632E
387.010	701 KAR 008:010E		907 KAR 001:632
	701 KAR 008:010	447.10	907 KAR 003:010
391.010	040 KAR 002:150	447.200-447.205	907 KAR 003:010
400.203	907 KAR 001:026E	447.271	907 KAR 001:008
	907 KAR 001:026	447.325	907 KAR 003:010
	907 KAR 001:038E	447.45	907 KAR 023:020
	907 KAR 001:038	447.500-447.520	907 KAR 023:020
	907 KAR 001:044	454.220	921 KAR 001:400
	907 KAR 001:632E	457.310	907 KAR 001:038E
	907 KAR 001:632		907 KAR 001:038
	907 KAR 003:010	485.500-485.546	902 KAR 020:490
403.160	921 KAR 001:400	485.618	902 KAR 020:490
403.210-403.240	921 KAR 001:400	503.110	922 KAR 001:330
403.211	921 KAR 001:380	508.125	922 KAR 001:330
403.707	201 KAR 020:411	527.100	922 KAR 001:350
403.720	921 KAR 002:006	527.110	922 KAR 001:350
	921 KAR 002:370	529.010	922 KAR 001:330
405.430	921 KAR 001:380	531.31-531.58	803 KAR 001:081
	921 KAR 001:400	532.045	922 KAR 001:330
405.440	921 KAR 001:400	600-645	505 KAR 001:120
405.450	921 KAR 001:400		505 KAR 001:140
405.467	921 KAR 001:380	600.010	922 KAR 001:330
405.520	921 KAR 001:380	600.020	921 KAR 002:500
405.991	921 KAR 001:400		922 KAR 001:100
406.021	921 KAR 001:380		922 KAR 001:300
	921 KAR 001:400		922 KAR 001:330
406.025	921 KAR 001:380		922 KAR 001:350
	921 KAR 001:400		922 KAR 002:160
407.5101-407.5903	921 KAR 001:380	605.080	922 KAR 001:300
414	907 KAR 003:010	605.090	922 KAR 001:100
415.110	907 KAR 003:010		922 KAR 001:300
415.152	907 KAR 001:026E		922 KAR 001:330
	907 KAR 001:026		922 KAR 001:350
415.170	907 KAR 001:026E	605.120	922 KAR 002:160
	907 KAR 001:026	605.130	922 KAR 001:330
415.172	907 KAR 001:026E	610.010	922 KAR 001:330
	907 KAR 001:026	610.110	922 KAR 001:300
415.174	907 KAR 001:026E		922 KAR 001:350
	907 KAR 001:026	610.170	921 KAR 001:380
415.208	907 KAR 001:044	615.010	922 KAR 001:300
416.164	907 KAR 001:008	615.030	922 KAR 001:100
416.166	907 KAR 001:008		922 KAR 001:300
421.500-421.575	201 KAR 020:411	615.040	922 KAR 001:300
422.317	907 KAR 001:044	620.010-620.050	922 KAR 001:330
424	922 KAR 001:300	620.020	201 KAR 020:620
424.300	807 KAR 005:001E		907 KAR 003:160E
431.17	907 KAR 001:044		907 KAR 003:160
	907 KAR 001:632E		922 KAR 001:300
	907 KAR 001:632		922 KAR 002:160
431.52	907 KAR 001:044	620.030	922 KAR 001:300
431.600	922 KAR 001:330		922 KAR 001:350
431.600-431.660	201 KAR 020:411	620.050	907 KAR 003:160E
434.840-434.860	907 KAR 001:044		907 KAR 003:160
435.603	911 KAR 001:090		922 KAR 001:100
438.2	907 KAR 001:026E		922 KAR 001:350
	907 KAR 001:026	620.070	922 KAR 001:330
	907 KAR 001:038E	620.072	922 KAR 001:330
	907 KAR 001:038	620.090	922 KAR 001:300
	907 KAR 001:632E	620.140	922 KAR 001:300
	907 KAR 001:632		922 KAR 001:350
	907 KAR 003:010	620.230	922 KAR 001:300
439	501 KAR 006:040	620.350	922 KAR 001:330
	501 KAR 006:050	620.360	922 KAR 001:100

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620.363	922 KAR 001:350		922 KAR 002:160
620.990	922 KAR 001:350	47 C.F.R.	807 KAR 005:001E
625	922 KAR 001:330	50 C.F.R.	301 KAR 002:075
625.045	922 KAR 001:350		301 KAR 003:120
625.108	922 KAR 001:100	7 U.S.C.	302 KAR 026:010
654.1-654.5	922 KAR 001:100		302 KAR 026:020
654.30-654.52	011 KAR 004:080		302 KAR 026:150
7 C.F.R.	011 KAR 004:080		302 KAR 027:011
	302 KAR 040:010		302 KAR 028:011
	902 KAR 008:160		302 KAR 029:011
	922 KAR 002:160		921 KAR 002:006
16 C.F.R.	302 KAR 079:009		922 KAR 002:160
	603 KAR 005:350	8 U.S.C.	921 KAR 002:006
	922 KAR 001:350		921 KAR 002:016
17 C.F.R.	808 KAR 010:450		922 KAR 001:350
20 C.F.R.	922 KAR 002:160	10 U.S.C.	202 KAR 007:330
21 C.F.R.	902 KAR 020:480	15 U.S.C.	808 KAR 010:450
	908 KAR 001:374		908 KAR 001:374
26 C.F.R.	900 KAR 010:120	20 U.S.C.	011 KAR 004:080
29 C.F.R.	202 KAR 007:555		701 KAR 008:010E
	803 KAR 001:081		701 KAR 008:010
	900 KAR 010:120		703 KAR 005:270
34 C.F.R.	011 KAR 004:080		707 KAR 001:002
	707 KAR 001:002		807 KAR 005:001E
	922 KAR 002:160		921 KAR 002:016
40 C.F.R.	302 KAR 026:020		922 KAR 001:300
	302 KAR 026:150	21 U.S.C.	921 KAR 002:006
	302 KAR 027:011	22 U.S.C.	921 KAR 002:006
	302 KAR 028:011	25 U.S.C.	921 KAR 002:016
	302 KAR 079:009		922 KAR 001:100
	401 KAR 063:060		922 KAR 002:160
42 C.F.R.	900 KAR 010:120	26 U.S.C.	105 KAR 001:365
	902 KAR 020:490E		105 KAR 001:411
	902 KAR 020:490		900 KAR 010:120
	902 KAR 055:110		921 KAR 002:016
	907 KAR 001:008	29 U.S.C.	701 KAR 008:010E
	907 KAR 001:026E		701 KAR 008:010
	907 KAR 001:026		921 KAR 002:016
	907 KAR 001:038E		922 KAR 002:160
	907 KAR 001:038		900 KAR 012:005
	907 KAR 001:044		921 KAR 002:370
	907 KAR 001:065		922 KAR 002:160
	907 KAR 001:632E	30 U.S.C.	803 KAR 030:010
	907 KAR 001:632	31 U.S.C.	045 KAR 001:050
	907 KAR 003:010	33 U.S.C.	803 KAR 030:010
	907 KAR 004:020	38 U.S.C.	017 KAR 003:020
	907 KAR 004:030		105 KAR 001:365
	907 KAR 020:020		105 KAR 001:415
	907 KAR 023:020		106 KAR 001:141
	908 KAR 001:374		106 KAR 001:171
	911 KAR 001:090		106 KAR 001:181
	922 KAR 001:350		106 KAR 001:191
45 C.F.R.	807 KAR 005:001E		106 KAR 001:201
	900 KAR 010:120		106 KAR 001:221
	902 KAR 020:480		201 KAR 002:413E
	902 KAR 020:490E		900 KAR 010:120
	902 KAR 020:490		900 KAR 012:005
	907 KAR 001:026E		907 KAR 001:044
	907 KAR 001:026		907 KAR 001:065
	907 KAR 001:044		907 KAR 004:020
	907 KAR 001:632E		907 KAR 004:030
	907 KAR 001:632		907 KAR 020:020
	921 KAR 001:380		907 KAR 023:020
	921 KAR 001:400		921 KAR 001:380
	921 KAR 002:006		921 KAR 001:400
	921 KAR 002:016		921 KAR 002:006
	921 KAR 002:017		921 KAR 002:500
	921 KAR 002:035		921 KAR 002:016
	921 KAR 002:370		922 KAR 002:160
	921 KAR 002:500		921 KAR 002:510
	921 KAR 002:510		921 KAR 002:520
	921 KAR 002:520		922 KAR 001:300
	922 KAR 001:100		922 KAR 001:350
	922 KAR 001:350		922 KAR 002:160

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42 U.S.C.	105 KAR 001:411		
	401 KAR 063:060		
	701 KAR 008:010E		
	701 KAR 008:010		
	902 KAR 020:480		
	902 KAR 020:490E		
	902 KAR 020:490		
	907 KAR 001:026E		
	907 KAR 001:026		
	907 KAR 001:038E		
	907 KAR 001:038		
	907 KAR 001:632E		
	907 KAR 001:632		
	907 KAR 001:680		
	907 KAR 003:010		
	907 KAR 003:190		
	907 KAR 020:050		
	910 KAR 001:180		
	911 KAR 001:090		
	921 KAR 002:035		
	921 KAR 002:040		
	921 KAR 002:050		
	921 KAR 002:060		
	921 KAR 002:370		
	922 KAR 001:100		
	922 KAR 002:165		
	922 KAR 001:330		
49 U.S.C.	302 KAR 029:011		
50 U.S.C.	106 KAR 001:141		
	106 KAR 001:171		
52 U.S.C.	921 KAR 002:035		

CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
013 KAR 002:045	06-22-2022	Remain in Effect without Amendment
016 KAR 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
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
907 KAR 001:026	01-30-2023	To be amended, in process when letter came
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 001:160	01-30-2023	Remain in Effect without Amendment
907 KAR 001:170	01-30-2023	Remain in Effect without Amendment
907 KAR 001:350	06-09-2022	Remain in Effect without Amendment
907 KAR 001:595	01-30-2023	Remain in Effect without Amendment
907 KAR 001:626	01-30-2023	Remain in Effect without Amendment
907 KAR 003:090	01-30-2023	Remain in Effect without Amendment
907 KAR 003:210	01-30-2023	Remain in Effect without Amendment
907 KAR 007:010	01-30-2023	Remain in Effect without Amendment
907 KAR 007:015	01-30-2023	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

CERTIFICATION LETTER SUMMARIES

907 KAR 010:016	08-10- 2022	Remain in Effect without Amendment
907 KAR 010:020	1/30/2023	Remain in Effect without Amendment
907 KAR 010:025	1/30/2023	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
010 KAR 006:010	11-10-2022	803 KAR 002:307	11-10-2022
013 KAR 003:020	11-10-2022	803 KAR 002:310	11-10-2022
013 KAR 003:030	11-10-2022	803 KAR 002:311	11-10-2022
013 KAR 003:040	11-10-2022	803 KAR 002:312	11-10-2022
013 KAR 003:060	11-10-2022	803 KAR 002:313	11-10-2022
101 KAR 002:102	01-12-2023	803 KAR 002:314	11-10-2022
201 KAR 012:010	07-14-2022	803 KAR 002:315	11-10-2022
201 KAR 020:390	07-12-2022	803 KAR 002:316	11-10-2022
201 KAR 020:600	07-12-2022	803 KAR 003:317	11-10-2022
201 KAR 020:670	07-12-2022	803 KAR 002:318	11-10-2022
505 KAR 001:080	12-14-2022	803 KAR 002:320	11-10-2022
702 KAR 005:030	11-18-2022	803 KAR 002:321	11-10-2022
704 KAR 003:455	11-18-2022	803 KAR 002:325	11-10-2022
705 KAR 003:141	11-18-2022	803 KAR 002:400	11-10-2022
725 KAR 001:010	11-10-2022	803 KAR 002:401	11-10-2022
725 KAR 001:020	11-10-2022	803 KAR 002:402	11-10-2022
725 KAR 001:025	11-10-2022	803 KAR 002:403	11-10-2022
725 KAR 001:030	11-10-2022	803 KAR 002:404	11-10-2022
725 KAR 001:030	11-10-2022	803 KAR 002:405	11-10-2022
725 KAR 001:040	11-10-2022	803 KAR 002:406	11-10-2022
780 KAR 002:010	11-10-2022	803 KAR 002:407	11-10-2022
780 KAR 003:020	11-10-2022	803 KAR 002:410	11-10-2022
780 KAR 003:030	11-10-2022	803 KAR 002:411	11-10-2022
780 KAR 003:035	11-10-2022	803 KAR 002:412	11-10-2022
780 KAR 003:100	11-10-2022	803 KAR 002:418	11-10-2022
780 KAR 003:120	11-10-2022	803 KAR 002:420	11-10-2022
780 KAR 003:130	11-10-2022	803 KAR 002:421	11-10-2022
780 KAR 006:010	11-10-2022	803 KAR 002:422	11-10-2022
780 KAR 006:020	11-10-2022	803 KAR 002:424	11-10-2022
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