



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on April 11, 2023, at 1:00 p.m. in room 149 Capitol Annex.
ARRS Tentative Agenda - [1877 Online agenda updated as needed](#)

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

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

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VOLUME 49, NUMBER 10 – APRIL 1, 2023

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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, April 11, 2023 at 1 p.m.
Annex Room 149**



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

BOARDS AND COMMISSIONS

Kentucky State Board of Accountancy

201 KAR 001:190. Examination sections, applications, and procedures.

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. (Amended After Comments)

Board of Licensure for Long-Term Care Administrators

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

Board of Nursing

201 KAR 020:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

201 KAR 020:472. Initial approval for dialysis technician training programs.

201 KAR 020:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement.

201 KAR 020:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 002:144. Fall wild turkey hunting.

301 KAR 002:300. Black bear seasons and requirements.

Licensing

301 KAR 005:001. Definitions for 301 KAR Chapter 5.

301 KAR 005:010. License agent applications and agreements.

301 KAR 005:020. License agent requirements and responsibilities.

301 KAR 005:022. License, tag, and permit fees.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

Child Welfare

505 KAR 001:120E. Department of Juvenile Justice Policies and Procedures Manual; Health and Safety Services. ("E" expires 10-10-2023) (Filed with Ordinary) (Emergency Amended After Comments)

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

EDUCATION AND LABOR CABINET

Office of Unemployment Insurance

Unemployment Insurance

787 KAR 001:090. Unemployed worker's reporting requirements. (Filed with Emergency)

787 KAR 001:100. Week of unemployment defined. (Filed with Emergency)

PUBLIC PROTECTION CABINET

Department of Insurance

Assets and Liabilities

806 KAR 006:072. Valuation of life insurance and annuity reserves.

Department of Financial Institutions

General Provisions

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

Securities

808 KAR 010:440. Examples of dishonest or unethical practice for broker-dealers and agents.

808 KAR 010:450. Examples of dishonest or unethical practice for investment advisers and investment adviser representatives.

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Student Education Loan Servicing

808 KAR 016:010. Licensing, registration, renewal and fees.
808 KAR 016:020. Recordkeeping requirements; unfair, deceptive, or predatory practices.

Department of Charitable Gaming

Charitable Gaming

820 KAR 001:005. Charitable gaming licenses and exemptions.
820 KAR 001:025. Reports.
820 KAR 001:130. Administrative actions.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Health Services and Facilities

902 KAR 020:490. Rural emergency hospitals. (Filed with Emergency)

Controlled Substances

902 KAR 055:110. Monitoring system for prescription controlled substances. (Not Amended After Comments)

Department for Medicaid Services

Medicaid Services

907 KAR 001:026E. Dental services' coverage provisions and requirements. ("E" expires 09-25-2023) (Filed with Ordinary)
(Emergency Amended After Comments)
907 KAR 001:026. Dental services' coverage provisions and requirements. (Filed with Emergency)
907 KAR 001:038. Hearing program coverage provisions and requirements. (Filed with Emergency)
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)
(Emergency Not Amended After Comments)
907 KAR 001:632. Vision program coverage provisions and requirements. (Filed with Emergency)

3. REGULATIONS REMOVED FROM APRIL'S AGENDA

DEPARTMENT OF THE LAW

Kentucky Opioid Abatement Advisory Commission

040 KAR 009:010E. General application procedure. ("E" expires 10-03-2023) (Filed with Ordinary) (Deferred from March)
040 KAR 009:010. General application procedure. (Filed with Emergency) (Deferred from April)
040 KAR 009:020E. Local government application procedure. ("E" expires 10-3-2023) (Filed with Ordinary) (Emergency Not Amended After Comments) (Deferred from April)
040 KAR 009:020. Local government application procedure. (Filed with Emergency) (Deferred from April)

BOARDS AND COMMISSIONS

Board of Social Work

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

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

Child Welfare

505 KAR 001:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services. (Filed with Emergency) (Comments Received; SOC due 04-14-2023)
505 KAR 001:140. Department of Juvenile Justice Policies and Procedures Manual: Detention Services. (Filed with Emergency) (Comments Received; SOC due 04-14-2023)

EDUCATION AND LABOR CABINET

Department of Education

Academic Standards

704 KAR 008:060. Required academic standards for social studies. (Comments Received; SOC ext. due 04-14-2023)

Department of Workplace Standards

Labor Standards; Wages and Hours

803 KAR 001:006. Employer-employee relationship. (Not Amended After Comments)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Health Services and Facilities

902 KAR 020:480. Assisted living communities. (Amended After Comments)

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

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

(See KRS Chapter 13A for specific provisions)

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

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

STATEMENT OF EMERGENCY
900 KAR 5:020E

This emergency administrative regulation is necessary to update the State Health Plan to increase access to inpatient psychiatric services; and, consistent with changes in 900 KAR 6:075E filed concurrently with this regulation, grant nonsubstantive review status to those certificate of need applications submitted by licensed hospitals that wish to convert existing acute care beds to psychiatric beds for adult patients. This emergency administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. in order to meet an imminent threat to public health, safety, and welfare. There is an ongoing mental health crisis across the nation, and hospitals report that the proportion of emergency department visits due to mental health issues has increased markedly during the last few years. The expansion of inpatient behavioral health services throughout the state, including rural areas, will enhance immediate access to resources for at-risk mental health patients of such acuity that they need inpatient services and stabilization. This amendment is needed, along with the companion regulation filed concurrently, 900 KAR 6:075E, to help promote access to inpatient psychiatric healthcare. This emergency administrative regulation will be replaced by an ordinary administrative regulation encompassing this and other changes filed concurrently with this regulation. This amendment is an effort to ease the urgent mental health crisis by promoting greater access to psychiatric care across Kentucky. The ordinary administrative regulation is not identical and includes other changes needed as part of the annual update to the State Health Plan.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Emergency Amendment)

900 KAR 5:020E. State Health Plan for facilities and services.

EFFECTIVE: March 15, 2023 at 8:00 a.m.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The State Health Plan shall be used to:

- (1) Review a certificate of need application pursuant to KRS 216B.040; and
- (2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference.

(1) The "2023[2022] Update to the State Health Plan", March 2023[July 2022], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector

General's Web site at:
<https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 10, 2023

FILED WITH LRC: March 15, 2023 at 8:00 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; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the current State Health Plan as defined by KRS 216B.015(28) and as required by KRS 216B.040(2)(a).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a., by establishing the State Health Plan's review criteria used for determinations regarding the issuance and denial of certificates of need.

(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 review criteria for certificate of need determinations.

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

(a) How the amendment will change this existing administrative regulation: In response to suggestions and comments submitted to the cabinet by interested groups, the amendment to this administrative regulation makes the following changes to the State Health Plan (SHP):

1. Updates the title and edition date of the SHP on page i of the Plan;
2. Updates the title of the SHP on page iii of the Plan under the heading "Purpose";

3. Adds new language to the review criteria on pages 23 and 24 to allow acute care hospitals to convert existing acute care beds to psychiatric beds for adult patients under the following conditions:

a. The occupancy of acute care beds in the applicant's facility is less than seventy (70) percent according to the most recent edition of the Kentucky Annual Hospital Utilization and Services Report;

i. All of the proposed psychiatric beds are being converted from licensed acute care beds; and

ii. No more than twenty-five (25) acute care beds will be converted to psychiatric beds;

b. All of the psychiatric beds will be implemented on-site at the applicant's existing licensed facility; and

c. All of the psychiatric beds shall be dedicated exclusively to the treatment of adult patients, aged eighteen (18) to sixty-four (64).

4. Deletes outdated language on page 24 referring to tuberculosis beds. That is no longer a bed category in Kentucky.

This change aligns with the proposed amendment of 900 KAR 6:075E, Section 2(3)(h), filed concurrently with this administrative regulation to grant nonsubstantive review status to certificate of need applications for acute care hospitals that wish to convert existing acute care beds to psychiatric beds for adult patients as described above.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to expand inpatient behavioral health services throughout the state, including rural areas, to enhance immediate access to resources for at-risk mental health patients of such acuity that they need inpatient services and stabilization

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes because it incorporates by reference the State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing the review criteria for certificate of need determinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities that submit certificate of need applications and affected persons as defined by KRS 216B.015(3). A total of 70 certificate of need applications were submitted to the cabinet in calendar year 2021; 60 certificate of need applications were submitted in calendar year 2020; and 81 applications submitted in calendar year 2022.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit a certificate of need application are subject to the criteria set forth in the State Health Plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The certificate of need application filing fee for nonsubstantive review and formal review is established in a separate administrative regulation, 900 KAR 6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities subject to certificate of need approval must demonstrate that their proposal is consistent with the State Health Plan pursuant to KRS 216B.040(2)(a)2.a.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is used as there are different certificate of need review criteria for each licensure category addressed in the State Health Plan.

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 Cabinet for Health and Family Services, Office of Inspector General, and may impact any government owned or controlled health care facility.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

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

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

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

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

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

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**STATEMENT OF EMERGENCY
900 KAR 6:075E**

This emergency administrative regulation is necessary to grant nonsubstantive review status to certificate of need applications submitted by licensed hospitals to increase access to inpatient psychiatric services. Consistent with changes in 900 KAR 5:020E filed concurrently with this regulation, this emergency administrative regulation would grant nonsubstantive review status to those certificate of need applications submitted by licensed hospitals that wish to convert existing acute care beds to psychiatric beds for adult patients. This emergency administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. in order to meet an imminent threat to public health, safety, and welfare. There is an ongoing mental health crisis across the nation, and hospitals report that the proportion of emergency department visits due to mental health issues has increased markedly during the last few years. The expansion of inpatient behavioral health services throughout the state, including rural areas, will enhance immediate access to resources for at-risk mental health patients of such acuity that they need inpatient services and stabilization. This amendment, along with the companion regulation filed concurrently, 900 KAR 5:020E, is needed to help promote access to inpatient psychiatric healthcare. This emergency administrative regulation will be replaced by an ordinary administrative regulation encompassing this and other changes to be filed concurrently with this regulation. This amendment is an effort to ease the urgent mental health crisis by promoting greater access to psychiatric care across Kentucky. The ordinary administrative regulation is not identical to this emergency administrative regulation. It includes other changes needed as the companion regulation to the State Health Plan, which is updated annually.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Emergency Amendment)**

900 KAR 6:075E. Certificate of need nonsubstantive review.

EFFECTIVE: March 15, 2023 at 8:00 a.m.

RELATES TO: KRS 216B.010, 216B.015, [216B.020, 216B.040, 216B.062, 216B.090, 216B.095, 216B.115, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1., 216B.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1. requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly

newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

(4) "Days" means calendar days, unless otherwise specified.

(5) "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7) "Public notice" means notice given through the cabinet's Certificate of Need Newsletter.

Section 2. Nonsubstantive Review.

(1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(3)(f), the Office of Inspector General shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital and was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent certificate of need approval;

2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service that the applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours;

(c)1. The proposal involves an application to establish an ambulatory surgical center that does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation;

(d) The proposal involves an application to establish an industrial ambulance service;

(e) Prior to July 1, 2026, the proposal involves an application by:

1. An ambulance service that is owned by a city or county government seeking to provide ambulance transport services pursuant to KRS 216B.020(9)(a)1. or 2.; or

2. A licensed hospital seeking to provide transport from a location that is not a health care facility pursuant to KRS 216B.020(9)(a)3. and (b);

(f) The proposal involves an application to transfer acute care beds from one (1) or more existing Kentucky-licensed hospitals to establish a new hospital under the following circumstances:

1. The existing hospital and new facility shall be under common ownership and located in the same county;

2. No more than fifty (50) percent of the existing hospital's acute care beds shall be transferred to the new facility; and

3.a. If the existing hospital is a state university teaching hospital, the existing hospital exceeded, by at least one (1), the minimum number of quality measures required to receive supplemental university directed payments from Kentucky Medicaid for the state fiscal year preceding the date the application was filed; or

b. If the existing hospital is not a state university teaching hospital, the existing hospital's overall rating by the Centers for Medicare and Medicaid Services Hospital Compare was three (3) stars or higher on the most recent annual update to the overall star ratings preceding the date the application was filed; [or]

(g)1. The proposal involves an application from a Program of All-Inclusive Care for the Elderly (PACE) program that:

a. Has met the requirements of the State Readiness Review (SRR) according to a report submitted by the Department for Medicaid Services (DMS) to the Centers for Medicare and Medicaid Services (CMS);

b. Seeks to provide, directly to its members, a health service that is not exempt from certificate of need (CON) under KRS 216B.020(1); and

c. Ensures that all services authorized under the PACE agreement are provided exclusively to its members who reside within the service area. The service area shall be:

- (i) Located within the Commonwealth of Kentucky; and
- (ii) Approved by both CMS and DMS.

2. Only an approved PACE program operating within the applicant's service area shall qualify as an affected person for the purpose of opposing a PACE program application.

3. A PACE program shall not be required to obtain certificate of need (CON) approval if the program:

a. Provides direct patient health services that are exempt from CON under KRS 216B.020(1) and provides other services subject to CON approval through contracts with licensed providers; or

b. Has already obtained CON approval within the approved PACE service area to provide a health service that is not exempt from CON; or[-]

(h) The proposal involves an application to establish an inpatient psychiatric unit in an existing licensed acute care hospital under the following conditions:

1. The hospital is located in a county that has no existing, freestanding psychiatric hospital;

2. The occupancy of acute care beds in the applicant's facility is less than seventy (70) percent according to the most recent edition of the Kentucky Annual Hospital Utilization and Services Report;

3.a. All of the proposed psychiatric beds are being converted from licensed acute care beds; and

b. No more than twenty-five (25) acute care beds will be converted to psychiatric beds;

4. All of the psychiatric beds will be implemented on-site at the applicant's existing licensed facility; and

5. All of the psychiatric beds shall be dedicated exclusively to the treatment of adult patients, aged eighteen (18) to sixty-four (64).

(4) A certificate of need approved for an application submitted under subsection (3)(c) of this section shall state the limitations specified under subsection (3)(c)1. and 2. of this section.

(5) If an application is denied nonsubstantive review status by the Office of Inspector General, the application shall automatically be placed in the formal review process.

(6) If an application is granted nonsubstantive review status by the Office of Inspector General, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(7)(a) If an application is granted nonsubstantive review status by the Office of Inspector General, any affected person who believes that the application is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10)

days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2. of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.

2. If the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.

(d) Nonsubstantive review applications may be consolidated for hearing purposes.

(8) If an application for certificate of need is granted nonsubstantive review status by the Office of Inspector General, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan.

(9) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.

(10) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Inspector General shall approve each application for a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply.

(11) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8) of this section has been rebutted by clear and convincing evidence by an affected party.

(12) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing that is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(14) A decision to approve or disapprove an application that has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted, as required by KRS 216B.095(1). A hearing officer shall prioritize rendering decisions regarding applications granted nonsubstantive review status pursuant to Section 2(3)(g) of this administrative regulation.

(15) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

Section 3. Exemption from Certificate of Need.

(1) A city or county government-owned ambulance service that meets the criteria established by KRS 216B.020(8) shall not be required to obtain a certificate of need to provide emergency ambulance transport services.

(2) A hospital-owned ambulance service shall not be required to obtain a certificate of need to provide non-emergency or emergency transport that originates from its hospital pursuant to KRS 216B.020(7).

(3)(a) If a hospital-owned ambulance service has certificate of need approval prior to the most recent effective date of this

administrative regulation to provide transport services from another health facility to its hospital, the service shall not be required to obtain authorization in accordance with paragraph (b) of this subsection.

(b) A hospital-owned ambulance service that is exempt from certificate of need under KRS 216B.020(7) may provide transport services from another health facility to its hospital if authorized as set out in KRS 311A.025(4).

(c)1. As used in paragraph (b) of this subsection, a hospital is authorized to provide inter-facility transport of a patient if:

a. The hospital contacts by phone at least one (1) ground ambulance provider with jurisdiction in the territory in which the other health facility is located, using contact information from the most recent edition of the agency directory maintained by the Kentucky Board of Emergency Medical Services at the following link (<https://kbems.kctcs.edu/legal/EMS%20Directory.aspx>); and

b. The ground ambulance provider:

(i) Declines the hospital's request for patient transport; or

(ii) Is not able to initiate the patient's transport within four (4) hours of receiving the hospital's request.

2. For purposes of this paragraph, a provider initiates transport when it arrives at the hospital to transport the patient.

3. The hospital shall document the ambulance service contacted and the reason for authorization to provide transport from another health facility to its hospital.

(4)(a) In accordance with KRS 216B.020(12)(a), the provisions of this section and Section 2(3)(e) of this administrative regulation shall expire on July 1, 2026.

(b) In accordance with KRS 216B.020(12)(b), a certificate of need exemption granted to an ambulance service under this section of this administrative regulation shall remain in effect on and after July 1, 2026.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 10, 2023

FILED WITH LRC: March 15, 2023 at 8:00 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; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the nonsubstantive review of certificate of need applications. Nonsubstantive review is an expedited review process granted to certain applications pursuant to KRS 216B.095. This administrative regulation expands upon the types of applications that qualify for nonsubstantive review per the

statute.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(18), 216B.040, and 216B.095.

(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 adding types of certificate of need applications that qualify for nonsubstantive review status, setting forth the procedure for granting nonsubstantive review status, and setting forth the procedure for affected parties to request a hearing to dispute the review status or application.

(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 adding types of certificate of need applications that qualify for nonsubstantive review status, setting forth the procedure for granting nonsubstantive review status, and setting forth the procedure for affected parties to request a hearing to dispute the review status or application.

(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 grants nonsubstantive review status to certificate of need applications submitted by licensed hospitals that wish to convert existing acute care beds to psychiatric beds for adult patients under certain conditions and permits such applications to be subject to nonsubstantive review.

(b) The necessity of the amendment to this administrative regulation: This amendment is being proposed pursuant to KRS 216B.095(3)(f), which permits the cabinet to grant nonsubstantive review status to a certificate of need application in accordance with circumstances prescribed by the cabinet via administrative regulation. This change was requested by providers to allow them to add psychiatric treatment to the range of services they provide. This amendment is needed to expand inpatient behavioral health services throughout the state, including rural areas, to enhance immediate access to resources for at-risk mental health patients of such acuity that they need inpatient services and stabilization.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 216B.095(3)(f), which permits the cabinet to grant nonsubstantive review status to a certificate of need application in accordance with circumstances prescribed by the cabinet via administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing the procedures for review of certificate of need applications granted nonsubstantive review status.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities that submit certificate of need applications subject to the nonsubstantive review process. The number of entities that submit certificate of need applications subject to nonsubstantive review varies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will permit nonsubstantive review of certificate of need applications for acute care hospitals that wish to convert existing acute care beds to psychiatric beds for adult patients in accordance with additional criteria proposed in Section 2(3)(h) of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The certificate of need application filing fee is the same for nonsubstantive review and formal review and is established in a separate administrative regulation, 900 KAR 6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment will help improve access to services without a duplication of psychiatric beds by making it easier to obtain a certificate of need to provide these services. This will increase access to services that are closer to home for many patients, particularly in rural areas of the state.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is used as certificate of need applications are reviewed under a formal review process (900 KAR 6:070) or nonsubstantive review process (this administrative regulation). The list of applications granted nonsubstantive review is being amended to add two (2) new categories.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects entities that are subject to the certificate of need program's nonsubstantive review process. This administrative regulation also impacts the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(8), 216B.040, 216B.095

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation

generate for the regulated entities for the first year? This administrative regulation will not generate cost savings for regulated entities during the first year.

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Emergency Amended After Comments)

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

EFFECTIVE: March 6, 2023

Prior versions:

Emergency Amendment – [49 Ky.R. 1567](#)

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

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference policies and procedures concerning health and safety for into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference.

(1) The "Department of Juvenile Justice Policy and Procedures Manual: Health and Safety Services", **March 15[January 13], 2023**[July 13, 2020], is incorporated by reference and includes the following:

- 400 Health Services Definitions (Amended 01/13/23[07/13/20])
- 400.1 Health Services (Amended 04/15/20)
- 401 Health Services Administration and Personnel (Amended 03/30/18)
- 402 Access to Treatment and Continuity of Care (Amended 04/15/20)
- 402.1 Continuity of Care and Medical Discharge (Amended 04/15/20)
- 403 Medical Records (Amended 04/15/20)
- 404.1 Admission Screening for Physical and Behavioral Health Challenges (Amended 07/13/20)
- 404.2 Ectoparasite Control (Amended 03/30/18)
- 404.3 Health Assessment and Physical Examination (Amended 03/30/18)
- 404.4 Sick Call (Amended 03/30/18)
- 404.5 Access to Diagnostic Services (Amended 03/30/18)
- 404.6 Emergency Medical Services (Amended 03/30/18)
- 404.7 First Aid, AED, and First Aid Kits (Amended 03/30/18)
- 404.8 Hospital Care (Amended 03/30/18)
- 404.10 Special Needs Treatment Plans (Amended 03/30/18)
- 404.11 Perinatal Care (Amended 03/30/18)
- 404.12 Oral Screening and Oral Care (Amended 03/30/18)
- 404.13 Preventative Health Care (Amended 03/30/18)
- 404.14 Family Planning Services (Amended 03/30/18)
- 405 Behavioral Health Services Administration and Personnel (Amended 07/13/20)
- 405.1 Behavioral Health Screening and Evaluation (Amended 04/15/20)
- 405.2 Forced Psychotropic Medications (Amended 07/10/18)
- 405.3 Referral for Behavioral Health Services (Amended 07/13/20)
- 405.4 Suicide Prevention and Intervention (Amended 03/15/23[07/13/20])
- 405.5 Behavioral Health Emergencies (Amended 04/15/20)
- 405.6 Psychiatric Hospitalization (Amended 07/13/20)
- 406 Therapeutic Restraints (Amended 01/13/23[03/30/18])

- 407 Pharmaceuticals (Amended 03/30/18)
- 408.1 Forensic Information (Amended 03/30/18)
- 409 Substance Abuse and Chemical Dependency (Amended 03/30/18)
- 410 Orthoses, Prostheses, and Other Aids to Reduce the Effects of Impairment (Amended 08/14/18)
- 411 Notification in Emergencies (Amended 03/30/18)
- 414 Environmental Health and Safety (Amended 03/30/18)
- 415 Occupational Exposure to Bloodborne Pathogens (Amended 03/30/18)
- 416 HIV/AIDS/STI (Amended 03/30/18)
- 416.1 Infectious Communicable Disease (Amended 03/30/18)
- 424 Emergency Plans (Amended 03/30/18)
- 424.1 Emergency Plans for Central Office (Amended 03/30/18)
- 426 Dietary Services (Amended 03/30/18)
- 427 Maintenance (Amended 03/30/18)
- 427.1 Control and Use of Tools and Sharps (Amended 03/30/18)
- 428 Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials (Amended 03/30/18)
- 428.1 Control of Hazardous Materials in Central Office (Amended 03/30/18)
- 430 Pets and Domestic Animals (Amended 03/30/18)

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

VICKI REED, Commissioner

APPROVED BY AGENCY: March 6, 2023

FILED WITH LRC: March 6, 2023 at 4:10 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 concerning health and safety governing the operations of the Department of Juvenile Justice (DJJ).

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to DJJ employees, juveniles, and their families concerning policies and procedures that govern operation of the department.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises definitions to match changes in

the 700 series and modifies security provisions in the suicide prevention policy.

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, juveniles, and their families will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with the operational changes made by this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the department.

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

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

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in funding is anticipated as estimated above.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Juvenile Justice

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

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost is unknown, but devices including conductive energy devices and chemical agents, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist with control at some DJJ facilities at an approximate cost of \$1,478,969.82. Training costs will also be incurred for each staff member who is authorized to use conductive energy devices and chemical agents. These costs are for the amendment of both administrative regulations being filed.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings are not anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Emergency Amended After Comments)**

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

EFFECTIVE: March 6, 2023

Prior versions:

Emergency Amendment – [49 Ky.R. 1569](#)

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

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

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

Section 1. Incorporation by Reference.

(1) The "Department of Juvenile Justice Policy and Procedures Manual: Detention Services", **March 6/January 13], 2023** [July 10, 2018], is incorporated by reference and includes the following:

- 700 Definitions (Amended [01/13/23](#)[03/30/18])
- 700.1 Detention Services Delivery System ([Amended 01/13/23](#)[Added 03/30/18])
- 701 Criteria for Admissions (Amended 03/30/18)
- 702 Intake, Reception and Orientation (Amended 07/10/18)
- 703 Detention Risk Assessment (Amended 03/30/18)
- 704 Alternatives to Secure Detention ([Amended 01/13/23](#)[07/10/18])
- 704.1 Supervision of Juveniles in Alternative to Secure Detention Programs (Amended 03/30/18)
- 704.2 Revocation of Juveniles in Alternative to Secure Detention Programs (Amended 03/30/18)
- 704.3 Juvenile Justice and Delinquency Prevention Act (Added 03/30/18)
- 705 Individual Client Records (Amended 03/30/18)
- 705.2 Progress Notes (Amended 03/30/18)
- 706 Grievance Procedure (Amended 03/30/18)
- 707 Bed Capacities and Staffing of Juvenile Detention Centers ([Amended 01/13/23](#)[03/30/18])
- 708 Classification of Juveniles for Housing and Program Assignment ([Amended 01/13/23](#)[03/30/18])
- 709 Security and Control (Amended 03/30/18)
- 710 Shift and Log Reports (Amended 03/30/18)
- 711 Transportation of Juveniles ([Amended 01/13/23](#)[03/30/18])
- 712 Escape/AWOL (Amended [01/13/23](#)[03/30/18])

- 713 Restraints (Amended [03/06/23](#)[[01/13/23](#)][07/10/18])
- 714 Searches (Amended 03/30/18)
- 715 Incident Reports (Amended 03/30/18)
- 716 Behavior Management (Amended 03/30/18)
- 717 Discipline and Special Behavior Management ([Amended 01/13/23](#)[03/30/18])
- 718 Disciplinary Review (Amended 07/10/18)
- 720 Programs and Services (Amended 03/30/18)
- 720.1 Library Services ([Amended 01/13/23](#)[03/30/18])
- 720.2 Recreation and Structured Activities ([Amended 01/13/23](#)[03/30/18])
- 720.3 Religious Programs (Amended 03/30/18)
- 720.4 Juveniles Work Details (Amended 03/30/18)
- 720.5 Social Services (Amended 07/10/18)
- 720.6 Family and Community Contact (Amended 07/10/18)
- 725 Educational Programming and Assessment (Amended 07/10/18)
- 725.1 Instructional Staffing (Amended 03/30/18)
- 725.2 Education Records (Amended 07/10/18)
- 726 Leaves (Amended 03/30/18)
- 729 Release From Detention (Amended 03/30/18)
- 730 Inspections of Secure Juvenile Detention Facilities ([Amended 01/13/23](#)[03/30/18])
- 731 Complaint Investigations of Secure Juvenile Detention Centers and Juvenile Holding Facilities (Amended 03/30/18)

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

VICKI REED, Commissioner

APPROVED BY AGENCY: March 6, 2023

FILED WITH LRC: March 6, 2023 at 4:10 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 concerning health and safety governing the operations of the Department of Juvenile Justice (DJJ).

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to DJJ employees, juveniles, and their families concerning policies and procedures that govern operation of the department.

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

(a) How the amendment will change this existing administrative regulation: The amendment allows the staff to use additional safety measures to protect themselves and control unruly juveniles.

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

disruptive and dangerous behavior of juveniles.

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, juveniles, and their families will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with the operational changes made by this amendment. Staff will be trained on the use of chemical agents and conductive energy devices.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the department.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE

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

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Juvenile Justice

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings are not anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a

major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency for the purchase of equipment and provision of training is anticipated.

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

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

EFFECTIVE: March 15, 2023

Prior versions:

Emergency Amendment – [49 Ky.R. 1579](#)

Emergency As Amended at ARRS – [49 Ky.R. 1731](#)

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) ["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.

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

(14)(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.

(15)(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.

(16)(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.

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

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

(19)(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.

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

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

(22)(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) 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.

(5)[(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.

(6)[(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.

(7)[(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.

(8)[(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>].

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

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 14, 2023

FILED WITH LRC: March 15, 2023 at 8:00 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

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

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

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

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

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

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

prior authorizations. The version that is Amended after Comments reinserts the provisions relating to locum tenens dentists.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all adult recipients in the Medicaid program. DMS anticipates that this could be as many as 900,000 individuals. In addition, Medicaid participating dental service providers will be affected by the amendments. Currently, there are 1,078 individual dentists, 158 group dental practices, sixty-nine (69) individual physicians who perform oral surgery, and nine (9) group physician practices that perform oral surgery enrolled in Kentucky's Medicaid program.

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

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

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

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

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

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

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

(6) What is the source of the funding to be used for the

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396d(r)(3)

(2) State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs." KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Coverage of dental services is mandated only for certain children within the early and periodic screening, diagnosis and treatment (EPSDT) program for individuals under age twenty-one (21.)

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.520(3), 42 U.S.C. 1396d(r)(3).

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates an increase of about \$1.00 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. The total state expenditure for this amount should be about \$3,857,900. This expenditure should be balanced against expected savings that will be generated within the Medicaid adult population. A lack of dental care for the adult population is a driver of increased emergency department utilization, opioid prescribing, and later – and more expensive – medical interventions such as oral surgery. DMS anticipates savings and decreased utilization in these more expensive care settings. For example, Medicaid enrollees with preventive care may have 43% lower costs and can be as much as eight times less likely to have an emergency department visit for dental care. In addition, up to 1 million work hours could be saved in the Commonwealth if emergency dental care is avoided for Medicaid recipients. Finally, consistent with national trends, DMS expects additional job-seeking opportunities to be available to the adult population as a result of enhanced dental care and this could result in a movement out of the Medicaid program for some adult beneficiaries.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

amendment may result in additional reimbursement for dentists.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

OFFICE OF THE GOVERNOR
Department of Veterans Affairs
Office of Kentucky Veterans Services
(As Amended at ARRS, March 7, 2023)

17 KAR 3:020. Charges for room and board, goods, and services at state veterans' nursing homes.

RELATES TO: KRS 40.320, 40.325, 38 U.S.C. 1745(a), 42 C.F.R. Parts 413, 483

STATUTORY AUTHORITY: KRS 40.325(3)(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.320 identifies the Commonwealth's duty to provide for the well-being of elderly and disabled veterans within state veterans' nursing homes. KRS 40.325(3)(2) authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations. This administrative regulation establishes the methodology for establishing charges [maximum monthly resident charge] for room and board, [and] goods, and services at state veterans' nursing homes.

Section 1. Definitions.

(1) "Ancillary services" means services for which a separate charge is customarily made. Ancillary services include, for example, physical therapy, occupational therapy, speech therapy, laboratory procedures, x-ray services, oxygen services, optometry services, podiatry services, dentist services, audiology services, and pharmacy goods and services.

(2) "Non-routine goods or services" mean those that are directly identifiable with an individual resident and which are not customarily intended for use by all residents including such things as transportation, special activities, cable television services, pay-per-view channels, private or personal phone service, hospitalization, ambulance services, hearing aids, dentures, cosmetology or beautician services (other than basic haircuts), orthotic devices, and specialty care and equipment.

(3) "Nursing facility" means a state veterans' home (SVH) operated by the Kentucky Department of Veterans Affairs.

(4) "Private pay" means residents who pay for their nursing home care out of personal funds.

(5) "Private room" means a room in a state veterans' home that was not built in accordance with the federal VA's community living center or small house design requirements, VHA Handbook, Section 1142.01, or Small House Model design guide, and does not have a roommate.

(6) "Resident" means a Kentucky veteran admitted to a state veterans' nursing facility.

(7) "Room and board" means the room, dietary services, social services, nursing services, basic laundry services, the use of equipment and facilities, and routine medical and surgical supplies.

(8) "Routine goods or services" mean those which are not identifiable to a particular individual resident, [resident] but which are used by all residents.

(9) "Semi-private room" means a room in a state veterans' home that was not built in accordance with the federal VA's community living center or small house design requirements, VHA Handbook, Section [Section] 1142.01, or Small House Model design guide, and does have a roommate.

(10) "Suite" means a private suite with a private bathroom including a shower that was built in accordance, [accordance] with the federal VA's community living center or small house design requirements, VHA Handbook, Section 1142.01, or Small House Model design guide.

Section 2. Charges at State Veterans Nursing Homes.

(1)(a) The private pay rate for room and board at a state veterans' nursing facility shall be established by each facility based

on the total cost of care, community rates, and available revenue sources.

(b) Any change to a facility's charges for room and board, goods, or [and/or] services shall [will] require advance notification in accordance with 42 C.F.R. Part 483, Subpart B– 483.10(g)(18)(ii).

(c) There shall [will] be a separate and distinct charge for a semi-private room, a private room, and a suite. [according to the following schedule:]

[(a)] [Semi-private room – \$4,000/month;]

[(b)] [Private room – \$4,500/month; and]

[(c)] [Suite – \$5,000/month.]

(2) The total monthly charge for a private pay resident shall be:

(a) The applicable private pay rate for room and board;

(b) Any charge for non-routine goods or services; and

(c) Any charge for ancillary services.

Section 3. Computation of Room and Board Charges.

(1) The monthly charge ~~[(personal liability as indicated on the MAP-552)]~~ for a Medicaid qualified resident shall be established by the Kentucky Department of Medicaid services in accordance [accordance] with 907 KAR 1:006. All items and services considered by the Medicaid program to be non-covered as defined in 907 KAR 1:022, that were provided to Medicaid residents during any period of a covered stay, may be billed to the resident or another payer.

(2) If a veteran meets the requirements established in 38 U.S.C. 1745(a) for a service-connected disability, the veteran shall not be charged for any room and board, goods, or services.

~~[(3) The monthly charge for a private pay veteran shall be established in accordance with Section 2 of this administrative regulation.]~~

~~[(3)] [If a veteran meets the requirements established in 38 U.S.C. 1745(a) for a service-connected disability, the veteran shall not be charged for any room and board, goods, or services.]~~

[(4)] The monthly charge for a Medicare recipient qualifying for skilled services shall be the applicable co-payments as established by the Centers for Medicare and Medicaid services in 42 C.F.R. Part 413.

~~[(4)] [(5)]~~ A late fee of six (6) percent per annum may be assessed on any unpaid balances.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) U.S. Department of Veterans Affairs, "VHA Handbook, Section 1142.01", August 13, 2008; and

(b) U.S. Department of Veterans Affairs, "Small House Model design guide", January 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Kentucky Veterans Centers, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the U.S. Department of Veterans Affairs Web site at <https://www.va.gov/vhapublications/index.cfm>.

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**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, March 7, 2023)**

105 KAR 1:001. Definitions for ~~[KAR Title] 105 KAR Chapter~~

1.

RELATES TO: KRS 16.505-~~f to j~~16.652, 61.510-~~f to j~~61.705, ~~and j~~78.510-~~f to j~~78.852

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pension Authority on behalf of the Kentucky Retirement Systems and the County Employees Retirement System to promulgate ~~[all]~~ administrative regulations that are consistent with the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. This administrative regulation establishes definitions for ~~[Title] 105 KAR Chapter 1 [of the Kentucky Administrative Regulations]~~.

Section 1. Definitions. ~~The following definitions shall apply to 105 KAR Chapter 1 [as used in Title 105 of the Kentucky Administrative Regulations,]~~ unless otherwise required by context or otherwise defined in a specific administrative regulation:

(1) "AAC" means:

(a) Prior to April 1, 2021, the Administrative Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems.

(b) Beginning April 1, 2021, the separate or joint Administrative Appeals Committees of the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System in accordance with KRS 61.645(16) and 78.782(16).

(2) ~~["Accumulated employer credit" is defined in KRS 16.505(39), 61.510(40), and 78.510(37)]~~

(3) "Accumulated account balance" is defined by/in KRS 16.505(40), 61.510(41), and 78.510(38).

(3)(4) "Accumulated contributions" is defined by/in KRS 16.505(7), 61.510(12), and 78.510(12).

(4) ~~"Accumulated employer credit" is defined by KRS 16.505(39), 61.510(40), and 78.510(37).~~

(5) "Act in line of duty" or "in line of duty" is defined by/in KRS 16.505(19) and 78.510(48).

(6) "Active member" means a member who is participating in the systems.

(7) "Actuarial equivalent" is defined by/in KRS 16.505(13), 61.510(17), and 78.510(17).

(8) "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.

(9) "Agency reporting official" is defined by/in KRS 78.510(20).

(10) "Alternate payee" is defined by/in KRS 16.505(38), 61.510(39), and 78.510(36).

(11) "Authorized leave of absence" is defined by/in KRS 16.505(14).

(12) "Beneficiary" is defined by/in KRS 16.505(25), 61.510(26), and 78.510(25).

(13) "Boards" means the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System.

(14) "Bona fide promotion or career advancement" is defined by/in KRS 61.598(1) and 78.545(22).

(15) "Career threshold" is defined by/in KRS 61.702(4)(e).9.a. and 78.5536(4)(e).9.a.

(16) "County" is defined by/in KRS 78.510(3).

(17) "Creditable compensation" is defined by/in KRS 16.505(8), 61.510(13), and 78.510(13).

(18) "Current rate of pay" is defined by/in KRS 16.505(24), 61.510(25), and 78.510(24).

(19) "Current service" is defined by/in KRS 16.505(4), 61.510(10), and 78.510(10).

(20) "DAC" means:

(a) Prior to April 1, 2021, the Disability Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems.

(b) Beginning April 1, 2021, the separate or joint Disability Appeals Committees of the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System in accordance with KRS 61.665(4) and 78.545(11).

(21) "Department" is defined by/in KRS 61.510(3).

(22) "Dependent child" is defined by/in KRS 16.505(17) and 78.510(49).

(23) "Disability retirement date" is defined by/in KRS 16.505(16), 61.590(5)(b), and 78.510(51).

(24) "Duty-related injury" is defined by/in KRS 61.621(2) and 78.545(20).

(25) "Early retirement date" is defined by/in KRS 16.505(20), 61.590(5)(c), and 78.545(4).

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

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

(28) "Employer's effective cessation date" is defined by/in KRS 61.522(1)(c) and 78.535(1)(c).

(29) "End of day" means 11:59 p.m. Eastern Time, on the date referenced.

(30) "Examiner" means the medical examiners as provided in KRS 61.665 and 78.545(11).

(31) "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).

(32) "Final compensation" is defined by/in KRS 16.505(9), 61.510(14), and 78.510(14).

(33) "Final rate of pay" is defined by/in KRS 16.505(10), 61.510(15), and 78.510(15).

(34) "Fiscal year" is defined by/in KRS 16.505(32), 61.510(19), and 78.510(19).

(35) "Gainful employment" means work in any capacity that is, or may be, performed with regularity and is, or may be, usually done for pay, whether or not pay is received, including seasonal, volunteer, part-time, and on-call work.

(36) "Grandfathered service" is defined by/in KRS 61.552(9)(b) and 78.545(7).

(37) "Hazardous disability" is defined by/in KRS 16.505(23) and 78.510(47).

(38) "Hazardous position" means a regular full-time officer as defined by/in 16.505(22), or a "hazardous position" as defined by/in 61.592(1)(a), 78.510(42), and 78.5520(1).

(39) "Hospital and medical insurance plan" is defined by/in KRS 61.702(1)(a) and 78.5536(1)(a).

(40) "In line of duty" or "act in line of duty" is defined by/in KRS 16.505(19) and 78.510(48).

(41) "Inactive member" means a member who is not participating in the system.

(42) "Increment" is defined by/in KRS 61.510(29) and 78.510(44).

(43) "Instructional staff" is defined by/in KRS 61.510(48).

(44) "Invalid," if/when used in reference to a form, means that the form does not meet the requirements to be valid, and shall not be processed by the agency.

(45) "Last day of paid employment" is defined by/in KRS 16.505(30), 61.510(32), and 78.510(45).

(46) "Level percentage of payroll amortization method" is defined by/in KRS 61.510(28) and 78.510(43).

(47) "Medical information" as used in KRS 61.610, 61.615, 61.665, 78.5526 and 78.5528-~~f, j~~

a) Means reports of examinations or treatments; medical signs that/which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs that/which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or

contact with reality; or laboratory findings ~~that~~**[which]** are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including ~~[but not limited to]~~ chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests; **and**

(b) Does not mean: written statements from medical providers alone ~~[are not medical information]~~ unless accompanied by supporting contemporaneous records as **established**~~[discussed]~~ in **paragraph (a)** of this subsection.

(48) "Member" is defined **by/in** KRS 16.505(21), 61.510(8), and 78.510(8).

(49) "Membership date" is defined **by/in** KRS 16.505(35), 61.510(36), and 78.510(33).

(50) "Month" is defined **by/in** KRS 16.505(34), 61.510(35), and 78.510(32).

(51) "Monthly average pay" is defined **by/in** KRS 16.505(41), 61.510(45), and 78.510(52).

(52) "Monthly contribution rate" is defined **by/in** KRS 61.702(1)(b) and 78.5536(1)(b).

(53) "Nominal fee" is defined **by/in** KRS 61.510(43) and 78.510(40).

(54) "Non-core services independent contractor" is defined **by/in** KRS 61.5991(9).

(55) "Nonhazardous position" is defined **by/in** KRS 61.510(44) and 78.510(41).

(56) "Normal retirement age" means the age at which the member meets the requirements for his or her normal retirement date.

(57) "Normal retirement date" is defined **by/in** KRS 16.505(15), 61.510(18), 61.590(5)(a), and 78.510(18).

(58) "Objective medical evidence" is defined **by/in** KRS 16.505(31), 61.510(33), and 78.510(46).

(59) "Officers and employees of the General Assembly" is defined **by/in** KRS 61.510(20).

(60) "Optional allowance" is defined **by/in** KRS 16.505(18).

(61) "Participant" is defined **by/in** KRS 16.505(36), 61.510(37), and 78.510(34).

(62) "Participating" is defined **by/in** KRS 16.505(33), 61.510(34), and 78.510(31).

(63) "Participating employer" means any employer that participates in one (1) of the systems operated by the agency.

(64) "Participation date" means the earlier of "membership date" as defined in this section or the date on which the member began participating in another state-administered retirement system if the member has not retired or taken a refund from the other state-administered retirement system.

(65) "Past service" is defined **by/in** KRS 61.552(5)(a) and 78.545(7).

(66) "Person" means a natural person.

(67) "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.

(68) "Prior service" is defined **by/in** KRS 16.505(5), 61.510(11), and 78.510(11).

(69) "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 by mail, fax, secure email, or via Self Service on the Web site maintained by the agency (if available).

(70) "Qualified domestic relations order" is defined **by/in** KRS 16.505(37), 61.510(38), and 78.510(35).

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

(72) "Reemployment" means the retired member's first date of employment with a participating employer following his or her most recent retirement date.

(73) "Regular full-time officers" is defined **by/in** KRS 16.505(22).**f.i]**

(74) "Regular full-time position" is defined **by/in** KRS 61.510(21) and 78.510(21).

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

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

(77) "Retirement office" is defined **by/in** KRS 16.505(28), 61.510(31), and 78.510(29).

(78) "School board" is defined **by/in** KRS 78.510(4).

(79) "School term or year" is defined **by/in** KRS 78.510(28).

(80) "Service" is defined **by/in** KRS 16.505(6), 61.510(9), and 78.510(9).

(81) "State" means the Commonwealth of Kentucky.

(82) "Systems" means the State Police Retirement System (KRS 16.505 to 16.652), the Kentucky Employees Retirement System (KRS 61.510 to 61.705), and the County Employees Retirement System (KRS 78.510 to 78.852).

(83) "Total and permanent disability" is defined **by/in** KRS 16.582(1)(a) and 78.5524(1)(a)1.

(84) "Valid," **if/when** used in reference to a form, means that all required sections of a form are filled out, the form has been fully executed by the required person or the person's legal representative, and all supporting documentation required by the form is included with the form.

(85) "Volunteer" is defined **by/in** KRS 61.510(42) and 78.510(39).

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FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (As Amended at ARRS, March 7, 2023)

105 KAR 1:365. Hybrid cash balance plan.

RELATES TO: KRS 16.505, **16.543, 16.577**, 16.578, 16.583, 61.505, 61.510, 61.542, **61.543**, 61.552, **61.559, 61.565, 61.592**, 61.5955, 61.597, **61.615**, 61.625, 61.637, 61.640, 61.680, 61.702, 78.510, 78.545, **78.5510, 78.5512, 78.5514**, 78.5516, **78.5520, 78.5528**, 78.5532, 78.5536, 78.5540, 78.5542, **78.615, 78.635**, 38 U.S.C. [§ 4301-4335, 26 U.S.C. [§ 414(u)

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority on behalf of the Kentucky Retirement Systems and the County Employees Retirement System to promulgate ~~[all]~~ administrative regulations that are consistent with the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 16.583, 61.597, 78.5512, and 78.5516 create a hybrid cash balance plan tier for members of the State Police Retirement System, Kentucky Employees Retirement System, and County Employees Retirement System with participation dates on or after January 1, 2014, or members making an election pursuant to KRS 61.5955 and 78.545. This administrative regulation establishes the procedures and requirements for the administration of the hybrid cash balance plan tier.

Section 1. Definitions.

(1) ~~["Decompression" means service purchased by a member for a period of time not to exceed ninety (90) days between the member's discharge from active-duty military service and the member's return to employment with a participating employer, if the member returned from military leave and did not immediately return to work, in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA). Decompression shall be credited to the member's account after the member has paid the employee contributions that would have been paid by the member for this period of time in accordance with KRS 16.543, 61.543, and 78.615. The employer also shall pay the employer contributions for this period of time in accordance with KRS 61.565 and 78.635.~~

(2) ~~"Military omitted" means service purchased by a member with a participation date on or after January 1, 2014, who was called to active-duty military in accordance with KRS~~

~~61.552(1) and 78.545. Military omitted is credited to the member's account only if the member has paid the employee contributions that would have been paid by the member for this period of time in accordance with KRS 16.543, 61.543, and 78.615. The employer also shall pay the employer contributions for this period of time in accordance with KRS 61.565 and 78.635.~~

~~(3)] "Nonvested member" means a member of the Systems who has less than five (5) years of service credited under KRS 16.543, 61.543, and 78.615 and who participates in the hybrid cash balance plan tier based on:~~

- ~~(a) A participation date on or after January 1, 2014, or~~
- ~~(b) Opting into the hybrid cash balance plan with a participation date between September 1, 2008 and December 31, 2013.~~

~~(2)](4)] "Vested member" means a member of the Systems who has five (5) or more years of service credited under KRS 16.543, 61.543, and 78.615 and who participates in the hybrid cash balance plan tier based on:~~

- ~~(a) A participation date on or after January 1, 2014, or~~
- ~~(b) Opting into the hybrid cash balance plan with a participation date between September 1, 2008 and December 31, 2013.~~

Section 2. Military Service Credit.

(1)(a) Decompression service shall mean service purchased by a member for a period of time not to exceed ninety (90) days between the member's discharge from active-duty military service and the member's return to employment with a participating employer, if the member returned from military leave and did not immediately return to work, in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301-4333.

(b) Decompression shall be credited to the member's account after the member has paid the employee contributions that would have been paid by the member for this period of time in accordance with KRS 16.543, 61.543, and 78.615.

(c) The employer shall pay the employer contributions for the period of decompression in accordance with KRS 61.565 and 78.635.

(2)(a) Military omitted service shall mean service purchased by a member with a participation date on or after January 1, 2014, who was called to active-duty military in accordance with KRS 61.552(1) and 78.545.

(b) Military omitted shall be credited to the member's account only if the member has paid the employee contributions that would have been paid by the member for this period of time in accordance with KRS 16.543, 61.543, and 78.615.

(c) The employer shall pay the employer contributions for the period of military omitted in accordance with KRS 61.565 and 78.635.

Section 3. Application.

(1) Systems. This administrative regulation shall apply[applies] to the hybrid cash balance plan tier within each of the Systems.

(2) Members. Except as provided in subsections (3) and (4) of this section, this administrative regulation shall apply[applies] solely to members who begin participating in the Systems on or after January 1, 2014, and who do not have a participation date in any other state-administered retirement system that is prior to January 1, 2014.

(3) Irrevocable Election. This subsection shall apply[applies] only to members with a participation date in the Systems between September 1, 2008 and December 31, 2013, who have not received a retirement benefit from the Systems.

(a) Pursuant to KRS 61.5955 and 78.545, a member with a participation date in the Systems between September 1, 2008 and December 31, 2013, may make a one-time, irrevocable election to receive the benefits and rights provided under the hybrid cash balance plan tier as defined in KRS 16.583, 61.597, 78.5512, and 78.5516 in lieu of benefits he or she is currently eligible to receive from the Systems.

1. A member with a participation date based on service in the Systems or service in another state-administered retirement system prior to September 1, 2008 shall not be eligible to make this one-time, irrevocable election upon separation of accounts in accordance with KRS 61.680, 78.5542, and 105 KAR 1:020.

2. A member with a participation date in the Systems between September 1, 2008 and December 31, 2013 who also has service in another state-administered retirement system between September 1, 2008 and December 31, 2013 shall be eligible to make this one-time, irrevocable election only upon separation of the member's account in the Systems from the member's account in the other state-administered retirement system as established[indicated] in Section 6(6)[5(6)] of this administrative regulation and in accordance with KRS 61.680, 78.5542, and 105 KAR 1:020.

(b)

1. Eligible members who make the one-time, irrevocable election as described in paragraph (a) of this subsection shall only be entitled to retain purchased service that is recontribution of a refund, omitted, omitted with interest, decompression, or service purchased in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA); the agency shall remove any other purchased service from total months of service credit and refund the cost of that service back, plus interest, to the source of the purchase.

2. Eligible members who make the one-time, irrevocable election as described in paragraph (a) of this subsection shall not retain any active duty military service pursuant to KRS 61.552(1) and 78.545, unless the eligible member is currently participating in one (1) of the systems and pays the military omitted.

(c) Members eligible to make the one-time, irrevocable election as described in paragraph (a) of this subsection shall be provided information detailing the potential results of that[such-an] election via Member Self Service on the Web site maintained by the agency, which shall reflect service credit purchases retained and refunded as described in paragraph (b) of this subsection, and may receive additional information from the agency's counselors upon request.

(d) The agency shall provide Form 2013, Hybrid Cash Balance Plan Opt-In Election, on which the member can make a one-time, irrevocable election as described in paragraph (a) of this subsection, available to the member via Member Self Service on the Web site maintained by the agency.

(e) The agency shall not process an eligible member's one-time, irrevocable election as described in paragraph (a) of this subsection until a complete and correct Form 2013, Hybrid Cash Balance Plan Opt-In Election, is on file at the retirement office.

(f) The effective date of the eligible member's one-time, irrevocable election as described in paragraph (a) of this subsection shall be the date on which the completed Form 2013, Hybrid Cash Balance Plan Opt-In Election, is received at the retirement office.

(4) Prior Participation that has been refunded. This subsection shall apply[applies] to a member with a participation date with the Systems prior to January 1, 2014, who terminates employment, and who takes a refund of accumulated contributions pursuant to KRS 61.625 and 78.545.

(a) If that[such-a] person is reemployed on or after January 1, 2014, in a regular full-time position required to participate in one of the Systems and does not have a participation date with any other state-administered retirement plan prior to January 1, 2014, the person shall become[becomes] a member of the hybrid cash balance plan tier.

(b) If that[such-a] member purchases his or her previously refunded service in accordance with KRS 61.552(3) and 78.545(7), the purchased service shall only be used to determine the member's years of service credited and shall not be used to determine the member's participation date.

Section 4.[Section—3.] Construction of Administrative Regulation. KRS 16.505 to 16.652, KRS 61.510 to 61.705, KRS 78.510 to 78.852, and KAR Title 105 [of the Kentucky Administrative Regulations] shall apply to the hybrid cash balance plan tier except if[where] required by or as necessary for the administration of the hybrid cash balance plan tier under KRS 16.583, 61.597, 78.5512, and 78.5516.

Section 5.[Section 4.] Trust Assets. All contributions made with respect to each Systems' hybrid cash balance plan tier shall be held in the trust for the respective System. ~~[There shall be no segregation of.]~~Assets for the hybrid cash balance plan tier ~~shall not be segregated~~ from the assets for other tiers for the respective System.

Section 6.[Section 5.] Reciprocity.

(1) All service credit with other state-administered retirement systems, including the Judicial and Legislators' Plan and the Teachers' Retirement System, shall be used for determining a member's years of service credited for purposes of eligibility for annuitization, unless:

(a) The member has separated ~~the member's account~~~~[their account(s)]~~ with another state-administered retirement systems by filing a complete Form 2022, Separation of Accounts;~~;~~~~f;~~ or

(b) The member previously retired based on the service with the other state-administered retirement system.

(2) Service credit in another state-administered retirement system shall not be used for determining whether a member who is not eligible to retire in the hybrid cash balance plan tier has the five (5) years of service required in order to receive a full refund of his or her accumulated account balance under KRS 16.583(5)(b), 61.597(5)(b), 78.5512(5)(b), and 78.5516(5)(b).

(3) Service credit in the cash balance plan tier ~~shall~~~~[will]~~ be counted as service for the other state-administered retirement systems and as service for hospital and medical insurance and managed care plan coverage pursuant to KRS 61.702 and 78.5536.

(4) ~~[In no event will.]~~The same service credit ~~shall not~~ be counted for benefit calculation purposes for more than one state-administered retirement system or tier ~~under any circumstances~~.

(5) A member who is participating in the hybrid cash balance tier in more than one of the Systems ~~shall~~~~[will]~~ have to retire at the same time and elect the same retirement benefit option in all applicable Systems, unless the member has requested that his or her accounts be separated in accordance with 105 KAR 1:020.

(6) A member with a participation date in the Systems between September 1, 2008 and December 31, 2013 may make a one-time, irrevocable election to have each system treat his or her service credit in that system without regard to any other service credit, by filing a Form 2022, Separation of Accounts, requesting that his or her accounts be separated in accordance with KRS 61.680 and 78.5542. If so requested, "final compensation" shall be based on the creditable compensation earned under each system separately.

(a) Members who are eligible and seeking to make the one-time, irrevocable election to separate accounts shall be provided information detailing the potential results of ~~that~~~~[such an]~~ election from the agency's counselors.

(b) The agency shall provide Form 2022, Separation of Accounts, on which the member can make the one-time, irrevocable election to separate accounts.

(c) The agency shall not process an eligible member's one-time, irrevocable election to separate accounts until the member has received the information ~~required by~~~~[indicated in]~~ paragraph (a) of this subsection and a complete and correct Form 2022, Separation of Accounts, is on file at the retirement office.

(d) The effective date of the eligible member's one-time, irrevocable election to separate accounts shall be the date on which the completed Form 2022, Separation of Accounts, is received at the retirement office.

Section 7.[Section 6.] Lump-sum Distributions upon Termination of Employment or Death for Nonvested Members.

(1) Termination of Employment. A nonvested member eligible for a refund pursuant to KRS 61.625 and 78.545 shall only be refunded his or her accumulated contributions, and shall forfeit any accumulated employer credit.

(2) Death before Retirement. Upon the death of a nonvested member, the beneficiary designated by the member pursuant to KRS 61.542(1)-(2) and 78.545~~f;~~~~(2)~~ (or if no designated beneficiary, the member's estate) shall only be entitled to receive a lump-sum payment of the nonvested member's accumulated contributions, and

shall not be entitled to receive payment of any accumulated employer credits.

(3) Rollovers. A nonvested member or the designated beneficiary of a nonvested member who receives a refund of accumulated contributions may elect to have the refunded accumulated contributions paid directly to an eligible retirement plan in accordance with 105 KAR 1:270 and 105 KAR 1:345.

Section 8.[Section 7.] Lump-sum Distributions upon Termination or Distributions upon Death of Vested Members.

(1) Termination of Employment.

(a) Upon termination of employment with all employers participating in the same Systems in which the member has service credit, a vested member who is not otherwise eligible to retire may elect to take a refund of his or her accumulated account balance.

(b)

1. Upon termination of employment with all employers participating in one or more of the Systems, a vested member who is eligible for retirement may elect to take a refund of his or her accumulated account balance, in lieu of other retirement payment options provided in KRS 16.583(7), 61.597(7), 78.5512(7), and 78.5516(7).

2. The member's election to take a refund of his or her accumulated account balance as described in subparagraph 1 of this paragraph shall be treated as a retirement and the member shall be a retired member ineligible to participate or accrue additional benefits in the Systems upon subsequent reemployment with any participating employer pursuant to KRS 61.637 and 78.5540. Additionally, the member who has made the election described in subparagraph 1 of this paragraph shall be subject to all requirements and restrictions for reemploying with a participating employer in KRS 61.637, 78.5540 and 105 KAR 1:390.

(2) Death before Retirement.

(a) Upon the death of a vested member participating in the Systems, the vested member's designated beneficiary (or if no designated beneficiary, the member's estate) ~~shall be~~~~[is]~~ entitled to a lump-sum distribution of the vested member's accumulated account balance in accordance with KRS 61.625(1)(a) and 78.545(5). The designated beneficiary may also be entitled to the other payment options available for a death before retirement pursuant to KRS 16.578, 61.640, and 78.5532.

(b) Upon the death of a vested member who is not participating in the Systems at the time of death and who has not taken a refund or retirement benefit, if the vested member has fewer than twelve (12) years of service credited, the vested member's designated beneficiary (or if no designated beneficiary the member's estate) ~~shall be~~~~[is]~~ entitled to a lump-sum distribution of the member's accumulated account balance in accordance with KRS 61.625(1)(a) and 78.545(5). If the vested member has twelve (12) or more years of service credited, the designated beneficiary may also be entitled to other payment options available for a death before retirement pursuant to KRS 16.578, 61.640, and 78.5532.

(3) Rollover. A vested member or the designated beneficiary of a vested member who takes a lump-sum distribution of the vested member's accumulated account balance under this section may elect to have the lump-sum distribution paid directly to an eligible retirement plan in accordance with 105 KAR 1:270 and 105 KAR 1:345.

Section 9.[Section 8.] Eligibility for an Annuity.

(1) At Normal Retirement Age. Subject to Section ~~6~~~~[5]~~ of this administrative regulation, a vested member who reaches normal retirement age under the applicable System's statutory provisions and who terminates employment with all participating employers ~~shall be~~~~[is]~~ eligible to retire and may elect to annuitize his or her accumulated account balance or take a lump-sum distribution of his or her accumulated account balance as provided in Section ~~8(1)(b)~~~~[7(1)(b)]~~ of this administrative regulation.

(2) Additional Eligibility for Annuitization for Members with Hazardous position Service. A member who has hazardous position service as provided in KRS 16.505-16.652, 61.592 and 78.5520, who has 25 or more years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1) or any other Kentucky state-administered

system, and who terminates employment with all employers participating in the Systems shall be/is eligible to retire and may elect to annuitize his or her accumulated account balance or take a lump-sum distribution of his or her accumulated account balance as provided in Section 8(1)(b)[7(1)(b)] of this administrative regulation.

(3) Additional Eligibility for Annuitization for Members with Service Only in a Nonhazardous Position. A member with exclusively nonhazardous position service who is at least age fifty-seven (57), who has an age plus years of service total of at least eighty-seven (87) years, and who terminates employment with all employers participating in the Systems shall be/is eligible to retire and may elect to annuitize his or her accumulated account balance or take a lump-sum distribution of his or her accumulated account balance as provided in Section 8(1)(b)[7(1)(b)] of this administrative regulation.

(4) Annuitization. A member who elects to annuitize his or her accumulated account balance may receive a retirement benefit determined in accordance with actuarial assumptions and actuarial methods adopted under subsection (6) of this section and in effect on the member's retirement date.

(5) Return of Contributions. If the retirement benefit payment option selected by the vested member includes a guaranteed return of contributions, that retirement benefit payment option shall be interpreted to mean that guarantee applies to the accumulated account balance.

(6) Board Action with respect to Annuitization. The ~~actions of the~~ Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System shall to adopt actuarial assumptions and methods that will apply to a specific fiscal year prior to the start of that fiscal year ~~are incorporated by reference under this administrative regulation. Each Board shall adopt the actuarial assumptions that will apply to a specific fiscal year prior to the start of that fiscal year.~~

(7) Eligibility for Retiree Hospital and Medical Benefit. Only a member who is receiving a monthly annuitized benefit shall be/is eligible for hospital and medical insurance and managed care plan coverage. A member who takes a lump-sum refund or lump-sum retirement benefit shall/is not be eligible for hospital and medical insurance and managed care plan coverage.

Section 10.~~[Section 9.]~~ Disability retirement. A member participating in the hybrid cash balance plan tier in one or more of the Systems whose disability retirement allowance is discontinued pursuant to KRS 61.615 and 78.5528 shall begin receiving retirement benefits, if eligible, under KRS 16.583(6), 61.597(6), 78.5512(6), or 78.5516(6) ~~, or 16.583(6)]~~, but shall not be eligible for early retirement benefits under KRS 61.559, 78.5510, 78.5514, or 16.577.

Section 11.~~[Section 10.]~~ Purchase of Service Credit.

(1) Members participating in the hybrid cash balance plan tier shall only be eligible to purchase service credit that is recontribution of a refund, omitted, omitted with interest, military omitted, decompression, or under the Uniformed Services Employment and Reemployment Rights Act (USERRA), and shall not be eligible to make any other types of service purchases.

(2) Uniformed Services Employment and Reemployment Rights Act (USERRA) Service.

(a) Years of service credited shall be determined as required by USERRA.

(b) In order to receive service credit for military omitted, decompression, or under the Uniformed Services Employment and Reemployment Rights Act (USERRA), the member shall pay the member contributions in accordance with KRS 16.543, 61.543, and 78.615, as though the member was employed during the period of his or her active military duty or decompression.

(c) The employer shall pay all employer contributions owed in accordance with KRS 61.552, 61.565, 78.545, and 78.635.

(3) Repayment of Refunded Contributions Plus Interest Credits or Accumulated Account Balance.

(a) Upon reemployment with a participating employer in a regular full-time position required to participate in the Systems or

participation in another state-administered retirement system, a nonvested member who took a refund of his or her member contributions plus interest credits may regain the refunded service credit by repaying, with interest at a rate determined by the board of the respective retirement system, the amount refunded with post-tax employee contributions or a rollover or transfer allowed under the Internal Revenue Code. Although the repayments of refunded contributions plus interest credit shall be used to determine the member's service credited, the repayment of the amount refunded shall not be used to determine a member's participation date.

(b) Upon reemployment with a participating employer in a regular full-time position required to participate in the Systems or participation in another state-administered retirement system, a vested member who was not eligible to retire and who took a refund of his or her accumulated account balance may regain the refunded service credit by repaying, with interest at a rate determined by the board of the respective retirement system, the amount refunded with post-tax employee contributions or a rollover or transfer allowed under the Internal Revenue Code. Although the repayments of the refunded accumulated account balance shall be used to determine the member's service credited, the repayment of the amount refunded shall not be used to determine a member's participation date.

(4) Omitted Service. Any person who is entitled to service credit in the hybrid cash balance plan tier that was not reported in accordance with KRS 16.543, 61.543, or 78.615 may pay the amount of member contributions that would have been due on that service in order to receive credit for the service in the hybrid cash balance plan tier. However, the service shall not be credited to the member's account until employer contributions for the service are received by the Systems. Once member and employer contributions have been received, accumulated employer credits shall be reflected in the member's account.

Section 12.~~[Section 11.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 2013, "Hybrid Cash Balance Plan Opt-In Election", February 2021; and

(b) Form 2022, "Separation of Accounts", September 2022.

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

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pension Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 7, 2023)

201 KAR 16:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.

RELATES TO: KRS 217.177(1), (4)[247.177(6)], 321.207, 321.235(7), 321.351

STATUTORY AUTHORITY: KRS 321.207(1), (2), 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) permits the Kentucky Board of Veterinary Examiners to authorize an animal control agency to apply for a registration certificate by the United States Drug Enforcement Administration (DEA) to euthanize animals. KRS 321.207(2) requires the applicant agency to comply with administrative regulations that establish standards for the proper storage and handling of the drugs the board has authorized for use, and other provisions that may be necessary to ensure that the drugs are used safely and solely for the purpose of euthanizing animals. KRS 321.235(3) and 321.240(5) authorize

the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the application, ~~and renewal, and reinstatement~~[certification] requirements for certification as an animal control agency, and the requirements for board inspections at certified animal control agencies[standards for proper drug storage, and drugs that may be used by certified animal control agencies and the certified animal euthanasia specialists they employ].

Section 1. Definitions.[General Requirements.]

(1) "Animal shelter" means a public agency or private humane society, society for the prevention of cruelty to animals, animal protection shelter or control agency, or other facility that provides shelter and care for homeless, stray, unwanted, or injured animals.

(2) "Certified Animal Control Agency" means an animal shelter that is certified under the provisions of KRS Chapter 321 and **201 KAR Chapter 16[associated regulations]**.

(3) "Designated On-site Manager" means a person who registers with the board to assume responsibility for the ordering, management, use, and disposal of controlled substances at a board-certified animal control agency.

Section 2. Application and Renewal Requirements.

(1) The applicant animal shelter[control agency] shall apply to the board for authorization as established by KRS 321.207.

(2) A complete application to the board shall include the following components:

(a) A completed Application for Certification as an Animal Control Agency form or online equivalent form, including all required attachments;

(b) Identification of the agency designated on-site[onsite] manager;

(c) A complete and current list of all individuals performing[performing] euthanasia or related activities at the animal shelter, whether or not each individual holds a credential from the board[control facility]; and

(d) Payment of the fee in accordance with 201 KAR 16:514.

(3) Prior to the board's issuance of the animal control agency certificate[of authorization], the applicant shall undergo an inspection of the facility by the board, its inspector, or other designee of the board in accordance with Section 5 of this administrative regulation.

(4) Following board application approval, the applicant shall apply to DEA for registration as a practitioner and designate "animal shelter" on the appropriate DEA form.

(5) A certified animal control agency shall submit to inspection by a board representative at any time, with or without advanced notice.

(6) A certified animal control agency shall identify a designated on-site[designate an onsite] manager in accordance with 201 KAR 16:552[of the shelter].

(a) The agency shall notify the board in writing within ten (10) days of any change in the designated on-site[onsite] manager of the animal shelter by submitting a completed Request for a New Designated On-site Manager form or online equivalent form, including all required attachments.

(b) The designated on-site manager shall be responsible for complying with all state and federal laws related to the ordering, purchase, storage, tracking, management, and disposal of the drugs obtained under the DEA controlled substances registration.

(7) Background checks. The board may conduct a national or jurisdictional level background check on each designated on-site[shelter] manager. The check shall be processed by a board approved background check provider, and may include a copy of the designated on-site manager's fingerprints captured at a board approved location. The board may accept the results of an employment background check from the county office in lieu of a state or federal background check if the background check results are not more than six (6) months old from the date of application. The board may reject background checks that do not have an official seal or watermark, or that are more than ninety (90) days old. The board may impose additional requirements as a condition of certification for the animal control agency or deny certification

following the board's review of findings from a background check.

Section 3.[(8)] Renewal Requirements for a Certified Animal[Animal] Control Agency[certificate-renewal-requirements].

(1)[(a)] A board-certified[An] animal control agency shall renew the board certification annually in accordance with 201 KAR 16:572.

(2)[(b)] Failure to renew the certificate for an animal control agency shall result in the following actions by the board:

(a)[(4-)] The animal control agency certificate shall be moved to expired status;

(b)[(2-)] Each ~~"[E]active"~~[E] status[All] certified animal euthanasia specialist[specialists] under the employment of the ~~expired[formerly]~~ certified animal control agency shall be moved to ~~"[E]inactive"~~[E] status;[and]

(c)[(3-)] The DEA shall be notified of the lapse in certification; and

(d) The board shall conduct a closeout inspection within six (6) months of the date of expiration to ensure that the controlled substances and other drugs on-site are properly disposed of. An animal shelter with an expired certificate shall continue to maintain the drugs in accordance with 201 KAR 16:552, and the Kentucky Veterinary Medicine Practice Act (**KRS Chapter 321**), and **201 KAR Chapter 16**, until the drugs are transferred in accordance with state and federal laws, or disposed of in accordance with 201 KAR 16:552, Section 7.

Section 4.[(e)] Reinstatement Requirements for Animal Control Agencies.

(1)[(4-)] An animal control agency with an expired certificate shall have five (5) years to reinstate their certificate by submitting a completed Reinstatement Application for Animal Control Agencies form or online equivalent form, including all required attachments and payment of the application fee pursuant to 201 KAR 16:514.

(2)[(2-)] The animal control agency shall undergo inspection by an authorized representative of the board in accordance with Section 5[subsection-](3) of this administrative regulation[section] prior to the reinstatement of a certificate.

(3)[(3-)] After five (5) years, the agency shall not be able to reinstate and shall be required to apply for a new certificate in accordance with this administrative regulation and 201 KAR 16:572.

[Section 2. Approved Drugs. A certified animal control agency shall be restricted to the purchase of sodium pentobarbital and other euthanasia drugs currently approved by the American Veterinary Medical Association (AVMA) for the purpose of euthanizing animals. DEA's Schedule II order forms (titled "DEA-222") shall be used for each purchase of sodium pentobarbital or other AVMA approved euthanasia drugs.

Section 3. Records.

(1) A certified animal control agency shall maintain records of purchases and administration of sodium pentobarbital and other AVMA approved euthanasia drugs for a period of not less than two (2) years.

(2) Records of administration shall include, at a minimum, the following information:

(a) The date of use;

(b) Identification of the animal;

(c) The amount of the drug used;

(d) The signature of the person administering the drug;

(e) The signature of the onsite manager certifying the accuracy of the administration of sodium pentobarbital and other AVMA approved euthanasia drugs not less than once per month; and

(f) The signature of the onsite manager certifying to the accuracy of the records.

(3) Records of purchase and destruction of sodium pentobarbital and other AVMA approved euthanasia drugs shall be maintained in a separate file from the records of administration of those substances.

(4) The records of purchase, destruction, and administration may be audited by representatives of the DEA or authorized designees of the board to determine adequacy, accuracy, and validity of the recordkeeping. The board may impose restrictions and administrative penalties on certificate holders as a result of

substandard controls or records of the drugs.

(5) The records of purchase, destruction, and administration shall be maintained at the location of the agency.

Section 4. Storage.

(1) Sodium pentobarbital and other AVMA-approved euthanasia drugs shall be stored in a securely locked cabinet within a locked storage room or other enclosure at the certified animal control agency.

(2) Schedule II order forms shall be stored in a securely locked cabinet, separate from the storage location of the drugs, within a locked storage room or other enclosure at the certified animal control agency.

Section 5. Disposal of Needles and Medical Waste. All needles generated in the process of euthanizing animals shall be disposed of pursuant to KRS 217.177(6).

Section 6. Disciplinary Action. An animal control agency and its employees shall be subject to disciplinary action pursuant to KRS 321.235(7) and KRS 321.351 for a violation of state or federal statutes or administrative regulations.]

Section 5. Inspection Requirements.

(1) A certified animal control agency shall be subject to inspection by the board, its investigator, or a board representative.

(2) An inspection may occur at any time, with or without advance notice. The designated on-site manager shall make themselves available to provide access and information during the inspection.

(3) An inspection shall be required:

(a) Prior to the approval of a new Application for Certification as an Animal Control Agency;

(b) Prior to the approval of a Reinstatement Application for ~~[a certification as an]~~Animal Control ~~Agencies~~[agency], if the last inspection was completed more than twelve (12) months prior to the date of the application;

(c) Periodically on a schedule set by the board, not more routinely than every ten (10) months, and at least once every two (2) years;

(d) As needed due to staff turnover at the animal control agency;

(e) Under suspicion of probable cause for violation of KRS Chapter 321; and

(f) Following the expiration, termination, suspension, or surrender of the certificate.

Section 6. ~~[Section 7.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Certification as an Animal Control Agency", 12/2022[3/2020]; ~~[and]~~

(b) "Reinstatement Application for Animal Control Agencies", 12/2022[3/2020]; ~~and~~

(c) "Request for a New Designated On-site Manager", 12/2022.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:30[8:00] a.m. to 4:30 p.m. This material may also be obtained at www.kybve.com.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 7, 2023)

201 KAR 16:552. Responsibilities for certified animal control agencies; limitations on drugs.

RELATES TO: KRS 321.181, 321.207, 321.235(7), 321.351

STATUTORY AUTHORITY: KRS 321.207(1), (2), 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) permits the Kentucky Board of Veterinary Examiners to authorize an animal control agency to apply for a registration certificate by the United States Drug Enforcement Administration (DEA) to order, purchase, manage, and store controlled substances which are authorized by the board for use in animal sedation and euthanasia. KRS 321.207(2) requires the applicant agency to comply with administrative regulations that establish standards for the proper storage and handling of the drugs the board has authorized for use, and other provisions that may be necessary to ensure that the drugs are used safely and solely for the purpose of euthanizing animals. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the duties for the animal control agency designated on-site manager, standards for proper drug storage, and drugs that may be used by certified animal control agencies and the certified animal euthanasia specialists they employ.

Section 1. Responsibilities of a Certified Animal Control Agency.

(1) A certified animal control agency and staff shall comply with all requirements of KRS Chapter 321 and 201 KAR Chapter 16 ~~[the administrative regulations promulgated by the board under this chapter].~~

(2) A certified animal control agency shall identify an agency designated on-site manager~~[manger]~~ and ensure the person complies with the requirements in Section 2 of this administrative regulation.

(3) Any change to the designated on-site manager shall be reported in writing to the board within ten (10) business days by submitting a completed Request for a New Designated On-site Manager form or online equivalent form, including all required attachments.

(4) A certified animal control agency shall ensure that the United States Drug Enforcement Administration (DEA) Controlled Substances Registration is kept in active status if~~[as long as]~~ there are controlled substances in the possession of the agency.

(5) A certified animal control agency shall submit to inspection by a board representative at any time, with or without advanced notice in accordance with 201 KAR 16:550, Section 5.

Section 2. Responsibilities of a Designated On-site Manager.

(1) The designated on-site manager shall be responsible for reviewing educational materials provided by the board and submitting a responsive answer sheet for review by the board. A board inspector or representative shall periodically review educational materials with the designated on-site manager.

(2) The designated on-site manager shall:

(a) Ensure proper controls are in place in accordance with all state and federal laws for all controlled substances and other drugs at the animal control agency;

(b) Ensure drugs for euthanasia and drugs used for sedation prior to euthanasia shall be limited to the substances identified in Section 3 of this administrative regulation;

(c) Ensure all employees authorized to conduct animal euthanasia at the certified animal control agency are trained and certified in accordance with the requirements of 201 KAR 16:560, unless the employee is a board-licensed veterinarian or board-licensed veterinary technician;

(d) Ensure all animal euthanasia specialists who conduct euthanasia at the certified animal control agency maintain an active certificate with the board;

(e) Notify the board in writing within ten (10) business days following the termination of a certified animal euthanasia specialist so the certificate of the animal euthanasia specialist may be taken out of "[~~active~~]" status;

(f) Shall develop and maintain standard operating procedures in writing for carcass disposal in accordance with all state and local laws and ordinances; and

(g) Shall be responsive and cooperative to the board's request for access and information to the certified animal control agency.

(3) The designated on-site manager shall ensure that the animal euthanasia process shall be conducted within the restrictions set forth in this subsection.

(a) Euthanasia shall only be conducted upon animals owned by the certified animal control agency, except in cases of emergency as defined by/in KRS 321.181(10).

1. Transfer of ownership or a temporary contract shall not be used for the purpose of circumventing this subsection[provision]; and

2. Wildlife shall be redirected to a board-licensed veterinarian, Certified Wildlife Rehabilitator authorized to operate pursuant to 301 KAR 2:075, or to a Nuisance Wildlife Control Operator authorized to operate pursuant to 301 KAR 3:120.

(b) Euthanasia shall only be conducted upon the premises of the certified animal control agency, except in cases of emergency as defined by/in KRS 321.181(10); and

(c) All euthanized animals shall be disposed of in accordance with the certified animal control agency's standard operating procedures for carcass disposal.

Section 3. Approved Drugs for Animal Euthanasia and Anesthesia or Sedation of Animals Prior to Euthanasia.

(1) A certified animal control agency shall be restricted to the purchase of specific drugs for the purpose of animal euthanasia. The drugs approved by the board for euthanasia are:

(a) Sodium pentobarbital; and

(b) Sodium pentobarbital with lidocaine.

(2) A certified animal control agency shall be restricted to the purchase of specific drugs for the purpose of animal anesthesia or sedation prior to euthanasia. The drugs approved by the board for animal anesthesia or sedation prior to euthanasia are, or any combination thereof:

(a) Acepromazine;

(b) Dexmedetomidine;

(c) Ketamine (30-day supply or less); and

(d) Xylazine.

(3) DEA's Schedule II order forms (titled "DEA-222") shall be used for each purchase or transfer of board approved controlled substances.

(4) Expired drugs.

(a) Expired drugs shall not be used.

(b) Expired drugs shall be properly disposed of in accordance with Section 7 of this administrative regulation.

Section 4. Storage.

(1) Board approved euthanasia and sedation drugs shall be stored in a securely locked cabinet within a locked storage room or other enclosure at the DEA address of record for the certified animal control agency. The cabinet shall be bolted securely to the floor or wall.

(2) DEA Controlled Substance Schedule II order forms shall be stored in a securely locked cabinet, separate from the storage location of the drugs, within a locked storage room or other enclosure at the DEA address of record for the certified animal control agency.

Section 5. Disposal of Needles and Medical Waste.

(1) All needles in an animal control agency shall:

(a) Not be accessible to the public;

(b) After use, be rendered incapable of use; and

(c) Be disposed of in an approved biohazard or sharps container.

(2) All syringes used in the process of euthanasia shall be disposed of in an approved biohazard or sharps container.

Section 6. Records.

(1) A certified animal control agency shall maintain records of purchases, administration of board approved euthanasia drugs and sedation drugs, transfer, and destruction of drugs for a minimum of two (2) years.

(2) Records of administration shall include, at a minimum, the following information:

(a) The date of use;

(b) Identification of the animal;

(c) The amount of the drug used;

(d) Any amount wasted;

(e) The signature of the person administering the drug;

(f) The signature of the designated on-site manager certifying the accuracy of the administration of board approved euthanasia drugs and sedation drugs not less than once per month; and

(g) The signature of the designated on-site manager certifying to the accuracy of the records not less than once per month, as well as on the annual inventory.

(3) Records of purchase and destruction of board approved euthanasia drugs and sedation drugs shall be maintained in a separate file from the records of administration of those substances.

(4) The records of purchase, destruction, and administration may be audited by representatives of the DEA or authorized designees of the board to determine adequacy, accuracy, and validity of the recordkeeping. The board may impose restrictions and administrative penalties on certificate holders or designated on-site managers as a result of substandard controls or records of the drugs.

(5) The records of purchase, administration, transfer, and destruction of euthanasia and sedation drugs, shall be maintained at the DEA address of record for the animal control agency.

Section 7. Destruction or Disposal of Drugs. Drugs at an animal control agency that require disposal shall be disposed of in accordance with one (1) of the methods set forth in this section. A written receipt with appropriate signatures shall be obtained for the methods in subsections (1) through (3) of this section, and a record of the action taken shall be made for the method in subsection (4) of this section. The record shall be maintained with the drug logs at the animal control agency.

(1) Transfer non-expired, non-controlled drugs to a licensed veterinarian.

(2) Transfer non-expired, controlled drugs to a DEA registered, board-licensed veterinarian using DEA Form 222. Copies of the DEA Form 222 shall be distributed per federal law.

(3) Surrender expired or non-expired drugs to local law enforcement for destruction.

(4) Inject expired or non-expired drugs into and incinerate an animal carcass in accordance with state and local rules on incineration. Written documentation shall describe the amounts disposed of, type of carcass, date of injection and incineration, witnesses, and any other pertinent details.

Section 8. Disciplinary Action. An animal control agency, designated on-site manager, and credentialed animal euthanasia specialists shall be subject to disciplinary action pursuant to KRS 321.235 and ~~KRS~~ 321.351 for a violation of state or federal statutes or administrative regulations.

Section 9. Incorporation by Reference.

(1) "Request for a New Designated On-site Manager", 12/2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at www.kybe.com.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 7, 2023)

201 KAR 16:560. Certification as an animal euthanasia specialist.

RELATES TO: KRS 257.160, 321.207, 321.235(7), 321.351, Chapter 335B

STATUTORY AUTHORITY: KRS 321.207(3), 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(3) requires the Kentucky Board of Veterinary Examiners to issue a certificate to a person who meets the qualifications of an animal euthanasia specialist and is approved by the board for a certificate. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the qualifications for certification as an animal euthanasia specialist and reinstatement[renewal] requirements[and the duties of an animal euthanasia specialist].

Section 1. To ~~be~~ in order to be eligible for certification as a board-certified animal euthanasia specialist an applicant shall:

- (1) Be at least twenty-one (21) years of age;
- (2) Be of good moral character;
- (3) Not have been convicted of, or entered an "Alford" plea or plea of nolo contendere to, irrespective of an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of the plea, one (1) or more or the following in the last ten (10) years, subject to the provisions of KRS Chapter 335B:
 - (a) A felony;
 - (b) An act involving moral turpitude or gross immorality; or
 - (c) A violation of any law, rule, or administrative regulation of this state, any other state, or the United States government that involves the use or trafficking of illegal substances;
- (4) Have a high school diploma or general equivalency degree (GED);
- (5) Pay the initial certification fee as specified in 201 KAR 16:514;
- (6) Be employed by a board-~~certified~~ animal control agency; and
- (7) Have successfully completed a board approved sixteen (16) hour euthanasia by injection~~[specialist training]~~ course as established in Section 2 of this administrative regulation within twelve (12) months~~[ten (10) years]~~ prior to application.

Section 2. Euthanasia by Injection (EBI)~~[Specialist]~~ Training Course Curriculum.

- (1) The curriculum for the sixteen (16) hour EBI~~[euthanasia specialist]~~ course shall provide information on the following subjects:
 - (a) Pharmacology, proper administration, and storage of euthanasia solutions that shall consist of a minimum of eight (8) hours;
 - (b) Federal and state laws regulating the storage and accountability for euthanasia solutions and drugs used to assist in euthanasia;
 - (c) Euthanasia specialist stress management and compassion fatigue;
 - (d) Proper animal handling with emphasis on easing the trauma and stress to the animal; and
 - (e) Disposal of euthanized animals.
- (2) An EBI~~[A]~~ training course ~~[for a euthanasia specialist]~~ shall be reviewed and approved by the board prior to presentation. A provider of an EBI~~[a euthanasia specialist]~~ training shall submit the following information to the board for consideration of approval:
 - (a) A published course or similar description;
 - (b) Names and qualifications of current instructors;
 - (c) A copy of the program agenda indicating hours of education, refreshment, and lunch breaks;
 - (d) A copy of the full program curriculum;

(e) A copy of an official certificate of completion from the sponsoring agency; and

(f) Upon completion of the instruction of a sixteen (16)-hour euthanasia course, a complete attendee list to the board, including the following:

1. The dates and locations of the course;
2. Each attendee's full name and address; and
3. Notation by an individual's name if the course was not completed, or more than fifteen (15) consecutive minutes of any portion of the course was missed.

Section 3. An application to the board for certification as an animal euthanasia specialist shall include the following components:

- (1) A completed application on an Application for Certification as an Animal Euthanasia Specialist form or online equivalent form, including all required attachments;
- (2) An official copy of final transcripts or a copy of the applicant's diploma from high school, or GED certificate, or highest level of education attained;
- (3) A copy of a certificate of completion from a board approved sixteen (16)-hour euthanasia by injection training course; and
- (4) Payment for the application fee pursuant to 201 KAR 16:514.

Section 4. An individual with an expired animal euthanasia specialist certificate may reinstate their certificate if not more than five (5) years have elapsed since the last date of certificate expiration. Reinstatement applications seeking board approval for certification as an animal euthanasia specialist shall include the following components:

- (1) A completed application on a Reinstatement Application for Animal Euthanasia Specialists form or online equivalent form, including all required attachments; and
- (2) Payment for the application fee pursuant to 201 KAR 16:514.

Section 5. An application to the board for approval for a change in licensure status shall be made in accordance with 201 KAR 16:580.

Section 6. Background Checks. The board may conduct a national or jurisdictional level background check on each applicant for certification. The check shall be processed by a board approved background check provider, and may include a copy of the applicant's fingerprints captured at a board approved location. The board may accept the results of an employment background check from the county office in lieu of a state or federal background check if the background check results are not more than six (6) months old from the date of application. The board may reject background checks that do not have an official seal or watermark, or that are more than ninety (90) days old. The board may impose additional requirements as a condition of certification or deny certification following the board's review of findings from a background check.

Section 7. Employment and Termination.

- (1) A person may function as a certified animal euthanasia specialist only while the person~~[he or she]~~ remains employed by a board-certified animal control agency in the Commonwealth of Kentucky.
- (2) Upon termination of employment with a certified animal control agency or upon expiration of the certified animal control agency's certificate, a certified animal euthanasia specialist's certificate status shall automatically be moved by the board from an active to inactive status. The inactive certified individual shall not perform animal euthanasia until the person~~[he or she]~~ has obtained employment with a certified animal control agency with a certificate in active status, and applied to the board and been approved to move the animal euthanasia specialist certificate back into active status in accordance with 201 KAR 16:580.

~~[Section 8. Duties of a Certified Animal Euthanasia Specialist. The duties of certified animal euthanasia specialist shall include the following:~~

- ~~(1) Preparing animals for euthanasia;~~
- ~~(2) Carefully and accurately recording dosages, administration,~~

and drug waste;

- (3) Ordering supplies and drugs;
- (4) Maintaining the security of all controlled substances and drugs in accordance with 201 KAR 16:550 and other applicable federal, state, and local laws;
- (5) Reporting to the board any infraction of KRS Chapter 321 or 201 KAR Chapter 16;
- (6) Humanely euthanizing animals;
- (7) Disposing of the bodies in a manner consistent with KRS 257.160;
- (8) Maintaining his or her certification;
- (9) Reporting to the board any change of address within thirty (30) days; and
- (10) Providing a written response to a grievance or inquiry from the board within thirty (30) days of receipt.

Section 9. Approved Methods of Euthanasia.

- (1) A certified animal euthanasia specialist shall perform euthanasia by means of lethal injection on an animal by use of sodium pentobarbital or other AVMA approved euthanasia drug and AVMA approved administration methodology, in a manufactured dosage form, whose only indication is for euthanizing animals.
- (2) When using a lethal solution to perform euthanasia on an animal, a certified animal euthanasia specialist shall use the appropriate solution in accordance with the following methods and in the following order of preference:
 - (a) Intravenous injection by hypodermic needle;
 - (b) Intraperitoneal injection by hypodermic needle;
 - (c) Intracardial injection by hypodermic needle, but only on a sedated or unconscious animal; or
 - (d) Solution or powder added to food.]

Section 8. [Section 10.] Disciplinary Action. A certified animal euthanasia specialist shall be subject to disciplinary action pursuant to KRS 321.235[(7)] and 321.351 for a violation of state or federal statutes or administrative regulations.

Section 9. [Section 11.] Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Application for Certification as an Animal Euthanasia Specialist", 3/2023/12/2022[3/2020]; and
 - (b) "Reinstatement Application for Animal Euthanasia Specialists", 12/2022[3/2020].
- (2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:30[8:00] a.m. to 4:30 p.m. This material may also be obtained at www.kybve.com.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

**BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 7, 2023)**

201 KAR 16:562. Duties and responsibilities of an animal euthanasia specialist.

RELATES TO: KRS 257.160, 321.181, 321.207, 321.235, 321.351

STATUTORY AUTHORITY: KRS 321.207, 321.235, 321.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(3) requires the Kentucky Board of Veterinary Examiners to issue a certificate to a person who meets the qualifications of an animal euthanasia specialist and is approved by the board for a certificate. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the duties and responsibilities of an animal euthanasia specialist.

Section 1. Duties of a Certified Animal Euthanasia Specialist. The duties of a board-certified animal euthanasia specialist shall include the following:

- (1) Preparing animals for euthanasia;
- (2) Carefully and accurately recording dosages, administration, and drug waste;
- (3) Ordering supplies and drugs in accordance with the employing certified animal control agency's operating procedures;
- (4) Maintaining the security of all controlled substances and board-approved drugs in accordance with 201 KAR 16:550, 16:552, and other applicable federal, state, and local laws;
- (5) Reporting to the board any infraction of KRS Chapter 321 or 201 KAR Chapter 16;
- (6) Humanely euthanizing animals;
- (7) Disposing of the carcasses in a manner consistent with local, state, and federal laws, including KRS 257.160, and shall be carried out according to the standard operating procedures of the board-certified animal control agency;
- (8) Maintaining active certification with the board;
- (9) Reporting to the board any change of address, phone, or email within thirty (30) days; and
- (10) Providing a written response to a grievance or inquiry from the board within twenty (20) days of receipt.

Section 2. Animals Approved for Euthanasia by Board-certified Animal Euthanasia Specialists. Animal euthanasia shall be conducted within the restrictions outlined in this section, or the practice shall be considered the practice of veterinary medicine and subject to a penalty for practicing without a license.

(1) Euthanasia shall only be conducted upon animals owned by the certified animal control agency, except in cases of emergency as defined by/in KRS 321.181(10).

(a) Temporary transfer of ownership or a temporary contract shall not be used for the purpose of circumventing this subsection[provision]; and

(b) Wildlife shall be redirected to a board-licensed veterinarian, Certified Wildlife Rehabilitator authorized to operate pursuant to 301 KAR 2:075, or to a Nuisance Wildlife Control Operator authorized to operate pursuant to 301 KAR 3:120.;

(2) Euthanasia shall only be conducted upon the premises of the certified animal control agency, except in cases of emergency as defined by/in KRS 321.181(10).

(3) All euthanized animals shall be disposed of in accordance with the certified animal control agency's standard operating procedures for carcass disposal in accordance with Section 1(7) of this administrative regulation, and shall not be returned to a prior owner.

Section 3. Approved Drugs for Animal Euthanasia, and Anesthesia or Sedation of Animals Prior to Euthanasia by Certified Animal Euthanasia Specialists.

- (1) The drugs approved by the board for euthanasia are:
 - (a) Sodium pentobarbital; and
 - (b) Sodium pentobarbital with lidocaine.
- (2) The drugs approved by the board for animal anesthesia or sedation prior to euthanasia are, or any combination thereof:
 - (a) Acepromazine;
 - (b) Dexmedetomidine;
 - (c) Ketamine (thirty (30) day supply or less); and
 - (d) Xylazine.
- (3) Expired drugs shall not be used.
- (4) Expired drugs shall be disposed of in accordance with 201 KAR 16:552, Section 7.

Section 4. Approved Methods of Euthanasia.

(1) A certified animal euthanasia specialist shall perform euthanasia by means of lethal injection on an animal by use of board-approved euthanasia drugs and drugs used to anesthetize or sedate an animal prior to euthanasia in accordance with subsection (2) of this section~~[of this administrative regulation]~~.

(2) When using a lethal solution to perform euthanasia on an animal, a certified animal euthanasia specialist shall use the

appropriate solution in accordance with the following methods and in the following order of preference, ensuring both humane euthanasia of the animal and the safety of the individuals handling the animal:

- (a) Intravenous injection by hypodermic needle;
- (b) Intracardial injection by hypodermic needle, but only on an anesthetized or unconscious animal;
- (c) Intraperitoneal injection by hypodermic needle, but only on an anesthetized or unconscious animal; or
- (d) Solution or powder added to food.

Section 5. Except as provided for performing the duties set forth in this administrative regulation, an animal euthanasia specialist shall be prohibited from practicing veterinary medicine.

Section 6. Disciplinary Action. A certified animal euthanasia specialist shall be subject to disciplinary action pursuant to KRS 321.235 and 321.351 for a violation of state statutes or administrative regulations.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 7, 2023)

201 KAR 16:572. Certificate renewal for animal control agencies and animal euthanasia specialists; renewal notice.

RELATES TO: KRS 321.207

STATUTORY AUTHORITY: KRS 321.207(1), (3), 321.235(3)(3), 321.240(5)(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) and (3) require[requires] the Kentucky Board of Veterinary Examiners to issue a certificate to all animal control agencies being qualified to register with the United States Drug Enforcement Administration (DEA) to purchase, possess, and use board authorized controlled substances, and to all persons qualified to engage in the practice of animal euthanasia in the Commonwealth of Kentucky. KRS 321.235(3)(3) and 321.240(5)(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation requires a renewal notice to all certified animal control agencies and animal euthanasia specialists and requires all certified animal control agencies and animal euthanasia specialists to complete the renewal application and return it, along with the renewal fee to the board. It further requires all certified animal control agencies and animal euthanasia specialists to keep the board apprised of the legal name and current address of the certificate holder[licensee].

Section 1.

(1) The board shall, not later than February 1 of each year, email or mail to each certified animal control agency and animal euthanasia specialist a renewal notice.

(2) The renewal application shall be completed by the credential holder[certified entity] and returned to the board, including all required attachments and fees.

(3) Timely receipt of renewal application.

(a) Renewals bearing a postmark, or, if an online renewal, a timestamp, of March 1 or earlier shall be considered received on time.

(b) Renewals bearing a postmark, or, if an online renewal, a timestamp, between March 2 and April 30 shall be considered late and therefore incur a late fee pursuant to 201 KAR 16:514.

(4) The renewal fee shall be attached to the completed renewal form when it is returned to the board.

(a) For certified animal control agencies, the renewal form shall be the Renewal Application for Animal Control Agencies form or online equivalent form, including all required attachments.

(b) For certified animal euthanasia specialists, the renewal form shall be the Renewal Application for Animal Euthanasia Specialists form or online equivalent form, including all required attachments.

(5) The renewal fee shall be paid in accordance with 201 KAR 16:514.

Section 2. The board shall not be held responsible or liable for lost renewal notices, or renewal notices not received, or not received on time.

(1) Regardless of cause, the board shall not have to refund money to a certificate holder who fails to renew in a timely manner pursuant to Section 1(3) of this administrative regulation.

(2) If a certificate holder fails to renew by the grace period deadline, the certificate shall expire. The former certificate holder may apply for reinstatement of the certificate[license] within five (5) years from the date of expiration in accordance with 201 KAR 16:550 and 201 KAR 16:560. A reinstatement application shall be required during this period; an application for a new certificate[license] shall not be accepted until five (5) years after the last date of expiration.

Section 3. Current contact information shall be on file with the board.

(1)

(a) Every certified animal control agency shall:

1. File a proper and current mailing address, phone, and, if available, email with the board at its principal office; ~~and~~

2. Within thirty (30) days, notify the board of any changes of the agency's mailing address by submitting a completed Request for Name or Address Change form or online equivalent form provided by the board; and

3. Identify on the renewal form each person who is currently employed for the purpose of animal euthanasia and each board credential holder who is employed with, either directly or by contract or agreement, to conduct animal euthanasia or the practice of veterinary medicine or the practice of veterinary technology at the animal control agency.

(b)

1. Every certified animal control agency shall file an update with the board to notify the board of any changes to the designated on-site[onsite] manager tasked with management of controlled substances and the euthanasia program pursuant to 201 KAR 16:550, or of any changes of the on-site manager's[onsite] ~~manger's~~ legal name or personal address.

2. Updates may be filed on the annual Renewal Application for Animal Control Agencies form or online equivalent form, or on the Request ~~for/to Designate~~ a New Designated[Agency] On-site[Onsite] Manager form or online equivalent form, including all required attachments.

(c) Background checks. For a new agency designated on-site manager[onsite managers], the board may conduct a national or jurisdictional level background check on each designated on-site[onsite] manager. The check shall be processed by a board approved background check provider, and may include a copy of the designated on-site manager's fingerprints captured at a board approved location. The board may accept the results of an employment background check from the county office in lieu of a state or federal background check if the background check results are not more than six (6) months old from the date of application. The board may reject background checks that do not have an official seal or watermark, or that are more than ninety (90) days old. The board may impose additional requirements as a condition of certification or deny certification following the board's review of findings from a background check. The results shall be submitted to the board within thirty (30) days of designating a new designated on-site[onsite] manager.

(2)

(a) Every certified animal euthanasia specialist shall:

1. File his or her legal name and proper and current mailing address with the board at its principal office; and

2. Within thirty (30) days, notify the board of any changes of his or her legal name or mailing address by submitting a completed Request for Name or Address Change form or online equivalent form provided by the board.

(b) Updates may be filed on the annual Renewal Application for Animal Euthanasia Specialists form or online equivalent form, or on the Request for Name or Address Change form or online equivalent form, including all required attachments.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Renewal Application for Animal Control Agencies", 12/2022[3/2020];

(b) "Renewal Application for Animal Euthanasia Specialists", 12/2022[3/2020];

(c) "Request for a New Designated On-site[to Designate a New Agency Onsite] Manager", 12/2022[3/2020]; and

(d) "Request for Name or Address Change", 12/2022[2/2020].

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:30[8:00] a.m. to 4:30 p.m. This material may also be obtained at www.kybve.com.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

BOARDS AND COMMISSIONS

Board of Physical Therapy

(As Amended at ARRS, March 7, 2023)

201 KAR 22:170. Physical Therapy Compact Commission.

RELATES TO: KRS 327.300(12)

STATUTORY AUTHORITY: KRS 327.300(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.300(12) requires the Board of Physical Therapy to review any rule adopted by the Physical Therapy Compact Commission within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS Chapter 13A.190 and for filing the rule as an accompanying ordinary administrative regulation, following the requirements of KRS Chapter 13A. This administrative regulation sets forth the Rules adopted by the Physical Therapy Compact Commission.

Section 1. The Kentucky Board of Physical Therapy shall comply with all bylaws, rules, and administrative regulations of the Physical Therapy Compact Commission, which includes the Physical Therapy Compact Commission Rules and Bylaws.

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

(a) "Physical Therapy Compact Commission Rules", October 2022[2024]; and

(b) "Physical Therapy Compact Commission Bylaws", October 2021.

(2)[(a)] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.[;] or

~~(b) This material may be obtained~~ on the Kentucky Board of Physical Therapy's Web site at <https://pt.ky.gov>.

(3) This material may also be obtained at:

(a) The Physical Therapy Compact Commission, 124 West Street South, Third Floor, Alexandria, Virginia, 22314; or

(b) <http://www.ptcompact.org>.

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

BOARDS AND COMMISSIONS

Board of Social Work

(As Amended at ARRS, March 7, 2023)

201 KAR 23:051. Renewal, expiration, termination, and 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)[(1), (3), (6), (7), 335.190,]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1) requires the board to administer and enforce the provisions of KRS 335.010 to 335.160 and 335.990, and to evaluate and approve the qualifications of applicants for licensure. KRS 335.070(3) [39A.180 and 39A.190 allow agencies]authorizes the board to promulgate administrative regulations to carry out the provisions of KRS 335.010 to 335.160 and 335.990, including [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 335.070(6) authorizes the board to renew licenses. 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, expiration, termination, and reinstatement of a license to engage in the practice of social work.

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) An Application for[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 the licensee's[their] contact information with the board within ten (10) days of the changes[such change(s)] by:

(a) The United States Postal Service[USPS];

(b) Email;

(c) [by]Hand; or

(d) [via]The self-service portal via the board's[board] Web site at bsw.ky.gov[; and] shall immediately notify the board in writing if the address changes.]

(4) Each licensee shall[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 an Application for[a] Renewal [form-] along with documentation of completed continuing education requirements pursuant to[per] 201 KAR 23:075, Section 2; [and]

(3) Pay a penalty of \$100 [dollars];

(4)(a) Submit official documentation of employment beginning with the date of expiration of the license; and

(b) Submit 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) If [When] reimbursement for services occurred during the grace period, the licensee shall reconcile the matter with the licensee's [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 license [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)(a) Section 3(5) of this administrative regulation [(e)] is applicable to this section; and

(b) [(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 shall [will] be terminated effective the date of the [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 shall be [is] based on:

(a) The request by the former licensee;

(b) The length of time the license was inactive; and

(c) Any extenuating circumstance creating the need for reinstatement that shall [can] be made in writing to the board by the licensee, but shall [cannot] be related to disciplinary action or renewal of the license. [;]

(3) [(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]

(4) [(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 on the board's Web site at bsw.ky.gov.

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.

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (As Amended at ARRS, March 7, 2023)

202 KAR 7:201. Emergency medical responders.

RELATES TO: KRS 12.355, 311A.010, 311A.025, 311A.030, 311A.050-311A.090 [311A.060], 311A.095, 311A.100, 311A.120, 311A.140, 311A.145, 311A.160, 10 U.S.C. 121, 12304

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to promulgate administrative regulations relating to emergency medical responders. KRS 311A.025 and 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes the standards relating to emergency medical responders.

Section 1. Emergency Medical Responder Student Eligibility.

[(+)] An individual [Individuals] shall be eligible to enroll as a student in an Emergency Medical Responder training program if the applicant:

[(a)] Is at least fifteen (15) years of age; and

(b) Is currently enrolled in grades 9-12 with a minimum GPA of 2.0; or

(c) Holds a high school diploma, high school equivalency diploma, or home school diploma.

(2) The student applicant shall:

(1) Is not [Not] currently [be-] subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification; and

[(b)] Pass a criminal background check through the Kentucky Administrative Office of the Courts (AOC) meeting the requirements of KRS 311A.050; and]

(2) [(e)] Meets [Meet] all additional requirements established by the EMS Training and Educational Institution (TEI).

Section 2. Certification Requirements. Individuals desiring initial certification as an Emergency Medical Responder shall:

(1) [Be at least sixteen (16) years of age;

(2) Successfully complete a board approved training program that conforms to the United States Department of Transportation, National Highway Traffic Safety Administration, National Emergency Medical Services Education [Educational] Standards- [Instructional Guidelines for the] Emergency Medical Responder Instructional Guidelines, except that the education curriculum shall not be satisfied by the completion of refresher or transition courses alone;

(2) [(3)] Meet all educational standards established in 202 KAR 7:601;

(3) [(4)] Obtain certification as a NREMT-Emergency Medical Responder;

(4) [(5)] Submit a completed [application for-] EMR Initial Certification Application in KEMSIS;

(5) [(6)] Pay the fee required for certification pursuant to 202 KAR 7:030;

(6) [(7)] Undergo a background check pursuant to KRS 311A.050 and 311A.100, which shall be:

(a) National in scope for an applicant not currently certified at any level in Kentucky;

(b) Statewide in scope for an applicant with current certification in Kentucky;

(c) Less than six (6) months old when the applicant submits to the board all requirements for certification;

(d) Provided by a vendor that has been contracted through the board; and

(e) Submitted to the board by the company that conducts the background check; and

(7) [(8)] Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

(a) A Social Security card;

(b) Birth certificate;

(c) A United States Citizenship and Immigration Services (U.S.C.I.S.) Permanent Resident Card (form I-551/Green Card); or

(d) Other legal authorization to live and work in the United States.

Section 3. Renewal of Certification and Continuing Education Requirements. (1) An Emergency Medical Responder shall be eligible for certification renewal if:

(a) The applicant submits a completed EMR Certification Renewal Application in KEMSIS;

(b) The applicant maintains written evidence of:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma training required by KRS 311A.120; and

3. Awareness of Sexual Violence Training required by KRS 311A.120;

(c) The applicant pays the fee pursuant to 202 KAR 7:030; and

(d) The applicant maintains evidence of:

1. Current certification by the NREMT as an Emergency Medical Responder, except that if this option is used, the board may request, though a continuing education audit, proof of continuing education to verify compliance with the requirements of this section; or

2. Successful completion of the NREMT Emergency Medical Responder National Component of the Continued Competency Program for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(2) An application for certification renewal shall be denied if:

(a) Prior to the certification expiration date, the applicant has not met the applicable requirements of this section; or

(b) The applicant has been subjected to disciplinary action that prevents certification renewal at the time of application.

(3) A certified Emergency Medical Responder, in good standing, who is a member of a National Guard or military reserve unit called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 12304[673b], shall be renewed according to KRS 12.355 upon submission of the Military Extension Application.

(4) The board office may audit an Emergency Medical Responder's continuing education and continuing education records. The Emergency Medical Responder shall submit the documentation requested within ten (10) business days of receipt of the board's request.

(5) The Emergency Medical Responder shall maintain documentation of all continuing education for three (3) years from the date of completion.

(6) If documentation of continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days of receipt of the board's request, the Emergency Medical Responder certification for the individual shall be summarily revoked and the individual shall reapply for certification through Reinstatement, if eligible.

(7) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

Section 4. Reinstatement of Certification. (1) An Emergency Medical Responder whose certification has lapsed may reinstate his or her certificate by submitting to the board:

(a) A completed EMR Reinstatement Certification Application in KEMSIS;

(b) Evidence of previous certification as an Emergency Medical Responder in the Commonwealth of Kentucky;

(c) Proof of current training in:

1. Pediatric Abusive Head Trauma as required by KRS 311A.120;

2. Awareness of Sexual Violence Training required by KRS 311A.120; and

3. HIV/AIDS training required by KRS 311A.120; and

(d) Evidence of successful completion of the NREMT Emergency Medical Responder National Component of the Continued Competency Program for Continuing Education within twelve (12) months preceding his or her application for reinstatement of Emergency Medical Responder.

(2) The applicant shall pay the fee required for reinstatement pursuant to 202 KAR 7:030.

(3) The applicant shall undergo a national background check provided by a vendor that has been contracted through the board. The applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(4) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of certification.

(5) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.

(6) An applicant who is ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 5. Emergency Medical Responder Reciprocity. (1) An individual who is certified in a contiguous state to the Commonwealth of Kentucky or by the NREMT as a NREMT-Emergency Medical Responder or any member of the United States Armed Forces, or veteran who has transitioned within the past six (6) years from the United States Armed Forces, and has been registered by the National Registry as a NREMT-Emergency Medical Responder or EMT[,] shall be eligible for reciprocity for Kentucky certification as an Emergency Medical Responder if the applicant submits:

(a) A completed EMR Reciprocity Certification Application in KEMSIS;

(b) Proof of the applicant's current unrestricted certification as a NREMT-Emergency Medical Responder or current Emergency Medical Responder certification in a contiguous state to the Commonwealth of Kentucky, or proof of completing a board-approved United States Armed Forces medical training course which included NREMT-Emergency Medical Technician certification; and

(c) Proof of current training in:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma as required by KRS 311A.120; and

3. Awareness of Sexual Violence Training required by KRS 311A.120.

(2) An applicant shall pay the fee required for reciprocity pursuant to 202 KAR 7:030.

(3) An applicant for Emergency Medical Responder reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of certification through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) An Emergency Medical Responder certified pursuant to this administrative regulation shall not perform any procedures or skill on which the Emergency Medical Responder has not been trained. An Emergency Medical Responder who performs a skill for which the Emergency Medical Responder does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) An Emergency Medical Responder certified pursuant to this section shall complete the Kentucky supplemental Emergency Medical Responder curricula for the procedures listed in 202 KAR 7:701 prior to beginning work for a licensed agency in Kentucky.

(a) Kentucky supplemental Emergency Medical Responder curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(b) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the Emergency Medical Responder for a minimum of three (3) years. Failure to submit the EMR Supplemental Curriculum Training Verification Report upon request shall result in revocation of the Emergency Medical Responder certification.

(c) If an Emergency Medical Responder certified pursuant to this section fails to supply verification of competency as required by subsection (7) of this section, the Emergency Medical Responder shall be ineligible to apply for and receive Emergency Medical Responder reciprocity certification until the applicant has submitted the EMR Supplemental Curriculum Training Verification Report as required by 202 KAR 7:701, and shall reapply for Reciprocity through the process listed in this section.

Section 6. Scope of Practice. ~~[(1)]~~ An Emergency Medical Responder shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

Section 7. Expiration of Certification. (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an Emergency Medical Responder's certification lapses or expires, the Emergency Medical Responder shall cease provision of emergency medical services.

(3) An Emergency Medical Responder who has allowed his or her certification to lapse or expire shall reinstate certification pursuant to

Section 4 of this administrative regulation.

Section 8. Surrender of Certification. (1) An Emergency Medical Responder surrendering certification shall:

(a) Submit a completed ~~Voluntary[Application for EMR]~~ Surrender of ~~EMR~~ Certification ~~Application~~ in KEMSIS; and

(b) Pay the fee pursuant to 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director with whom the applicant is affiliated immediately upon surrendering his or her certification.

Section 9. Reporting Requirements. (1) An Emergency Medical Responder shall maintain current demographic information in KEMSIS including:

(a) Legal name;

1. Any changes to an Emergency Medical Responder's legal name shall be submitted using the Name Change Application in KEMSIS; and

2. One (1) of the following documents as verification of name change:

a. Social Security card;

b. Driver's license; or

c. Passport;

(b) Mailing address;

(c) Email address; and

(d) Phone number.

(2) An Emergency Medical Responder who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 10. Exemptions from Emergency Medical Responder Administrative Regulations. Certification requirements for an Emergency Medical Responder shall not apply to:

(1) United States military personnel or state National Guard or employees of the United States government while providing services on a United States government-owned or operated facility, or while engaged in the performance of their official duties under federal law, or while providing assistance in a mass casualty or disaster type situation; or

(2) An Emergency Medical Responder certified in another state or territory of the United States who:

(a) Comes into Kentucky to transport a patient from another state into Kentucky; or

(b) Is transporting a patient through the state of Kentucky to an out-of-Kentucky location.

Section 11. Public Notice of Negative Action. The board office shall cause to be published on the board website the name of an Emergency Medical Responder who:

(1) Is fined;

(2) Is placed on probationary status;

(3) Is placed on restricted status;

(4) Is suspended; or

(5) Has had his or her certification revoked.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Emergency Medical Responder Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077B, January 2009;

(b) "EMR Initial Certification Application" in KEMSIS, July 2019;

(c) "EMR Certification Renewal Application" in KEMSIS, July 2019;

(d) "EMR Reciprocity Certification Application" in KEMSIS, July 2019;

(e) "EMR Reinstatement Certification Application" in KEMSIS, July 2019;

(f) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(g) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;

(h) "EMR Supplemental Curriculum Training Verification Report", July 2019;

(i) ~~["[Voluntary[EMR Certification] Surrender of EMR Certification Application"]~~ in KEMSIS, July 2019;

(j) "National Registry of Emergency Medical Technicians National Continued Competency Program EMR", October 2016;

(k) ~~["National Registry of Emergency Medical Technicians Emergency Medical Responder Psychomotor Examination Users Guide", September 2016];~~

~~[(h)]~~ "Name Change Application" in KEMSIS, July 2019;

~~[(l)]~~ ~~[(m)]~~ "Military Extension Application" in KEMSIS, July 2019; and

~~[(m)]~~ ~~[(n)]~~ "United States Citizenship and Immigration Services (U.S.C.I.S.) Permanent Resident Card (form I-551/Green Card)", July 2019.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 500 Mero Street, 5th Floor 5SE32, Frankfort, Kentucky 40601 [2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509], by appointment, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the board's Web site at: kyems.com.

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KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (As Amended at ARRS, March 7, 2023)

202 KAR 7:301. Emergency medical technician.

RELATES TO: KRS 12.355, 311A.010, 311A.025, 311A.050-311A.090[311A.060], 311A.095, 311A.100, 311A.120, 311A.130, 311A.140, 311A.145, 311A.165, 10 U.S.C. 121, 12304

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.140, 311A.165

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians.

Section 1. Emergency Medical Technician Student Eligibility.

[(1)] An individual~~Individuals~~ shall be eligible to enroll as a student in an Emergency Medical Technician education and training program if the applicant:

[(a)] ~~Is at least seventeen (17) years of age; and~~
[(b)] ~~Is currently enrolled in grades 9–12 with a minimum GPA of 2.0; or~~

[(c)] ~~Holds a high school diploma, high school equivalency diploma, or home school diploma.~~

[(2)] ~~The student applicant shall:~~

[(1)] ~~Is not~~~~Not~~ currently ~~be~~ subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification; and

[(b)] ~~Pass a criminal background check through the Kentucky Administrative Office of the Courts (AOC) meeting the requirements of KRS 311A.050; and~~

[(2)]~~[(c)]~~ Meets~~Meet~~ all additional requirements established by the EMS Training and Educational Institution (EMS-TEI).

Section 2. Certification Requirements. Individuals desiring initial certification as an Emergency Medical Technician shall:

[(1)] ~~Be at least eighteen (18) years of age;~~

[(2)] Successfully complete a board approved education and training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration National Emergency Medical Services Education~~Education~~ Standards ~~Instructional Guidelines for the~~ Emergency Medical Technician Instructional Guidelines, except that the educational curriculum shall not be satisfied by the completion of refresher or transition courses alone;

[(2)]~~[(3)]~~ Meet all educational standards established by 202 KAR 7:601;

[(3)]~~[(4)]~~ Obtain certification as a NREMT-Emergency Medical Technician;

[(4)]~~[(5)]~~ Submit a completed EMT Initial Certification Application in KEMSIS;

[(5)]~~[(6)]~~ Pay the fee required for certification pursuant to 202 KAR 7:030;

[(6)]~~[(7)]~~ Undergo a background check pursuant to KRS 311A.050 and 311A.100, which shall be:

(a) National in scope for an applicant not currently certified at any level in Kentucky;

(b) Statewide in scope for an applicant with current certification in Kentucky;

(c) Less than six (6) months old when the applicant submits to the board all requirements for certification;

(d) Provided by a vendor that has been contracted through the board; and

(e) Submitted to the board by the company that conducts the background check; and

[(7)]~~[(8)]~~ Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

(a) A Social Security card;

(b) Birth certificate;

(c) A United States Citizenship and Immigration Services (U.S.C.I.S.) Permanent Resident Card (form I-551/Green Card); or

(d) Other legal authorization to live and work in the United States.

Section 3. Renewal of Certification and Continuing Education Requirements. (1) An Emergency Medical Technician shall be eligible for certification renewal if:

(a) The applicant submits a completed EMT Certification Renewal Application in KEMSIS;

(b) The applicant maintains written evidence of:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma required by KRS 311A.120; and

3. Awareness of Sexual Violence Training required by KRS 311A.120;~~[(c)]~~

(c) The applicant pays the fee required for renewal pursuant to 202 KAR 7:030; and

(d) The applicant maintains evidence of:

1. Current certification by the NREMT as an Emergency Medical Technician, except that if this option is used, the board may request, through a continuing education audit, proof of continuing education to verify compliance with the requirements of this section; or

2. Successful completion of the NREMT Emergency Medical Technician National Component of the Continued Competency Program ~~National Component~~ for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(2) An application for certification renewal shall be denied if:

(a) Prior to the certification expiration date, the applicant has not met the applicable requirements of this section; or

(b) The applicant has been subjected to disciplinary action that prevents certification renewal at the time of application.

(3) A certified Emergency Medical Technician, in good standing, who is a member of a National Guard or a military reserve unit called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 12304~~673b~~, shall be renewed according to KRS 12.355 upon submission of the Military Extension Application.

(4) The board office may audit an Emergency Medical Technician's continuing education and continuing education records. The Emergency Medical Technician shall submit the documentation requested within ten (10) business days of receipt of the board's request.

(5) If documentation of continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days of receipt of the board's request, the Emergency Medical Technician certification for the individual shall be summarily revoked and the individual shall reapply for certification through reinstatement if eligible.

(6) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

(7) The Emergency Medical Technician shall maintain documentation of all continuing education for three (3) years from the date of completion.

Section 4. Reinstatement of Certification. (1) An Emergency Medical Technician whose certification has lapsed may reinstate his or her certificate by submitting to the board:

(a) A completed EMT Reinstatement Certification Application in KEMSIS;

(b) Evidence of previous certification as an Emergency Medical Technician in the Commonwealth of Kentucky;

(c) Proof of current training in:

1. Pediatric Abusive Head Trauma as required by KRS 311A.120;

2. Awareness of Sexual Violence Training required by KRS 311A.120; and

3. HIV/AIDS training required by KRS 311A.120; and

(d) Payment of the fee pursuant to 202 KAR 7:030.

(2) The applicant for reinstatement of certification shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of certification.

(3) An applicant for reinstatement of certification shall submit to the board evidence of successful completion of the NREMT Emergency Medical Technician National Component of the Continued Competency Program for Continuing Education within twelve (12) months preceding his or her application for reinstatement of the Emergency Medical Technician.

(4) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.

(5) An applicant who is ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 5. Emergency Medical Technician Reciprocity. (1) An individual who is certified in a contiguous state to the Commonwealth of Kentucky or by the NREMT as an Emergency Medical Technician or any member of the United States Armed Forces, or veteran who has transitioned within the past six (6) years from the United States Armed Forces, and has been registered by the National Registry as a NREMT-Emergency Medical Technician shall be eligible for reciprocity for Kentucky certification as an Emergency Medical Technician if the applicant submits:

(a) ~~A~~^[a] completed EMT Reciprocity Certification Application in KEMSIS; ~~and proof of:~~

(b) ~~(a)~~ ^[a] Proof of the ~~The~~ applicant's current unrestricted certification as a NREMT-Emergency Medical Technician or current Emergency Medical Technician certification in a contiguous state to the Commonwealth of Kentucky, or proof of completing a board-approved United States Armed Forces medical training course which included NREMT-Emergency Medical Technician certification; and

(c) ~~(b)~~ ^[b] Proof of current ~~Current~~ training in:

1. HIV/AIDS training required by KRS 311A.120;
2. Pediatric Abusive Head Trauma as required by KRS 311A.120; and
3. Awareness of Sexual Violence Training required by KRS 311A.120.

(2) An applicant shall pay the fee required for certification through reciprocity pursuant to 202 KAR 7:030.

(3) An applicant for Emergency Medical Technician reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of certification through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) An Emergency Medical Technician certified pursuant to this administrative regulation shall not perform any procedures or skill on which the Emergency Medical Technician has not been trained. An Emergency Medical Technician who performs a skill for which the Emergency Medical Technician does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) An Emergency Medical Technician certified pursuant to this section shall complete the Kentucky supplemental Emergency Medical Technician curricula for the procedures listed in 202 KAR 7:701 prior to beginning work for a licensed agency in Kentucky.

(a) Kentucky supplemental Emergency Medical Technician curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(b) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the Emergency Medical Technician for a minimum of three (3) years. Failure to submit the EMT Supplemental Curriculum Training Verification Report upon request shall result in revocation of the Emergency Medical Technician certification.

(c) If an Emergency Medical Technician certified pursuant to this section fails to supply verification of competency as required by subsection (7) of this section, the Emergency Medical Technician shall be ineligible to apply for and receive Emergency Medical Technician reciprocity certification until the applicant has submitted the EMT Supplemental Curriculum Training Verification Report as required by 202 KAR 7:701, and shall reapply for reciprocity through the process listed in this section.

Section 6. Scope of Practice. ~~[(4)]~~ An Emergency Medical

Technician shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

Section 7. Expiration of Certification. (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an Emergency Medical Technician's certification lapses or expires, the Emergency Medical Technician shall cease provision of emergency medical services.

(3) An Emergency Medical Technician who has allowed his or her certification to lapse or expire shall be required to reinstate certification pursuant to Section 4 of this administrative regulation.

Section 8. Downgrading Certification. (1) An Emergency Medical Technician currently certified as an Emergency Medical Technician by the board shall be eligible for certification downgrade if:

(a) The certification is in good standing with no pending disciplinary action;

(b) The applicant submits a completed EMT Certification Downgrade Application in KEMSIS; and

(c) The applicant pays the fee pursuant to 202 KAR 7:030.

(2) An Emergency Medical Technician shall only be eligible to downgrade his or her certification to an Emergency Medical Responder certification.

(3) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(4) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

(a) Statewide in scope for an applicant with current certification in Kentucky;

(b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and

(c) Provided by a vendor that has been contracted through the board.

~~[(5)]~~ The applicant shall provide proof of:

~~(a) Current certification by the NREMT as an Emergency Medical Technician; or~~

~~(b) Successful completion of the NREMT Emergency Medical Technician National Continued Competency Program for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601; and~~

~~(c) Current training in:~~

- ~~1. Pediatric Abusive Head Trauma required by KRS 311A.120; and~~
- ~~2. Awareness of Sexual Violence Training required by KRS 311A.120.]~~

~~[(5)]~~^[(6)] Downgrade shall be denied if the applicant has not met the requirements of this section or has been subject to disciplinary action that prevents certification at the time of application.

~~[(6)]~~^[(7)] The applicant shall be responsible for meeting the renewal requirements of the downgraded certification level issued prior to expiration of that certification.

~~[(7)]~~^[(8)] To reinstate the certification or license that was previously held, the applicant shall meet the regulatory requirements for that level of certification or licensure.

~~[(8)]~~^[(9)] The applicant shall notify the board's licensed service director with whom the applicant is affiliated immediately upon downgrading his or her certification.

~~[(9)]~~^[(10)] Once the applicant has downgraded his or her certification or license, the applicant shall no longer be permitted to provide emergency medical services at the previous certification or license level held.

~~[(10)]~~^[(11)] An applicant applying for downgrade who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

~~[(11)]~~^[(12)] All endorsements, certifications, or licenses held at the previous certification or license level shall be void at the completion of the downgrade.

Section 9. Surrender of Certification. (1) An Emergency Medical Technician surrendering certification shall:

- (a) Submit a completed EMT Certification Surrender Application

in KEMSIS; and

(b) Pay the fee pursuant to 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director with whom the applicant is affiliated immediately upon surrendering his or her certification.

Section 10. Reporting Requirements. (1) An Emergency Medical Technician shall maintain current demographic information in KEMSIS including:

(a) Legal name;

1. Any changes to an Emergency Medical Technician's legal name shall be submitted using the Name Change Application in KEMSIS; and

2. One (1) of the following documents as verification of name change:

a. Social Security card;

b. Driver's license; or

c. Passport;

(b) Mailing address;

(c) Email address; and

(d) Phone number.

(2) An Emergency Medical Technician who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 11. Exemptions from Emergency Medical Technician Administrative Regulations. Certification requirements for an Emergency Medical Technician shall not apply to:

(1) United States military personnel or state National Guard or employees of the United States government while providing services on a United States government owned or operated facility, or while engaged in the performance of their official duties under federal law, or while providing assistance in a mass casualty or disaster type situation; or

(2) An Emergency Medical Technician certified in another state or territory of the United States who:

(a) Comes into Kentucky to transport a patient from another state into Kentucky; or

(b) Is transporting a patient through the state of Kentucky to an out-of-Kentucky location.

Section 12. Public Notice of Negative Action. The board office shall cause to be published on the board Web site the name of an Emergency Medical Technician who:

(1) Is fined;

(2) Is placed on probationary status;

(3) Is placed on restricted status;

(4) Is suspended; or

(5) Has had his or her certification revoked.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Emergency Medical Technician Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077C, January 2009;

(b) "EMT Initial Certification Application" in KEMSIS, July 2019;

(c) "EMT Certification Renewal Application" in KEMSIS, July 2019;

(d) "EMT Reciprocity Certification Application" in KEMSIS July 2019;

(e) "EMT Reinstatement Certification Application" in KEMSIS, July 2019;

(f) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(g) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;

(h) "EMT Supplemental Curriculum Training Verification Report", July 2019;

(i) "EMT Certification Downgrade Application" in KEMSIS, July 2019;

(j) "EMT Certification Surrender Application" in KEMSIS, July

2019;

(k) "National Registry of Emergency Medical Technicians National Continued Competency Program EMT", October 2016;

(l) ~~["National Registry of Emergency Medical Technicians Emergency Medical Technician Psychomotor Examination Users Guide", September 2016;~~

~~{m}] "Name Change Application" in KEMSIS, July 2019;~~

~~{m}]{n}] "Military Extension Application" in KEMSIS, July 2019;~~ and

~~{n}]{o}] "United States Citizenship and Immigration Services (U.S.C.I.S.) Permanent Resident Card (form I-551/Green Card)", July 2019.~~

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(3) This material is also available on the board's Web site at: kyems.com.

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KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (As Amended at ARRS, March 7, 2023)

202 KAR 7:330. Advanced emergency medical technician.

RELATES TO: KRS ~~12.355, 38.030,~~ Chapter 39, ~~[38.030,~~ ~~§9A.050, 311A.010, 311A.020, 311A.025, 311A.050-f, 311A.090,~~ 311A.095, 311A.100, ~~311A.120,~~ 311A.140, 311A.145, 311A.150, 311A.195, 10 U.S.C. 121, ~~12304[672(b)]~~

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025(2) requires the ~~board/Kentucky Board of Emergency Medical Services]~~ to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the Advanced Emergency Medical Technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technician.

Section 1. Advanced Emergency Medical Technician Student Eligibility. ~~An individual~~

~~[(4)] [Individuals]~~ shall be eligible to enroll ~~as a student~~ in an Advanced Emergency Medical Technician education and training program if the applicant:

~~[(a)] Is at least eighteen (18) years of age;~~

~~(b) Holds a high school diploma, high school equivalency diploma, or home school diploma; and]~~

~~(1)[(c)] Is currently certified at a minimum of an Emergency Medical Technician by the board or the NREMT;[-]~~

~~[(2) The student applicant shall:]~~

~~(2)[(a)] Is not[Not] currently [be-]subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification; and~~

~~[(b) Pass a criminal background check through the Kentucky Administrative Office of the Courts (AOC) meeting the requirements of KRS 311A.050; and]~~

~~(3)[(c)] Meets[Meet] all additional requirements established by the EMS Training and Educational Institution (EMS-TEI).~~

Section 2. Certification Requirements. (1) Individuals desiring initial certification as an Advanced Emergency Medical Technician shall:

(a) Successfully complete a board approved education and training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration National Emergency Medical Services ~~Education[Educational]~~ Standards-~~[Instructional Guidelines for~~

~~the~~ Advanced Emergency Medical Technician Instructional Guidelines, except that the educational curriculum shall not be satisfied by the completion of refresher or transition courses alone;

(b) Meet all educational standards established in 202 KAR 7:601;

(c) Obtain certification as a NREMT-Advanced Emergency Medical Technician;

(d) Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

1. A Social Security card;
2. Birth certificate;

3. A United States Citizenship and Immigration Services (U.S.C.I.S.) Permanent Resident Card (form I-551/Green Card); or
4. Other legal authorization to live and work in the United States.

(e) Submit a completed AEMT Initial Certification Application in KEMSIS; and

(f) Pay the fee pursuant to 202 KAR 7:030 for certification as an Advanced Emergency Medical Technician.

(2) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

(a) National in scope for an applicant not currently certified at any level in Kentucky;

(b) Statewide in scope for an applicant with current certification in Kentucky;

(c) Less than six (6) months old when the applicant submits to the board all requirements for certification; and

(d) Provided by a vendor that has been contracted through the board.

(3) An applicant shall not directly submit a background check. The background check shall be submitted to the board by the company that conducts the background check.

Section 3. Renewal of Certification and Continuing Education Requirements. (1) An Advanced Emergency Medical Technician shall be eligible for certification renewal if:

(a) The applicant submits a completed AEMT Certification Renewal Application in KEMSIS;

(b) The applicant maintains written evidence of:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma as required by KRS 311A.120; and

3. Awareness of Sexual Violence Training required by KRS 311A.120;

(c) The applicant pays the fee required for renewal pursuant to 202 KAR 7:030; and

(2) The applicant maintains evidence of:

(a) Current certification by the National Registry of Emergency Medical Technicians as an Advanced Emergency Medical Technician, except that if this option is used, the board may request, through a continuing education audit, proof of continuing education to verify compliance with the continuing education requirements of this section; or

(b) Successful completion of the NREMT Advanced Emergency Medical Technician National Component of the Continued Competency Program, for Continuing Education which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(3) An application for certification renewal shall be denied if:

(a) Prior to the certification expiration date, the applicant has not met the applicable requirements of this section;

(b) The applicant has been subjected to disciplinary action that prevents certification renewal at the time of application; or

(c) The applicant is delinquent on fines or fees owed to the board pursuant to KRS 311A.055, 311A.060, or 202 KAR 7:030.

(4) A certified Advanced Emergency Medical Technician, in good standing, who is a member of a branch of the United States National Guard or a military reserve unit called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 12304~~673b~~, shall be renewed in accordance with KRS 12.355 upon submission of the Military Extension Application.

(5) The board office may audit an Advanced Emergency Medical Technician's continuing education and continuing education

records.

(6) The Advanced Emergency Medical Technician shall submit the documentation requested within ten (10) business days of receipt of the board's request. If documentation of continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days of receipt of the board's request, the Advanced Emergency Medical Technician certification for the individual shall be summarily revoked and the individual shall reapply for certification through Reinstatement if eligible.

(7) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

(8) The Advanced Emergency Medical Technician shall maintain documentation of all continuing education for three (3) years from the date of completion.

Section 4. Reinstatement of Certification. (1) An Advanced Emergency Medical Technician whose Kentucky certification has lapsed shall be eligible for reinstatement of certification if the applicant submits:

(a) A completed AEMT Reinstatement Certification Application in KEMSIS; and

(b) Evidence of:

1. Previous certification as an Advanced Emergency Medical Technician in the Commonwealth of Kentucky;

2. Proof of current training in:

a. Pediatric Abusive Head Trauma as required by KRS 311A.120;

b. Awareness of Sexual Violence Training required by KRS 311A.120; and

c. HIV/AIDS training required by KRS 311A.120.

(2) The applicant shall pay the fee pursuant to 202 KAR 7:030.

(3) The applicant for reinstatement of certification shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of certification.

(4) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.

(5) An applicant for reinstatement of an Advanced Emergency Medical Technician certification shall submit to the board evidence of successful completion of the NREMT Advanced Emergency Medical Technician National Component of the Continued Competency Program for Continuing Education within the twelve (12) months preceding application for reinstatement of the Advanced Emergency Medical Technician.

(6) An applicant who is ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 5. Advanced Emergency Medical Technician Reciprocity.

(1) An individual who is certified in a contiguous state to the Commonwealth of Kentucky or by the NREMT as an Advanced Emergency Medical Technician or any member of the United States Armed Forces, or veteran who has transitioned within the past six (6) years from the United States Armed Forces, and has been registered by the National Registry as an Advanced Emergency Medical Technician or EMT and has successfully completed a board-approved United States Armed Forces medical training course shall be eligible for reciprocity for certification as an Advanced Emergency Medical Technician in Kentucky if the applicant submits:

(a) A completed AEMT Reciprocity Certification Application in KEMSIS;

(b) Proof of the applicant's current unrestricted NREMT certification as an Advanced Emergency Medical Technician or

current Advanced Emergency Medical Technician certification in a contiguous state to the Commonwealth of Kentucky or proof of completing a board-approved United States Armed Forces medical training course which included NREMT-Emergency Medical Technician certification; and

(c) ~~Proof~~**[Completion]** of current training in:

1. HIV/AIDS training required by KRS 311A.120;
2. Pediatric Abusive Head Trauma training required by KRS 311A.120; and
3. Awareness of Sexual Violence Training required by KRS 311A.120.

(2) An applicant shall pay the fee required for certification through reciprocity pursuant to 202 KAR 7:030.

(3) An applicant for Advanced Emergency Medical Technician reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board. An applicant shall not directly submit a background check. The background check shall be submitted to the board by the company that conducts the background check. Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of certification through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) An Advanced Emergency Medical Technician certified pursuant to Section 2 of this administrative regulation shall not perform any procedures or skill on which the Advanced Emergency Medical Technician has not been trained. An Advanced Emergency Medical Technician who performs a skill for which the Advanced Emergency Medical Technician does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) An Advanced Emergency Medical Technician certified pursuant to this section shall complete the Kentucky supplemental Advanced Emergency Medical Technician curricula for the procedures listed in 202 KAR 7:701 prior to beginning work for a licensed agency in Kentucky.

(8) Kentucky supplemental Advanced Emergency Medical Technician curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(9) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the Advanced Emergency Medical Technician for a minimum of three (3) years. Failure to submit the AEMT Supplemental Curriculum Training Verification Report shall result in revocation of Advanced Emergency Medical Technician certification.

(10) If an Advanced Emergency Medical Technician certified pursuant to this section fails to supply verification of competency as required by subsection (7) of this section the Advanced Emergency Medical Technician shall be ineligible to apply for and receive Advanced Emergency Medical Technician reciprocity certification until the applicant has submitted the AEMT Supplemental Curriculum Training Verification Report as required pursuant to 202 KAR 7:701, and shall reapply for Reciprocity through the process set forth in this section.

Section 6. Scope of Practice. An Advanced Emergency Medical Technician shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

Section 7. Expiration of Certification. (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an Advanced Emergency Medical Technician's certification lapses or expires, the Advanced Emergency Medical Technician shall cease provision of emergency medical services.

(3) An Advanced Emergency Medical Technician who has allowed his or her certification to lapse or expire shall be required to reinstate certification pursuant to Section 4 of this administrative regulation.

Section 8. Downgrading Certification. (1) An Advanced Emergency Medical Technician currently certified as an Advanced Emergency Medical Technician by the board shall be eligible for certification downgrade if:

(a) The certification is in good standing with no pending disciplinary action;

(b) The applicant submits a completed AEMT Certification Downgrade Application in KEMSIS; and

(c) The applicant pays the fee established in 202 KAR 7:030.

(2) An Advanced Emergency Medical Technician is only eligible to downgrade his or her certification to an Emergency Medical Technician or Emergency Medical Responder certification.

(3) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(4) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

(a) Statewide in scope for an applicant with current certification in Kentucky;

(b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and

(c) Provided by a vendor that has been contracted through the board.

~~[(5) The applicant shall provide proof of:~~

~~(a) Current certification by the NREMT as an Advanced Emergency Medical Technician; or~~

~~(b) Successful completion of the NREMT Advanced Emergency Medical Technician National Continued Competency Program for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601; and~~

~~(c) Current training in:~~

~~1. Pediatric Abusive Head Trauma required by KRS 311A.120; and~~

~~2. Awareness of Sexual Violence Training required by KRS 311A.120;~~

~~[(5)][(6)]~~ Downgrade shall be denied if the applicant has not met the requirements of this section or has been subject to disciplinary action that prevents certification at the time of application.

~~[(6)][(7)]~~ The applicant shall be responsible for meeting the renewal requirements of the downgraded certification level issued prior to expiration of that certification.

~~[(7)][(8)]~~ To reinstate the certification or license that was previously held, the applicant shall meet the regulatory requirements for that level of certification or licensure.

~~[(8)][(9)]~~ The applicant shall notify the board's licensed service director with whom the applicant is affiliated immediately upon downgrading his or her certification.

~~[(9)][(10)]~~ Once the applicant has downgraded his or her certification or license, the applicant is no longer permitted to provide emergency medical services at the previous certification or license level held.

~~[(10)][(11)]~~ An applicant applying for downgrade who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

~~[(11)][(12)]~~ All endorsements, certifications, or licenses held at the previous certification or license level shall be void at the completion of the downgrade.

Section 9. Surrender of Certification. (1) An Advanced Emergency Medical Technician surrendering certification shall:

(a) Submit a completed AEMT Certification Surrender Application in KEMSIS; and

(b) Pay the fee established in 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director with whom the applicant is affiliated immediately upon surrendering his or her certification.

Section 10. Reporting Requirements. (1) An Advanced Emergency Medical Technician shall maintain current demographic information in KEMSIS including:

(a) Legal name;

1. Any changes to an AMET's legal name shall be submitted

using the Name Change Application in KEMSIS; and

2. One (1) of the following documents as verification of name change:

- a. Social Security card;
- b. Driver's license; or
- c. Passport;
- (b) Mailing address;
- (c) Email address; and
- (d) Phone number.

(2) An Advanced Emergency Medical Technician who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 11. Exemptions from Advanced Emergency Medical Technician Administrative Regulations. Certification requirements for an Advanced Emergency Medical Technician shall not apply to:

(1) United States military members, state National Guard personnel, or employees of the United States government if the individual provides emergency medical services:

- (a) On land owned by the United States government;
- (b) In facilities owned by the United States government;
- (c) In the performance of official duties under federal law; or
- (d) As part of assistance for a mass casualty or disaster incident pursuant to federal law or official state assistance request; or

(2) An Advanced Emergency Medical Technician certified in another state or territory of the United States who:

- (a) Enters Kentucky with a patient being transported to a medical facility or other final destination in Kentucky; or
- (b) Travels through Kentucky during the course of a patient transport from an out-of-state location to a destination outside of Kentucky.

Section 12. Public Notice of Negative Action. The board office shall cause to be published on the board Web site the name of an Advanced Emergency Medical Technician who:

- (1) Is fined;
- (2) Is placed on probationary status;
- (3) Is placed on restricted status;
- (4) Is suspended; or
- (5) Has had his or her certification revoked.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Advanced Emergency Medical Technician Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077D, January 2009;

(b) "AEMT Initial Certification Application" in KEMSIS, July 2019;

(c) "AEMT Certification Renewal Application" in KEMSIS, July 2019;

(d) "AEMT Reciprocity Certification Application" in KEMSIS, July 2019;

(e) "AEMT Reinstatement Certification Application" in KEMSIS, July 2019;

(f) "AEMT Supplemental Curriculum Training Verification Report", July 2019;

(g) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(h) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;

(i) "AEMT Certification Downgrade Application" in KEMSIS, July 2019;

(j) "AEMT Certification Surrender Application" in KEMSIS, July 2019;

(k) "National Registry of Emergency Medical Technicians National Continued Competency Program AEMT", October 2016;

~~(l) ["National Registry of Emergency Medical Technicians Advanced Emergency Medical Technician Psychomotor Examination Users Guide", September 2016;~~

~~(m)] "Name Change Application" in KEMSIS, July 2019;~~

~~(n)] "Military Extension Application" in KEMSIS, July 2019;~~

and

~~(n)](e)]~~ "United States Citizenship and Immigration Services (U.S.C.I.S.) Permanent Resident Card (form I-551/Green Card)", July 2019.

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CONTACT PERSON: John K. Wood, Legal Counsel, Kentucky Board of Emergency Medical Services, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, email administrativeregulations@wgmfirm.com.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, March 7, 2023)**

301 KAR 2:245. Wanton waste and disposal of big game and upland game birds.

RELATES TO: KRS 150.015, 150.025, 150.092, 150.170, 150.390, 150.722

STATUTORY AUTHORITY: KRS 150.015, 150.025(1), 150.390(1), 512.070(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate any administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.390(1) prohibits the taking of any wild elk, deer, wild turkey, or bear contrary to any provisions of KRS Chapter 150 or KAR Title 301. KRS 512.070, Criminal Littering, protects against knowingly placing or throwing litter on any public or private property or in any public or private water without permission. This administrative regulation protects against intentional and wanton waste or unlawful disposal of big game animals and upland game birds.

Section 1. Definitions.

(1) "Big game" means wild individuals of the species:

- (a) Deer, *Odocoileus virginianus*;
- (b) Elk, *Cervus canadensis nelsoni*; and
- (c) Bear, *Ursus americanus*.

(2) "Carcass or offal" means the skeleton, skin, entrails, and other parts of big game or upland game birds remaining after the edible portions have been removed.

(3) "Edible parts" are those portions suitable for processing and consumption after take and recovery of the animal, which have not been spoiled due to the method of take, including:

- (a) For big game, the quarters and outer loins; and
- (b) For an upland game bird, the breast meat.

(4) "Processing" means the act of removing the usable portions of meat from a taken and recovered animal and storing or preparing the meat for consumption.

(5) "Recover" means to locate and retrieve an animal a person has taken.

(6) "Upland game birds" means wild individuals of ~~the~~these species:

- (a) Wild turkey, *Meleagris gallopavo silvestris*;
- (b) Northern bobwhite, *Colinus virginianus*; and
- (c) Ruffed grouse, *Bonasa umbellus*.

Section 2. Recovery of Big Game ~~or~~and an Upland Game ~~Birds~~Bird. A person who has attempted to take big game or an upland game bird shall make a reasonable effort to recover the animal.

Section 3. Harvest of Big Game or Upland Game Birds.

(1) Upon recovery of big game or an upland game bird, the

hunter taking the animal shall:

(a) Comply with the ~~established~~ requirements ~~as~~ established in 301 KAR Chapter 2 for tagging and checking; and

(b) Remove edible parts from the field and make a reasonable effort to transport them to the hunter's residence or other destination for storage or processing, or lawfully transfer them to another individual, establishment, or organization.

(2) It shall be unlawful to remove inedible portions of big game or an upland game bird while leaving edible portions in the field to waste.

(3) The provisions of this section shall not apply to big game or an upland game bird that is:

(a) Recovered and the hunter taking the animal has reasonable grounds to believe the animal was diseased or rendered partially or completely unusable by infection or injury; or

(b) Cannot be recovered before the carcass has begun to decay rendering it unsuitable for consumption.

Section 4. Authorization to Take for Other Purposes. A person shall be exempt from ~~the~~ requirements in this administrative regulation for big game or an upland game bird taken:

(1) For damage to private lands or personal property by the landowner or a person otherwise authorized under the provisions of KRS 150.170(7);

(2) Due to vehicle collision; or

(3) For humanely dispatching an animal or in defense of self or others under the provisions of KRS 150.172(2)(a) or 525.130(2).

Section 5. Carcass Disposal.

(1) It shall be unlawful to dispose of a carcass or offal of big game or an upland game bird on any private or public property or public waterway, except:

(a) A hunter may dispose of a carcass or offal from big game or an upland game bird on the public property where the animal was taken, but the carcass or parts shall be deposited at least 300 feet from a building, maintained road, parking area, public access facility or gate, or established hunting blind, unless otherwise prohibited and ~~if as long as~~ the big game or upland bird is not removed from the public property and then returned thereto;

(b) A hunter may dispose of a carcass or offal from legally acquired big game or upland bird on private property where the hunter received permission from the landowner; or

(c) A hunter may dispose of a big game carcass or offal by burying the carcass and parts, deposition in a contained landfill, or removal by a duly licensed rendering establishment as described in KRS 150.722.

(2) A person disposing of big game or an upland game bird carcass or offal in an unlawful manner may be cited with criminal littering pursuant to KRS 512.070.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, March 7, 2023)**

301 KAR 3:120. Commercial nuisance wildlife control.

RELATES TO: KRS 150.183, 150.275, 150.330, 150.410, ~~150.330~~, 50 C.F.R. 21.41

STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.105, 150.170, 150.235, 150.275, ~~150.235~~, 150.365, ~~150.170~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(h) authorizes the department to promulgate any other administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.105 authorizes the commissioner, with the approval of the commission, to authorize any person to destroy or bring under control any wild animal, fish, or wild birds, protected or unprotected, which are

causing damage to persons, property, other animals, or spreading diseases. KRS 150.275 authorizes the department to issue permits to qualified persons to take and transport wildlife at any time for commercial nuisance wildlife control. This administrative regulation establishes the requirements for commercial nuisance wildlife control permits, and nuisance wildlife control operators. KRS 150.235 prohibits persons from performing acts authorized to be performed by a permit without first procuring the permit and the permit or license shall be kept on their person while conducting acts. KRS 150.170 prevents persons from doing any act or assisting a person with an act authorized by any kind of license or permit unless they hold the kind of permit that authorizes the act. 50 C.F.R. 21.41 provides federal permitting requirements for depredating migratory birds and allows a NWCO to herd or scare depredating migratory birds without a federal permit, except that federally endangered or threatened species and bald or golden eagles shall not be scared or herded.

Section 1. Definitions.

(1) "Commercial purposes" means taking nuisance wildlife in exchange for payment, ~~or~~ trade, or associated with job duties as part of employment.

(2) "Enhanced Rabies Surveillance Zone~~area~~" means Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Perry, Robertson, and Whitley counties.

(3) "Federally-protected wildlife" means any wildlife species listed by the U.S. Fish and Wildlife Service as threatened or endangered, and any birds protected under the Migratory Bird Treaty Act ~~or~~ and the Bald and Golden Eagle Protection Act.

(4) "Nuisance wildlife" means vertebrate wildlife that causes or may cause damage or threat to agriculture, human health, ~~or~~ safety, ~~or~~ property, ~~or~~ natural resources.

(5) "Nuisance wildlife control operator" means the holder of a valid permit, issued by the department, which authorizes the taking of nuisance wildlife for commercial purposes.

(6) "NWCO" means a nuisance wildlife control operator as defined in this administrative regulation.

(7) "Permit" means the nuisance wildlife control operator's permit issued pursuant to this administrative regulation.

(8) "Rabies vector species" means a:

(a) Coyote (*Canis latrans*);

(b) Gray fox (*Urocyon cinereoargenteus*);

(c) Raccoon (*Procyon lotor*);

(d) Red fox (*Vulpes vulpes*);

(e) Spotted skunk (*Spilogale putorius*); or

(f) Striped skunk (*Mephitis mephitis*).

(9) "Rural habitat" means an area of the state not included within the boundaries of an incorporated or unincorporated city, village or borough, and having a population in excess of 1,500 inhabitants.

Section 2. Permitting Requirements~~NWCO Permit~~.

(1) A permit authorizes a NWCO to take nuisance wildlife year-round using lethal or non-lethal capture methods, provided the NWCO has written or oral authorization from the person requesting control.

(2)~~(4)~~ A person shall apply for and obtain a valid NWCO permit, prior to conducting NWCO activities, by submitting ~~on a form provided by the department.~~

(a) A correct and complete Commercial NWCO Permit Application; and

(b) A Commercial NWCO Annual Activity Report for renewal applications.

(3)~~(2)~~ The department shall only~~not~~ grant a permit to a person who:

(a) ~~Is~~ Less than eighteen (18) years old or over;

(b) ~~Who~~ Has not been convicted of a violation of KRS Chapter 150 or the administrative regulations promulgated under its authority within the denial period established in this administrative regulation; ~~one (1) year of the date of application; or~~

(c) Provides proof of a passing score on the National Wildlife Control Training Program course, except a person who passed the

department issued examination prior to the effective date of this administrative regulation shall[are] not be required to complete the National Wildlife Control Training Program course; ~~Who fails to achieve a score of seventy (70) percent or better on an examination administered by the department.]~~

(d) Remits the correct annual permit fee as established in 301 KAR 3:022;

(e) Provides a complete and correct Commercial NWCO Permit Application; and

(f) Provides a valid email address.

~~[(3) Nothing in this subsection shall prohibit persons under eighteen (18) years old from assisting a NWCO.~~

(4) A person may appeal the denial of a permit for a violation of KRS Chapter 150 or the administrative regulations adopted under its authority by following the procedures established in Section 7 of this administrative regulation.]

(4) ~~[(5)]~~ A NWCO shall always have their[his] permit in their[his] possession ~~[at all times]~~ when performing the acts authorized by a NWCO permit ~~[taking or transporting wildlife]~~.

(5) ~~[(6)]~~ The NWCO permit shall be valid from March 1 through the last day of February.

(6) A permitted NWCO wishing to sell the pelts of a furbearer[s] taken during the statewide furbearer hunting and trapping season shall also possess a valid trapping license or hunting license, if applicable.

Section 3. Reporting Requirements.

(1) A NWCO shall keep records of all wildlife taken in the course of NWCO duties on the NWCO Annual Activity Report.

(2) ~~[(4)]~~ A NWCO shall submit a NWCO Annual Activity Report to the Department:

(a) No later than March 30; and

(b) Prior to a permit being renewed ~~[file an annual activity report with the department between March 1 and March 30 of each year.~~

(2) The annual activity report shall be filed:

(a) On a form:

1. Provided by the department; or

2. Photocopied from the department form.]

(3) ~~[(b)]~~ The Commercial NWCO Annual Activity Report ~~[form]~~ shall contain the information regarding the activity for the period from February ~~[March]~~ 1 of the previous year through January 31 ~~[the last day of February]~~ of the current year.

(4) ~~[(3)]~~ The department shall not renew the permit of an operator who does not:

(a) Submit the Commercial NWCO Annual Activity Report ~~[annual activity report]~~ as required by this section; or

(b) ~~[Does not]~~ Provide the information required by the Commercial NWCO Annual Activity Report ~~[annual activity report form]~~.

(5) ~~[(6)]~~ (4) Report documents and all records of NWCO activity, including the current or previous year's activity and written permission for releases, shall be made available to department staff upon request.

Section 4. Restrictions on Taking Wildlife.

(1) A NWCO shall only dispatch or release captured wildlife according to the requirements in this administrative regulation, except for federally protected species that meet the criteria in Sections 4, 6, and 7 of this administrative regulation.

(2) ~~[(4)]~~ A NWCO shall not:

(a) Transport nuisance wildlife to a wildlife rehabilitator or any person or facility that holds wildlife captive, except that a NWCO shall immediately transport injured, ill, orphaned, or exhausted federally protected species to a permitted wildlife rehabilitator within Kentucky;

(b) Release wildlife in any area that restricts their free movement or holds them captive;

(c) Hold wildlife for more than forty-eight (48) hours;

(d) ~~[(a)]~~ Take federally protected wildlife unless ~~[the NWCO has]~~ a valid permit for the activity is issued by the U. S. Fish and Wildlife Service for the species of nuisance wildlife, except that a federal permit is not required to herd or scare migratory birds, excluding bald and golden eagles and endangered or threatened species;

~~(e) ~~[(b)]~~ Take the species established in subparagraphs 1. through 8. of this paragraph~~ ~~[5.]~~ unless authorized by the commissioner:

1. Copperbelly water snake (*Nerodia erythrogaster neglecta*);

2. White-tailed deer (*Odocoileus virginianus*);

3. Elk (*Cervus canadensis*);

4. Black bear (*Ursus americanus*); ~~[or]~~

5. Wild turkey (*Meleagris gallopavo*); ~~[or]~~

6. Kirtland's snake (*Clonophis kirtlandii*);

7. Alligator Snapping turtle (*Macrochelys temminckii*);

8. Hellbender (*Cryptobranchus alleganiensis*); or

~~(f) ~~[(c)]~~ Dispatch or cause death to bats~~ ~~[Use lethal capture methods to take bats].~~

~~[(2) A NWCO may take other nuisance wildlife year-round using lethal or nonlethal capture methods, provided the NWCO has written or oral authorization from the person requesting control.]~~

Section 5. Legal Means of Take ~~[Methods of taking nuisance wildlife.]~~

(1) A NWCO using traps shall comply with:

(a) KRS 150.410; and

(b) The trapping requirements in 301 KAR 2:251.

(2) A NWCO using a gun shall provide proof of completion of the Kentucky Hunter Education Program or a course offered by another jurisdiction that meets the course standards set by the International Hunter Education Association.

Section 6. Dispatch ~~[Disposal]~~ of Captured Wildlife ~~[animals]~~.

~~[(1) A NWCO may euthanize or release captured wildlife, except that a NWCO shall:~~

(a) Euthanize any rabies vector species captured within the enhanced rabies surveillance area before being moved; and

(b) Shall not transport a rabies vector species into or out of the enhanced rabies surveillance area.

(2) Acceptable methods of euthanizing wildlife shall include:

(a) Captive bolt;

(b) Gunshot;

(c) Drowning, for wildlife trapped in water sets, pursuant to 301 KAR 2:251;

(d) Cervical dislocation or thoracic compression for small mammals and birds;

(e) Mechanical stunning, if followed immediately by an acceptable euthanasia method;

(f) Inhalants, including halothane, isoflurane, carbon monoxide, or carbon dioxide;

(g) Noninhalants including Secobarbital/dibucaine; or

(h) Commercially-available agents for striped skunks, in accordance with manufacturer's specifications.]

~~(1) ~~[(3)]~~ The department may, upon issuing a permit, specify that certain species shall be dispatched~~ ~~[euthanized]~~.

(a) The requirement that a species be dispatched may apply statewide or to certain geographical regions.

(b) If the requirement that a species be dispatched is made to apply:

1. Statewide, all permits issued in that permit year shall contain the same requirement; or

2. To a limited geographical area, all permits issued in that area shall contain the same requirement.

(2) A NWCO shall dispatch:

(a) House sparrow (*Passer domesticus*);

(b) European starling (*Sturnus vulgaris*);

(c) Pigeon (*Columba domestica* or *Columba livia*);

(d) Nutria (*Myocaster coypus*);

(e) House mouse (*Mus musculus*);

(f) Rat (*Rattus norvegicus* or *Rattus rattus*);

(g) Wildlife that shows obvious symptoms of disease or injury, except for federally protected species and bats; or ~~[(f)]~~

(h) Any rabies vector species captured within the Enhanced Rabies Surveillance Zone at the capture site before being moved.

(3) ~~[(2)]~~ Legal ~~[Acceptable]~~ methods of dispatching ~~[euthanizing]~~ wildlife shall include:

(a) Captive bolt;

(b) Gunshot;

(c) Submersion~~[Drowning]~~, for wildlife trapped in water sets, pursuant to 301 KAR 2:251;

(d) Cervical dislocation or thoracic compression for small mammals and birds, except for federally protected species and bats;

(e) Mechanical stunning, if followed immediately by an acceptable dispatch~~[euthanasia]~~ method;

(f) Inhalants, including halothane, isoflurane, carbon monoxide, or carbon dioxide;

~~[(g) Noninhalants including Secobarbital/dibucaine; or]~~

~~[(g) [(h)] Commercially available agents for striped skunks, in accordance with manufacturer's specifications, except that prohibited methods of dispatch listed in this section shall not be used; or]~~

~~[(h) Commercially available rodenticides used on small rodents in accordance with manufacturer specifications, except that prohibited methods of dispatch listed in this section shall not be used.]~~

(4) Prohibited methods of dispatch:

(a) Extra-label use of chemicals, toxicants, or poisons is prohibited.

(b) Per KRS 150.365, the following methods of take are prohibited:

1. Fire;

2. Explosives;

3. Mechanical, electrical, or hand operated sonic recording devices; or

4. Gas or smoke in a den, hole, or nest of wildlife.

Section 7. Release of Captured Wildlife.

(1) A NWCO shall:

(a) Transport wildlife for release in a safe manner that minimizes stress to the animal;

(b) Only release non-rabies vector species of wildlife:

1. On-site; or

2. In a rural habitat suitable for the particular species in which wildlife movement is unrestricted; and

3. With the written permission of:

a. The private landowner of at least 100 contiguous acres;

b. The private landowners of contiguous properties totaling at least 100 acres; or

c. The agency responsible for management of public land totaling at least 300 acres.

(c) Only release rabies vector species of wildlife captured outside the Enhanced Rabies Surveillance Zone;

1. On-site;

2. In a rural habitat suitable for the particular species within the county of capture in which wildlife movement is unrestricted; and

3. With the written permission of:

a. The private landowner of at least 100 contiguous acres;

b. The private landowners of contiguous properties totaling at least 100 acres; or

c. The agency responsible for management of public land totaling at least 300 acres.

(2) A NWCO shall not:

(a) Transport a rabies vector species into, out of, or within the enhanced rabies surveillance zone;

(b) Release nuisance wildlife in unsuitable habitat including any enclosed area that restricts free movement of wildlife or holds wildlife captive.

[(4) A NWCO shall:

(a) Euthanize wildlife that shows obvious symptoms of disease or injury;

(b) Transport wildlife for release in a safe manner that minimizes stress to the animal;

(c) Not release wildlife:

1. Except in a rural habitat suitable for the particular species; and

2. Without the written permission of:

a. The private landowner of at least 100 contiguous acres;

b. The private landowners of contiguous properties totaling at least 100 acres; or

c. The agency responsible for management of public land

totaling at least 300 acres;]

Section 8. Disposal of Carcasses.

~~[(4) [(d)] A NWCO shall dispose of all wildlife carcasses~~~~[carcasses]~~ by:

~~[(1) [(1.) Complete incineration of the entire carcass and all of its parts and products;~~

~~[(2) [(2.) Placing the carcass in a contained landfill as established in KRS Chapter 224;~~

~~[(3) [(3.) Burying the carcass and all its parts and products in the earth;~~

~~[(a) [(a.) In a location that is never covered with the overflow of ponds or streams;~~

~~[(b) [(b.) Not less than 100 feet from any watercourse, sinkhole, well, spring, public highway, residence, or stable; and~~

~~[(c) [(c.) At least one (1) foot deep and covered with one (1) foot of earth; or~~

~~[(4) [(4.) Removing the carcass by a duly licensed rendering establishment; and~~

~~[(e) Not hold wildlife for more than forty-eight (48) hours except as otherwise provided by administrative regulations promulgated by the department.~~

~~[(5) A permitted NWCO wishing to sell the pelts of furbearers taken during the statewide furbearer hunting and trapping season shall also possess a valid trapping license or hunting license, if applicable.]~~

Section 9. [Section 7.] Revocation and Denial of Permits and Appeal Procedure. [Permit revocation, appeal process.]

(1) The department shall revoke the permit without refund, deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit and confiscate wildlife of a person [the permit of a nuisance wildlife control operator] who:

(a) Is convicted of a violation of any provisions of:

1. KRS Chapter 150;

2. 301 KAR Chapters 1 through 5;

3. Any federal statute or regulation related to hunting, fishing, or wildlife; or

4. Another state's fish and wildlife law.

(b) Fails to comply with the provisions of this administrative regulation or 301 KAR 2:041, 301 KAR 2:075, 301 KAR 2:081, or 301 KAR 2:251;

(c) Provides false information on a Commercial NWCO Permit Application, Commercial NWCO Annual Activity Report, federal permit, written permission for wildlife release, or records;

(d) Takes nuisance wildlife with methods not approved in this regulation or 301 KAR 2:251;

(e) Takes nuisance wildlife for commercial purposes without a valid commercial nuisance wildlife control permit;

(f) Takes federally protected species without a federal permit;

(g) Possesses wildlife over forty-eight (48) hours;

(h) Fails to dispatch rabies vector species at capture site in the Enhanced Rabies Surveillance Zone;

(i) Transports rabies vector species into, out of, or within the Enhanced Rabies Surveillance Zone; ~~or;~~

(j) Transports rabies vector species captured outside the Enhanced Rabies Surveillance Zone to a location outside the county of capture;

(k) Fails to comply with any provision of KRS Chapter 150, any administrative regulation of the department, or hunting, fishing, or wildlife laws of the federal government; ~~or;~~

(l) Allows non-permitted persons to assist or conduct NWCO activities or have direct contact with wildlife.

(2) A person whose permit is denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(a) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(b) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(c) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

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(3) Denial period.

(a) An applicant for a NWCO permit whose permit has been revoked or denied for the grounds established in this section shall be ineligible to reapply, and all applications shall be denied for the period established below:

1. The initial denial period shall be one (1) year;
2. A second denial period shall be three (3) years; **and**
3. A third or subsequent denial period shall be five (5) years.

(b) During the denial period, a person whose nuisance wildlife control operator permit has been denied or revoked shall not operate as a NWCO or assist in nuisance wildlife control activities.

[(a) Is convicted of a violation of a federal fish and wildlife law, a Kentucky fish and wildlife law, including KRS Chapter 150 or Title 301 KAR, or another state's fish and wildlife law; or

(b) Knowingly provides false information on:

1. The application for a permit; or
2. The Annual Activity Report.

(2) An individual whose permit has been revoked shall be ineligible to apply for another Nuisance Wildlife Control Operator Permit or be an assistant on another Nuisance Wildlife Control Operator Permit for a period of three (3) years.

(3) An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.]

Section 10.[Section 8.] Incorporation by Reference[Items incorporated by Reference].

(1) The following material is incorporated by reference:

(a) "Commercial Nuisance Wildlife Control (NWCO) Permit Application," 2022 edition[August 2004]; and

(b) "Commercial Nuisance Wildlife Control Operator (NWCO) Annual Activity Report[Form]," 2022 edition,[August 2004;]

(2) The 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[Game Farm Road], Frankfort, Kentucky, Monday through Friday from 8 a.m. to 4:30 p.m.

(3) This material may also be found on the department's Web site at: <https://fw.ky.gov/Wildlife/Pages/Commercial-Nuisance-Wildlife-Control-Operator.aspx> for general NWCO information.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, March 7, 2023)**

501 KAR 6:040. Kentucky State Penitentiary policies and procedures.

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, **March 7[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 3/7/23[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 3/7/23[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 10-04-01	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 3/7/23[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 3/7/23[11/14/22][3/14/17])
KSP 14-06-01	Inmate Grievance Procedure (Amended 3/7/23[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 3/7/23[11/14/22][3/14/17])
KSP 16-02-01	Inmate Correspondence (Amended 3/7/23[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 3/7/23[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 3/7/23[11/14/22][11/14/12])
KSP 18-01-01	Classification Committee (Amended 3/7/23[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 18-10-01	Preparole Progress Report (Amended 3/14/17)]
KSP 18-15-01	Protective Custody Unit (Amended 3/7/23[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 3/7/23 11/14/22 3/14/17)
KSP 19-05-01	Correctional Industries (Amended 3/7/23 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 3/7/23 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/Ircfilings.aspx>.

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.

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, March 7, 2023)**

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

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

STATUTORY AUTHORITY: KRS 160.1591

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

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

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

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

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

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

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

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

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

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

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

(f) Suspension (in-school suspension or home suspension) two

(2) or more times during the past school year and an overall grade average below a C;

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

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

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

(j) Indication of being socially isolated; or

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

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

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

(8) "Charter contract" or "contract" is defined by KRS 160.1590(5)(4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(26) "Notice" means written notice.

(27) "Notify" means provide written notice.

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

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

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

(31) "Primary enrollment preference" means any enrollment

preference other than a secondary enrollment preference.

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

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

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

~~[(35) "Start-up public charter school" is defined by KRS 160.1590(17).]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Charter School Student Application.

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

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

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

(c) Provision for breaks during the lottery;

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

(e) Creation of minutes from the lottery; and

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

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

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

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

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

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

(b) Human randomization or computerized randomization.

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

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

(b) The charter application; and

(c) The charter contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Reduce charter school community shareholder concerns;

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

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

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

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

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

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

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

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

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

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

(16) In the lottery, the charter school shall select students for enrollment up to the capacity of the school for that school year, and then the charter school shall select students for inclusion on the wait list above the school capacity as established in paragraphs (a) through (g) of this subsection. A charter school shall:

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

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

writing of the student's inclusion on the wait list and the student's position on the wait list after the conclusion of the wait list lottery process;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The charter school has expelled the student pursuant to KRS 158.150;

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

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

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

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

(a) Whether the emancipated youth student, adult student, parent, or person with custody or charge gives consent for the

charter school unilaterally to unenroll or withdraw the student from the charter school without providing the due process protections established in KRS 158.150;

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

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

(d) The student's English competence;

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

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

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

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

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

(a) Require or request;

1. An interview prior to enrollment;

2. Letters of recommendation;

3. Essays;

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

5. Grades;

6. Test scores;

7. Attendance records;

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

9. Disciplinary history except pursuant to KRS 158.155;

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

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

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

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

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

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

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

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

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

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

through (e) in enrolling additional local school district resident students pursuant to KRS 160.1591(5)(b)(a).

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

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

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

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

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

1. Phone;

2. Email;

3. Mailed correspondence; or

4. Home visit; and

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

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

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

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

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

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

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

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

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

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

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

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, March 7, 2023)**

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

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

STATUTORY AUTHORITY: KRS 160.1596

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Indication of being socially isolated; or

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

(8) "Authorizer" or "public charter school authorizer" is defined

by KRS 160.1590[(43)](15).

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

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

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

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

(11) "Charter" means charter contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(37)[(36)] "Public charter school" is defined by KRS

160.1590[(42)](14).

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

[(38)] "Regional achievement zone" is defined by KRS 160.1590(16).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Identification of any charter application preferences of the

authorizer pursuant to KRS 160.1594(2);

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

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

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

1. The rights and responsibilities of each party regarding school autonomy;

2. Funding;

3. Administration and oversight;

4. Outcomes;

5. Measures for evaluating success or failure;

6. Performance consequences; and

7. Other material terms;

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

(a) Ensuring a charter school's legally entitled autonomy;

(b) Protecting student's civil, disability, safety, and educational rights;

[(c)] Ensuring the establishment of a food program as required by KRS 160.1592(3)(r);[f]

[(d)][(e)] Informing intervention, revocation, and renewal decisions; and

[(e)][(4)] Providing annual reports as required by [KRS 160.1597(5)]KRS 160.1596;

(5) The requirements for reporting to the public;

(6) The authorizer's authority to intervene in charter schools, if necessary;

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

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

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

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

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

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

(c) Foreseen and unforeseen closure; and

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

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

(12) The charter school closure protocol and requirements;

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

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

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

(16) The requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for an applicant, a board of directors, an education service provider, a charter school, and their employees.

Section 3. Standards of Authorizer Performance Generally.

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

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

(3) Pursuant to KRS 160.1596~~(6)~~⁽¹⁷⁾(e), an authorizer shall include in its report and place in a publicly accessible location on its website information on the following:

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

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

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

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

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

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

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

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

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

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

(a) From an applicant that is or includes:

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

pursuant to KRS Chapter 14A; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. A charter application that the applicant, the proposed board of directors, or another entity previously withdrew from consideration

and the reasons the charter application was withdrawn;

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

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

(d) A memorandum of understanding as required by KRS 160.1593(3)(f)(3).

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

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

(12)(13) Within five (5) days of the authorizer's approval, the authorizer shall submit an approved charter application to the commissioner of education[for review and approval in accordance with Section 5(11) of this administrative regulation].

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A requirement that, if at any time during any fiscal year of the charter school's existence, a member of the charter school board of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Identify and describe the terms of any facility agreement that

may be part of the relationship between the charter school board of directors and the education service provider;

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

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

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

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

(o) Assure:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Require the charter school to implement a cash management plan approved by the authorizer;

2. Commence a more in-depth review, and an audit if necessary, of the charter school's financial budget reports, expenditures, and revenues;

3. Request financial management assistance for the charter school from the department; and

4. Restrict the charter school's expenditures and require the authorizer's approval prior to expenditure of charter school funds for the remainder of the school year; and

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

1. Consult with the commissioner of education;

2. Communicate with the charter school board of directors to determine the need for charter contract revocation;

3. Commence actions under paragraph (a) of this subsection;

4. Review the closure protocol;

5. Review the charter contract termination provisions;

6. Communicate with the charter school board of directors regarding the closure protocol and contract provisions for termination; and

7. Notify students and resident local school districts, as soon as necessary to ensure all students and resident local school districts are provided adequate time to prepare for the student transitions and to provide free and appropriate public education to any returning students.

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

(a) Is financially insolvent;

(b) Is financially unsustainable for the remainder of the school year or the charter contract term; or

(c) Has violated or threatened the health and safety of the students of the public charter school, pursuant to KRS 160.1598(7).

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

(a) Student assessment and accountability;

(b) Student graduation rates;

(c) Student promotion rates;

(d) Student attendance rates;

(e) Student admission and enrollment in postsecondary institutions; and

(f) Other outcomes.

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

renew a contract with a charter school board of directors for a charter school that:

(a) Does not operate:

1. A breakfast program under the Child Nutrition Act of 1966, 42 U.S.C. 1773, as amended (CNA), and a lunch program under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq. (NSLA); or

2. A breakfast and lunch program with provision of meals at no cost to students who qualify for free meals under the CNA and NSLA and with the provision of meals at a reduced cost to students who qualify for reduced price meals under the CNA and NSLA; or

(b) Does not provide initial and continuing evidence and assurances of the charter school's financial solvency and financial sustainability, as demonstrated initially by the financial plan in the charter application, to cover the expenses of start-up or conversion, operation, and any foreseen or unforeseen closure of the charter school during the fiscal year or during the contract term.

(2) An authorizer shall require for approval of a charter application, for contracting with a charter board of directors, for performance of a charter contract, and for renewal of a charter contract, the following:

(a) Inclusion of at least two (2) local school district resident parents or persons with custody or charge of local school district resident students who will attend the charter school in a charter school board of directors;

(b) Exercise by a charter school board of directors of their authority in KRS 160.1592(3)(p)4 and 5 only as allowed for a local board of education in KRS 160.540;

(c) Participation of all members of a charter school board of directors in annual training, approved by the commissioner of education, on topics of charter school governance and operation including financial governance and transparency; conflict of interest; curriculum and instruction; educational services provided for special needs, at risk, English learner, gifted, and other special population students; physical restraint and seclusion of students; and ethics. Fulfillment of this requirement shall occur through:

1. Twelve (12) hours of annual training for a new charter school board member or a member with zero to eight (8) years of experience as a charter school board member and eight (8) hours for a charter school board member with more than eight (8) years of experience as a charter school board member; or

2. Competency-based annual training;

(d) Attendance by the authorizer, or its designee for authorizing, or at least one (1) member of the authorizer's board of directors at any due process hearing conducted pursuant to KRS 158.150 to suspend or expel a charter school student. A charter school board of directors, with the consent of the parent, person with custody or charge, adult student, or emancipated youth student, and as otherwise allowed by confidentiality laws, may invite the resident local district superintendent to attend the due process hearing and to provide information to the charter school board of directors as to the educational services the resident local school district would provide the student:

1. If the student is expelled from the charter school; and

2. If the charter school board of directors determines, on the record and supported by clear and convincing evidence, that the charter school cannot provide or assure that educational services are provided to the student in an appropriate alternative program or setting because the expelled student posed a threat to the safety of other students or school staff and could not be placed into a state-funded agency program;

(e) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of the Individual with Disabilities Education Act dispute resolution procedures, 707 KAR 1:340, regarding a student attending a charter school or the services provided by a charter school;

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

(g) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and

copies of all records of allegations received or substantiation of violation of any health, safety, civil rights, and disability rights of students, staff, or parents or persons with custody or charge;

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

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

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

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

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

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

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

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

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

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

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

1. The charter school's operations;

2. The charter school's financial solvency;

3. The charter school's financial sustainability through the end of the school year and the end of the charter contract term;

4. The potential for closure;

5. Violation of the charter contract; and

6. The need for imposition of unilateral conditions, amendment, nonrenewal, or revocation of the charter contract, or immediate revocation of the charter contract pursuant to KRS 160.1598(7).

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

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

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

(c) If the authorizer does determine a member of the applicant or the proposed board of directors has previously been found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, the authorizer may only approve a charter application, contract with, or renew a charter for a start-up public charter school or conversion charter school that does not sponsor interscholastic athletic activities, unless the charter school's sponsorship of interscholastic athletic activities is approved by the Kentucky Board of Education.

(6) An authorizer shall remove a member of a board of directors that has been convicted of a crime described in KRS 61.040 and remove any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure when the member or members threaten the health,

safety, civil rights, or disability rights of the students or the community pursuant to KRS 160.1598(11).

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

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

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

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

- (a) Holding in the resident local school district a public hearing to allow for public comment on the charter application; and
- (b) Allowing public comment to be submitted in writing prior to the hearing, or oral or written public comment at the hearing and allowing comment at the public hearing by a resident superintendent who has filed an objection to the charter application.

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

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

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

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

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

- 1. The closure decision;
- 2. The closure date;
- 3. The closure process;
- 4. Availability and timeline for appeals and their intersection with the closure protocol;
- 5. A copy of the notification provided to charter school parents, persons with custody or charge, adult students, and emancipated youth students;
- 6. Information on student instruction and reassignment; and
- 7. Contact information for additional information;

(d) Budget review and revision to limit expenditures to only those in the approved budget required for fulfilling the obligations through closure;

(e) Communication of the budget information to parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and the Kentucky Board of Education;

(f) Meeting of the authorizer with the charter school board of directors and charter school employees to notify and coordinate:

- 1. The closure;

- 2. The closure process;
- 3. The closure timeline and dates;
- 4. Information on student instruction and reassignment;
- 5. Employment, payroll, and benefits information;
- 6. Transfer of federal and state funds and assets according to the federal and state requirements; and
- 7. Contact information for additional information;

(g) Additional and final notification to parents and resident local school districts, including:

- 1. Information on the existence and role of any appeal of the closure;
- 2. Identifying the last student attendance day;
- 3. Detailing end of the year activities and transition activities for students; and
- 4. Providing information and assistance for reassignment of students;

(h) Procedures and requirements for establishment of transition teams, development of closure plan, and assignment of roles for closure;

(i) Procedures and requirement for scheduling closure meetings with the transition team, parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and employees;

(j) Procedures and requirements for a final report from the charter school board of directors to the authorizer and the department detailing completion of the closure plan;

(k) Maintenance of the charter school facilities;

(l) Identification and notification of all creditors and debtors of the board of directors and the Teachers' Retirement System and the County Employees Retirement System;

(m) Notification of federal, state, local, and private grantors;

(n) Termination of any contract with an education service provider;

(o) Accounting, inventory, and protection of assets;

(p) Notification of employee benefit providers;

(q) Notification of all contractors and termination of all contracts;

(r) Transfer of student and personnel records;

(s) Notification of the IRS;

(t) Issuance of final grades to students;

(u) Dissolution of the charter school;

(v) Maintenance of records; and

(w) Completion of an independent final audit within six (6) months of the closure of the charter school that may function as the annual audit, and that includes at least:

1. An accounting of all financial assets, including cash and accounts receivable and an inventory of property, equipment, and other items of material value;

2. An accounting of the liabilities, including accounts payable and any reduction in apportionments as a result of audit findings or other investigations, loans or grants, and unpaid staff compensation; and

3. An assessment of the disposition of any restricted funds received by or due to the charter school.

(2) An authorizer's charter school closure protocol shall include the following regarding distribution of assets upon closure:

(a) The assets of the charter school, if sufficient to satisfy all the outstanding debts of the charter school, shall be distributed in the following order:

1. To satisfy outstanding payroll obligations for employees of the public charter school;

2. To creditors of the charter school; and

3. To the resident local school districts, in direct proportion to the percentage of the charter school student body that will be returning to each resident local school district after closure;

(b) If the assets of the public charter school are insufficient to satisfy all debts of the charter school, the prioritization of the distribution of assets may be determined by a court of law; and

(c) A charter school board of directors shall distribute its assets within six (6) months of closure of the charter school, unless granted an extension by the authorizer or ordered otherwise by a court of law.

(3) The commissioner of education, upon request by the authorizer, may appoint an independent third-party, paid from the

charter school's funds, to manage the closure with assistance from the department. The commissioner of education may remove an appointed independent third-party for cause and appoint a replacement.

(4) The department shall develop a charter closure protocol guide that an authorizer may utilize in developing the closure protocol.

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

(a) If there is persistently unsatisfactory performance of the portfolio of the public charter schools of the authorizer;

(b) If there is a pattern of well-founded complaints about the authorizer or its public charter schools; or

(c) If the Kentucky Board of Education finds other objective circumstances warranting investigation.

(2) The Kentucky Board of Education shall request investigation by the commissioner of education.

(3) In reviewing and evaluating the performance of an authorizer, the Kentucky Board of Education shall apply nationally recognized standards for quality in charter authorizing, in addition to the standards of performance included in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) If at any time the Kentucky Board of Education determines that an authorizer is not in compliance with an existing charter contract or the requirements for an authorizer, the Kentucky Board of Education shall either:

(a) Notify the authorizer in writing of any identified problem and the authorizer shall have a reasonable opportunity to respond and remedy the problem; or

(b) If deemed necessary, take action against the authorizer under Section 10.

Section 10. Consequences. (1) The Kentucky Board of Education may, in addition to its authority over authorizers and their action on a charter application, renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter school pursuant to KRS 160.1595[(4)](2), place an authorizer on probation and require the following during probation of an authorizer:

(a) Additional training for the authorizer;

(b) Meeting with the commissioner of education to provide status reports and solicit feedback on charter school performance during a charter contract;

(c) Written and in-person status reports to the Kentucky Board of Education on the authorizer's monitoring of charter schools and other authorizing activity;

(d) Approval by the commissioner of education on the authorizer's monitoring activities, imposition of unilateral conditions, and revocation decisions;

(e) Approval of the Kentucky Board of Education for any renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter contract; and

(f) Any other consequences the Kentucky Board of Education deems necessary to ensure compliance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) The Kentucky Board of Education shall establish the length and extent of the probation of the authorizer's authority and reporting requirements for the authorizer to report on the progress of the charter schools authorized by the authorizer.

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

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

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

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

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

(4) The Kentucky Board of Education may entertain a request

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

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

(b) The authorizer's evidence of:

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

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

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

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

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

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

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

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, March 7, 2023)

701 KAR 8:040. Conversion charter school petition, conversion, and operation.

RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.011, 161.141, 161.800

STATUTORY AUTHORITY: KRS 160.1599

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1599 requires the Kentucky Board of Education to promulgate an administrative regulation to govern the processes and procedures for the petition, the conversion, and the operation of a conversion public charter school. This administrative regulation establishes requirements for conversion public charter schools.

Section 1. Definitions. (1) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

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

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

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

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

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

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

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

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

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

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

(12) "Local board of education" means local school board as defined by KRS 160.1590(9).

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

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

(15) "Notice" means written notice.

(16) "Notify" means provide written notice.

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

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

(19) "Petitioner" means the persons or organizations initiating and circulating a petition to convert an existing public school to a charter school.

(20) "Public charter school" is defined by KRS 160.1590[(142)](14).

(21) "School level", "level", or "educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(22) "Student" is defined by KRS 160.1590[(149)](18) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(23) "Student application" means an application submitted to a charter school for student enrollment in the charter school.

(24) "Superintendent" means the local school district employee tasked with the duties established in KRS 160.370.

(25) "Year", "academic year", or "school year" means school year as defined by KRS 158.050.

Section 2. Conversion Petition and Charter Application. (1) The department shall annually publish on its website a list of noncharter public schools, by school level, level, or educational level, that are eligible for charter school conversion through the petition process pursuant to KRS 160.1599(2)(a).

(2) Prior to circulation of a petition to convert an existing public school to a charter school, a petitioner shall file a notice of intent with the resident board of education.

(3) If a charter application proposes that a newly converted charter school is to be established and prepared to enroll students for the next school year, both the charter application and the petition, determined to be valid pursuant to subsection (9) of this section, proposing the conversion of an existing public school to a charter school shall be submitted to the authorizer on or before October 30.

(4) A petitioner shall utilize the Public Charter School Conversion Petition and shall include the following information in a petition to convert an existing public school to a charter school:

(a) A written statement that the petition seeks to convert the existing public school to a charter school;

(b) A written statement of the reasons the petitioner believes the existing public school should be converted to a charter school, including descriptions of how the conversion public charter school shall accomplish the purposes of KRS 160.1591(2); and

(c) Information for filing a written complaint to the commissioner of education regarding the petition or the petitioner.

(5) For the signatures on the petition to count toward the requirements of KRS 160.1599(2)(a) or (b), a petitioner shall ensure inclusion of the following from each of the existing public school's resident parents, persons with custody or charge, adult students, or emancipated youth students signing the petition:

(a) Their printed names;

(b) Their mailing and street address, phone number, and email address, as available; and

(c) Their signature in ink or indelible pencil. [i]

(6) The inclusion of signatures, from adult students, emancipated youth students, or parents or persons with custody or charge, on behalf of students who do not attend the existing public school as residents of the local school district and under the attendance zone boundary policies and procedures of the local board of education for the local school district, shall not count toward

the requirements of KRS 160.1599(2)(a) or (b).

(7) Signatures from parents, persons with custody or charge, adult students, and emancipated youth students shall count toward the requirements of KRS 160.1599(2)(a) or (b) up to but not in excess of the number of students attending the existing public school for whom those individuals are parents or persons with custody or charge or the students themselves.

(8) The inclusion of an invalid signature on the petition shall not invalidate the entire petition, but shall instead result in the invalid signature being stricken and not counted.

(9) Within thirty (30) days of receipt of a petition for conversion of an existing public school, a local school district designee of the local board of education shall conduct and complete an examination of the signatures on the petition and any necessary investigation to make a determination of whether the petition contains enough signatures of qualified resident adult students, emancipated youth students, and parents and persons with custody or charge of students attending the existing public school to meet the requirements of KRS 160.1599(2)(a) or (b).

(10) Within three (3) days of making the determination in subsection (9) of this section, the local school district designee of each local board of education that has authority over the existing public school shall provide notice as to whether the petition met the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b):

(a) On the local school district website; and

(b) To the following:

1. The petitioner;

2. The existing public school's principal;

3. Any school-based decision making council of the existing public school established under KRS 160.345; and

4. Each local board of education with authority over the existing public school.

(11) For a petition under KRS 160.1599(2)(b), each local board of education's majority vote to convert the existing public school to a charter school shall be conducted at its next regular meeting or an earlier special meeting.

(12) Any person who has reason to believe that the petition process was not conducted pursuant to the requirements of this administrative regulation or that the signatures on the petition were procured through fraud, intimidation, bribery, or harassment, may file a written complaint with the commissioner of education and the commissioner of education shall:

(a) Cause an investigation to determine the validity of the petition;

(b) Ensure the investigation is completed within thirty (30) days of receipt of the complaint; and

(c) Render a determination as to the validity of the petition.

(13) If the petition fails to meet the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b) or if the commissioner of education determines the petition to be invalid, the existing public school shall not be eligible for conversion to a charter school unless:

(a) Each local board of education with authority over the existing public school acts pursuant to KRS 160.1599(2)(c); or

(b) Another petition is circulated and determined to be valid pursuant to KRS 160.1599(a) or (b) and this administrative regulation.

(14) After any vote by each local board of education required pursuant to KRS 160.1599(2)(a), (b), or (c), an applicant shall submit to the authorizer a charter application to convert an existing public school to a charter school during the same school year as:

(a) Each local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or

(b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each local board of education with authority over the existing public school, if required by KRS 160.1599(2)(b).

(15) After any vote by each local board of education required pursuant to KRS 160.1599(2)(b) or (c), the authorizer shall allow submission of a charter application to convert the existing public

school to a charter school during the same school year as:

(a) Each local board of education's vote to convert the existing public school to a charter school, pursuant to KRS 160.1599(2)(c); or

(b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each local board of education with authority over the existing public school, if required by KRS 160.1599(2)(b).

(16) The authorizer shall commence the charter application review and approval process pursuant to KRS 160.1594 and 701 KAR Chapter 8 upon receipt of a charter application to convert an existing public school to a charter school within the same school year as either:

(a) Each local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or

(b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each local board of education, if required by KRS 160.1599(2)(b).

(17) The authorizer shall review the petition and a submitted charter application and only approve the conversion of an existing public school if the charter application meets the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and if:

(a) The petition meets the requirements of KRS 160.1599 and this administrative regulation during the same school year as the filing of the charter application, and if the commissioner of education has not determined the petition to be invalid; or

(b) Each local board of education with authority over the existing public school has voted within the same school year to convert an existing public school to a charter school.

(18) The department shall create a charter school conversion petition and application guidance document that petitioners, applicants, authorizers, and local boards of education may utilize.

Section 3. Conversion. (1) No conversion public charter school shall begin operation after the beginning of a school year.

(2) After each local board of education's vote to convert an existing public school to a charter school or completion of the petition process requirements of KRS 160.1599(2)(a) or (b) and this administrative regulation, and after the authorizer's approval of a charter application to establish a conversion public charter school, each superintendent of a district with authority over the existing public school shall:

(a) Notify resident students of the conversion of the existing public school and provide information for student application to the conversion charter school during the time that information on other school programs in the local school district is provided;

(b) Create with the conversion charter school board of directors a plan for conversion of the existing public school that shall include, at a minimum, timelines, roles, responsibilities, and notification requirements for the following:

1. Coordination of student application, lottery, enrollment, and transfer to and from the conversion charter school; and

2. Transfer of management and operation of the conversion charter school in the same public school facility for the school years included in the conversion charter school's operation under the charter contract;

(c) Meet during the first year of the charter contract with the charter school board of directors to coordinate student application, lottery, enrollment, and transfer of students; and

(d) Meet throughout the charter contract with the charter school board of directors regarding the usage and maintenance of the facility by the charter school board of directors.

(3) Each local board of education with authority over the existing public school and the conversion charter school board of directors shall execute a lease for the public school facility prior to the operation of a conversion public school.

(4) The department shall create a charter school conversion

process guidance document that an authorizer, local board of education, and a charter school board of directors may utilize.

Section 4. Employees. (1) Local school district employees placed in the existing public school prior to conversion, who are not hired by the conversion charter school board of directors to work in the converted charter school, shall retain their employment rights with the local school district, pursuant to KRS Chapter 161 and under the provisions of any collective bargaining agreement with the local school district. Conversion of an existing public school of the local school district may result in the circumstances described in KRS 161.800 and 161.011 necessitating the local school district superintendent's review of the necessity for a reasonable reduction in the number of teachers and classified employees employed by the local school district under KRS 161.800 and 161.011.

(2) A teacher, with continuing status pursuant to KRS Chapter 161, who is employed by a Kentucky local school district, who is hired by the conversion charter school board of directors to work in the converted charter school, and who is granted leave by the employing local board of education pursuant to [KRS 160.1593(22)]KRS 160.1592(22), shall notify the local school district of the teacher's intent to work in the converted charter school or to return to employment with the local school district the next school year by April 15 of each year of the granted leave.

(3) The department shall create a charter school conversion employee transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 5. Students. (1) Each local school district with authority over the existing public school shall provide, to the students and parents and persons with custody or charge of students who attend an existing public school that has been approved for conversion to a charter school, information and any plan the local school district shall use to address the educational needs and placements of students who choose not to attend or who otherwise shall not be attending the conversion charter school.

(2) The department shall create a charter school conversion student transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 6. Operation and Reversion of a Conversion Charter School.

(1) An authorizer may otherwise renew, non-renew, revoke, or take other action regarding a conversion public charter school as provided in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) If a closed conversion charter school is reverting back to its noncharter status, each local board of education with authority over the existing public school shall solicit feedback on the future of the school from parents, persons with custody or charge, adult students, and emancipated youth students of the school prior to the reversion.

Section 7. Incorporation by Reference. (1) "Public Charter School Conversion Petition", October 2022~~[February 2018]~~, is incorporated by reference.

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

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, March 7, 2023)

704 KAR 8:120. Required Kentucky Academic Standards for Science.

RELATES TO: KRS 156.070, 156.160, 158.645, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 158.6453, 160.290

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and requires the Kentucky Board of Education to manage and control the common schools and all assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. KRS 158.6453(2) requires the Kentucky Department of Education to implement a comprehensive process for the review of academic standards and assessment with the advice of standards and assessments review and development committees. This administrative regulation incorporates by reference the Kentucky Academic Standards for Science, which contain the general courses of study and academic content standards of science, for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky Academic Standards for Science.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards for Science", December 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed at: https://education.ky.gov/curriculum/standards/kyacadstand/Document/Kentucky_Academic_Standards_for_Science_2022.pdf.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, March 7, 2023)

707 KAR 1:002. Definitions.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419

STATUTORY AUTHORITY: KRS 156.035, 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in

accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes definitions for this chapter of administrative regulations regarding special education.

Section 1. Definitions. (1) "Admissions and release committee" or "ARC" means a group of individuals described in 707 KAR 1:320, Section 3, that is responsible for developing, reviewing, or revising an individual education program (IEP) for a child with a disability.

(2) "Adverse effect" means that the progress of the child is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers.

(3) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not mean a medical device that is surgically implanted, or the replacement of such a device.

(4) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. This term shall include:

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, like those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child.

(5) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional-behavior disability.

(6) "Business day" means Monday through Friday except for federal and state holidays, unless a holiday is specifically included in the designation of business day as in 707 KAR 1:370, Section 1.

(7) "Caseload for special classes" means the number of children with disabilities assigned to a teacher of exceptional children for the purpose of providing individualized specially designed instruction and related services in a special class setting.

(8) "Change of placement because of disciplinary removals" means a change of placement occurs if:

(a) The removal is for more than ten (10) consecutive school[schools] days; or

(b) The child has been subjected to a series of removals that constitute a pattern (which is determined on a case-by-case basis) because:

1. The series of removals total more than ten (10) school days in a school year;

2. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

3. Of additional factors, including the length of each removal, the

total amount of time the child has been removed, and the proximity of the removals to one (1) another.

(9) "Child with a disability" means a child evaluated in accordance with 707 KAR 1:300, as meeting the criteria listed in the definitions in this section for autism, deaf-blindness, developmental delay, emotional-behavior disability, hearing impairment, mental disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment which has an adverse effect on the child's educational performance and who, as a result, needs special education and related services.

(10) "Class size for resource classes" means the number of children with disabilities assigned to a teacher of exceptional children per period, block, or the specified length of time set by the individual school.

(11) "Collaboration" means, for purposes of determining class size in 707 KAR 1:350, Section 2, a teacher of exceptional children works with children with disabilities in the regular classroom to provide specifically[special]-designed instruction and related services.

(12) "Complaint" means a written allegation that a local education agency (LEA) has violated a requirement of the Individuals with Disabilities Education Act (IDEA) or an implementing administrative regulation, and the facts on which the statement is based.

(13) "Compliance" means the obligations of state or federal requirements are met.

(14) "Compliance monitoring report" means a written description of the findings of an investigation, like on-site monitoring, citing each requirement found in noncompliance.

(15) "Consent" means:

(a) A parent has been fully informed of all information relevant to the activity for which consent is sought, in his native language, or other mode of communication;

(b) A parent understands and agrees in writing to the carrying out of the activity for which his consent is sought, and the consent describes the activity and lists the records, if any, that will be released and to whom;

(c) A parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and

(d) If a parent revokes consent, that revocation does not negate an action that has occurred after the consent was given and before the consent was revoked.

(16) "Controlled substance" means a drug or other substance identified under 21 U.S.C. Section 812(c).

(17) "Core academic subjects" means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history, and geography.

(18) "Corrective action plan or "CAP" means a written improvement plan describing activities and timelines, with persons responsible for implementation, developed to correct identified areas of noncompliance, including directives from the Kentucky Department of Education, specifying actions to be taken to fulfill a legal obligation.

(19) "Course of study" means a multiyear description of coursework from the student's current school year to the anticipated exit year designed to achieve the student's desired postschool goals.

(20) "Day" means calendar day unless otherwise indicated as business day or school day.

(21) "Deaf-blindness" means concomitant hearing and visual impairments that have an adverse effect on the child's education performance, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness, unless supplementary assistance is provided to address educational needs resulting from the two (2) disabilities.

(22) "Developmental delay" or "DD" means that a child within the ages of three (3) through eight (8) has not acquired skills, or achieved commensurate with recognized performance expectations for his age in one (1) or more of the following developmental areas:

cognition, communication, motor development, social-emotional development, or self-help-adaptive behavior. Developmental delay includes a child who demonstrates a measurable, verifiable discrepancy between expected performance for the child's chronological age and current level of performance. The discrepancy shall be documented by:

(a) Scores of two (2) standard deviations or more below the mean in one (1) of the areas listed above as obtained using norm-referenced instruments and procedures;

(b) Scores of one and one-half (1 1/2) standard deviations below the mean in two (2) or more of the areas listed above using norm-referenced instruments and procedures; or

(c) The professional judgment of the ARC that there is a significant atypical quality or pattern of development. Professional judgment shall be used only where normal scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.

(23) "Education records" means records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g.

(24) (a) "Emotional-behavioral disability" or "EBD" means that a child, when provided with interventions to meet instructional and social-emotional needs, continues to exhibit one (1) or more of the following, when compared to the child's peer and cultural reference groups, across settings, over a long period of time and to a marked degree:

1. Severe deficits in social competence or appropriate behavior which cause an inability to build or maintain satisfactory interpersonal relationships with adults or peers;

2. Severe deficits in academic performance which are not commensurate with the student's ability level and are not solely a result of intellectual, sensory, or other health factors but are related to the child's social-emotional problem;

3. A general pervasive mood of unhappiness or depression; or

4. A tendency to develop physical symptoms or fears associated with personal or school problems.

(b) This term does not apply to children who display isolated (not necessarily one (1)) inappropriate behaviors that are the result of willful, intentional, or wanton actions unless it is determined through the evaluations process that the child does have an emotional-behavioral disability.

(25) "Enforcement" means the Kentucky Department of Education takes steps to ensure federal and state special education requirements are implemented.

(26) "Extended school year services" means specially designed instruction and related services that are provided to a child with a disability beyond the normal school year in accordance with the child's IEP at no cost to the parents.

(27) "Free appropriate public education" or "FAPE" means special education and related services that:

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the Kentucky Department of Education included in 707 KAR Chapter 1 and the Program of Studies, 704 KAR 3:303, as appropriate;

(c) Include preschool, elementary school, or secondary school education in the state; and

(d) Are provided in conformity with an individual education program (IEP) that meets the requirements of 707 KAR 1:320.

(28) "Functional" means activities and skills that are not considered academic or related to a child's academic achievement as measured on statewide assessments pursuant to 703 KAR Chapter 5.

(29) "Hearing impairment", sometimes referred to as "deaf" or "hard of hearing", means a hearing loss that:

(a) May be mild to profound, unilateral or bilateral, permanent or fluctuating; and is determined by:

1. An average pure-tone hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 25dB in the better ear;

2. An average pure-tone hearing loss in the high-frequency range (2000Hz, 4000Hz, and 6000Hz) of at least 45dB in the better ear; or

3. An average pure-tone unilateral hearing loss in the speech

range (500Hz, 1000Hz, and 2000Hz) of at least 60dB in the impaired ear];

(b) Results in difficulty identifying linguistic information through hearing; and

(c) Has an adverse effect on the child's educational performance.

(30) "High school diploma" means the student has completed the required course of study with the minimum number of credit hours as required by 704 KAR 3:305 and any applicable local district requirements. "High school diploma" does not mean a certificate of completion or a GED.

(31) "Home school" means, for purposes of 707 KAR Chapter 1 only, a private school primarily conducted in one's residence.

(32) "IDEA" means the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400 through 1450, as amended.

(33) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question.

(34) "Individual education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 707 KAR 1:320.

(35) "Interpreting services" means, with respect to children who are deaf or hard of hearing, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services such as communication access real-time translation (CART) C-Print and Type Well and special interpreting services for children who are deaf-blind.

(36) "Local educational agency" or "LEA" means a public local board of education or other legally constituted public authority that has either administrative control or direction of public elementary or secondary schools in a school district or other political subdivision of the Commonwealth. LEA also means any other public institution or agency, including the Kentucky School for the Blind (KSB) and the Kentucky School for the Deaf (KSD), that is charged by state statute with the responsibility of providing educational services to children with disabilities.

(37) "Mental disability" means that a child has one (1) of the following:

(a) A mild mental disability (MMD) in which:

1. Cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean;

2. Adaptive behavior deficit is at least two (2) standard deviations below the mean;

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and

4. Manifestation is typically during the developmental period; or

(b) A functional mental disability (FMD) in which:

1. Cognitive functioning is at least three (3) or more standard deviations below the mean;

2. Adaptive behavior deficits are at least three (3) or more standard deviations below the mean;

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and

4. Manifestation is typically during the developmental period.

(38) "Monitoring" means gathering and reviewing information to determine if a project or program meets state and IDEA requirements including the implementation of corrective action plans.

(39) "Multiple disabilities" or "MD" means concomitant impairments that have an adverse effect on the child's educational performance, the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for one (1) of the impairments. Examples of MD include mental disability-blindness, and mental disability-orthopedic impairment. Multiple disabilities does not mean deaf-blindness nor does it mean a speech or language impairment in combination with another category of disability.

(40) "Native language" means, if used in reference to an individual of limited English proficiency, the following:

(a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child;

(b) In all direct contact with a child (including evaluation of the

child), the language normally used by the child in the home or learning environment; or

(c) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication that is normally used by the individual, such as sign language, Braille, or oral communication.

(41) "Orthopedic impairment" or "OI" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes:

(a) An Impairment caused by a congenital anomaly such as clubfoot, or absence of some member;

(b) An Impairment caused by disease such as poliomyelitis, or bone tuberculosis; and

(c) An impairment from other causes such as cerebral palsy, amputations, and fractures or burns that causes contractures.

(42) "Other health impairment" or "OHI" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(a) Is due to a chronic or acute health problem, such as acquired immune deficiency syndrome, asthma, attention deficit disorder, attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette [Tourette] syndrome, or tuberculosis; and

(b) Adversely affects a child's educational performance.

(43) "Parent" means:

(a) A biological or adoptive parent of a child;

(b) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;

(c) A person acting in the place of a biological or adoptive parent such as a grandparent, stepparent, or other relative with whom the child lives, or a person who is legally responsible for the child's welfare;

(d) A foster parent if the biological or adoptive parents' authority to make educational decisions on the child's behalf has been extinguished and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child;

(e) A foster parent if the biological or adoptive parents grant authority in writing for the foster parent to make educational decisions on the child's behalf, and the foster parent is willing to make educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child; or

(f) A surrogate parent who has been appointed in accordance with 707 KAR 1:340, Section 6.

(44) "Participating agency" means a state or local agency other than the LEA that is financially and legally responsible for providing transition services to a child with a disability.

(45) "Personally identifiable information" means information that includes the name of the child, the child's parents, or other family member, the address of the child, a personal identifier, including the child's Social Security number or student number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(46) "Postsecondary goals" means those goals that a student hopes to achieve after leaving high school.

(47) "Private school children with disabilities" means children with disabilities enrolled by their parents in private elementary or secondary school as defined by IDEA regulations, 34 C.F.R. Part 300.13 and 300.36, and not children with disabilities enrolled in private schools upon referral by a LEA.

(48) "Public expense" means that the LEA either pays for the full cost of the services to meet the requirements of 707 KAR Chapter 1 or ensures that the services are otherwise provided at no cost to the parent. Nothing in these administrative regulations shall relieve an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(49) "Qualified personnel" means personnel who meet the statutory or regulatory qualifications for each respective profession

currently applicable in this state.

(50) "Reasonable efforts to obtain voluntary compliance" means active and ongoing efforts by the Kentucky Department of Education through technical assistance and negotiation to arrive at an acceptable corrective action plan and follow through on an agreed-upon corrective action plan.

(51)(a) "Related services" means transportation and such developmental, corrective, or supportive services as are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes.

(b) "Related services" also means school health services and school nurse services, social work services in school, and parent counseling and training.

(c) "Related services" do not include a medical device that is surgically implanted, the optimization of that device's functioning (such as mapping) maintenance of that device, or the replacement of that device.

(d) The definition of "related services" does not:

1. Limit The responsibility of the LEA to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school;

2. Prevent the routine checking of an external component of a surgically implanted device to make sure it is functioning properly; or

3. Limit The right of a child with a surgically [-] implanted device to receive related services that are determined by the ARC to be necessary for the child to receive FAPE.

(52) "Sanctions" means actions such as technical assistance, consultation, or training, that are taken by the Kentucky Department of Education in response to a LEA's failure to comply with the required standards in state and federal laws and administrative regulations.

(53) "School day" means any day, including a partial day, that children ~~attend~~~~are in attendance~~~~at~~ school for instructional purposes. School day means the same thing for all children in school, including children with or without disabilities.

(54) "Serious bodily injury" means bodily injury as defined in 18 U.S.C. Section 1365(h)(3).

(55) "Services plan" means a written statement that describes the special education or related services that the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary that is developed in accordance with 707 KAR 1:370.

(56) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability including instruction in the classroom, in the home, in hospitals and institutions, and in other settings. Special education means speech-language pathology services, (if the service is considered special education rather than a related service), travel training, and vocational education.

(57) "Special education mentor" means individuals with exceptional expertise, experience, and certification in special education administration or teaching granted the authority described in KRS 157.197.

(58) "Specially-designed instruction" means adapting as appropriate the content, methodology, or delivery of instruction to address the unique needs of the child with a disability and to ensure access of the child to the general curriculum included in the Program of Studies, 704 KAR 3:303.

(59) "Specific learning disability" or "LD" means a disorder that adversely affects the ability to acquire, comprehend, or apply reading, mathematical, writing, reasoning, listening, or speaking skills to the extent that specially designed instruction is required to benefit from education. The specific learning disability (LD) may

include dyslexia, dyscalculia, dysgraphia, developmental aphasia, and perceptual/motor disabilities. The term does not include deficits that are the result of other primary determinant or disabling factors such as vision, hearing, motor impairment, mental disability, emotional-behavioral disability, environmental or economic ~~disadvantage~~~~[disadvantaged]~~, cultural factors, limited English proficiency, or lack of relevant research-based instruction in the deficit area.

(60) "Speech or language impairment" means a communication disorder, including stuttering, impaired articulation, a language impairment, a voice impairment, delayed acquisition of language, or an absence of language, that adversely affects a child's educational performance.

(61) "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable a child with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 707 KAR 1:350.

(62) "Transition services" means a coordinated set of activities for a child with a disability that:

(a) Is designed to be within a results-oriented process~~[;]~~ that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, considering ~~[taking into account]~~ the child's strengths, preferences, and interests; and

(c) Includes:

1. Instruction;

2. Related services;

3. Community experiences;

4. The development of employment and other post-school adult living objectives; and

5. If appropriate, acquisition of daily living skills and functional vocational evaluation.

(63) "Traumatic brain injury" or "TBI" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury does not mean brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. Traumatic brain injury means open or closed head injuries resulting in impairments in one (1) or more areas, including:

(a) Cognition;

(b) Language;

(c) Memory;

(d) Attention;

(e) Reasoning;

(f) Abstract thinking;

(g) Judgment;

(h) Problem-solving;

(i) Sensory, perceptual, and motor abilities;

(j) Psychosocial behavior;

(k) Physical functions;

(l) Information processing; and

(m) Speech.

(64) "Travel training" means instruction to children with significant cognitive disabilities and any other children with disabilities, as appropriate, to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within that environment, such as school, home, work and community.

(65) "Visual impairment" or "VI" means a vision loss, even with correction, that~~;~~

~~[(a) Requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration;~~

~~(b)] has an adverse effect on the child's educational performance[-; and~~

~~(c) Meets the following:~~

~~1. The child has visual acuity with prescribed lenses that is 20/70~~

or worse in the better eye; or

2. The child has visual acuity that is better than 20/70 and the child has one (1) of the following conditions:

- a. A medically diagnosed progressive loss of vision;
- b. A visual field of twenty (20) degrees or worse;
- c. A medically diagnosed condition of cortical blindness; or
- d. A functional vision loss].

(66) "Ward of the state" means a child who has been committed to the Cabinet for Families and Children or the Department of Juvenile Justice through a legal process, whether the commitment is voluntary or nonvoluntary and the biological or adoptive parental rights have been terminated.

(67) "Weapon" means "dangerous weapon" as defined in 18 U.S.C. 930(g)(2).

(68) "Withholding" means no further payment of specified funds are made to an approved recipient.

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**PUBLIC PROTECTION CABINET
Department of Insurance
Financial Standards and Examinations Division
(As Amended at ARRS, March 7, 2023)**

806 KAR 003:250. Cybersecurity reporting procedures.

RELATES TO: KRS 304.3-750 ~~–[through]~~ [KRS.] 304.3-768, 45 C.F.R. 160, 164, 15 U.S.C. 6801, 6805

STATUTORY AUTHORITY: KRS 304.2-110, 304.3-756. 304.3-760, 304.3-766

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.3-756 requires a non-exempt licensee to develop, implement, and maintain a comprehensive information security program based on an internal risk assessment. KRS 304.3-760 and 304.3-766 require non-exempt licensees to notify the Commissioner of the Department of Insurance of a cybersecurity event involving nonpublic information. This administrative regulation establishes the reporting procedures for non-exempt licensees to report a cybersecurity event and file a cybersecurity compliance report. The administrative regulation also establishes the procedure for a licensee to file a cybersecurity exemption form under KRS 304.3-752 and 304.3-766.

Section 1. Definitions.

(1) "Cybersecurity Event" is defined by KRS 304.3-750(2).

(2) "Information security program" is defined by KRS 304.3-750(4).

(3) "Licensee" is defined by KRS 304.3-750(6).

(4) "eServices" means/is a secured electronic database developed and managed by the Department of Insurance that houses a registration of public and nonpublic information of licensees.

Section 2. Compliance and Exemption Reporting.

(1) A licensee who[that] is domiciled in this state and is not exempt from the requirements of KRS 304.3-750 through/to KRS 304.3-768 pursuant to KRS 304.3-752, or deemed in compliance with KRS 304.3-750 through/to 304.3-768 pursuant to KRS 304.3-766, shall file a Cybersecurity Compliance Attestation Form with the department by February 15th of each year, attesting that the licensee has conducted all necessary risk assessments to fully develop an information security program and is currently implementing and executing that information security program as established/set forth in KRS 304.3-756.

(2) A licensee who[that] is deemed compliant under KRS 304.3-766, shall file a Cybersecurity Exemption Compliance Form

with the department by February 15th of each year, attesting to their compliance with the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Parts 160 and 164, or the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 and 6805.

(3) The Cybersecurity Compliance Attestation Form and the Cybersecurity Exemption Compliance Form shall be filed electronically through the licensees' eServices account on the department's secure Web site: <https://insurance.ky.gov/doieservices/UserRole.aspx>.

Section 3. Reporting a Cybersecurity Event.

(1) If a licensee who[that] is domiciled in Kentucky[this state] and is not exempt under KRS 304.3-752, reasonably believes that a cybersecurity event has occurred that meets a qualification established in KRS 304.3-760(1)(a) or (b), the licensee shall:

(a) Report to the commissioner the details of a cybersecurity event within three (3) business days from the determination that a cybersecurity event has occurred; and

(b) Report the cybersecurity event on the Cybersecurity Event Reporting Form submitted electronically through the licensees' eServices account located on the department's secure Web site: <https://insurance.ky.gov/doieservices/UserRole.aspx>.

(2) A licensee who[that] is not domiciled in Kentucky and who is not exempt as established in KRS 304.3-752,[this state] but reasonably believes that the cybersecurity event meets any of the qualifications established/described in KRS 304.3-760(1)(c), shall:

(a) Report to the commissioner the details of a cybersecurity event within three (3) business days from the determination that a cybersecurity event has occurred; and

(b) Report the cybersecurity event on the Cybersecurity Event Reporting Form submitted electronically through the licensees' eServices account located on the department's secure Web site: <https://insurance.ky.gov/doieservices/UserRole.aspx>.

(3) A licensee who is deemed compliant under KRS 304.3-766 shall:

(a) Notify the commissioner of a cybersecurity event in the same manner and form no later than the licensee notifies the affected consumers or federal regulatory authorities, as applicable; and

(b) Submit the notification electronically to the commissioner via email at/: DOI.CommissionerOffice@ky.gov.

Section 4. Amending a Cybersecurity Event Submission. A licensee, who has filed a Cybersecurity Event Reporting Form with the department shall:

(1) Within three (3) business days of the discovery of new information, update and supplement any initial and subsequent cybersecurity event notifications to the commissioner; and

(2) Amend a previously submitted Cybersecurity Event Reporting Form electronically through the licensees' eServices account located on the department's secure Web site: <https://insurance.ky.gov/doieservices/UserRole.aspx>.

Section 5. Incorporated by Reference.

(1) The following material is incorporated by reference.

- (a) "Cybersecurity Compliance Attestation Form", 12/22;
- (b) "Cybersecurity Exemption Compliance Form", 12/22; and
- (c) "Cybersecurity Event Reporting Form", 12/22.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Department of Insurance Internet Web site, <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

CONTACT PERSON: Abigail Gall, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

**ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS**

**BOARDS AND COMMISSIONS
Board of Optometric Examiners
(Amended After Comments)**

201 KAR 5:002. Board administration and optometric practice.

RELATES TO: KRS 7, 320.230, 320.295, 320.300(4), 320.310(1)(f), (2), (3), 326.060

STATUTORY AUTHORITY: KRS 320.230, 320.240, 320.240(4), (7), 320.295, 320.310(1)(f), (2), (3), 320.240(4), (7), (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.295 prohibits false, misleading, or deceptive advertising. This administrative regulation describes what an advertisement shall include to avoid being characterized as false, misleading, or deceptive. This includes advertising in all forms including print media and electronic media. KRS 320.310(3) authorizes the board to promulgate an administrative regulation to establish minor violations that are subject to expungement. This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement. KRS 320.240(4), (7), and (8) that the board shall have the power to promulgate an administrative regulation about what acts constitute unprofessional conduct. KRS 320.310(1)(n) authorizes the board to discipline a licensee who violates an administrative regulation promulgated by the board. This administrative regulation establishes the acts that constitute unprofessional conduct. KRS 320.310(2) permits each doctor of optometry to maintain branch offices. This administrative regulation requires each doctor of optometry to furnish information concerning each office to the board. KRS 320.230 allows the board members to receive per diem compensation to be determined by administrative regulation of the board not to exceed \$125. This administrative regulation prescribes the board member's per diem compensation. KRS 320.300(4) prohibits a person from practicing optometry under any name other than his own except as permitted by the board in its administrative regulations. This administrative regulation prescribes the instances where a doctor of optometry may practice under a trade name. KRS 320.310(1)(f) authorizes the board to promulgate administrative regulations to permit the practice of optometry outside of the licensee's regular office for a charitable purpose as defined by the board. This administrative regulation establishes the standards for the practice of optometry outside the licensee's office for a charitable purpose.

Section 1. Definitions.

(1) "Board Member's Compensation" shall mean that each board member is eligible for a per diem of \$100 for each day in which that member conducts work on behalf of the board.

(2) "Charitable organization" means a nonprofit entity accepted by the Internal Revenue Service and organized for benevolent, educational, philanthropic, humane, social welfare, or public health purposes.

(3) "Charitable purpose" means a purpose that holds itself out to be benevolent, educational, philanthropic, humane, or for social welfare or public health.

(4) "Expungement" means that:

(a) The affected records shall be sealed;

(b) The proceedings to which they refer shall be deemed not to have occurred; and

(c) The affected party may properly represent that no record exists regarding the matter expunged.

(5) "Minor violations" means:

(a) Failure to timely renew a license;

(b) Failure to timely obtain continuing education; and shall not include

(c) Any violations of the laws surrounding the advertisement of optometric services by Doctors of Optometry.

Section 2. Advertising.

(1) An advertisement shall state if additional charges may be

incurred in an eye examination for related services in individual cases.

(2) An advertisement of price for visual aid glasses, including contact lenses or other optical goods, alone shall clearly state: "does not include eye examination".

(3) Any doctor of optometry who has been subjected to any disciplinary measures for advertising violations may be required by the board to secure prepublication approval of all advertisements by the board for any period of time which the board deems appropriate.

(4) When advertising an eye examination, such examination shall follow the standards of care and established clinical practice guidelines adopted by the American Optometric Association at the time of the provision of care.

(5) The advertisement of eye glass lenses shall include: single vision or specified type of multifocal lenses.

(6) Advertisement of contact lenses shall include:

(a) Description of type of lens; for example, "soft, tinted, extended wear toric";

(b) Whether or not professional fees are included in the advertised price.

(7) If dispensing fees are not included in the advertisement of visual aid glasses, the advertisement shall so state.

(8) The advertisement of optometric services rendered in Kentucky shall include whether the services will be performed by a licensed doctor of optometry:

(a) In-person;

(b) Via live or real-time audio and video synchronous telehealth technology; or

(c) Via asynchronous store-and-forward telehealth technology.

(9) Except as provided in subsection (10) of this section, a person, individually or while employed or connected with a corporation or association, shall not advertise the fitting of contact lenses unless they are a doctor of optometry, physician or osteopath.

(10) An ophthalmic dispenser may advertise that they dispense contact lenses, if the patient presents a valid prescription from a doctor of optometry, physician or osteopath.

(11) Advertising shall be prohibited if it represents a doctor of optometry as a specialist in an optometric specialty if they have not:

(a) Been certified by a certifying board which has been approved by the Kentucky Board of Optometric Examiners and recognized by the Federal Government; and

(b) Furnished proof of their certification to the Kentucky Board of Optometric Examiners;

(12) A doctor of optometry shall not advertise a coded or special name for a visual material or service that has an established trade name, if the coded or special name would deceive consumers.

Section 3. Unprofessional Conduct.

(1) A doctor of optometry shall not practice optometry in an office if the instruments and equipment, including office furniture, fixtures and furnishings, contained therein are not maintained in a working, clean and sanitary manner.

(2) Under Kentucky law only doctors of optometry, osteopaths and physicians are authorized to fit contact lenses. Ophthalmic dispensers may fit contact lenses in the presence of and under the supervision of a doctor of optometry, osteopath or physician.

(3) The signed spectacle prescription, or contact lens prescription shall be given to the patient at the completion of the examination and payment of fees.

(4) A doctor of optometry shall use the letters "OD" or "O.D." in any advertisement where a doctor of optometry uses letters to denote an optometry degree.

(5) A doctor of optometry shall not give or receive a fee, salary, commission, or other remuneration or thing of value, in any manner, or under any pretext, to or from any person, firm, or corporation in return for the referral of optometric patients, or in order to secure optometric patients. Payment between health providers or from a health services industry, solely for the referral of a patient, is considered fee splitting and unprofessional conduct.

(6) A doctor of optometry shall not be employed by an unlicensed doctor of optometry, firm, or corporation as an optometrist, except to the extent permitted by subsection (7) of this section or an entity approved by the Kentucky Board of Optometric Examiners.

(7) A doctor of optometry shall not enter into a contract, agreement, or arrangement, for the hire or leasing of their professional services, except that upon the:

(a) Death of a Kentucky licensed Doctor of Optometry, the surviving spouse or estate of the deceased Doctor of Optometry may contract optometric services or employ a Kentucky licensed doctor of optometry for a period not to exceed eighteen (18) months from the time of death; or

(b) Permanent disability of a Kentucky licensed doctor of optometry, the spouse, legal guardian, or disabled doctor of optometry may contract optometric services or employ a Kentucky licensed doctor of optometry for a period not to exceed eighteen (18) months from the time of disability.

(8) The provisions of subsections (5), (6), and (7) of this section shall not prohibit employment of an optometrist by a:

(a) Licensed hospital;

(b) Licensed multidisciplinary health clinic;

(c) Professional service corporation;

(d) Governmental entity; or

(e) Other entity approved by the Kentucky Board of Optometric Examiners.

(9)(7) Clinical patient care shall be determined by the doctor of optometry and not determined by outside influences or third parties.

(10)(8) A doctor of optometry shall not engage in any unlawful, grossly unprofessional, or incompetent practice, nor shall they practice in premises where others engage in any unlawful, grossly unprofessional, or incompetent practice, if that practice is known to the doctor of optometry, or would have been known to a person of reasonable intelligence.

(11)(9) A doctor of optometry shall not be associated with or share an office or fees with a person who is engaged in the unauthorized practice of optometry.

(12)(10) A doctor of optometry shall keep the visual welfare of the patient uppermost at all times and on dismissal of patient must provide adequate opportunity to obtain other eye care regardless of their person's financial status.

(13)(11) A doctor of optometry shall treat with confidentiality the protected health information obtained from the patient, except as otherwise required by law.

(14)(12) A doctor of optometry shall provide care that is consistent with established clinical practice guidelines, specifically those adopted by the American Optometric Association at the time of the provision of care, and shall only employ those clinical procedures and treatment regimens for which they are competent to perform and within the scope of practice.

(15)(13) It is unprofessional conduct to fail to maintain in good working order, or to be unable to operate instruments and equipment necessary to provide competent clinical care as established in the clinical optometric guidelines adopted by the American Optometric Association at the time of the provision of care.

(16)(14) The patient care performed in a patient's case shall be left to the professional judgment of the doctor of optometry and determined by the established American Optometric Association clinical practice guidelines in effect at that time.

(17)(15) An act constituting a violation of KRS Chapter 320, or any applicable state or federal law related to provider-patient care shall be unprofessional conduct.

(18)(16) It is unprofessional conduct for a doctor of optometry to fail to inform the board of the change in location, mailing address, and telephone number of each office they practice in within thirty (30) days of any change.

Section 4. Expungement Eligibility and Procedure.

(1) The licensed doctor of optometry shall not have been the subject of a subsequent violation of the same nature for a period of three (3) years after the date of completion of disciplinary sanctions imposed for the violation sought to be expunged; and

(2) They shall submit a written request to the board. The board shall consider each request and shall, if the requirements established in KRS 320.310(3) and this administrative regulation are satisfied, expunge the record of the subject disciplinary order.

Section 5. Trade Names. A doctor of optometry may practice under a trade name if:

(1) It is not the same as his name; and

(2) The name of each doctor of optometry practicing in their office is prominently displayed on:

(a) The exterior of the main entrance to the office; and

(b) Stationery, prescription pads, telephone directory listings, and other items bearing or displaying the trade name, **including any form of electronic communication media.**

Section 6. Practice of Optometry Outside of Regular Office for a Charitable Purpose.

(1) In order for a Kentucky licensed doctor of optometry to provide optometric services outside the doctor of optometry's regular office for a charitable purpose, a charitable organization shall provide to the board:

(a) A written request to include the services of Kentucky licensed doctor of optometry at least thirty (30) days before the optometric services are to be offered;

(b) Proof of its nonprofit status;

(c) Assurance that the participating doctor of optometry shall not be compensated or remunerated in any manner;

(d) The names of all participating doctors of optometry;

(e) The address of the location where the optometric services will be offered;

(f) The dates and times the optometric services will be offered, which shall not exceed seven (7) days per event;

(g) A statement of the nature of the optometric services to be provided and the class of individuals who are intended to be the recipients of the optometric services;

(h) A statement that the charitable organization shall **retain and maintain a patient record for each individual treated by the participating doctor of optometry, and where the patient may seek access to such record**~~require every participating doctor of optometry to develop and maintain a permanent patient record for each individual treated by that doctor of optometry~~; and

(i) A statement that the charitable organization shall require every participating doctor of optometry to **follow the standards of care and established clinical practice guidelines adopted by the American Optometric Association at the time of the provision of care** ~~[comply with the minimum eye examination requirements of Section 3 of this administrative regulation]~~.

(2) The board or its acting president may waive the thirty (30) day requirement based on exigent circumstances that prevented the charitable organization from complying with the thirty (30) day requirement.

(3) The board or its acting president shall notify the charitable organization in writing if its request has been approved within ten (10) business days of receipt of the completed request.

(4) A written request may include multiple events on different dates if the events are scheduled within twelve (12) months of the date the completed request is received by the board.

(5) Lenses shall be first quality and meet the requirements of inspection, tolerance, and testing procedures as outlined in the American Standard Prescription Requirements.~~[Requirements for Eyeglasses Provided.]~~

~~(a) If eyeglasses are provided as part of the charitable service, all materials shall be new, first quality and free from defects.~~

~~(b) Eyeglass material shall be:~~

~~1. First quality and meet the requirements of inspection, tolerance, and testing procedures as outlined in the American Standard Prescription Requirements; and~~

~~2. Made to meet the individual recipient's personal prescription.]~~

(6) Failure to comply with the terms of this administrative regulation may result in denial or withdrawal of approval.

WILLIAM REYNOLDS, Board President

APPROVED BY AGENCY: March 15, 2023

FILED WITH LRC: March 15, 2023 at 11:30 a.m.

CONTACT PERSON: Carson Kerr, Executive Director, Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504, phone (859) 246-2744, fax (859) 246-2746, email Carson.Kerr@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carson Kerr

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes standards for the appropriate regulation of Optometry Services in Kentucky as authorized by existing statutory law.

(b) The necessity of this administrative regulation: KRS 320.240 and KRS 320.295 require the Board to promulgate administrative regulations to establish standards for the appropriate administration of Optometric practice in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes the standards for the appropriate administration and regulation of Optometry Services in Kentucky in conjunction with statutory authority and standards contained in KRS 320.240 and KRS 320.295, and is narrowly tailored to this purpose.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes standards for the appropriate administration and regulation of Optometry Services in Kentucky as authorized by existing statutory law.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed Kentucky Optometrists totaling approximately 1,000 will be affected as will the Agency itself as it enforces these provisions.

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

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

Licensed Kentucky Optometrists will be affected by this administrative regulation, as will the agency as it seeks to enforce these provisions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no direct cost associated with these provisions as they simply establish the standards for appropriate regulation of Optometry Services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agency will have more direct means of monitoring professional practice.

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

(a) Initially: This will not cost the agency nor stakeholders any money to implement.

(b) On a continuing basis: This will not cost the agency nor stakeholders any money to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Restricted Funds from Licensing Fees. The agency receives no unrestricted state or federal funds.

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

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, that will not be necessary.

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

(9) TIERING: Is tiering applied? No. This administrative regulation treats all impacted entities the same.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 7, and KRS Chapter 320.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated, unless fines are levied as a result of agency adjudication.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated, unless fines are levied as a result of agency adjudication.

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

(d) How much will it cost to administer this program for subsequent years? No costs to administer directly.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. There will be no effect on the regulated entities as it will not require a wholesale replacement of existing signage and advertising.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no anticipated cost savings or cost increase for the regulated entities as these rules have generally been effect for years previously because the administrative regulation expired and this filing is substantially similar.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no anticipated cost savings or cost increase for the regulated entities as these rules have generally been effect for years previously.

(c) How much will it cost the regulated entities for the first year? There are no explicit new costs nor any indirect costs associated with this filing.

(d) How much will it cost the regulated entities for subsequent years? There are no explicit new costs nor any indirect costs associated with this filing.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: This filing reinitiates the KBOE's Expired Regulations for Advertising, Expungement of Minor Violations, and Unprofessional Conduct which had previously been effect largely in this form. Additionally it consolidates some other existing regulations. As such, there is no anticipated change in costs to

regulated entities, who are optometrists and therefore no applicable dollar estimates to provide.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, that definition does not apply here for the reasons given above.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amended After Comments)**

902 KAR 20:480. Assisted living communities.

RELATES TO: KRS 194A.700—194A.729, **209.030(2) – (4)**, 209.032, 216.515, 216.530, 216.532, 216.595, 216.718, 216.765, 216.789, 216B.015(13), 216B.020(1), 216B.105, 216B.160, 216B.165, 218A.200(6), **314.011(3)**, 21 C.F.R. Part 1317, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2–1320d-8

STATUTORY AUTHORITY: KRS 194A.707(1), (9), 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.707(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations under KRS Chapter 13A for an initial and re-licensure review process for assisted living communities. KRS 194A.707(9) permits the cabinet to promulgate administrative regulations to establish an assisted living community and assisted living community with dementia care licensure fee that shall not exceed costs of the program to the cabinet. KRS 216B.042(1) requires the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the minimum licensure requirements for the operation of social model assisted living communities (**ALC**), assisted living communities that provide basic health and health-related services (**ALC-BH**), and assisted living communities with a secured dementia care unit (**ALC-DC**).

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Ambulatory" is defined by KRS 194A.700(2).

(3) "Assistance with activities of daily living and instrumental activities of daily living" is defined by KRS 194A.700(3).

(4) "Assistance with self-administration of medication" is defined by KRS 194A.700(4).

(5) "Assisted living community" is defined by KRS 194A.700(5).

(6) "Assisted living community with dementia care" is defined by KRS 194A.700(6).

(7) "Assisted living services" is defined by KRS 194A.700(7).

(8) "Basic health and health-related services" is defined by KRS 194A.700(8).

(9) "Dementia" is defined by KRS 194A.700(10).

(10) "Dementia care services" is defined by KRS 194A.700(11).

(11) "Dementia-trained staff" is defined by KRS 194A.700(12).

(12) "Direct care service" is defined by KRS 216.718(4).

(13) "Hands-on assistance" is defined by KRS 194A.700(13).

(14) "Health facility" is defined by KRS 216B.015(13) to include assisted living communities.

(15) "Immediate family member" means a:

(a) Spouse;

(b) Child;

(c) Stepchild;

(d) Son-in-law;

(e) Daughter-in-law; or

(f) Grandchild.

(16) [(15)] "Instrumental activities of daily living" is defined by

KRS 194A.700(15).

(17) [(16)] "Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of the resident's affairs.

(18) "Licensed health professional" means a person who:
(a) Possesses a current Kentucky license or multistate licensure privilege to practice in Kentucky; and

(b) Provides services to ALC-BH or ALC-DC residents, including the delegation of tasks pursuant to KRS 194A.700(7)(h) as authorized under the professional's scope of practice.

(19) [(17)] "Living unit" is defined by KRS 194A.700(16).

(20) [(18)] "Managing agent" means an individual or legal entity designated by the licensee through a management agreement to act on behalf of the licensee in the on-site management of the assisted living community.

(21) [(19)] "Medication administration" is defined by KRS 194A.700(17).

(22) [(20)] "Medication management" is defined by KRS 194A.700(18).

(23) [(21)] "Medication reconciliation" means the process of identifying the most accurate list of all medications the resident is taking, including the name, dosage, frequency, and route, by comparing the resident record to an external list of medications obtained from the resident, hospital, prescriber, or other provider.

(24) [(22)] "Medication setup" is defined by KRS 194A.700(19).

(25) "Nurse" is defined by KRS 314.011(3).

(26) "Nursing task" is defined by 201 KAR 20:400, Section 1(11).

(27) [(23)] "Person-centered care" is defined by KRS 194A.700(21).

(28) [(24)] "Resident" is defined by KRS 194A.700(22).

(29) [(25)] "Secured dementia care unit" is defined by KRS 194A.700(23).

(30) [(26)] "Service plan" is defined by KRS 194A.700(24).

(31) [(27)] "Significant financial interest" is defined as the lawful ownership of an out-of-state or a Kentucky-licensed health facility or health service, or other entity regulated by the cabinet, whether by share, contribution, or otherwise in an amount equal to or greater than twenty-five (25) percent of total ownership of the out-of-state or Kentucky-licensed health facility or health service, or other cabinet-regulated entity.

(32) [(28)] "Temporary condition" is defined by KRS 194A.700(26).

(33) [(29)] "Unlicensed personnel" is defined by KRS 194A.700(27).

(34) "Volunteer" means a person who has duties that are equivalent to the duties of an employee providing direct care services and the duties involve, or involve, one-on-one contact with a resident a member of a community-based or faith-based organization or group that provides volunteer services that do not involve unsupervised interaction with a resident.

Section 2. Licensure Categories. (1) The licensure categories established by this administrative regulation include the following:

(a) A social model assisted living community (ALC) license for any facility that provides assisted living services, excluding basic health and health-related services;

(b) An assisted living community with basic health care (ALC-BH) license for any facility that:

1. Provides assisted living services, including basic health and health-related services directly to its residents; and

2. Does not have a secured dementia care unit; and

(c) An ALC with dementia care (ALC-DC) license for any facility that provides assisted living services and dementia care services in a secured dementia unit.

(2) In accordance with KRS 194A.710(3), a license issued under this administrative regulation shall not be assignable or transferable.

(3) In accordance with KRS 194A.704, a personal care home that is in substantial compliance with KRS 194A.703 shall convert its license to an ALC-BH or ALC-DC license, if applicable, by submitting the application, accompanying documentation, and fee required by Section 3(2) of this administrative regulation at least sixty (60) days prior to the

date of annual renewal of the facility's personal care home license.

Section 3. Licensure Application and Fees. (1) In accordance with KRS 216B.020(1), an ALC, ALC-BH, or ALC-DC shall be exempt from certificate of need.

(2) An applicant for a provisional, initial license or annual renewal as an ALC, ALC-BH, or ALC-DC shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate an Assisted Living Community at least sixty (60) days prior to the:

1. Planned opening; or
2. Annual renewal date;

(b) Proof of approval by the State Fire Marshal's office;

(c) A copy of a blank lease agreement that includes the elements required by KRS 194A.713 and any documentation incorporated in the agreement;

(d) An organizational chart that identifies all entities and individuals with a significant financial interest in the prospective or existing licensee, including the relationship with the licensee and with each other;

(e) A description of any special programming that may be provided in accordance with KRS 194A.713(11);

(f) If applying for a provisional, initial license, or if changes have been made since the date of the previous renewal, a copy of the facility's floor plan that shall identify the:

1. Living units, including features that meet the requirements of KRS 194A.703(1);
2. Central dining area;
3. Laundry facility; and
4. Central living room;

(g) Whether in the preceding seven (7) years any individual with a significant financial interest in the entity seeking initial licensure or renewal as an ALC, ALC-BH, or ALC-DC had a significant financial interest in an out-of-state or a Kentucky-licensed health facility or health service, or other entity regulated by the cabinet, that had its license or certificate to operate denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm;

(h)1. A copy of the applicant's compliance history for any other care facility the applicant operates if applying for a provisional, initial license as an:

a. ALC or ALC-BH; or

b. ALC-DC that did not have a dementia unit in operation prior to July 14, 2022.

2. Documentation of the applicant's compliance history shall include a copy of all enforcement action issued by the regulatory agency against the care facility including violations, fines, or negative action against the facility's license during the seven (7) year period prior to application for a provisional, initial license; and

(i) A nonrefundable fee made payable to the Kentucky State Treasurer in accordance with the following fee schedule:

Number of Units	Initial and Annual Fee
<25	\$500 + \$40 per unit
25-49	\$1,000 + \$40 per unit
50-74	\$1,500 + \$40 per unit
75-99	\$1,750 + \$40 per unit
100 or more	\$2,000 + \$40 per unit

(3)(a) Name change. An ALC, ALC-BH, or ALC-DC shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the facility's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. An ALC, ALC-BH, or ALC-DC shall not change the location of the facility until an Application for License to Operate an Assisted Living Community accompanied by the documentation and fees required by subsection (2) of this section have been submitted to the Office of Inspector General.

(c) Change in number of living units.

1. An ALC, ALC-BH, or ALC-DC shall submit an Application for License to Operate an Assisted Living Community to the Office of Inspector General:

a. At least sixty (60) days prior to an increase in the number of

living units; and

b. Accompanied by a fee of sixty (60) dollars per each additional unit.

2. If there is a decrease in the number of living units, an ALC, ALC-BH, or ALC-DC shall notify the Office of Inspector General within sixty (60) days of the decrease.

(d) Change of ownership.

1. The new owner of an ALC, ALC-BH, or ALC-DC shall submit an Application for License to Operate an Assisted Living Community accompanied by a fee of \$500 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing facility or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(e) Change of managing agent. An ALC, ALC-BH, or ALC-DC shall submit an updated Application for License to Operate an Assisted Living Community accompanied by a fee of twenty-five (25) dollars within ten (10) calendar days of the effective date of a change of managing agents.

(f) Information shared with lending institutions relative to financing for ALC projects. The cabinet's fee for providing information in accordance with KRS 194A.729 shall be \$250.

(g) Voluntary termination of operations.

1. An ALC or ALC-BH shall:

a. Notify the Office of Inspector General at least sixty (60) days prior to voluntarily relinquishing its license; and

b. Notify residents at least sixty (60) days prior to closure unless there is a sudden termination due to:

- (i) Fire;
- (ii) Natural disaster; or
- (iii) Closure by a governmental agency.

2. An ALC-DC that elects to voluntarily terminate operations shall:

a. Relinquish its license; and

b. Comply with notification requirements and other the steps for voluntary relinquishment established by KRS 194A.7063.

(4) Upon receipt of an application accompanied by the documentation and fees required by subsection (2) or subsection (3)(b), (c), or (d) of this section, the Office of Inspector General shall:

(a) Review the application for completeness; and

(b) Return the application and accompanying licensure fee if:

1. An individual having a significant financial interest in the facility, within the seven (7) year period prior to the application date, had a significant financial interest in an out-of-state or a Kentucky-licensed health facility or health service, or other entity regulated by the cabinet, that had its license or certificate to operate denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm; or

2. The cabinet finds that the applicant misrepresented or submitted false information on the application.

Section 4. Regulatory Functions and Authority to Enter Upon the Premises. (1) In accordance with KRS 216.530, inspection of an ALC, ALC-BH, or ALC-DC shall be unannounced.

(2) Licensure review inspections shall be conducted in accordance with the survey intervals established by KRS 194A.707(2).

(3) Nothing in this administrative regulation shall prevent the cabinet from:

(a) Conducting an investigation related to a complaint; or

(b) Making an on-site survey of an ALC, ALC-BH, or ALC-DC more often if the cabinet deems necessary.

(4) An ALC, ALC-BH, or ALC-DC shall be subject to the:

(a) Inspection requirements of 902 KAR 20:008, Section 2(12);

(b) Procedures for correcting violations established by 902 KAR 20:008, Section 2(13); and

(c) Civil monetary penalties imposed under KRS 194A.722(5) for any violation that poses imminent danger to a resident in which substantial risk of death or serious mental or physical harm is present.

Section 5. License Requirements. (1) In accordance with KRS 194A.707(3), an entity shall not operate as ALC, ALC-BH, or ALC-DC unless it is licensed.

(2) The licensee shall be legally responsible for:

(a) The management, control, and operation of the facility in accordance with KRS 194A.710(1), regardless of the existence of a management agreement or subcontract; and

(b) Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the ALC, ALC-BH, or ALC-DC.

(3) An ALC, ALC-BH, or ALC-DC shall not represent that the facility provides any service other than a service it is licensed to provide.

(4)(a) Upon approving an application, the cabinet shall issue a single license for each building that is operated by the licensee as an ALC, ALC-BH, or ALC-DC, except as provided under paragraph (b) of this subsection.

(b)1. Upon approving an application for an ALC, ALC-BH, or ALC-DC, the cabinet shall issue a single license for two (2) or more buildings on a campus if operated by the same licensee.

2. A license for two (2) or more buildings on a campus shall identify the:

a. Address;

b. Licensed resident capacity of each building;

c. Whether any building has residents that receive basic health and health-related services from the licensee; and

d. Whether any building has a dementia care unit.

Section 6. Physical Plant Requirements. (1) An ALC, ALC-BH, and ALC-DC shall comply with the requirements for living units as established by KRS 194A.703, including compliance with applicable building and safety codes as determined by the enforcement authority with jurisdiction.

(2) Pursuant to KRS 216.595(3), an ALC-DC may request a waiver from the cabinet regarding building requirements to address the specialized needs of individuals with Alzheimer's disease or other brain disorders.

(3) The request for a waiver shall follow the same process as a facility's request for a variance pursuant to 902 KAR 20:008, Sections 5 and 6.

Section 7. Operations and Services. (1) Resident criteria.

(a) In accordance with KRS 194A.711, a resident of an ALC, ALC-BH, or ALC-DC shall be ambulatory unless due to a temporary condition.

(b) An ALC, ALC-BH, or ALC-DC shall require a medical examination in accordance with KRS 216.765(1) prior to admission of a resident.

(c)1. An ALC, ALC-BH, or ALC-DC shall complete a functional needs assessment in accordance with KRS 194A.705(6) and provide a copy to the resident:

a. Upon move-in; and

b. As needed with updated information if there is a change in the resident's condition, but no later than once every twelve (12) months.

2. The functional needs assessment shall be administered by a staff person with at least:

a. A bachelor's degree in health or human services or a related field;

b. An associate's degree in health or human services or a related field and at least one (1) year of experience working with the elderly or conducting assessments; or

c. A high school diploma or its equivalency and two (2) years of experience working with the elderly or conducting assessments.

3. The functional needs assessment shall be used to ensure that the prospective or current resident:

a. Meets the eligibility criteria pursuant to KRS 194A.711;

b. Has at least minimal ability to verbally direct or physically participate in activities of daily living (ADL) or instrumental activities of daily living (IADL) during the time in which assistance is provided;

c. Is free from signs and symptoms of any communicable disease that is likely to be transmitted to other residents or staff;

d. Does not have any special dietary needs that the facility is

unable to meet; and

e. Does not require twenty-four (24) hour nursing supervision.

(2) Minimum requirements. Each ALC, ALC-BH, and ALC-DC shall:

(a) Provide each resident with a copy of the resident's rights established by KRS 216.515;

(b) Provide each resident with access to the services required by KRS 194A.705(1) according to the lease agreement;

(c) Except for a social model ALC, provide each resident with access to basic health and health-related services;

(d) Permit a resident to arrange for additional services under direct contract or arrangement with an outside party pursuant to KRS 194A.705(3) if permitted by the policies of the ALC, ALC-BH, or ALC-DC;

(e) Utilize a person-centered care planning and service delivery process;

(f) Provide an emergency response system or personal medical alert device for residents to request assistance twenty-four (24) hours per day, seven (7) days per week;

(g) Allow residents the ability to furnish and decorate the resident's unit within the terms of the lease agreement;

(h) Allow the resident the right to choose a roommate if sharing a unit;

(i) Except for a resident of a secured dementia unit in an ALC-DC, notify the resident that the living unit shall have a lockable entry door in accordance with KRS 194A.703(1)(b). The licensee shall:

1. Provide the locks on the unit;

2. Ensure that only a staff member with a specific need to enter the unit shall have access to the unit and provide advance notice to the resident before entrance, if possible; and

3. Not lock a resident in the resident's unit;

(j) Develop and implement a staffing plan for determining staffing levels that:

1. Includes an evaluation conducted at least twice a year of the appropriateness of staffing levels in the facility;

2. Ensures sufficient staffing at all times to meet the scheduled and reasonably foreseeable unscheduled needs of each resident as required by the residents' functional needs assessments and service plans on a twenty-four (24) hour per day basis; and

3. Ensures that the facility can respond promptly and effectively to:

a. Individual resident emergencies; and

b. Emergency, safety, and disaster situations affecting staff or residents in the facility;

(k) Ensure that one (1) or more staff are available twenty-four (24) hours per day, seven (7) days per week, who are responsible for responding to the requests of residents for assistance with health or safety needs;

(l) Upon the request of the resident, provide directly or assist with arranging for transportation to:

1. Medical and social services appointments;

2. Shopping; and

3. Recreation;

(m) Upon the request of the resident, provide assistance with accessing available community resources and social services;

(n) Provide culturally appropriate programs that help:

1. Residents remain connected to their traditional lifeways; and

2. Promote culturally sensitive interactions between staff and residents; and

(o) Allow residents to voluntarily engage in one (1) or more IADLs without assistance or with minimal assistance as documented in the resident's service plan, but shall not force a resident to perform IADLs such as housekeeping, shopping, or laundry.

(3) Lease agreements.

(a) Upon entering into a lease agreement, each ALC, ALC-BH, and ALC-DC shall inform the resident in writing according to KRS 194A.705(4) about policies relating to the provision of services and contracting or arranging for additional services.

(b) A lease agreement entered into between a resident and an ALC, ALC-BH, or ALC-DC shall meet the minimum content requirements of KRS 194A.713.

(4) Policies and procedures. Each ALC, ALC-BH, and ALC-DC shall maintain written policies and procedures that are up-to-date

and address the following:

(a) Reporting and recordkeeping of alleged or actual cases of abuse, neglect, or exploitation of an adult in accordance with KRS 194A.709 **and KRS 209.030(2) – (4) to the:**

1. Office of Inspector General, Division of Health Care; and
2. Department for Community Based Services;

(b) A description of dementia or other brain disorder-specific staff training as required by KRS 216.595(2)(i) if the facility provides special care for persons with a medical diagnosis of Alzheimer's disease or other brain disorders;

(c) How priority will be given to assist a resident during an emergency if evacuation of the facility is necessary and the resident requires hands-on assistance from another person to walk, transfer, or move from place to place with or without an assistive device pursuant to KRS 194A.717(5);

(d) Grievance policies required by KRS 194A.713(14);

(e) Except for a social model ALC, a method that incorporates at least four (4) components in an ongoing resident assessment done by a registered nurse or manager's (director) designee in accordance with KRS 216B.160(7);

(f) Conducting a functional needs assessment pursuant to KRS 194A.705(6);

(g) Infection control practices that address:

1. The prevention of disease transmission; and

2. Cleaning, disinfection, and sterilization methods used for equipment and the environment;

(h) Reminders for medications, treatments, or exercises, if applicable;

(i) Except for a social model ALC, ensuring that all nurses and ~~licensed~~ health professionals have current and valid licenses to practice;

(j) Medication and treatment management, if the facility provides these services;

(k) Except for a social model ALC, delegation of:

1. Nursing tasks in accordance with 201 KAR 20:400; [by registered nurses] or

2. Therapeutic or other tasks assigned by other licensed health professionals;

(l) Except for a social model ALC, supervision of ~~registered~~ nurses and licensed health professionals;

(m) Except for a social model ALC, supervision of unlicensed personnel performing delegated tasks, **which shall include how the facility ensures compliance with the supervision requirements of 201 KAR 20:400, Section 4, if nursing tasks are delegated;**

(n) Cardiopulmonary resuscitation unless the policies of the facility state that this procedure is not initiated by its staff, and each resident or prospective resident is informed of the facility's policy pursuant to KRS 194A.719(1)(d); and

(o) Compliance with the requirements of KRS 216B.165, including assurance that retaliatory action shall not be taken against a staff member who in good faith reports a resident care or safety problem.

(5) Resident grievances.

(a) Each ALC, ALC-BH, and ALC-DC shall post in a conspicuous place:

1. Information about the facility's grievance procedures; and

2. The name, telephone number, and e-mail contact information for the individuals who are responsible for handling resident grievances.

(b) The notice shall also have:

1. Contact information for the state long-term care ombudsman; and

2. Information for reporting suspected abuse, neglect, or exploitation of an adult.

Section 8. Business Operations. (1) Display of license. The original current license shall be displayed at the main entrance of each ALC, ALC-BH, and ALC-DC.

(2) Quality management.

(a) For purposes of this section, "quality management activity" shall mean evaluating the quality of care by:

1. Periodically reviewing resident services, complaints made,

and other issues that have occurred; and

2. Determining whether changes in services, staffing, or other procedures need to be made to ensure safe and competent services to residents.

(b) Each ALC, ALC-BH, or ALC-DC shall engage in quality management appropriate to the size of the facility and relevant to the type of services provided.

(c) Documentation about the facility's quality management activity shall be:

1. Maintained for at least two (2) years; and

2. Available to the Office of Inspector General at the time of the survey, investigation, or renewal.

(3) Restrictions.

(a) An ALC, ALC-BH, ALC-DC, or staff person shall not:

1. Accept a power-of-attorney from a resident for any purpose or accept appointment as a guardian or conservator; or

2. Borrow a resident's funds or personal or real property or convert a resident's property to the possession of the facility or staff person.

(b) An ALC, ALC-BH, ALC-DC, or staff person shall not serve as a resident's designated contact person or legal representative **unless the staff person is an immediate family member of the resident.**

(4) Resident finances and property.

(a) An ALC, ALC-BH, or ALC-DC may assist a resident with household budgeting, including paying bills and purchasing household goods, but shall not otherwise manage a resident's property except as described in this subsection.

(b) If an ALC, ALC-BH, or ALC-DC accepts responsibility for managing a resident's personal funds as evidenced by the facility's written acknowledgment, the facility shall comply with KRS 216.515(8).

(c) Within thirty (30) days of the effective date of a facility-initiated or resident-initiated termination of housing or services or the death of the resident, the ALC, ALC-BH, or ALC-DC shall:

1. Provide to the resident, resident's legal representative, or resident's designated contact person a final statement of account;

2. Provide any refunds due; and

3. Return any money, property, or valuables held in trust or custody by the facility.

Section 9. Dietary Services. (1) ~~(a) Dining area. Access to central dining shall be provided [A dining area shall be available]~~ for residents of an ALC, ALC-BH, or ALC-DC **in accordance with KRS 194A.703(2), including three (3) meals and snacks made available each day in accordance with KRS 194A.705(1)(b) with flexibility for residents in a secure dementia care unit.**

(b) In addition to subsection (1) of this section, subsections (2) to (5) of this section of this administrative regulation shall apply to facilities licensed to operate as an ALC-BH or ALC-DC.

(2) Therapeutic diets. If the facility provides therapeutic diets and the staff member responsible for food services is not a licensed dietician or certified nutritionist, the responsible staff person shall consult with a licensed dietician or certified nutritionist.

(3) Menu planning.

(a) Menus shall be planned in writing and rotated to avoid repetition.

(b) An ~~ALC, ALC-BH,~~ or ALC-DC shall meet the nutritional needs of residents.

(c) Meals shall correspond with the posted menu.

(d) Menus shall be planned and posted one (1) week in advance.

(e) If changes in the menu are necessary:

1. Substitutions shall provide equal nutritive value;

2. The changes shall be recorded on the menu; and

3. Menus shall be kept on file for thirty (30) days.

(4) Food preparation and storage.

(a) There shall be at least a three (3) day supply of food to prepare well-balanced, palatable meals.

(b) Food shall be prepared with consideration for any individual dietary requirement.

(c) Modified diets, nutrient concentrates, and supplements shall be given only on the written order of a **licensed health**

professional[physician].

(d) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast.

(e) At least two (2) hot meals daily shall be offered.

(f) Between-meal snacks, including an evening snack before bedtime shall be offered to all residents.

(g) Adjustments shall be made if medically contraindicated.

(h) Food shall be:

1. Prepared by methods that conserve nutritive value, flavor, and appearance; and

2. Served at the proper temperature and in a form to meet individual needs.

(i) A file of tested recipes, adjusted to appropriate yield, shall be maintained.

(j) Food shall be cut, chopped, or ground to meet individual needs.

(k) If a resident refuses food served, substitutes of equal nutritional value and complementary to the remainder of the meal shall be offered and recorded.

(l) All opened containers or leftover food items shall be covered and dated when refrigerated.

(m) Drinking water shall be readily available to the residents at all times.

(n) Food services shall be provided in accordance with 902 KAR 45:005.

(5)(a) Nothing in this administrative regulation shall be construed as taking precedence over the resident's right to make decisions regarding his or her eating and dining.

(b) Information about the resident's eating and dining preferences shall be included in the resident's service plan based on the resident's preferences.

(c) If the resident's eating and dining preferences have a potential health risk, staff shall inform the resident and the resident's designated contact person or legal representative.

Section 10. Employee Records and Requirements. [~~Employee records.~~]

(1) Each ALC, ALC-BH, or ALC-DC shall maintain a current record of each:

(a) Staff person employed by the facility directly or by contract; and

(b) Regularly scheduled volunteer providing direct care services.

(2) The record for each staff person shall include the following:

(a) Evidence of current professional licensure, registration, or certification, if applicable;

(b) Documentation of orientation completed within thirty (30) days from the date of hire and annual training;

(c) Documentation of annual performance evaluations;

(d) Current job description, including qualifications, responsibilities, and identification of each staff person who provides supervision;

(e) Documentation of background checks in accordance with Section 14(1) of this administrative regulation; and

(f) Record of any health exams related to employment, including compliance with the tuberculosis testing requirements of 902 KAR 20:205.

(3) The record for each regularly scheduled volunteer shall include documentation of background checks in accordance with Section 14(1) of this administrative regulation.

(4)(a) Each [~~employee~~]-record shall be retained for at least three (3) years after an employee or volunteer ceases to be employed by or provides services at the facility.

(5)(b) If a facility ceases operation, [~~employee~~]-records shall be maintained for three (3) years after facility operations cease.

Section 11. Prevention and Control of Tuberculosis and Other Communicable Diseases. (1) Each ALC, ALC-BH, and ALC-DC shall maintain written evidence of compliance with the screening and testing requirements of:

(a) 902 KAR 20:200, Tuberculosis (TB) testing for residents in long-term care settings; and

(b) 902 KAR 20:205, Tuberculosis (TB) testing for health care workers.

(2) An ALC, ALC-BH, and ALC-DC shall follow current requirements related to communicable diseases pursuant to KRS 194A.717(4).

(3) In accordance with KRS 194A.707(6), each ALC, ALC-BH, and ALC-DC may provide residents or their designated representatives with educational information or educational opportunities on influenza disease by September 1 of each year.

Section 12. Disaster Planning and Emergency Preparedness Plan.

(1) Each ALC, ALC-BH, and ALC-DC shall:

(a) Have a written emergency disaster plan that:

1. Contains a plan for evacuation, including the written policy required by Section 7(4)(c) of this administrative regulation and KRS 194A.717(5);

2. Addresses elements of sheltering in place or provides instructions for finding a safe location indoors and staying there until given an all clear or told to evacuate;

3. Identifies temporary relocation sites; and

4. Details staff assignments in the event of a disaster or an emergency;

(b) Post an emergency disaster plan prominently;

(c) Provide building emergency exit diagrams to all residents;

(d) Post emergency exit diagrams on each floor; and

(e) Have a written policy and procedure regarding missing tenant residents.

(2)(a) Each ALC, ALC-BH, and ALC-DC shall:

1. Provide emergency and disaster training to all staff during the initial staff orientation and annually; and

2. Make emergency and disaster training available to residents annually.

(b) Staff who have not received emergency and disaster training shall be allowed to work only if trained staff are also working on site.

Section 13. Resident Records. (1) Each ALC, ALC-BH, and ALC-DC shall maintain a record for each resident.

(2) Entries in the resident record shall be current, legible, permanently recorded, dated, and authenticated with the name and title of the staff person making the entry.

(3) Resident records, whether written or electronic, shall be protected against loss, tampering, or unauthorized disclosure.

(4) Each resident record shall include the following:

(a) Resident's name, date of birth, address, and telephone number;

(b) Name, address, and telephone number of the resident's legal representative or designated contact person;

(c) Names, addresses, and telephone numbers of the resident's health and medical service providers, if known;

(d) Health information, including medical history, allergies, tuberculosis test results, vaccination information, and if the provider is managing medications, treatments, or therapies, documentation of the administration of all medications or delivery of treatments or therapy services;

(e) The resident's advance directives, if any;

(f) Copies of any health care directives, guardianships, powers of attorney, or conservatorships;

(g) The resident's current and previous functional needs assessments and service plans;

(h) All records of communications pertinent to the resident's services;

(i) Documentation of significant changes in the resident's status and actions taken in response to the needs of the resident, including reporting to the appropriate supervisor or licensed health [~~care~~] professional;

(j) Documentation of any incident or accident involving the resident and actions taken in response to the needs of the resident, including reporting to the appropriate supervisor or licensed health [~~care~~] professional;

(k) Documentation that services have been provided as identified in the service plan and according to any required orders received from the resident's health care practitioner;

(l) Documentation of administration of medications and delivery of therapeutic services;

(m) Documentation of all verbal prescription orders received by phone and signed by the authorized health **professional[care practitioner]** within thirty (30) days;

(n) Documentation that the resident has received and reviewed the resident's rights;

(o) Documentation of complaints received and any resolution;

(p) Documentation of move-out or transfer to another setting, if applicable; and

(q) Other documentation relevant to the resident's services or status.

(5) With the resident's knowledge and consent, if a resident is relocated to another facility or if care is transferred to another service provider, the ALC, ALC-BH, or ALC-DC shall convey to the new facility or provider the:

(a) Resident's full name, date of birth, and insurance information;

(b) Name, telephone number, and address of the resident's designated contacts or legal representatives, if any;

(c) Resident's current documented diagnoses that are relevant to the services being provided;

(d) Resident's known allergies that are relevant to the services being provided;

(e) Name and telephone number of the resident's physician, if known, and the current physician orders that are relevant to the services being provided;

(f) All medication administration records and treatment sheets that are relevant to the services being provided;

(g) Most recent functional needs assessment; and

(h) Copies of health care directives, "do not resuscitate" orders, and any guardianship orders or powers of attorney.

(6)(a) Following a resident's move-out or termination of services, an ALC, ALC-BH, or ALC-DC shall retain a resident's record for at least six (6) years.

(b) Arrangements shall be made for secure storage and retrieval of resident records if the facility ceases to operate.

(7) Ownership.

(a) Any medical records shall be the property of the ALC, ALC-BH, or ALC-DC.

(b) The original medical record shall not be removed except by court order.

(c) Copies of medical records or portions thereof may be used and disclosed in accordance with the requirements established in this administrative regulation.

(8) Confidentiality and Security: Use and Disclosure.

(a) The ALC, ALC-BH, or ALC-DC shall maintain the confidentiality and security of resident records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

(b) The ALC, ALC-BH, or ALC-DC may use and disclose resident records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

(c) An ALC, ALC-BH, or ALC-DC may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

Section 14. Staff Requirements. (1) Background checks.

(a) All owners, ~~and~~ staff, **and regularly scheduled volunteers** in a position that involves providing direct care services to residents, **which may include access to the belongings, funds, or personal information of residents** shall:

1. Have a criminal record check performed pursuant to KRS 216.789(3);

2. In accordance with KRS 216.789(1), not have a criminal conviction or plea of guilty to a felony offense related to:

a. Theft;

b. Abuse or sale of illegal drugs;

c. Abuse, neglect, or exploitation of an adult; or

d. A sexual crime;

3. In accordance with KRS 216.789(2), not have a criminal conviction or plea of guilty to a misdemeanor offense related to abuse, neglect, or exploitation of an adult;

4. Not have a criminal conviction or plea of guilty to a felony or misdemeanor offense related to abuse, neglect, or exploitation of a child;

5. In accordance with KRS 209.032, not be listed on the caregiver misconduct registry established by 922 KAR 5:120; and

6. In accordance with KRS 216.532, not be listed on the nurse aide abuse registry established by 906 KAR 1:100.

(b) Staff in a position that involves providing direct care services to residents shall submit to a:

1. Criminal background check upon initial hire and no less than every two (2) years thereafter; and

2. Check of the following registries upon initial hire and annually thereafter:

a. Caregiver misconduct registry;

b. Nurse aide abuse registry; and

c. Central registry established by 922 KAR 1:470.

(c) An ALC, ALC-BH, or ALC-DC may use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of paragraphs (a) and (b) of this subsection.

(d) In accordance with KRS 216.789(4), an ALC, ALC-BH, or ALC-DC may temporarily employ an applicant pending receipt of the results of a criminal record check performed upon initial hire.

(2) Licensed health professionals and nurses. ~~[Except for a social model ALC,]~~ A licensed health professional or nurse who provides services to residents of an ALC-BH or ALC-DC shall possess a current Kentucky license **or multistate licensure privilege to practice in Kentucky.**

(3) Staffing.

(a) In accordance with KRS 194A.717(1), staffing in an ALC, ALC-BH, or ALC-DC shall be sufficient in number and qualifications to meet the twenty-four (24) hour scheduled needs of each resident pursuant to the lease agreement, functional needs assessment, and service plan.

(b) In accordance with KRS 194A.717(2), at least one (1) staff person shall be awake and on-site at all times at each:

1. Licensed entity; or

2. Building on the same campus for two (2) or more buildings operated by the same licensee.

(c) The designated manager (director) of the facility shall meet the requirements of KRS 194A.717(3).

(4) Availability of nurse.

~~[(a)]~~ An ALC-BH and ALC-DC shall have a ~~[registered]~~ nurse **readily available[for consultation by staff performing delegated nursing tasks].**

~~(b) The registered nurse shall be readily available]~~ in person, by telephone, or by other means **of live, two-way communication to unlicensed[the] staff** at times the staff is providing delegated **nursing tasks[services].**

(5) Delegation of assisted living services.

~~(a) 1. [Except for a social model ALC,] A nurse in an ALC-BH or ALC-DC[registered nurse or licensed health professional]~~ may delegate tasks in accordance with **201 KAR 20:400.**

2. A licensed health professional in an ALC-BH or ALC-DC may delegate tasks in accordance with the professional's[practitioner's] scope of practice standards only to those staff who possess the knowledge and skills consistent with the complexity of the tasks delegated.

(b) The ALC-BH or ALC-DC shall establish and implement a system to communicate up-to-date information to the ~~[registered]~~ nurse or **appropriate** licensed health professional regarding current available staff so the ~~[registered]~~ nurse or licensed health professional has sufficient information to determine the appropriateness of delegating tasks to meet individual resident needs and preferences.

(c) If the ~~[registered]~~ nurse or licensed health professional delegates tasks to unlicensed personnel, the ~~[registered]~~ nurse or health professional shall ensure that prior to the delegation the

unlicensed staff person is trained in the proper methods to perform the tasks and demonstrates competence in performing the tasks.

(d) If an unlicensed staff person has not regularly performed the delegated assisted living task during the previous twenty-four (24) month period, the unlicensed staff person shall demonstrate competency in the task to the ~~[registered] nurse~~ or appropriate licensed health professional.

(e) The ~~[registered] nurse~~ or licensed health professional shall document delegated nursing or other assigned~~[instructions for the delegated]~~ tasks in the resident's record.

(6) Supervision of staff providing non-health related services.

(a) Staff who provide only those assisted living services identified in KRS 194A.700(7)(a)-(f), (i) or (n) shall be supervised periodically to:

1. Verify that the work is being performed competently; and
2. Identify problems and solutions to address issues relating to the staff's ability to provide the services.

(b) The supervision of unlicensed personnel shall be done by staff who:

1. Have the authority, skills, and ability to provide the supervision of unlicensed personnel;
2. Can implement changes as needed; and
3. Can train staff.

(c) Supervision may include~~[includes]~~:

1. Direct observation of an unlicensed staff person while the unlicensed staff person is providing the services; and
2. Indirect methods of gaining input such as gathering feedback from the resident.

(d) Supervisory review of unlicensed staff shall be provided at a frequency based on the unlicensed staff person's knowledge, skills, and performance.

(7) Supervision of staff providing delegated nursing or therapy tasks.

(a) An unlicensed staff person who performs:

1. Delegated nursing tasks shall be supervised by a nurse pursuant to the requirements of 201 KAR 20:400, Section 4; or

2. Therapy tasks shall be supervised by [a registered nurse or] an appropriate licensed health professional according to the facility's policy to:

a.[1.] Verify that the work is being performed competently; and

b.[2.] Identify problems and solutions related to the staff person's ability to perform the tasks.

(b) Supervision of an unlicensed staff person performing medication or treatment administration~~[shall]~~:

1. Shall be provided by a ~~[registered] nurse~~ or appropriately licensed health professional; and

2. May include observation of the staff person administering the medication or treatment and the interaction with the resident.

(c) The direct supervision of an unlicensed staff person performing a delegated task shall be provided the first time the staff person performs the delegated task and on an as needed basis thereafter based on performance.

(8) Orientation and annual training.

(a) Prior to working independently with residents and within thirty (30) days from the date of hire, all staff and management shall receive orientation education that addresses the topics required by KRS 194A.719(1) with emphasis on those most applicable to the employee's assigned duties.

(b) All staff and management shall receive annual training in accordance with KRS 194A.719(2), which shall include in-service education regarding Alzheimer's disease and other types of dementia.

Section 15. Medication Management. (1) Medication management services.

(a) This section of this administrative regulation applies to facilities licensed to operate as an ALC-BH or ALC-DC.

(b) Medications or therapeutic services shall not be administered or provided to any resident except on the order of a licensed health care practitioner as authorized under the practitioner's scope of practice.

(c) Each facility subject to this section shall develop, implement, and maintain written medication management policies and procedures developed under the supervision and direction of a

~~[registered] nurse~~, appropriate licensed health professional, or pharmacist consistent with scope of practice standards and guidelines.

(d) The policies and procedures shall address:

1. Requesting and receiving prescriptions for medications;
2. Preparing and giving medications;
3. Verifying that prescription drugs are administered as prescribed;
4. Documenting medication management activities;
5. Storage of medications, which shall include compliance with the following requirements:
 - a. All medications shall be kept in a locked place;
 - b. All medications requiring refrigeration shall be kept in a separate locked box in the refrigerator in the medication area; and
 - c. Drugs for external use shall be stored separately from those administered by mouth or injection;
6. Monitoring and evaluating medication use;
7. Resolving medication errors;
8. Communicating with the prescriber, pharmacist, resident and if applicable, designated contact person or legal representative;
9. Disposing of unused medications; and
10. Educating residents and designated contacts or legal representatives about medications.

(e) If controlled substances are being managed, the policies and procedures shall identify how the facility ensures security and accountability for the overall management, control, and disposition of those substances in accordance with subsection (21) of this section.

(f) All resident medications shall be plainly labeled with the:

1. Resident's name;
2. Name of the drug;
3. Strength;
4. Name of the pharmacy;
5. Prescription number;
6. Date;
7. Prescriber's name; and
8. Caution statements and directions for use, unless a modified unit dose drug distribution system is used.

(2) Provision of medication management services. Prior to providing medication management services to a resident pursuant to orders from the resident's health care practitioner in accordance with KRS 194A.708(1)(d), the facility shall have a [registered] nurse or other licensed health professional~~[prescribing practitioner shall]~~ conduct an assessment that shall:

(a) Be face-to-face with the resident;

(b) Determine what medication management services will be provided and how the services will be provided;

(c) Include an identification and review of all medications the resident is known to be taking. The review and identification shall include:

1. Indications for medications;
2. Side effects;
3. Contraindications; and
4. Possible allergic or adverse reactions, and actions to address these issues;

(d) Identify interventions needed in the management of medications to prevent diversion of medication by the resident or others who may have access to the medications; and

(e) Provide instructions to the resident and designated contacts or legal representatives on interventions to prevent diversion of medications such as misuse, theft, or illegal or improper disposition of medications.

(3) Individualized medication monitoring and reassessment. The ALC-BH or ALC-DC shall reassess the resident's medication management services in accordance with subsection (2) of this section:

(a) If the resident presents with symptoms or other issues that may be medication-related; and

(b) No later than every twelve (12) months.

(4) Resident refusal. The ALC-BH or ALC-DC shall:

(a) Document in the resident's record any refusal for an assessment for medication management;~~[and]~~

(b) Discuss ~~[with the resident]~~ the possible consequences of

the resident's refusal with the:

1. Resident;

2. Resident's designated contact person or legal representative; or

3. Both individuals identified by subparagraph 2. and 3. of this paragraph; and

(c) Document the discussion in the resident's record.

(5) Individualized medication management plan.

(a) For each resident receiving medication management services, the ALC-BH or ALC-DC shall develop and maintain a current individualized medication management record for each resident based on the resident's assessment.

(b) The medication management record shall be updated if there is a change and contain:

1. A statement describing the medication management services that will be provided to the resident;

2. A description of storage of medications that:

a. Is based on the resident's needs and preferences;

b. Reduces risk of diversion; and

c. Is consistent with the manufacturer's directions;

3. Documentation of specific instructions relating to the administration of medications to the resident;

4. Identification of persons responsible for monitoring medication supplies and ensuring that medication refills are ordered on a timely basis;

5. Identification of medication management tasks that may be delegated to unlicensed personnel;

6. Procedures for staff to notify a ~~[registered]~~nurse or appropriate licensed health professional if a problem arises with medication management services; and

7. Any resident-specific requirements related to:

a. Documenting medication administration;

b. Verification that all medications are administered as prescribed; and

c. Monitoring of medication use to prevent possible complications or adverse reactions.

(c) Medication reconciliation shall be completed by a ~~[registered]~~nurse, licensed health **professional[care practitioner]** acting within the **professional's[practitioner's]** scope of practice, or authorized prescriber for each resident receiving medication management services.

(6) Administration of medication. A licensed health **[care]**professional may:

(a) Administer medications as authorized under the professional's scope of practice; or

(b) Delegate medication administration tasks in accordance with subsection (7) of this section.

(7) Delegation of medication administration.

(a) Unlicensed personnel who meet the requirements of subparagraph 1. of this paragraph may only administer oral or topical medication or preloaded injectable insulin if delegated to them by a **nurse or appropriate** licensed health **[care]**professional. If medication **administration** is delegated to unlicensed personnel, the ALC-BH or ALC-DC shall ensure that the ~~[registered]~~nurse or licensed health **[care]**professional has:

1.[(a)] Delegated medication administration to a staff person who:

a. Is a certified medication aide; or

b. Has[:

1-] successfully completed a:

(i) [the Kentucky] Medication aide training program accepted by the Kentucky Board of Nursing (KBN);

(ii) Skills competency evaluation; and

2. [Demonstrated the ability to competently follow the procedures;

(b) Instructed the unlicensed personnel in the proper methods to administer oral or topical medications;

(c)] Specified, in writing, specific instructions for each resident and documented those instructions in the resident's records; and

3.[(d)] Communicated with the unlicensed personnel about the individual needs of the resident.

(b) The ALC-BH or ALC-DC shall ensure that a nurse or licensed health professional is readily available during times

the unlicensed staff administers medications in accordance with Section 14(4) of this administrative regulation.

(8) Documentation of administration of medications.

(a) Each medication administered shall be documented in the resident's record.

(b) The documentation shall include the:

1. Signature and title of the staff person who administered the medication;

2. The medication name, dosage, date, and time administered; and

3. Method and route of administration.

(c) The staff person shall document the:

1. Reason why medication administration was not completed as prescribed, if applicable; and

2. Any follow-up procedures that were provided to meet the resident's needs if medication was not administered as prescribed and in compliance with the resident's medication management plan.

(9) Documentation of medication setup. At the time of medication setup, the authorized health **professional[care practitioner]** shall document the following in the resident's record:

(a) Date of medication setup;

(b) Name of medication;

(c) Quantity of dose;

(d) Times to be administered;

(e) Route of administration; and

(f) Name of the staff person completing the medication setup.

(10) Medication management for residents who will be away from the facility.

(a) An ALC-BH or ALC-DC shall develop and implement policies and procedures for giving accurate and current medications to the resident for planned or unplanned times away from the facility according to the resident's individualized medication management plan.

(b) The policies and procedures shall state that:

1. For planned time away, the medications shall be obtained from the pharmacy or set up by the ~~[registered]~~nurse or authorized health **professional[care practitioner]**;

2. For unplanned time away, if the pharmacy is not able to provide the medications, a ~~[registered]~~nurse or authorized health **professional[care practitioner]** shall provide medications in the amounts and dosages needed for the length of the anticipated absence, not to exceed seven (7) calendar days.

(c) The ALC-BH or ALC-DC shall:

1. Provide the resident with written information on medications, including any special instructions for administering or handling the medications;

2. Place the medications in a medication container or containers appropriate to the provider's medication system; and

3. Label the container or containers with the:

a. Resident's name; and

b. The dates and times that the medications are scheduled.

(11) Over-the-counter drugs and dietary supplements not prescribed.

(a) An ALC-BH or ALC-DC providing medication management services for over-the-counter drugs or dietary supplements shall retain those items in the original labeled container with directions for use prior to setting up for immediate or later administration.

(b) The ALC-BH or ALC-DC shall verify that the medications are up to date and stored as appropriate.

(12) Prescriptions. There shall be a current written or electronically recorded prescription for all prescribed medications that the ALC-BH or ALC-DC is managing for the resident.

(13) Renewal of prescriptions. Prescriptions shall be renewed at least every twelve (12) months or more frequently as indicated by the assessment in subsection (2) of this section.

(14) Verbal prescription orders. If an order is received by telephone, the order shall be:

(a) Recorded in the resident's medication management record; and

(b) Signed by the physician or health care practitioner as authorized under the practitioner's scope of practice within thirty (30) days.

(15) Written or electronic prescription. At the time a written or

electronic prescription is received, it shall be:

- (a) Communicated to the ~~[registered]~~nurse in charge; and
- (b) Recorded or placed in the resident's record.

(16) Medications provided by resident or family members. If a staff person becomes aware of any medications or dietary supplements that are being used by the resident and are not included in the assessment for medication management services, the staff person shall advise the ~~[registered]~~nurse and document that in the resident record.

(17) Storage of medications. Except for the storage of controlled substances that shall be kept under a double lock in accordance with subsection (21)(b) of this section, an ALC-BH or ALC-DC shall store all prescription medications in securely locked and substantially constructed compartments according to the manufacturer's directions and permit only authorized personnel to have access.

(18) Prescription drugs. A prescription drug, prior to being set up for immediate or later administration, shall be kept in the original container in which it was dispensed by the pharmacy bearing the original prescription label with legible information including the expiration or beyond-use date of a time-dated drug.

(19) Prohibitions. No prescription drug supply for one (1) resident may be used or saved for use by anyone other than the resident.

(20) Disposition of medications.

(a) Any current medications being managed by the ALC-BH or ALC-DC shall be provided to the resident if:

1. The resident's service plan ends; or
2. Medication management services are no longer part of the service plan.

(b) The ALC-BH or ALC-DC shall dispose of any medications remaining with the facility:

1. That are discontinued or expired; or
2. Upon termination of the service plan or the resident's death.

(c) Upon disposition, the facility shall document in the resident's record the disposition of the medication, including:

1. The medication's name, strength, prescription number as applicable, and quantity;
2. How the medication was disposed of or to whom the medications were given;
3. Date of disposition; and
4. Names of staff and other individuals involved in the disposition.

(21) Controlled substances.

(a) Controlled substances. An ALC-BH or ALC-DC shall not keep any controlled substances or other habit forming drugs, hypodermic needles, or syringes except under the specific direction of a prescribing practitioner.

(b) Controlled substances shall be kept under double lock, for example, stored in a locked box in a locked cabinet, and keys or access codes to the locked box and locked cabinet shall be accessible to designated staff only.

(c) There shall be a controlled substances bound record book with numbered pages that includes:

1. Name of the resident;
2. Date, time, kind, dosage, and method of administration of each controlled substance;
3. Name of the practitioner who prescribed the medications; and
4. Name of the nurse who:

a. Administered the controlled substance; or

b. Supervised self-administration by a resident whose medical record includes a written determination from an appropriately authorized[a] health professional[care practitioner] that the resident is able to safely self-administer a controlled substance under supervision.

(d) An appropriately authorized[A] licensed health professional[practitioner] with access to controlled substances shall be responsible for maintaining a recorded and signed:

1. Schedule II controlled substances count daily; and
2. Schedule III, IV, and V controlled substances count at least one (1) time per week.

(e) All expired or unused controlled substances shall be disposed of, or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:

1. After expiration of the medication; or
 2. From the date the medication was discontinued.
- (f) If controlled substances are destroyed on-site:

1. The method of destruction shall render the drug unavailable and unusable;

2. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and

3. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the:

- a. Date of destruction;
- b. Resident name;
- c. Drug name;
- d. Drug strength;
- e. Quantity;
- f. Method of destruction;
- g. Name and signature of the person responsible for the destruction; and
- h. Name of the witness.

(g) For purposes of this paragraph, an ALC-BH or ALC-DC shall be treated the same as a licensed personal care home that stores and administers controlled substances in an emergency medication kit (EMK) in which case the facility shall comply with the same:

1. Requirement for licensed personnel established by 201 KAR 2:370, Section 2(4)(i);

2. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), (7), (8), and (9); and

3. Limitation on the number and quantity of medications established by 902 KAR 55:070, Section 2(6).

(22) Emergency drugs for non-controlled substances in an EMK.

(a) For purposes of this paragraph, an ALC-BH or ALC-DC shall be treated the same as a licensed personal care home that stores and administers non-controlled substances in an EMK in which case the facility shall comply with the same:

1. Requirement for licensed personnel established by 201 KAR 2:370, Section 2(4)(i); and

2. Limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

(b) An ALC-BH or ALC-DC that stores and administers non-controlled substances from a long-term care facility (LTCF) drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(b).

(23) Loss or spillage.

(a) An ALC-BH or ALC-DC shall develop and implement procedures to address loss or spillage of all controlled substances.

(b) The procedures shall require that if spillage of a controlled substance occurs, a notation shall be made in the resident's record explaining the spillage and the actions taken.

(c) The notation shall be signed by the person responsible for the spillage and include verification that any contaminated substance was disposed of.

(d) The procedures shall require that the ALC-BH or ALC-DC:

1. Investigate any known loss or unaccounted for prescription drugs;

2. Document the investigation in required records; and

3. Provide a copy of the detailed list of controlled substances lost, destroyed, or stolen to the Office of Inspector General:

- a. Division of Audits and Investigations as soon as practical pursuant to KRS 218A.200(6); and
- b. Division of Health Care.

Section 16. Assisted Living Communities with Dementia Care. (1) An applicant for licensure as an ALC-DC shall provide services in a manner that is consistent with the requirements of KRS 194.7061(1) – (3).

(2) An ALC-DC shall comply with KRS 194A.7065 and KRS 216.595.

(3) The manager (director) of an ALC-DC shall complete ten (10) hours of annual dementia-specific training in the topics established by KRS 194A.7201(2).

(4) An ALC-DC shall:

- (a) Develop policies and procedures in accordance with KRS

194A.708(1); and

(b) Provide a copy of the policies and procedures to the resident and the resident's designated contact person or legal representative at the time of move-in.

(5) An ALC-DC shall ensure that the facility complies with the staffing standards established by KRS 194A.7203, including the requirement for only dementia-trained staff to care for residents on its secured dementia unit unless a temporary emergency situation exists.

(6) An ALC-DC shall:

(a) Provide all of the services listed in KRS 194A.7052(1);

(b) Evaluate each resident on its secured dementia unit for engagement in activities and develop an individualized activity plan pursuant to KRS 194A.7052(2) and (3);

(c) Provide a selection of daily structured and non-structured activities for residents on its secured dementia unit in accordance with KRS 194A.7052(4);

(d) Evaluate behavioral symptoms that negatively impact residents on its secured dementia unit and others in the facility and comply with the requirements of KRS 194A.7052(5);

(e) Offer support services to the families of residents on its secured dementia unit and others with significant relationships at least every six (6) months in accordance with KRS 194A.7052(6); and

(f) For dementia care units constructed after July 14, 2022, offer access to secured outdoor space in accordance with KRS 194A.7052(7).

(7) In addition to the training requirements of Section 14(8) of this administrative regulation, an ALC-DC shall meet the training requirements of KRS 194A.7205 for direct care staff who work in the facility's secured dementia care unit.

Section 17. Violation of Standards. An ALC, ALC-BH, or ALC-DC shall be subject to any applicable enforcement actions authorized by KRS 194A.722 and 902 KAR 20:008, Sections 7 and 8 for violations of the standards established by this administrative regulation, KRS 194A.700—194A.729, 216.532, or 216.789.

Section 18. Denial and Revocation.

(1) In addition to the reasons for denial or revocation of a license in accordance with 902 KAR 20:008, Section 8, the cabinet shall deny or revoke an ALC, ALC-BH, or ALC-DC license if it finds that:

(a) There has been a substantial failure by the facility to comply with the provisions of:

1. KRS 194A.700—194A.729, 216.532, or 216.789; or

2. This administrative regulation;

(b) The facility permits, aids, or abets the commission of any illegal act in the provision of assisted living services;

(c) The facility performs any act detrimental to the health, safety, or welfare of a resident;

(d) The facility obtains licensure by fraud or misrepresentation, including a false statement of a material in fact in:

1. The Application for License to Operate an Assisted Living Community; or

2. Any records required by this administrative regulation;

(e) The facility denies a representative of the cabinet access to any part of the facility's books, records, files, employees, or residents;

(f) The facility interferes with or impedes the performance of the duties and responsibilities of the long-term care ombudsman;

(g) The facility interferes with or impedes a representative of the cabinet in the enforcement of this administrative regulation or fails to fully cooperate with a survey or investigation by the cabinet;

(h) The facility destroys or makes unavailable any records or other evidence relating to the facility's compliance with this administrative regulation;

(i) The facility refuses to initiate a background check or otherwise fails to comply with the requirements of KRS 216.789;

(j) The facility fails to timely pay any fines assessed by the cabinet;

(k) The facility violates any applicable building or safety codes as determined by the building code or safety code enforcement authority with jurisdiction;

(l) There have been repeated incidents in the facility of personnel performing services beyond their competency level;

(m) The facility continues to operate beyond the scope of the facility's license after the timeframe specified for correction of the violation; or

(n) An individual with a significant financial interest in the facility:

1. Is convicted of a felony or gross misdemeanor that relates to the operation of the facility or directly affects resident safety or care; or

2. Had the application returned in accordance with Section 3(4) of this administrative regulation.

(2) The cabinet shall follow the notification requirements of 902 KAR 20:008, Section 8(2) and (3) for denial or revocation.

(3) In accordance with KRS 216B.105(2), the denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee files a request in writing for a hearing with the cabinet within thirty (30) days after the date of the notice.

Section 19. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form OIG – 20:480, "Application for Licensure to Operate an Assisted Living Community", November 2022 edition; and

(b) Form OIG – 20:480-A, "Functional Needs Assessment", **March 2023**~~(November 2022)~~ edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/ltcapplications.aspx>.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 8, 2023

FILED WITH LRC: March 15, 2023 at 8:00 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the minimum licensure requirements for the operation of social model assisted living communities (ALC), health care model assisted living communities that provide basic health and health-related services (ALC-BH), and assisted living communities with a secured dementia care unit (ALC-DC).

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to comply with the passage of SB 11 during the 2022 regular session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation conforms to the content of KRS 194A.700—194A.729 by establishing an initial and re-licensure review process. This new administrative regulation also conforms to the content of KRS 216B.042(1) by establishing the licensure standards and procedures to ensure safe, adequate, and efficient health facilities which is defined by KRS 216B.015(13) to include assisted living communities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation assists in the effective administration of KRS 194A.700—194A.729 by establishing minimum licensure requirements for the operation of social model ALCs, ALCs-BH, and ALCs-DC.

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

(a) How the amendment will change this existing administrative regulation: In response to comments received during the public

comment period, this amended after comments regulation includes the following changes: Adds "immediate family member", "licensed health professional", "nurse", "nursing task" and "volunteer" to Section 1, Definitions. Clarifies that reports of abuse, neglect, or exploitation must be made to the Office of Inspector General and Department for Community Based Services. Clarifies that the delegation of nursing tasks and the supervision of unlicensed personnel performing delegated tasks in an ALC-BH or ALC-DC must be in compliance with 201 KAR 20:400. Adds an exemption from the prohibition against being a contact person or legal representative only if a staff person is an "immediate family member" of the resident. Clarifies that social model ALCs must continue to comply with the current requirements for dietary services in accordance with KRS 194A.703(2) and KRS 194A.705(1)(b) while ALCs-BH and ALCs-DC must comply with the remaining subsections of Section 9, Dietary services, which mirror the same requirements established by the PCH regulation, 902 KAR 20:036, Section 4(3)(c) for dietary services. Replaces "physician" with "licensed health professional" in Section 9(4)(c) to align with KRS 194A.700(7)(f). Clarifies that a record shall be maintained for each regularly scheduled volunteer and shall include documentation of a background check. Clarifies that employees with access to residents' belongings, funds, or personal information are subject to the same background checks required of direct care staff. Replaces all references to "health care professional" with "licensed health professional" as newly defined in Section 1. Replaces all references to "registered nurse" with "nurse" so that a licensed practical nurse (LPN) who provides services pursuant to KRS 194A.700(7)(g) in an ALC-BH or ALC-DC may delegate nursing tasks. Clarifies that a nurse in an ALC-BH or ALC-DC must be readily available in person, by telephone, or by other means to unlicensed staff at times the staff is providing delegated nursing tasks; deletes the requirement for a registered nurse to be available for consultation by staff performing delegated nursing tasks. Replaces the requirement for a nurse or licensed health professional in an ALC-BH or ALC-DC to document instructions for the delegated tasks in the resident's record with a requirement for the nurse or licensed health professional to document delegated tasks in the resident's record. Clarifies that the nurse or other licensed professional in an ALC-BH or ALC-DC shall be responsible for conducting a face-to-face assessment with the resident prior to providing medication management services. Clarifies that an ALC-BH or ALC-DC shall discuss the possible consequences of a resident's refusal of an assessment for medication management with the resident, resident's designated contact person or legal representative, or both. Clarifies that unlicensed staff who administer medications in an ALC-BH or ALC-DC under the delegation of a nurse must be: (1) a certified medication aide; or (2) have successfully completed a medication aide training program accepted by KBN and a skills competency evaluation. This change assures that unlicensed personnel are not limited solely to the Kentucky medication aide training program offered by the Kentucky Community and Technical College System. The use of properly trained and competent medication aides leads to fewer errors with drug use and medication administration, thereby enhancing liability protections for the facility and helping ensure fewer negative outcomes for residents. Allows certified medication aides in an ALC-BH or ALC-DC to administer preloaded injectable insulin in addition to oral or topical medications. Makes changes to the Functional Needs Assessment as described under the Summary of Material Incorporated by Reference.

(b) The necessity of the amendment to this administrative regulation: This amended after comments regulation is necessary to address issues brought forth during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: This amended after comments regulation conforms to the content of KRS 194A.700 -194A.729 by establishing an initial and re-licensure review process. This amended after comments regulation also conforms to the content of KRS 216B.042(1) by establishing the licensure standards and procedures to ensure safe, adequate, and efficient health facilities which is defined by KRS 216B.015(13) to include assisted living communities.

(d) How the amendment will assist in the effective administration

of the statutes: This amended after comments regulation assists in the effective administration of KRS 194A.700 - 194A.729 by establishing minimum licensure requirements for the operation of social model ALCs, ALCs-BH, and ALCs-DC.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects ALCs. There are approximately 114 ALCs certified by the Department for Aging and Independent Living that will convert to licensed facilities regulated by the Office of Inspector General after adoption of this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with SB 11 and this administrative regulation, entities that convert their certification status or otherwise seek licensure as an ALC, ALC-BH, or ALC-DC will be required to submit an initial and annual renewal application to the cabinet with accompanying documentation. They will have to comply with the minimum licensure standards established by KRS 194A.700—194A.729 and this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation was promulgated in accordance with the passage of SB 11, a measure brought forward by Kentucky's three long-term care associations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In accordance with the passage of SB 11 during the 2022 regular session, this administrative regulation will replace the current structure of certification of ALCs, which are currently prohibited from providing health services, with a framework that will allow ALCs to seek licensure to provide basic health and health-related services, including dementia care services. The overall goal of converting the current "social model" to a "health care model" will allow more seniors who reside in assisted living communities to age in place to the extent that basic health and health-related services are needed, which may also include dementia care services.

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

(a) Initially: The OIG anticipates an estimated cost of approximately \$352,000 to cover four (4) new staff positions that will be needed to absorb the workload associated with inspecting and monitoring licensed assisted living communities.

(b) On a continuing basis: The OIG anticipates an estimated ongoing cost of approximately \$352,000 to cover the four (4) staff positions necessary to inspect and monitor licensed assisted living communities.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this new administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: ALCs are currently subject to the fee schedule established by 910 KAR 1:240, Section 2(1)(e) for initial certification and Section 3(2)(c) for annual renewal. This new administrative regulation retains the same fee schedule for ALCs and therefore does not increase fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation establishes fees as authorized by KRS 194A.707(9) and retains the same fee structure as currently established by 910 KAR 1:240.

(9) TIERING: Is tiering applied? Tiering is used because entities may seek licensure as a social model assisted living community, health care model assisted living community, or as an assisted living community with a secured dementia care unit defined by KRS 194A.700(6).

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts assisted living communities (ALC), apartment-style personal care homes that convert to ALC licensure, and the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.707(1) and (9), 216B.042(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue is based on the number of licensed ALCs subject to the following fee schedule: ? Revenue is based on the number of licensed ALCs subject to the following fee schedule: Number of Units: <25, Rate: \$500 + \$40 per unit; Number of Units: 25-49, Rate: \$1,000 + \$40 per unit; Number of Units: 50-74, Rate: \$1,500 + \$40 per unit; Number of Units: 75-99, Rate: \$1,750 + \$40 per unit; Number of Units: 110 or more, Rate: \$2,000 + \$40 per unit.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Ongoing revenue is based on the number of licensed ALCs subject to the above fee schedule.

(c) How much will it cost to administer this program for the first year? The OIG anticipates an estimated cost of approximately \$352,000 to cover four (4) new staff positions that are needed to absorb the workload associated with inspecting and monitoring licensed ALCs during the first year.

(d) How much will it cost to administer this program for subsequent years? The OIG anticipates an estimated ongoing cost of approximately \$352,000 to cover the four (4) staff positions necessary to inspect and monitor licensed ALCs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated

entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The annual licensure fees paid by the roughly 114 assisted living communities is not anticipated to exceed \$500,000. Therefore, this new administrative regulation is not expected to have a major economic impact on the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 21 C.F.R. Part 1317, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2–1320d-8

(2) State compliance standards. KRS 194A.707(1) and (9), 216B.042(1)

(3) Minimum or uniform standards contained in the federal mandate. 21 C.F.R. Part 1317, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2–1320d-8

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

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

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**GENERAL GOVERNMENT CABINET
Auditor of Public Accounts
(Amendment)**

45 KAR 1:040. Audits of county fee officials.

RELATES TO: KRS 43.070, 43.075, [64.530-], 64.810, 68.210
STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of counties and elected county officials. This administrative regulation establishes the auditing standards, procedures, and formats for county fee officials' audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures, and Formats. The financial and compliance audit of the funds administered by each county fee official shall be conducted and reported in accordance with:

(1) Generally accepted auditing standards[~~Auditing standards generally accepted in the United States of America~~], referenced in 201 KAR 1:290[~~201 KAR 1:300, Section 5(1)(a)~~];

(2) Generally accepted government auditing standards, referenced in 201 KAR 1:290[~~201 KAR 1:300, Section 5(1)(b)~~]; and

(3) The "Audit Program for County Fee Officials," issued by the Auditor of Public Accounts, February 13, 2023[~~July 1, 2017~~].

Section 3. Auditor's Independent Judgement[~~Judgment~~]. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective.

(1) The primary objective of an audit of a fee official shall be an audit report that provides an opinion on whether the financial statements of the fee official present fairly, in all material respects, the receipts, disbursements, and excess fees.

(2) An auditor shall make tests sufficient to determine whether:

(a) The fee official has complied with the requirements of the uniform system of accounts adopted under KRS [64.530 and] 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The fee official has complied with all other legal requirements relating to the management of public funds by his or her office.

Section 5. Allowance of Audit Fees; Acceptance of Report.

(1) Fees for county fee officials' audits shall be allowable as reasonable and necessary expenses of a county or county fee official if the independent accountant's audit has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A fee official shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fee official's[officials'] audit.

(3) Failure by an independent certified public accountant to comply with the "Audit Program for County Fee Officials" and this administrative regulation, shall disqualify him [or her] from conducting fee officials' audits.

Section 6. Incorporation by Reference.

(1) The "Audit Program for County Fee Officials," Auditor of Public Accounts, February 13, 2023[~~July 1, 2017~~] is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 209 Saint Clair Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

MIKE HARMON, Auditor of Public Accounts

APPROVED BY AGENCY: March 14, 2023

FILED WITH LRC: March 15, 2023 at 8:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2023, at 10:00 a.m. Eastern Time at the office of the Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Graham Gray, General Counsel, Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601; phone 502-209-2870; fax 502-564-2912; e-mail Graham.Gray@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Graham Gray

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates uniform standards and procedures for conducting, and uniform formats for reporting, all audits of county fee officials performed under KRS 43.070 or KRS 64.810.

(b) The necessity of this administrative regulation: KRS 43.075 requires the Auditor of Public Accounts to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of county fee officials performed under KRS 43.070 or KRS 64.810.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists or will assist in the effective administration of the statute by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of county fee officials performed under KRS 43.070 or KRS 64.810.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by replacing the "Audit Program for County Fee Officials," issued by the Auditor of Public Accounts, July 1, 2017, with the "Audit Program for County Fee Officials," issued by the Auditor of Public Accounts, February 13, 2023, which is incorporated by reference, to make auditing procedures and report formats conform

to the regulatory basis of accounting and applicable auditing standards. The amendment also updates the regulatory references in Section 2.

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation by updating the regulatory references in Section 2 and incorporating the updated "Audit Program for County Fee Officials" is necessary to conform this administrative regulation to current county fee officials' audit practices and procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 43.075, by updating current standards and procedures for conducting, and formats for reporting, county fee officials' audits performed under KRS 43.070 or KRS 64.810.

(d) How the amendment will assist in the effective administration of the statute: The amendment will assist in the effective administration of the statute, KRS 43.075, by updating current standards and procedures for conducting, and uniform formats for reporting, all county fee officials' audits performed under KRS 43.070 or KRS 64.810.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky counties, certified public accountants licensed in Kentucky who perform county fee officials' audits, and the Auditor of Public Accounts, are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not be impacted by the change to this administrative regulation that this amendment effectuates; the groups identified will continue to audit and be audited using uniform standards and procedures for conducting, and uniform formats for reporting, county fee officials' audits.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will all benefit by having an updated "Audit Program for County Fee Officials" to follow in completing all county fee officials' audits conducted pursuant to KRS 43.070 or KRS 64.810, consistent with the regulatory basis of accounting.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Payments by county fee officials to the agency for the expense of the audits pursuant to KRS 43.070.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering is not applicable to this amendment to this administrative regulation. Neither the amendment nor the administrative regulation disproportionately impact certain classes of regulated entities, as all county fee officials are audited using the same uniform standards and procedures for conducting, and uniform formats for reporting, audits.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All 120 Kentucky county fee officials, certified public accountants licensed in Kentucky that perform county fee officials' audits, and the Auditor of Public Accounts, are affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 43.075.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this amended administrative regulation on the expenditures and revenues of county fee officials is neutral, resulting in no increase or decrease in expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year, other than the expenses provided for under KRS 43.070.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years, other than the expenses provided for under KRS 43.070.

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

Revenues (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of county fee officials is neutral, resulting in no increase or decrease in revenues.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the expenditures of county fee officials is neutral, resulting in no increase or decrease in expenditures.

Other Explanation: None.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. The effect of this amended administrative regulation on the expenditures and revenues of county fee officials is neutral, resulting in no increase or decrease in expenditures or revenues.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The fiscal impact of this amendment to this administrative regulation on the revenues of county fee officials is neutral, resulting in no increase or decrease in cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The fiscal impact of this amendment to this administrative regulation on the revenues of county fee officials is neutral, resulting in no increase or decrease in cost savings.

(c) How much will it cost the regulated entities for the first year? There will be no cost to administer this program for the first year, other than the expenses provided for under KRS 43.070.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to administer this program for the first year, other than the expenses provided for under KRS 43.070.

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

Cost Savings (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of county fee officials is neutral, resulting in no increase or decrease in cost savings.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of county fee officials is neutral, resulting in no increase or decrease in cost savings.

Other Explanation: None.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment to this administrative regulation will not have a major economic impact. The fiscal impact of this amendment to this administrative regulation on the revenues and expenditures of county fee officials is neutral, resulting in no increase or decrease in revenues or expenditures of county fee officials. There will be no cost to administer this program for the first year or subsequent years, other than the expenses provided for under KRS 43.070.

**PERSONNEL CABINET
(Amendment)**

101 KAR 2:034. Classified compensation administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110, 18A.165

STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate administrative regulations which govern the pay plan for all employees in the classified service. This administrative regulation establishes requirements to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. New Appointments. (1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

(2) The appointing authority shall adjust to that salary an employee who is not on initial or promotional probation and is earning less than the new appointee's salary, if the appointing authority determines that the incumbent employee:

- (a) Is in the same job classification;
- (b) Is in the same department or office;
- (c) Is in the same work county; and
- (d) Has a similar combination of education and experience relating to the relevant job class specification.

(3) If sufficient funds are available, the appointing authority may identify each incumbent employee affected by subsection (2) of this section whose salary is less than five (5) percent above the appointment salary assigned to the new employee. The appointing authority may adjust all affected incumbent employees' salaries to five (5) percent above the new appointee's salary.

Section 2. Reentrance to Classified Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Public Pensions Authority or Kentucky Teachers Retirement System shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees.

(a) Former classified employees. An appointing authority shall set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstated after a break in continuous employment in the classified service, or probationarily appointed in one (1) of the following ways:

- 1. In accordance with the standards used for making new appointments in this administrative regulation;
- 2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary; or
- 3. The same salary as that paid at the time of separation from the classified service provided the employee is returning to the same pay grade or same job classification held at the time of separation from the classified service.

4. If sufficient funds are available, the appointing authority may identify each incumbent employee affected by Section 1(2) of this administrative regulation who is not on initial or promotional probation at the time the salary adjustment becomes effective. For all affected incumbent employees whose salary is less than five (5) percent above the appointment salary assigned to the new employee, the appointing authority may adjust all affected incumbent employees' salaries to five (5) percent above the new appointee's salary on that same effective date. An adjustment made pursuant to this subparagraph shall not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary.

(b) Former unclassified employees with prior classified service. An appointing authority shall set the salary of a former classified employee who moved to the unclassified service and who is reinstated, reemployed, or probationarily appointed to a position in the classified service in one (1) of the following ways:

- 1. In accordance with the standards for making new appointments;
- 2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary;

3. At a salary that is the same as the salary the employee last received in the classified service with adjustments for increases that would have been received if the employee had remained in the classified service prior to resignation if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary; or

4. At a salary up to five (5) percent above the pay grade entry level wage for each year of service in the KRS Chapter 18A system, if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary. Salary shall be calculated using whole percentages.

5. If sufficient funds are available, the appointing authority may identify each incumbent employee affected by Section 1(2) of this administrative regulation who is not on initial or promotional probation at the time the salary adjustment becomes effective. For all affected incumbent employees whose salary is less than five (5) percent above the appointment salary assigned to the new employee, the appointing authority may adjust all affected incumbent employees' salaries to five (5) percent above the new appointee's salary on that same effective date. An adjustment made pursuant to this subparagraph shall not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary.

(c) Former unclassified employees with no previous classified service. An appointing authority shall set the salary of a former unclassified employee with no previous classified service, who is probationarily appointed or reemployed, in one (1) of the following ways:

- 1. In accordance with the standards for making new appointments; or
- 2. At a salary up to five (5) percent above the minimum salary for each year of service in the unclassified service, if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary. Salary shall be calculated using whole percentages.

3. If sufficient funds are available, the appointing authority may identify each incumbent employee affected by Section 1(2) of this administrative regulation who is not on initial or promotional probation at the time the salary adjustment becomes effective. For all affected incumbent employees whose salary is less than five (5) percent above the appointment salary assigned to the new employee, the appointing authority may adjust all affected incumbent employees' salaries to five (5) percent above the new appointee's salary on that same effective date. An adjustment made pursuant to this subparagraph shall not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary.

(d) Laid off employees. A former employee, separated from the classified service by layoff and reinstated or reemployed in the same

or similar job classification within five (5) years from the date of layoff, may receive the salary the employee was receiving at the time of layoff, even if the salary is above the maximum of the pay grade.

(3) Probationary increments upon reenrance to state service. A former employee who is probationarily appointed at a salary at or below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the probationary period.

Section 3. Salary Adjustments. (1) Promotion.

(a) An employee who is promoted shall receive the greater of five (5) percent for each grade, or an increase to the minimum of the new grade except as provided under subsections (2)(b), (3)(b), and (4)(b) of this section; or

(b) If sufficient funds are available ~~and except as provided under subsection (2)(b) of this Section~~, an appointing authority may adjust the employee's salary up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subsection (1)(a) of this section.

(2) Demotion.

(a) If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

1. The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced; or

2. The employee shall retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(b) An employee whose salary is not reduced by five (5) percent per grade upon demotion shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, pay grade change, or successful completion of promotional probation until the employee is moved to a job classification with a higher pay grade than that from which he was demoted. If a promotion, reclassification, detail to special duty, reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been demoted.

(c) In the event of a salary schedule adjustment of an entry level wage of a pay grade, if an employee demoted to a lower pay grade, retained his or her salary, and was subsequently promoted and on promotional probation on the effective date of the new salary schedule, if the employee's salary is less than five (5) percent above the new entry level salary of the pay grade assigned to that employee on the effective date, the Personnel Cabinet shall adjust that employee's salary to five (5) percent above the new entry level wage.

(3) Reclassification.

(a) An appointing authority shall adjust the salary of an employee who is advanced to a higher pay grade through reclassification in one (1) of the following ways:

1. The greater of five (5) percent for each grade or the new grade minimum except as provided under subsections (2)(b), (3)(b), and (4)(b) of this section; or

2. If sufficient funds are available ~~and except as provided under subsection (2)(b) of this Section~~, up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subparagraph 1. of this paragraph.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification, but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, pay grade change, or successful completion of promotional probation until the employee is moved to a job classification with a higher pay grade than that from which he was reclassified. If a promotion, reclassification, detail to special duty, reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been reclassified.

(c) If sufficient funds are available, an appointing authority may adjust up to the midpoint of the pay grade the salary of an employee who is placed in the same pay grade through reclassification.

(d) An employee shall not be reclassified from a job classification that does not require the supervision of employees to a job classification that requires the supervision of employees as mandated within the job class specification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsections (2)(b), (3)(b), and (4)(b) of this section.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation, but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, pay grade change, or successful completion of promotional probation until he is moved to a job classification with a higher pay grade than that from which he was reallocated. If a promotion, reclassification, detail to special duty, reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been reallocated.

(5) Detail to special duty.

(a) An employee who is approved for detail to special duty shall receive, during the period of detail, the greater of five (5) percent for each grade or the new grade minimum except as provided under subsections (2)(b), (3)(b), and (4)(b) of this section.

(b) If sufficient funds are available, an appointing authority may adjust the salary of an employee who is placed in the same pay grade or higher pay grade through detail to special duty, up to the midpoint of the pay grade, as long as the increase is greater than the increase specified in paragraph (a) of this subsection.

(c) An employee who is approved for detail to the same or lower pay grade shall receive the same salary received prior to detail except as provided under subsection (5)(b) of this section.

(6) Reversion.

(a) The salary of an employee who is reverted while serving a promotional probationary period, or following detail to special duty in a higher pay grade, shall be adjusted to:

1. The salary received prior to the promotion or detail; and
2. All salary advancements and adjustments which would have been awarded if the promotion or detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and
2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(c) The increment date of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be restored to the increment date set prior to leaving the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, except as provided under subsections (2)(b), (3)(b), and (4)(b) of this section, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent per pay grade; ~~or~~

2. The greater of the new grade minimum or ten (10) percent per pay grade; or

3. At a percentage determined by the Personnel Cabinet.

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification who is below the special entrance rate to the new rate. If sufficient funds are available, on the same date as the establishment of the special entrance rate, an appointing authority may uniformly grant to all employees in that job classification, except those employees who are on initial probation, a salary adjustment equal to the difference between the entrance of the pay grade and the new entrance rate.

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a salary adjustment to all employees in a job classification within an agency who were eligible for, but did not receive, a five (5) percent

per pay grade increase or ten (10) percent per pay grade increase[salary-adjustment] as a result of a grade change applicable to the job classification, on or after January 1, 1999. The total adjustment granted at the time of the grade change and under this paragraph shall equal a five (5) percent per pay grade increase or ten (10) percent per pay grade increase to[of] the employee's salary immediately prior to the grade change. Such adjustment shall not be retroactive.

(b) If sufficient funds are available, an appointing authority may adjust the salary of one or more employees with status in an office or department due to internal pay equity issues within a job classification or sustained retention issues impacting the mission of the agency.

1. The appointing authority shall substantiate in writing to the secretary the need for adjustment and include the proposed adjustment for each employee.

2.a. An adjustment shall be any amount that does not cause an employee's hourly rate to exceed the midpoint of the pay grade; or

b. An adjustment that causes an employee's hourly rate to exceed the midpoint of the pay grade shall not exceed twenty-five (25) percent of the employee's hourly pay rate.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and five-tenths (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee's hourly rate of base pay. This conversion shall be applied before applying any other salary adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements. (1) Initial probation increase. A full-time or part-time employee who completes an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period.

(2) Promotional probation increase. An employee shall receive a five (5) percent salary advancement on the first of the month following completion of the promotional probationary period except as provided under Sections 3(2)(b), 3(3)(b), and 3(4)(b) of this administrative regulation.

(3) An employee who separates prior to the first of the month following completion of a probationary period shall forfeit the five (5) percent salary advancement.

(4) Annual increment dates shall be established as follows:

(a) Upon completion of an initial probationary period;

(b) When a former employee has been probationarily appointed and has received compensation in any twelve (12) months without receiving an increment; or

(c) When an employee returns from leave without pay under the provisions of subsection (6)[(5)] of this section.

(5)[(4)] Annual increment dates shall not change if an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of a reallocation;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified;

(j) Receives a promotional increase after completion of a promotional probationary period; or

(k) Is reemployed after layoff.

(6)[(5)] Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after receiving compensation in any twelve (12) months since the last increment was received.

(7)[(6)] Service computation. Full-time and part-time service shall be counted in computing service for the purpose of determining increment eligibility.

(8)[(7)] Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the

adjustment or advancement is added to the employee's salary, except if the adjustment is based on a reversion, pay grade change, a salary schedule change, or establishment of a special entrance rate.

Section 5. Educational Achievement Award. (1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met.

(a) For a high school diploma, high school equivalency certificate, or a passing score on the GED test, the qualifying conditions shall be met if:

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours;

b. While in state service; and

c. After establishing an increment date;

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or a passing score on the GED test.

(b) For postsecondary education or training, the qualifying conditions shall be met if:

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken.

Section 6. Salary Schedule Adjustment. (1) If the secretary authorizes an adjustment of a[the] salary schedule, an appointing authority shall adjust the salaries of all employees below the new schedule entry level wage for the pay grade to the new schedule entry level wage for the pay grade. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule entry level wage for the grade and the new schedule entry level wage for the grade.

(2) After consultation with the state budget director, if sufficient funds are available, and the Secretary of Personnel determines that an increase in the entry level wage of one (1) or more pay grades is warranted, the Personnel Cabinet shall identify each currently active employee in the pay grade(s), other than an interim employee, who is not on initial or promotional probation at the time the revised salary schedule becomes effective. For an employee whose salary is less than five (5) percent above the new entry level wage of the pay grade assigned to that employee on the effective date, the Personnel Cabinet shall adjust that employee's salary to five (5) percent above the new entry level wage.

Section 7. Paid Overtime. (1) Overtime for which pay is authorized shall be in accordance with 101 KAR 2:102, Section 5,

and the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., as amended.

(2) Eligibility for overtime pay shall be approved by the appointing authority, and shall be subject to review by the Secretary of Personnel.

(3) An employee who is eligible for overtime shall request permission to or be directed in advance by the supervisor to work overtime.

(4) An overtime payment shall not be added to base salary or wages.

Section 8. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 9. Supplemental Premiums. (1) Locality premium.

(a) 1. Upon request by an appointing authority, the secretary may authorize and establish the amount of the payment of a locality premium for an employee who is regularly, temporarily, or intermittently assigned to work in a job classification, work county, and organizational unit where the agency can demonstrate sustained recruitment and retention issues impacting the mission of the agency; or

2. The secretary may direct the payment of a locality premium for an employee who is regularly, temporarily, or intermittently assigned to work in a job classification, work county, and organizational unit where there are demonstrated sustained recruitment and retention issues impacting the mission of the agency.

(b) Once authorized or directed, this premium shall apply to all employees in that organizational unit who are regularly or temporarily assigned to work in the job classification and work county for which the locality premium is approved.

(c) An employee shall not receive a locality premium after transfer, reclassification, reallocation, detail to special duty, promotion or demotion to a position in a job classification, organizational unit, or work county that is ineligible for a locality premium.

(d) The secretary may rescind authorization to pay a locality premium for a job classification at any time.

(e) Locality premium pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(2) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(3) Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to work on Saturdays, Sundays, or state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications in that agency who are regularly assigned to work Saturdays, Sundays, or state holidays as part of

their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages and shall not be applied to any leave time usage.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications.

(4) Multilingual hourly premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(5) Critical position premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a premium for a position held by an employee who has established an annual increment date and is regularly assigned to perform job duties that are deemed critical to the operation of the agency.

(b) A critical position premium may be authorized for at least one (1) full-time filled position in an office or department. The premium may be authorized for additional full-time filled positions if the total number of premiums does not exceed one (1) percent of the total number of full-time filled positions in an office or department.

(c) The premium shall not exceed twenty-five (25) percent of the employee's hourly rate.

(d) The critical position designation shall expire when the position becomes vacant.

(e) An employee shall not receive a critical position premium after transfer, reclassification, reallocation, detail to special duty,

promotion, or demotion to a position in a different job classification, organizational unit, or work county, unless the appointing authority submits a new request, for approval by the secretary, to designate the position in the different job classification, organizational unit, or work county as critical prior to the personnel action at issue.

(f) The appointing authority or the secretary may rescind authorization to pay a critical position premium at any time.

(g) A critical position premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(6) Sign-on bonus.

(a) Upon written request by an appointing authority, the secretary may prospectively authorize a sign-on bonus for full-time or part time classified positions if:

1. The positions are in the same job classification, work county, and department or office where the appointing authority can substantiate sustained recruitment and retention issues impacting the mission of the agency;

2. The total amount of the sign-on bonus is uniform and does not exceed \$5,000 for the job classification; and

3. Eligibility for the sign-on bonus is limited to a probationarily appointed, rehired, or reinstated employee who:

a. Has not been employed in a KRS Chapter 18A classified position within ninety (90) calendar days preceding the effective date of appointment, rehire, or reinstatement;

b. Has not previously received any amount of sign-on bonus pursuant to this subsection; and

c. Is working or on approved leave at the time payment is scheduled to be issued.

(b) Once a sign-on bonus is authorized by the secretary, an eligible employee shall receive:

1. Twenty-five (25) percent of the total sign-on bonus on the first day of the month after appointment, rehire, or reinstatement;

2. Twenty-five (25) percent of the total sign-on bonus on the first day of the month after completion of six (6) months of active service in the position into which the employee was appointed, rehired, or reinstated; and

3. Fifty (50) percent of the total sign-on bonus on the first day of the month after completion of twelve (12) months of active service in the position into which the employee was appointed, rehired, or reinstated.

(c) An employee shall not receive future payment of any portion of a sign-on bonus after transfer, promotion, or demotion to a position in a job classification, department or office, or work county other than the position into which the employee was appointed, rehired, or reinstated.

(d) An employee who is detailed to special duty or whose position is reclassified or reallocated shall remain eligible for future payment of the original sign-on bonus amount.

(e) The secretary may rescind authorization to pay a sign-on bonus at any time prior to the effective date of appointment, rehire, or reinstatement.

(f) A sign-on bonus shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

Section 10. Employee Recognition Award (ERA). (1) On the 16th day of a month, an appointing authority may grant an employee an ERA in the form of a lump sum payment of any whole percentage from one (1) to ten (10) percent of the grade midpoint under the following conditions:

(a) [The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which is in the department or office granting the award;

(b)] The employee has not received an ERA in the preceding twenty four (24) months, nor an Adjustment for Continuing Excellence (ACE) award in the preceding twelve (12) months; and

(b)[(e)]1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens;

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department, office, or governmental

operations; or

3. The employee has demonstrated a sustained level of exceptional job performance.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(5) [An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in a department or office in a calendar year.

(6)] An appointing authority shall submit a written justification to the Personnel Cabinet to award an ERA. The justification shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department or office; and

2. The criteria and limitations established in this section have been met.

Section 11. Adjustment for Continuing Excellence (ACE) Award.

(1) On the 16th day of a month, an appointing authority may grant a salary adjustment of any whole percentage from one (1) to ten (10) percent of the grade midpoint of the position in which the employee holds status to a full-time employee's base pay as an ACE award under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which shall have been served in the department or office granting the award;

(c) The employee has not received an ACE award in the preceding twenty-four (24) months or an ERA in the preceding twelve (12) months; and

(d)1. The employee has demonstrated a sustained level of exceptional job performance;

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through department or office directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if:

(a) An educational achievement award has been granted for the same training; or[-]

(b) The employee received either of the two (2) lowest possible evaluation ratings on the most recent performance evaluation.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) [An appointing authority shall not grant an ACE award to more than twenty-five (25) percent of the total number of full-time employees in a department or office in a calendar year.

(5)] An appointing authority shall submit a written justification to the Personnel Cabinet to grant an ACE award. The justification shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Sufficient funds are available within the department's or office's current recurring base budget to support the award.

Section 12. Voluntary actions. An employee request for transfer, demotion, or promotion shall be documented on the Voluntary

Transfer/Demotion/Promotion Employee Agreement Form in Accordance with 101 KAR 1:335 and 101 KAR 1:400.

Section 13. Incorporation by Reference. (1) "Voluntary Transfer/Demotion/Promotion Employee Agreement Form", September 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Personnel Cabinet's Web site at: <https://extranet.personnel.ky.gov/Pages/Documentsindemand.aspx>

GERINA D. WHETHERS, Secretary

APPROVED BY AGENCY: March 14, 2023

FILED WITH LRC: March 15, 2023 at 9:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2023, at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rosemary Holbrook

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for administration of the pay plan for classified employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure uniformity and equity in administration of the pay plan for classified employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent application and handling of classified compensation.

(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 significant changes are discretionary compensation enhancements, such as providing an appointing authority the ability to adjust incumbent employees' salaries to prevent a new appointee from surpassing the incumbents' salaries after receiving a probationary increase. Another significant compensation enhancement is the addition of a sign-on bonus option. Other changes include authority for salary adjustments due to internal pay equity or retention issues, relaxation of limits on the number of agency employees eligible for recognition awards, and general maintenance edits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify requirements, enhance flexibility, and promote consistency for classified

compensation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies requirements, enhances flexibility, and promotes consistency for classified compensation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees in classified positions and their employing agencies are subject to the provisions of 101 KAR 2:034.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the regulation itself has no additional cost. The cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments provide for enhanced employee compensation, subject to budget constraints and discretion of the appointing authority or secretary.

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

(a) Initially: Programming changes to the Kentucky Human Resource Information System (KHRIS) will cost approximately \$52,000.

(b) On a continuing basis: There are minimal additional costs anticipated for continuing administration of this regulation.

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

(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: Implementation of the changes does not require an increase in fees or funding. However, discretionary utilization of some changes may lead to requests for agency budget increases.

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

(9) TIERING: Is tiering applied? No. This administrative regulation treats all impacted entities the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All KRS Chapter 18A employees in classified positions and their employing agencies are subject to the provisions of 101 KAR 2:034.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(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 cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

(d) How much will it cost to administer this program for subsequent years? The cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: The cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

(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 not be direct cost savings. Indirect cost savings may be recognized through improved recruitment and retention.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will not be direct cost savings. Indirect cost savings may be recognized through improved recruitment and retention.

(c) How much will it cost the regulated entities for the first year? The cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

(d) How much will it cost the regulated entities for subsequent years? The cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

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

Cost Savings (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: The cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

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

PERSONNEL CABINET (Amendment)

101 KAR 2:095. Classified service general requirements.

RELATES TO: KRS 18A.030(2), 18A.110

STATUTORY AUTHORITY: KRS 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the classified service. This administrative regulation establishes requirements for the classified service and governs the maintenance of employee and other records and reports in the cabinet and other conditions of employment.

Section 1. Attendance; Hours of Work.

(1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half (37 1/2) hours per week or forty (40) hours per week, unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from:

(a) 8 a.m. to 4:30 p.m., local time, Monday through Friday, for a thirty-seven and one-half (37 1/2) hour work schedule; or

(b) 8 a.m. to 5 p.m., local time, Monday through Friday, for a forty (40) hour work schedule.

(3) An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works for an agency that requires more than one (1) shift or seven (7) days a week operation may be reassigned from one (1) shift to another or from one (1) post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An employee shall give reasonable notice in advance of absence from an official work station or alternate work station.

Section 2. Official Work Station, Alternate Work Station, and Temporary Assignment.

(1) Each employee shall be assigned an official work station and may be assigned one (1) or more additional alternate work stations by the appointing authority.

(2) An official work station or alternate work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different official work station or alternate work station in a different county. The assignment shall be to the same job classification.

(a) If an employee is temporarily assigned to a different official work station or alternate work station in a different county, the assignment shall not last more than sixty (60) calendar days.

(b) Temporary assignment may be renewed with prior approval of the Secretary of Personnel.

(c) A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with 200 KAR 2:006, and the appointing authority shall notify the employee in writing prior to the effective date of the action.

(4) An appointing authority may assign an employee to work in a different site within the county of employment within the same job classification.

Section 3. Dual Employment. An employee holding a full-time position covered under KRS Chapter 18A shall not hold another KRS Chapter 18A position except upon recommendation of the appointing authority and the written approval of the secretary.

Section 4. Notice of Resignation and Retirement.

(1) An employee who decides to terminate his or her service shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's notice shall be attached to the separation personnel action and placed in the personnel files maintained by the agency and the Personnel Cabinet.

(3) Failure of an employee to give fourteen (14) calendar days' notice may result in forfeiture of accrued annual leave, based on:

(a) If the fourteen (14) day deadline was:

1. Practicable under the circumstances;

2. Appropriate for the situation; and

3. Complied with; or

(b) If the appointing authority and the employee have agreed that the employee shall retain the leave.

(4) The effective date of a separation shall be the next calendar day following the last work day unless the employee has been approved for the use of annual, compensatory, or sick leave prior to termination.

Section 5. Records and Reports.

(1) An appointing authority shall provide a request to the Personnel Cabinet for a personnel action or status change.

(a) The Secretary of the Personnel Cabinet shall determine which personnel actions warrant a Personnel Action Notification to the employee, in accordance with KRS 18A.020 and 18A.095.

(b) The secretary shall provide a Personnel Action Notification to the appointing authority.

(c) The appointing authority shall provide a copy of a Personnel Action Notification to the employee affected by the action.

(2) The secretary shall maintain a leave record showing for each employee:

- (a) Annual leave earned, used and unused;
- (b) Sick leave earned, used and unused;
- (c) Compensatory leave earned, used and unused; and
- (d) Special leave or other leave with or without pay.

Section 6. Telecommuting.

(1) Telecommuting shall be a work arrangement in which a selected state employee is allowed to perform the normal duties and responsibilities of his or her position through the use of computer or telecommunications at home or another place apart from the employee's usual official work station or alternate work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in a telecommuting program shall be the decision of the agency, with no implied or specific right to participation being granted to an employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee.

(a) Employee salary, benefits, and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall agree to maintain a clean, safe workplace.

(d) An on-site visit by the employer for monitoring of safety issues shall not require advance notice by the employer.

Section 7. Workplace Violence Policy.

(1) Workplace violence shall be prohibited and shall include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his or her health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

- (a) Threats of harm;
- (b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner that would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;
- (c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;
- (d) Stalking;
- (e) Striking, slapping, or otherwise physically attacking another person; or
- (f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions that create a risk to the health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 8. Issuance of Pay to State Employees.

(1) Pay shall be issued to state employees on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, state employees shall be issued pay on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday, as defined in KRS 18A.190, pay shall be issued on the workday

preceding the holiday.

Section 9. Correction of Errors. With the appointing authority's concurrence, the secretary may correct an executive branch agency's pay or leave error when in the best interest of the service.

Section 10. Incorporation by Reference.

(1) "Personnel Action Notification", PAN, August 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GERINA D. WHETHERS, Secretary

APPROVED BY AGENCY: March 14, 2023

FILED WITH LRC: March 15, 2023 at 9:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2023, at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rosemary Holbrook

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements governing employee records, the maintenance and handling of these records, and other conditions of employment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the oversight and maintenance of the state employment system pursuant to KRS Chapter 18A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110 provides that the secretary shall promulgate comprehensive administrative regulations for the classified and unclassified service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to satisfy the statutory requirement of establishing for the state a system of personnel administration based on merit principles. This regulation sets forth general terms and conditions of employment, to assist in the consistent application and treatment of KRS Chapter 18 employees.

(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: A new section is added for correction of errors. With the appointing authority's concurrence, the secretary may correct an executive branch agency's pay or leave error when in the best interest of the service.

(b) The necessity of the amendment to this administrative regulation: This amendment clarifies that a correction of a pay or

leave error may be made without the need for a legal order.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in KRS 18A.030 and 18A.110.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies that a correction of a pay or leave error may be made without the need for a legal order.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees are affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs anticipated to any entity identified above.

(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: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This administrative regulation treats all impacted entities the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2) and 18A.110.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this regulation.

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? This regulation does not create any cost for regulated entities during the first year.

(d) How much will it cost the regulated entities for subsequent years? This regulation does not create any cost for regulated entities for subsequent years.

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

Cost Savings (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation will not have a major economic impact.

PERSONNEL CABINET (Amendment)

101 KAR 3:045. Compensation plan and pay incentives for unclassified service.

RELATES TO: KRS 18A.110, 18A.155, 18A.202, 199.555

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(2), 18A.155(1)(b), (e), 18A.202(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t), and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees. This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

Section 1. New Appointments. An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

Section 2. Reentrance to State Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A, while receiving retirement payments through the Kentucky Public Pensions Authority or Kentucky Teachers Retirement System, shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees. An appointing authority shall set the salary of a former classified or unclassified employee, other than a returning retiree:

(a) In accordance with the standards used for making new appointments in this administrative regulation; or

(b) Up to a salary formerly paid in the classified or unclassified service~~[-, if that salary is within the current pay grade].~~

Section 3. Salary Adjustments. (1) Promotion.

(a)1. An employee who is promoted shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater; or

2. An appointing authority may grant a salary increase of five (5) percent per grade upon promotion.

(b) If sufficient funds are available, an appointing authority may adjust the employee's salary up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subparagraph 1. of subsection (1)(a) of this section.

(2) Demotion. If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(a) The employee's salary shall be reduced to a rate that is not below the minimum for the job classification to which the demotion is made;

(b) The employee shall retain the salary received prior to the demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files; or

(c) In the event of a salary schedule adjustment of an entry level wage of a pay grade, if an employee demoted to a lower pay grade, retained his or her salary, and was subsequently promoted and on promotional probation on the effective date of the new salary schedule, if the employee's salary is less than five (5) percent above the new entry level salary of the pay grade assigned to that employee on the effective date, the Personnel Cabinet shall adjust that employee's salary to five (5) percent above the new entry level wage.

(3) Reclassification.

(a) An appointing authority shall adjust the salary of an employee who is advanced to a higher pay grade through reclassification in one (1) of the following ways:

1. The greater of five (5) percent or the new grade minimum;

2. The greater of five (5) percent for each grade or the new grade minimum; or

3. If sufficient funds are available, up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subparagraph 1. of this paragraph.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.

(c) If sufficient funds are available, an appointing authority may adjust up to the midpoint of the pay grade the salary of an employee who is placed in the same pay grade through reclassification.

(d) An employee shall not be reclassified from a job classification that does not require the supervision of employees to a job classification that requires the supervision of employees as mandated within the job class specification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive a five (5) percent increase or an increase to the new grade minimum, whichever is greater. An appointing authority may grant a five (5) percent increase per grade upon reallocation to a higher grade.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation.

(5) Detail to special duty.

(a) An employee who is detailed to special duty in a higher grade shall receive a five (5) percent increase or an increase to the minimum of the grade, whichever is greater, for the duration of the period of the detail. An appointing authority may grant a salary increase of five (5) percent per grade for the duration of the detail.

(b) If sufficient funds are available, an appointing authority may adjust the salary of an employee who is placed in the same pay grade or higher pay grade through detail to special duty, up to the midpoint of the pay grade, as long as the increase is greater than

the increase specified in paragraph (a) of this subsection.

(c) An employee who is detailed to special duty to the same or lower grade shall continue to receive the same salary except as provided under paragraph (b) of this subsection.

(6) Reversion.

(a) The salary of an employee who is reverted following detail to special duty in a higher pay grade shall be adjusted to:

1. The salary received prior to the detail; and

2. All salary advancements and adjustments which would have been awarded if the detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall

raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent per pay grade~~[-or]~~

2. The greater of the new grade minimum or ten (10) percent per pay grade~~[-or]~~

3. At a percentage determined by the Personnel Cabinet.

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification, who is below the special entrance rate, to the new rate. If sufficient funds are available, on the same date as the establishment of the special entrance rate, an appointing authority may also grant a salary adjustment equal to the difference between the entrance of the pay grade and the new special entrance rate to other employees in that job classification, except those employees who are on initial probation.

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a five (5) percent salary adjustment to an employee who was eligible for, but did not receive an increase upon the completion of six (6) months service following promotion.

(b) On the 16th of a month, an appointing authority may grant a salary adjustment to an employee within an agency who was eligible for, but did not receive at least a five (5) percent per pay grade increase or ten (10) percent per pay grade increase~~[advancement]~~ as a result of a grade change on or after January 1, 1999. The total adjustment under this provision when combined with an increase at the time of the grade change shall equal a five (5) percent per pay grade increase or ten (10) percent per pay grade increase~~to [of]~~ the employee's salary immediately prior to the grade change. Such adjustment shall not be retroactive.

(c) If sufficient funds are available, an appointing authority may adjust the salary of one or more unclassified employees in an office or department due to internal pay equity issues within a job classification or sustained retention issues impacting the mission of the agency.

1. The appointing authority shall substantiate in writing to the secretary the need for adjustment and include the proposed adjustment for each employee.

2. a. An adjustment shall be any amount that does not cause an employee's hourly rate to exceed the midpoint of the pay grade; or

b. An adjustment that causes an employee's hourly rate to exceed the midpoint of the pay grade shall not exceed twenty-five (25) percent of the employee's hourly pay rate.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and five-tenths (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee's hourly rate of base pay. This conversion shall be applied before applying any other salary

adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements. (1) Initial appointment increase. An appointing authority may grant a five (5) percent increase to an employee, except an interim employee, on the first day of the month following completion of the greater of six (6) months of service or the months of service required by 101 KAR 1:325 Section 1(2).

(2) Six (6) month promotional increase. An employee may receive a five (5) percent increase following the completion of the greater of six (6) months service after promotion or the months of service required by 101 KAR 1:325 Section 1(2).

(3) Annual increment dates shall be established as follows:

(a) On the first day of the month following completion of the initial probation period; or

(b) On the first day of the month following completion of twelve (12) months service since receiving the last annual increment for an employee, other than an interim employee, who returns from leave without pay.

(4) Annual increment dates shall not change if an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; or

(j) Receives an increase six (6) months following promotion.

(5) Return from leave without pay. An employee, other than an interim employee, returning to duty from leave without pay shall receive an annual increment on the first of the month after receiving compensation in any twelve (12) months since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted when computing service for purposes of determining increment eligibility. Service as an interim employee, or in the former seasonal, temporary, or emergency categories shall not be considered.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary, except if the adjustment is based on a reversion, pay grade change, a salary schedule change, or establishment of a special entrance rate.

Section 5. Educational Achievement Award. (1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established in subsection (5) of this section for the appropriate type of educational achievement award have been met.

(a) For a high school diploma, high school equivalency certificate, or a passing score on the GED test, the qualifying conditions shall be met if:

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours;

b. While in state service; and

c. After establishing an increment date.

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or a passing score on the GED test.

(b) For postsecondary education or training, the qualifying conditions shall be met if:

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken.

Section 6. Salary Schedule Adjustment. (1) If the secretary authorizes an adjustment of ~~a~~^{the} salary schedule, an appointing authority shall adjust the salaries of all employees below the new schedule entry level wage for the pay grade to the new schedule entry level wage for the pay grade. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule entry level wage for the grade and the new schedule entry level wage for the grade.

(2) After consultation with the state budget director, if sufficient funds are available, and the Secretary of Personnel determines that an increase in the entry level wage of one (1) or more pay grades is warranted, the Personnel Cabinet shall identify each currently active employee in the pay grade(s), other than an interim employee, who is not on initial or promotional probation at the time the revised salary schedule becomes effective. For an employee whose salary is less than five (5) percent above the new entry level salary of the pay grade assigned to that employee on the effective date, the Personnel Cabinet shall adjust that employee's salary to five (5) percent above the new entry level wage.

Section 7. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 8. Supplemental Premiums. (1) Locality premium.

(a) 1. Upon request by an appointing authority, the secretary may authorize and establish the amount of the payment of a locality premium for an employee who is regularly, temporarily, or intermittently assigned to work in a job classification, work county, and organizational unit where the agency can demonstrate sustained recruitment and retention issues impacting the mission of the agency; or

2. The secretary may direct the payment of a locality premium for an employee who is regularly, temporarily, or intermittently assigned to work in a job classification, work county, and organizational unit where there are demonstrated sustained recruitment and retention issues impacting the mission of the agency.

(b) Once authorized or directed, this premium shall apply to all employees in that organizational unit who are regularly or temporarily assigned to work in the job classification and work county for which the locality premium is approved.

(c) An employee shall not receive a locality premium after

transfer, reclassification, reallocation, detail to special duty, promotion, or demotion to a position in a job classification, organizational unit, or work county that is ineligible for a locality premium.

(d) The secretary may rescind authorization to pay a locality premium for a job classification at any time.

(e) Locality premium pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(2) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion, or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(3) Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to work on Saturdays, Sundays, or state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications in that agency who are regularly assigned to work Saturdays, Sundays, or state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages and shall not be applied to any leave time usage.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications.

(4) Multilingual hourly premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

(d) Once authorized, the multilingual hourly premium shall apply

to all employees in that

agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(5) Critical position premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a premium for a position held by an employee who has established an annual increment date and is regularly assigned to perform job duties that are deemed critical to the operation of the agency.

(b) A critical position premium may be authorized for at least one (1) full-time filled position in an office or department. The premium may be authorized for additional full-time filled positions if the total number of premiums does not exceed one (1) percent of the total number of full-time filled positions in an office or department.

(c) The premium shall not exceed twenty-five (25) percent of the employee's hourly rate.

(d) The critical position designation shall expire when the position becomes vacant.

(e) An employee shall not receive a critical position premium after transfer, reclassification, reallocation, detail to special duty, promotion, or demotion to a position in a different job classification, organizational unit, or work county, unless the appointing authority submits a new request, for approval by the secretary, to designate the position in the different job classification, organizational unit, or work county as critical prior to the personnel action at issue.

(f) The appointing authority or the secretary may rescind authorization to pay a critical position premium at any time.

(g) A critical position premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(6) Sign-on bonus.

(a) Upon written request by an appointing authority, the secretary may prospectively authorize a sign-on bonus for full-time or part time unclassified positions if:

1. The positions are in the same job classification, work county, and department or office where the appointing authority can substantiate sustained recruitment and retention issues impacting the mission of the agency;

2. The total amount of the sign-on bonus is uniform and does not exceed \$5,000 for the job classification; and

3. Eligibility for the sign-on bonus is limited to a newly appointed or rehired employee who:

a. Has not been employed in a KRS Chapter 18A classified position within ninety (90) calendar days preceding the effective date of appointment or rehire;

b. Has not previously received any amount of sign-on bonus pursuant to this subsection; and

c. Is working or on approved leave at the time payment is scheduled to be issued.

(b) Once a sign-on bonus is authorized by the secretary, an eligible employee shall receive:

1. Twenty-five (25) percent of the total sign-on bonus on the first day of the month after appointment or rehire;

2. Twenty-five (25) percent of the total sign-on bonus on the first day of the month after completion of six (6) months of active service in the position into which the employee was appointed or rehired; and

3. Fifty (50) percent of the total sign-on bonus on the first day of the month after completion of twelve (12) months of active service in the position into which the employee was appointed or rehired.

(c) An employee shall not receive future payment of any portion of a sign-on bonus after transfer, promotion, or demotion to a position in a job classification, department or office, or work county other than the position into which the employee was appointed or rehired.

(d) An employee who is detailed to special duty or whose position is reclassified or reallocated shall remain eligible for future payment of the original sign-on bonus amount.

(e) The secretary may rescind authorization to pay a sign-on bonus at any time prior to the effective date of appointment or rehire.

(f) A sign-on bonus shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

Section 9. Employee Recognition Award (ERA). (1) On the 16th day of a month, an appointing authority may grant an employee an ERA in the form of a lump sum payment of any whole percentage from one (1) to ten (10) percent of the employee's annual salary[grade midpoint] under the following conditions:

(a) ~~[The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which is in the department or office granting the award;~~

—(b)] The employee has not received an ERA in the preceding twenty four (24) months, nor an Adjustment for Continuing Excellence (ACE) award in the preceding twelve (12) months; and

~~(b)](e)]~~1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens;

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department, office, or governmental operations; or

3. The employee has demonstrated a sustained level of exceptional job performance.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

~~(5) [An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in a department or office in a calendar year.~~

(6)] An appointing authority shall submit a written justification to the Personnel Cabinet to award an ERA. The justification shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department or office; and

2. The criteria and limitations established in this section have been met.

Section 10. Adjustment for Continuing Excellence (ACE) Award.

(1) On the 16th day of a month, an appointing authority may grant a salary adjustment of any whole percentage from one (1) to ten (10) percent of the employee's annual salary[grade midpoint] to a full-time employee's base pay as an ACE award under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which shall have been served in the department or office granting the award;

(c) The employee has not received an ACE award in the preceding twenty-four (24) months or an ERA in the preceding twelve (12) months; and

(d)1. The employee has demonstrated a sustained level of exceptional job performance;

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through department or office directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

~~(4) [An appointing authority shall not grant an ACE award to more than twenty-five (25) percent of the total number of full-time employees in a department or office in a calendar year.~~

~~(5)]~~ An appointing authority shall submit a written justification to the Personnel Cabinet to

grant an ACE award. The justification shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Sufficient funds are available within the department's or office's current recurring base budget to support the award.

Section 11. Adoption Benefit Program. The provisions of the Adoption Benefit Program established in 101 KAR 2:120 shall apply to an employee in the unclassified service.

GERINA D. WETHERS, Secretary, Personnel Cabinet

ANDY BESHEAR, Governor

APPROVED BY AGENCY: March 10, 2023

FILED WITH LRC: March 15, 2023 at 9:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2023, at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rosemary Holbrook

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the compensation plan and pay incentives for employees in the unclassified service.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate

comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent application and handling of compensation and pay incentives for employees in unclassified service.

(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 significant changes are discretionary compensation enhancements, such as the addition of a sign-on bonus option. Other changes include authority for salary adjustments due to internal pay equity or retention issues, addition of a critical position premium to mirror the classified compensation regulation, relaxation of limits on the number of agency employees eligible for recognition awards, and general maintenance edits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify requirements, enhance flexibility, and promote consistency for unclassified compensation and pay incentives.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies requirements, enhances flexibility, and promotes consistency for unclassified compensation and pay incentives.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS Chapter 18A employees in unclassified positions within executive branch agencies and their employing agencies are subject to the provisions of 101 KAR 3:045.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments provide for enhanced employee compensation, subject to budget constraints and discretion of the appointing authority or secretary.

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

(a) Initially: The cost of programming changes to the Kentucky Human Resource Information System (KHRIS) is reflected in the companion amendment to 101 KAR 2:034. That cost is not duplicated here.

(b) On a continuing basis: There are minimal additional costs anticipated for continuing administration of this regulation.

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

(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: Implementation of the changes does not require an increase in fees or funding. However, discretionary utilization of some changes may lead to requests for agency budget increases.

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new or additional fees.

(9) TIERING: Is tiering applied? No. This administrative regulation treats all impacted entities the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with unclassified employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2), 18A.155(1)(b), (e), 18A.110(2), 18A.202(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? 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 cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

(d) How much will it cost to administer this program for subsequent years? The cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: The cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

(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 not be direct cost savings. Indirect cost savings may be recognized through improved recruitment and retention.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will not be direct cost savings. Indirect cost savings may be recognized through improved recruitment and retention.

(c) How much will it cost the regulated entities for the first year? The cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

(d) How much will it cost the regulated entities for subsequent years? The cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

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

Cost Savings (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: The cost to employing agencies utilizing compensation enhancement changes can only be determined upon future application on a case-by-case basis.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact"

means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation is not anticipated to have a major economic impact.

**GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(Amendment)**

201 KAR 5:055. Telehealth.

RELATES TO: KRS 320.300, 320.390

STATUTORY AUTHORITY: KRS 320.390(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.390(2) requires the Board of Optometric Examiners to promulgate administrative regulations to prevent abuse and fraud through the use of telehealth services, prevent fee-splitting through the use of telehealth services, and utilize telehealth in the provision of optometric services and in the provision of continuing education. This administrative regulation establishes requirements for the use of telehealth services.

Section 1. Definitions.

(1) ["Contact lens prescription" is defined by KRS 367.680(3).

(2) "Eye examination" means an examination that meets the requirements for a complete eye examination established in 201 KAR 5:040, Section 7(1).

(3) "Face to face" means in person and not via telehealth.

(4) "Licensed health care professional" means an optometrist licensed pursuant to KRS Chapter 320, or a physician or osteopath licensed under KRS 311.550(12).

(5) "Doctor of Optometry[Optometrist]" means an individual licensed by the Kentucky Board of Optometric Examiners to engage in the practice of optometry.

(2)[(6)] "Patient" means the person receiving services or items from a doctor of optometry[an optometrist or a physician].

[(7)] "Physician" is defined by KRS 311.550(12).]

(3)[(8)] "Practice of optometry" is defined by KRS 320.210(2).

[(9)] "Prescription" means an order for a pharmaceutical agent, or any other therapy within the scope of practice of an optometrist or a physician.

(10) "Prescription for eyewear" means a written prescription for visual aid glasses or a contact lens prescription after a complete eye examination is performed by an optometrist or physician.]

(4)[(14)] "Telehealth" is defined by KRS 320.390(3) and KRS 211.332.

(12) "Telehealth provider" means an optometrist licensed pursuant to KRS Chapter 320 who performs a telehealth consultation.

(13) "Telepractice" means the practice of optometry that is provided by using communication technology that is two (2) way; interactive, simultaneous audio and video.

(14) "Visual aid glasses" is defined by KRS 320.210(4).]

Section 2. [Patient Identity,]Communication and Informed Consent Requirements.

(1) All telehealth services by a doctor of optometry shall be conducted:

(a) By a doctor of optometry to a patient or to another health care provider at a different location; and,

(b) Over secure telecommunication technologies, including but not limited to synchronous and asynchronous technology, remote patient monitoring technology, and audio-only encounters.

(2) Prior to the delivery of telehealth services, a doctor of optometry must obtain the informed consent of the patient or obtain the consent by another appropriate person with authority to make the health care treatment decision for the patient.

(a) For purposes of this section, informed consent by a patient can be provided in writing, verbally acknowledged, or electronically submitted.

(b) The informed consent must include an acknowledgment of the risks and limitations of telehealth services.[An optometrist-patient relationship shall not commence via telehealth.

(2) An initial, in-person meeting for the optometrist and patient who will prospectively utilize telehealth shall occur in order to evaluate whether the potential or current patient is a candidate to receive services via telehealth.

(3) An optometrist who uses telehealth to deliver vision or eye care services shall at the initial, face-to-face meeting with the patient:

(a) Verify the identity of the patient;

(b) Establish a medical history and permanent record for the patient;

(c) Obtain alternative means of contacting the patient other than electronically such as by the use of a telephone number or mailing address;

(d) Provide to the patient alternative means of contacting the optometrist other than electronically such as by the use of a telephone number or mailing address;

(e) Provide contact methods of alternative communication the optometrist shall use for emergency purposes such as an emergency on call telephone number;

(f) Document if the patient has the necessary knowledge and skills to benefit from the type of telepractice provided by the optometrist; and

(g) Inform the patient in writing and document acknowledgement of the risk and limitations of:

1. The use of technology in the use of telepractice;

2. The potential breach of confidentiality of information or inadvertent access of protected health information due to technology in telepractice;

3. The potential disruption of technology in the use of telepractice;

4. When and how the optometrist will respond to routine electronic messages;

5. The circumstances in which the optometrist will use alternative communications for emergency purposes;

6. Others who may have access to patient communications with the optometrist;

7. How communications shall be directed to a specific optometrist;

8. How the optometrist stores electronic communications from the patient; and

9. Whether the optometrist may elect to discontinue the provision of services through telehealth.]

Section 3. Jurisdictional Considerations.

(1) A doctor of optometry licensed by the Kentucky Board of Optometric Examiners may provide telehealth services in the practice of optometry:

(a) To a person who is a permanent resident of Kentucky while the person is located in Kentucky;

(b) To a person who is a permanent resident of Kentucky while the person is temporarily located outside of Kentucky; or

(c) To a person who is not a permanent resident of Kentucky while the person is temporarily located in Kentucky.

(2) A doctor of optometry licensed by the Kentucky Board of Optometric Examiners may provide telehealth services when the doctor of optometry is not physically located in Kentucky to a permanent resident of Kentucky.

(3) A doctor of optometry licensed by the Kentucky Board of Optometric Examiners may establish a doctor-patient relationship using telehealth and digital technologies.[A licensed health care professional providing eye and vision services via telehealth shall be licensed by the Kentucky Board of Optometric Examiners or the Kentucky Board of Medical Licensure if services are provided:

(1) To a person physically located in Kentucky; or

(2) By a person who is physically located in Kentucky.]

Section 4. Representation of Services and Code of Conduct.

(1) A doctor of optometry[A telehealth provider] shall not engage in false, misleading, or deceptive advertising.

(2) An advertisement for telehealth services must comply with

~~201 KAR 5:002, Section 2. [A person shall not advertise an eye examination unless the requirements of 201 KAR 5:040, Section 7(1) are met. A person shall not purport to write a prescription for eyewear solely by using an autorefractor or other automated testing device.]~~

~~(3)(2) Evaluation, treatment, and consultation recommendations by a doctor of optometry via telehealth shall be held to the same standards of appropriate practice as those in traditional in-person clinical settings and established in 201 KAR 5:002, Section 3. [Treatment and consultation recommendations made in an online setting, including a prescription or a prescription for eyewear via electronic means, shall be held to the same standards of appropriate practice as those in traditional practice, face-to-face settings. Treatment, including issuing a prescription for eyewear based solely on an online autorefraction, shall not constitute an acceptable practice or standard of care.]~~

~~(4) A doctor of optometry providing optometry services via telehealth shall: [A telehealth provider shall:]~~

~~(a) Verify the identity of the patient before telehealth services are performed [Not split fees in accordance with KRS 320.300(3)];~~

~~(b) Collect and review a patient's medical history [Shall maintain a medical record of a service or item provided to a patient via telepractice];~~

~~(c) Provide any applicable accommodations required by the Federal Americans with Disabilities Act, 42 U.S.C. secs. 12101 et seq., as amended;~~

~~(d) Maintain patient privacy and security in accordance with applicable state and federal law;~~

~~(e) Gather and transmit protected health information in compliance with the federal Health Insurance Portability and Accountability Act of 1996, as amended;~~

~~(f)(c) Document and maintain a record of the patient's presenting problem or purpose for the telehealth service, including the diagnosis or treatment and include which services were provided by telehealth [telepractice];~~

~~(g) Perform telehealth services with a recognized Current Procedural Terminology Code maintained by the American Medical Association, if applicable;~~

~~(h) Secure all required credentialing for reimbursement of telehealth services; and~~

~~(i) Obtain privileges if required by hospitals or facilities to admit and treat patients.~~

~~(5) An optometrist providing telehealth services shall not split fees in accordance with KRS 320.300(3);~~

~~(6) Prescriptions for controlled substances shall not be made via telehealth by a doctor of optometry.~~

~~(7) A contact lens or visual aid glasses prescription issued through telehealth must include the requirements established in the Kentucky Consumer Protection Eye Care Act, KRS 367.680-690 et seq.~~

~~[(d) Use secure communications with each patient including encrypted text messages, via email or secure Web site and not use personal identifying information in non-secure communications; and~~

~~(e) Dispense visual aids only in accordance with KRS 320.300(1).]~~

~~Section 5. Utilization of Telehealth in Provision of Continuing Education. Credit for telehealth educational presentations shall be granted in accordance with 201 KAR 5:030. [Section 2. Educational hours obtained through telehealth shall be considered as part of the credit hours granted in accordance with 201 KAR 5:030, Section 6(1).]~~

~~Section 6. This administrative regulation shall not be construed as giving jurisdiction over physicians licensed under KRS Chapter 314 to the Kentucky Board of Optometric Examiners.]~~

WILLIAM REYNOLDS, President

APPROVED BY AGENCY: March 15, 2023

FILED WITH LRC: March 15, 2023 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2023 at 3:00 p.m. at the Kentucky board of Optometric Examiners,

2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on May 18, 2023, five workdays prior to this 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 will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on May 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Carson Kerr, Executive Director, Kentucky Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504; phone (859) 246-2744; fax (859) 246-2746; email carson.kerr@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carson Kerr

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the existing telehealth regulation to bring about some needed revisions. Among those revisions this amendment is designed to prevent abuse and fraud through the use of telehealth services, prevent fee-splitting through the use of telehealth services, and utilize telehealth in the provision of optometric services and in the provision of continuing education. This administrative regulation establishes requirements for the use of telehealth services.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with the mandates of KRS 320.390(2), which requires the Kentucky Board of Optometric Examiners to promulgate administrative regulations related to the practice of optometry via telehealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes criteria for mandates in KRS 320.390, specifically drafted to prevent fraud and abuse, prevent fee-splitting, and promote the utilization of telehealth in the provision of optometric services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment to the current administrative regulations continues to carry-out the functions mandated in KRS 320.390 while also promoting utilization of telehealth.

(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 eliminates and cleans up existing definitions which are no longer necessary to define, it eliminates the barriers to doctors of optometry establishing the doctor-patient relationship via telehealth, incorporates model telehealth regulation language related to jurisdictional concerns, and sets out the manner in which doctors of optometry may utilize telehealth in the practice of optometry.

(b) The necessity of the amendment to this administrative regulation: The amendment brings the regulation in conformity with the authorizing statutes, and refreshes the regulation to bring it in line with similar telehealth rules in Kentucky.

(c) How this amendment conforms to the content of the authorizing statutes: The amendment eliminates the requirement that the doctor-patient relationship may not be established via telehealth except in unique circumstances, as the authorizing statutes do not address this issue.

(d) How the amendment will assist in the effective administration of the statutes: There will be conformity between the statutes and regulation, and more consistency with newer telehealth rules.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 900 optometrists are required to follow the dictates of these provisions for the practice of optometry by Kentucky Licensed Doctors of Optometry;

(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: Doctors of optometry will find it easier to establish a doctor-patient relationship via telehealth while also being required to maintain certain records, and comply with the provisions of this regulation in order to practice in this manner.

(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 monetary cost to the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment eliminates a requirement rather than add one, so there is no benefit of compliance.

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

(a) Initially: No new costs will be incurred by the board.

(b) On a continuing basis: No new costs will be incurred by the Board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for this amendment.

(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: Implementation of this regulation is not dependent on 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 any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.390 requires the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no change in cost for the agency. This will not require any new measures for enforcement unless a complaint comes in regarding these updated practices, in which case the agency will investigate as it always has done.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation simply brings optometry

practice in the context of telehealth in line with the terminology and means by which other agencies in the Commonwealth discuss telehealth.

(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 costs savings, or additional costs for that matter.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no costs savings, or additional costs for that matter.

(c) How much will it cost the regulated entities for the first year? There will be no costs savings, or additional costs for that matter.

(d) How much will it cost the regulated entities for subsequent years? There will be no costs savings, or additional costs for that matter.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: There will be no costs savings, or additional costs for that matter.

(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 will not have a major economic impact.

BOARDS AND COMMISSIONS Board of Chiropractic Examiners (Amendment)

201 KAR 21:025. Board; officers, duties, and compensation.

RELATES TO: KRS 312.019, 312.055

STATUTORY AUTHORITY: KRS 312.019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.055 requires the election of certain officers by the board. KRS 312.019(6) authorizes the board to employ personnel and incur expenses necessary for the performance of its duties. This administrative regulation establishes the duties of the officers, field personnel, and administrative staff, establishes the terms and procedure for election of officers, and establishes compensation.

Section 1. The officers of the board shall perform the duties established in this section.

(1) The president shall be the chief executive of the board. The president shall preside over all meetings of the board.

(2) The vice president shall perform the duties of the president during the president's absence or inability to serve. The vice president shall perform other reasonable duties delegated to him by the president or by the board.

(3) The executive secretary shall, if necessary or upon the discretion of the board:

(a) Record and present the minutes of a meeting to the board at the next scheduled meeting;

(b) Supervise the administrative functions of the board; and

(c) Perform other reasonable duties delegated to the executive secretary by the board.

Section 2. The board may employ a field coordinator as a part of the regular staff of the board. The field coordinator shall be paid a salary as the board may determine.

(1) The field coordinator may be a member of the board, except that the president or executive secretary, as referenced in KRS 312.055(1), shall not serve as field coordinator.

(2) The field coordinator shall:

(a) Investigate complaints against licensees referred by the board for investigation and report findings to the board;

(b) Not vote on any matter relative to formal or informal complaints against any licensee if:

1. Any of the charges were investigated by him in the capacity of field coordinator; and

2. The field coordinator is a board member; and

(c) Perform other reasonable duties as are delegated by the board.

(3)

(a) If the field coordinator is a member of the board, following the appointment as field coordinator, he or she shall serve until the conclusion of his term of appointment as a member of the board.

(b) A member who has been appointed to the position of field coordinator, who is reappointed to the board following the expiration of the original term, shall continue in the position of field coordinator until a successor is appointed, and accepts and assumes the duties of the position.

(c) A person appointed as field coordinator may be reappointed by the board to the position.

(4) The administrative staff shall assist the board in the performance of its duties and shall:

(a) Keep an accurate and up-to-date file of all licensees of the board, including:

1. Addresses, e-mail addresses, and telephone numbers;

2. Status as to whether or not they are in active practice or are inactive;

3. Whether a licensee is in practice in this state or out of it;

4. Documents establishing attendance at educational programs if these have been requested by the board;

5. All fees paid by licensees; and

6. Providing to the board, at least once each year, the names of licensees who are delinquent in the payment of fees or attendance of educational programs;

(b) Transmit notices for renewal of licenses as provided by KRS 312.175(2);

(c) Transmit notices of special meetings of the board; and

(d) Attend to the correspondence and communications of the board.

Section 3. A member elected as president, vice president, or executive secretary shall serve in office for one (1) year. An officer may be reelected by the board. Officer elections shall take place at the last meeting of the calendar year and shall take effect the first meeting of the following calendar year.

Section 4. Salary and Per Diem Compensation. [(4)] Board members shall receive \$100 per day for each day of actual service to the board.

Section 5. Financial Audit of Board Accounts.

(1) The board shall cause, on a biennial basis, an independent financial audit of board accounts to be conducted and a report made to the board of the results.

(2) The ~~biennial~~[annual] financial audit shall be conducted by the Kentucky Auditor of Public Accounts, or by an independent auditor qualified and licensed as a certified public accountant, and retained by the board. If the Auditor of Public Accounts declines to perform the audit, the board shall perform the audit.

(3) The audit shall be of the previous year's accounts, unless the board finds that a broader audit is necessary, and votes to conduct a broader audit by a majority of the board. The board vote shall define the scope of the audit sought.

DR. JAMES ENGLAND, Chair

APPROVED BY AGENCY: March 13, 2023

FILED WITH LRC: March 14, 2023 at 1:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 25, 2023 at 12:00 noon EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public

hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference: Join from PC, Mac, Linux, iOS or Android:

https://us06web.zoom.us/j/82428127008?pwd=blg4a3hSZVkvTnFtUnpMWDFaKkY5QT09//_Password:059844 // Or Telephone: Dial: USA 713 353 0212; USA 8888227517 (US Toll Free) // Conference code: 446599. Individuals interested in attending this hearing shall notify this agency in writing by May 20, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 11:59 pm on May 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: Clayton Patrick, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (502) 782-0562 (office), fax (502) 564-4818, email Clayton.Patrick@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clayton Patrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes board offices, procedures for election of same, compensation, and audit procedures.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes board offices, procedures for election of same, compensation, and audit procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 a technical error where there was an inconsistency in the frequency of audit dates. Section 5. (1) establishes a biennial independent financial audit and (2) is being corrected to reflect the biennial audit instead of the reference to an annual.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make technical corrections for consistent audit requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation makes a technical correction for consistent provisions for audit procedure.

(d) How the amendment will assist in the effective administration of the statutes: See 2(c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: This amendment to the administrative regulation will have no direct impact other than the Board of Chiropractic Examiners other than to make a technical correction to an amendment in 2021.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$30,000.00, which is the amount the Board is already required to pay for a biennial audit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will comply with auditory requirements and the frequency of the audits will be consistent with the recommendations of the State Auditor.

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

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

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

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for 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? None.

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There are no additional costs. There is a theoretical savings if it was required annually.

(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? \$30,000.00 every two (2) years, which is the amount the Board is already required to pay.

(d) How much will it cost the regulated entities for subsequent years? \$30,000.00 every two (2) years, which is the amount the Board is already required to pay.

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

Cost Savings (+/-): None

Expenditures (+/-): \$30,000.00 is the cost for the biennial audit.

Other Explanation: This is a technical correction since one section mentions an annual audit.

(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 Chiropractic Examiners (Amendment)

201 KAR 21:041. Licensing; standards, fees.

RELATES TO: KRS 312.085, 312.095, 312.145, 312.175

STATUTORY AUTHORITY: KRS 312.019, 312.085, 312.095, 312.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes the procedures relating to application for licensure, license renewal, and fees.

Section 1. Initial Application. An applicant for initial licensure shall submit to the board:

(1) A completed New Licensee Application; and

(2) A nonrefundable application fee of \$350.

(3) If the initial applicant graduated from chiropractic school more than four (4) years ago, proof of successfully passing the Special Purposes Examination for Chiropractic given by the National Board of Chiropractic Examiners within the past six (6) months shall be submitted to the board unless the initial applicant submits proof acceptable to the board of active practice under a license in good standing in another state or jurisdiction. In determining whether to accept proof of active practice, the board shall consider the following submitted by the licensee in writing:

(a) The number, or approximate number, of patients treated per week;

(b) The practice location(s) and address(es) at which the licensee has practiced, and the month and years of practice at each respective location; and

(c) Any relevant information the licensee may submit to show active practice.

Section 2. Licenses. Each license by the board shall:

(1) Set forth the:

(a) Name of the issuing board;

- (b) Name of the licensee;
- (c) Number of license; and
- (d) Date of the license issuance;
- (2) Be signed by a minimum of three (3) members of the board;
- and
- (3) Have the seal of the board affixed.

Section 3. License Renewal.

- (1)
- (a) Each licensee of the board shall annually renew the license on or before the first day of March.
- (b)
- 1. A licensee seeking active status shall:
- a. Submit a completed Application for Annual License Renewal;
- and
- b. Pay a renewal fee of \$250.
- 2. A licensee seeking inactive status shall:
- a. Submit a completed Annual Inactive License Renewal Application; and
- b. Pay a renewal fee of seventy-five (75) dollars.
- (2) The amount of the restoration fee established by KRS 312.175(2) and (4) shall be \$250 per year, or any part of a year.
- (3) Continuing education requirements.
- (a) Each active licensee shall complete at least twelve (12) hours of board-approved continuing education, with:
 - [1. A minimum of six (6) hours of the required twelve (12) hours obtained at a live event, which is an event at which both the licensee and presenter are present in-person;]
 - 1.[2.] No more than eight (8) hours completed in a day; and
 - 2.[3.] Proof of completion submitted with the Application for Annual License Renewal upon request by the Board.
- (b) A new licensee shall complete a two (2) hour jurisprudence course, provided by the board, by the licensee's first renewal[within one (1) year of the date of the licensee's initial license approval.]; but shall not otherwise be required to complete the continuing education requirements set out in (3)(a) above until after the licensee's first renewal and before the licensee's second renewal.[The course shall account for two (2) of the twelve (12) hours of continuing education required by paragraph (a) of this subsection.
- (c) A new licensee shall complete the licensee's required twelve (12) hours of continuing education by the first relicensing period following the completion of his or her first calendar year in practice.]
- (c)[(d)] An inactive licensee may renew the inactive license without meeting the continuing education requirements required by this subsection.

Section 4. Activation of an Inactive License.

- (1) To activate an inactive license, a licensee shall submit:
- (a) A completed Application for Activation or Reinstatement of Kentucky License;
- (b) The renewal fee required by Section 3(1)(b) of this administrative regulation;
- (c) Proof that the licensee has met the continuing education requirements established by Section 3(3) of this administrative regulation; and
- (d) License verification from each state or jurisdiction from which the licensee has held a license.
- (2) If the licensee was inactive for more than four (4) years, proof of successfully passing the Special Purposes Examination for Chiropractic given by the National Board of Chiropractic Examiners within the past six (6) months shall be submitted to the board unless the licensee submits proof acceptable to the board of active practice under a license in good standing in another state or jurisdiction. In determining whether to accept proof of active practice, the board shall consider the following submitted by the licensee in writing:[-]
 - (a) The number, or approximate number, of patients treated per week;
 - (b) The practice location(s) and address(es) at which the licensee has practiced, and the month and years of practice at each respective location; and
 - (c) Any relevant information the licensee may submit to show active practice.

Section 5. Denial or Refusal of License. The board may deny or refuse to renew a license if an applicant or licensee:

- (1) Has a conviction for a felony or violation of any law involving moral turpitude; or
- (2) Violates any of the provisions of KRS Chapter 312 or 201 KAR Chapter 21.

Section 6. Change of Address. Each licensee shall notify the board within ten (10) days of each change of mailing address or place of business.

Section 7. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) Application for Licensure, DPL-KBCE-01, March 2023;["New Licensee Application", 2016;]
 - (b) "Application for Annual License Renewal", DPL-KBCE-03, March 2023;[September 2020;]
 - (c) "Annual Inactive License Renewal Application", 2013; and
 - (c)[(d)] "Application for Activation or Reinstatement of Kentucky License", DPL-KBCE-04, March 2023[2013].
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. JAMES ENGLAND, Chair

APPROVED BY AGENCY: March 13, 2023

FILED WITH LRC: March 14, 2023 at 1:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 25, 2023 at 12:00 noon EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference: Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/82428127008?pwd=blg4a3hSZVkvTnFtUnpMWDFaNFkY5QT09_Password:059844 // Or Telephone: Dial: USA 713 353 0212; USA 8888227517 (US Toll Free) // Conference code: 446599. Individuals interested in attending this hearing shall notify this agency in writing by May 20, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 11:59 pm on May 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: Clayton Patrick, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (502) 782-0562 (office), fax (502) 564-4818, email Clayton.Patrick@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clayton Patrick

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes the procedures relating to application for licensure, license renewal, and fees.
 - (b) The necessity of this administrative regulation: This

administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to licensing standards and continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for licensing standards and continuing education.

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

(a) How the amendment will change this existing administrative regulation: The Amendment will establish licensing standards for initial applicants, allow licensees to obtain continuing education from on-line sources without limitation, and will establish licensing standards for reactivation and reinstatement.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish licensing standards for initial applicants, reactivation, and reinstatement to protect the public and to allow chiropractors to obtain continuing education by either in-person or online attendance without restrictions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to licensing standards for initial applicants, reactivation or reinstatement and continuing education.

(d) How the amendment will assist in the effective administration of the statutes: See 2(c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 919 active licensed chiropractors and 119 inactive licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of initial applicants; and an unknown number of their patients who depend on their chiropractor having the appropriate licensing standards and remaining current with their training.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will require applicants for reactivation or reinstatement to take the SPEC exam, or show proof of active practice within the last four (4) years, and require initial applicants who have graduated more than four (4) years to take the SPEC exam, or show proof of active practice within the last four (4) years, that is satisfactory to the board and also allow chiropractors to obtain continuing education from sources other than live, in-person providers which may reduce the costs associated with time and travel to the event.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial applicant or the applicant for reactivation or reinstatement who must show proof of successful passage of the SPEC exam may incur the cost of the exam when they cannot show proof of active practice within the last four (4) years, in the approximate amount of \$1500.00. This regulation should add no additional cost to the licensed chiropractor in obtaining continuing education which may reduce the costs associated with time and travel to the event.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will allow initial applicants and those for reactivation or reinstatement to ensure they have adequate knowledge to perform their duties as required by law and will allow chiropractors to obtain continuing education from both

in-person and online providers without restriction.

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

(a) Initially: This administrative regulation does not create an additional cost for the administrative body and any additional costs would be minimal.

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

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for 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? None.

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals. There may be additional costs to the agency for the review of experience in the last 4 years, but it will be minimal.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings is indeterminable but could occur due to reduction in time and travel expenses for continuing education.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings is indeterminable but could occur due to reduction in time and travel expenses for continuing education.

(c) How much will it cost the regulated entities for the first year? The initial applicant or the applicant for reactivation or reinstatement who must show proof of successful passage of the SPEC exam may

incur the cost of the exam when they cannot show proof of active practice within the last four (4) years, in the approximate amount of \$1500.00. This regulation should add no additional cost to the licensed chiropractor in obtaining continuing education and may reduce the costs associated with time and travel to the event.

(d) How much will it cost the regulated entities for subsequent years? The cost of obtaining required continuing education only, which is indeterminable.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: The initial applicant or the applicant for reactivation or reinstatement who must show proof of successful passage of the SPEC exam may incur the cost of the exam when they cannot show proof of active practice within the last four (4) years, in the approximate amount of \$1500.00. This regulation should add no additional cost to the licensed chiropractor in obtaining continuing education and may reduce the costs associated with time and travel to an event.

(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 Chiropractic Examiners (Amendment)

201 KAR 21:042. Standards, applications[~~application~~] and approval of continuing education.

RELATES TO: KRS 312.085, 312.095, 312.145, 312.175

STATUTORY AUTHORITY: KRS 312.019, 312.085, 312.095, 312.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes standards for continuing education and the procedures relating to the application and approval of continuing education.

Section 1. Standards for Continuing Education.

(1) Continuing education shall be ~~either:~~

~~(a) A post graduate course of study at or sponsored by a chiropractic college accredited by the Council on Chiropractic Education or its successors; or~~

~~(b) A continuing education program approved by the board, or by a committee designated by the board to act between sessions of the board.~~

(2) The continuing education program shall be:

(a) A post graduate course of study at or sponsored by a chiropractic college accredited by the Council on Chiropractic Education or its successors; or

(b)[(a)] Sponsored by a national or state chartered organization of chiropractors or a chiropractic college; and

(c)[(b)] Open to all doctors of chiropractic in Kentucky who desire to attend.

(3) The instructors and speakers shall be in the field of chiropractic, chiropractic education, or allied sciences.

(4) The programs to be presented shall contain subjects of clinical benefit to licensees and on a postgraduate level of education.

(5) The programs shall comply with the Kentucky chiropractic scope of practice as defined by KRS 312.017; and the board or its designated committee shall determine whether online versus live education is appropriate for the subject matter being offered in its

determination whether to approve programs as proposed.

Section 2. Requirements for Online Continuing Education.

(1) Any entity submitting an online course for approval shall be Pre-Approved Continuing Education (PACE) Commission certified; and submit the program through the PACE pre-check program using the Kentucky Board of Chiropractic Examiners Continuing Education Application form.~~[PACE Pre-Check Expedited Course Submission for Kentucky form. Any entity not certified through PACE shall submit an application for approval for a program directly to the board through December 31, 2020 by completing the Kentucky Board of Chiropractic Examiners Continuing Education Application.]~~

(2) The program shall:

(a) Have a mechanism to ensure that users view each page of the program;

(b) Ensure the user has earned all of the time required for the program;

(c) Have a mechanism in place for the user to be able to contact the provider regarding questions about the continuing education programs;

(d) Include a mechanism to evaluate the user's knowledge of the subject matter contained in the program;

(e) Provide a printed verification or allow the user to print verification only upon completion of the program; and

(f) Ensure that the course time cannot be earned away from the program and that automatic lock out occurs if the keyboard becomes unattended.

(3) Programs shall be completed and earned one (1) at a time. The user of a program shall not earn credit for multiple windows or programs completed simultaneously.

Section 3. Application for Approval.

(1) The sponsoring party of a proposed educational program for license renewal shall apply for approval of the program prior to its presentation by submitting ~~either the PACE Pre-Check Expedited Course Submission for Kentucky form if PACE certified, or if not certified through PACE by submitting~~ the Kentucky Board of Chiropractic Examiners Continuing Education Application, and by providing to the board:

(a) The name of the course;

(b) The name of the sponsoring organization;

(c) The objective of the program;

(d) The number of classroom hours over which the educational program will be presented, and the dates presented;

(e) The names of the instructors and speakers and the name and address of the institution with which they are associated, if applicable;

(f) The instructors' or speakers' educational background and other relevant qualifications;

(g) The name and address of the person authorized to certify attendance; and

(h) An educational program review fee as established in subparagraph 1. through 3. of this paragraph.

1. Live Events Only - A live event is an event at which both the presenter and attendee are present in person. A minimum fee of twenty-five (25) dollars for a live one-time event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars per requested credit hour with a maximum fee of \$100. For events with multiple dates and locations there will be an additional twenty-five (25) dollar fee.

2. Online Events Only - A minimum fee of twenty-five (25) dollars for a live one-time event or recorded event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars per requested credit hour with a maximum fee of \$100. The online event shall remain approved for one (1) calendar year.

3. Live Event That Will Also Be Recorded To Be Used As Online CE - A minimum fee of fifty (50) dollars for an event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars per requested credit hour with a maximum fee of \$100. The online event shall remain approved for one (1) calendar year.

(2) The educational program may be monitored by an officer of the board, the field coordinator of the board, or a person designated by the president of the board.

(3)

(a) A proposed program shall be received by the board for approval at least sixty (60) days prior to the date of the presentation.

(b) The board, or a designee of the board to act between meetings of the board, shall give written notification of the board's approval or disapproval of the program to the sponsoring party not more than thirty (30) days after receiving the proposed educational program.

(c) An online course shall remain approved for one (1) calendar year from a date of the event provider's choosing if that date is no earlier than sixty (60) days from the date the board received the submission for approval.

Section 4. Incorporation by Reference.

(1) [The following material is incorporated by reference:

(a) "~~PACE Pre-Check Expedited Course Submission for Kentucky form~~", (2020); and

(b)] "Kentucky Board of Chiropractic Examiners Continuing Education Application", DPL-KBCE-05, March 2023, is incorporated by reference [September 2020].

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m.

DR. JAMES ENGLAND, Chair

APPROVED BY AGENCY: March 13, 2023

FILED WITH LRC: March 14, 2023 at 1:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 25, 2023 at 12:00 noon EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference: Join from PC, Mac, Linux, iOS or Android:

https://us06web.zoom.us/j/82428127008?pwd=blg4a3hSZVkvTnFtUnpMWDFaNkY5QT09//_Password: 059844 // Or Telephone: Dial: USA 713 353 0212; USA 8888227517 (US Toll Free) // Conference code: 446599. Individuals interested in attending this hearing shall notify this agency in writing by May 20, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 11:59 pm on May 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: Clayton Patrick, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (502) 782-0562 (office), fax (502) 564-4818, email Clayton.Patrick@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clayton Patrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements relating to continuing education.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements relating to continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 clarify the standards for continuing education and make a technical correction to reference a new form and delete obsolete forms.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the standards for continuing education and make technical corrections to reference a new form and delete obsolete forms.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation sets standards for continuing education and makes a technical correction to reference a new form and delete obsolete forms.

(d) How the amendment will assist in the effective administration of the statutes: See 2(c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the administrative regulation will have no affect other than to clarify established standards for continuing education and reference a new form and delete obsolete forms.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be needed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change combines two existing forms into one form which will reduce confusion by providers and any delay in approval.

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

(a) Initially: None. This administrative regulation does not create a cost for the administrative body

(b) On a continuing basis: None. This administrative regulation does not create a cost for the administrative body

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for 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? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? This regulation should add no additional cost to the licensed chiropractor in obtaining continuing education and may reduce the costs associated with time and travel to the event.

(d) How much will it cost the regulated entities for subsequent years? The cost of obtaining required continuing education only, which cannot now be determined.

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

Cost Savings (+/-): None

Expenditures (+/-): None

Other Explanation:

(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 Chiropractic Examiners
(Amendment)

201 KAR 21:075. Peer review committee procedures and fees.

RELATES TO: KRS 312.200

STATUTORY AUTHORITY: KRS 312.015, 312.019, 312.200

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.200 requires the board to appoint a peer review committee and establish procedures and fees for the review of submitted claims. This administrative regulation establishes fees and procedures pertaining

to the peer review committee.

Section 1. Peer Review Committee.

(1) The board shall appoint a Peer Review committee of up to five (5)~~four (4)~~ members. All members of the peer review committee may serve a three (3) year term.

(a) Each member of the Peer Review committee shall serve until their successor is appointed and qualified.

(b) Appointments to fill vacancies shall be for the unexpired term.

(c) Applicants for appointment to the Peer Review committee shall make application on the same form utilized by applicants for appointment to the board, except filed with the board and not the Governor's office, and shall include a cover letter stating that the application is for the Peer Review Committee.

(2) Members of the Peer Review committee shall be doctors of chiropractic of integrity and ability who at the time of their appointment have been actual residents of the Commonwealth of Kentucky for at least two (2) years next preceding their appointment, and have been engaged in the actual practice of chiropractic for at least five (5) years next preceding their appointment.

(3) Any member of the peer review committee shall not hold an elected position in any state organization or association relating to or consisting of licensees of this board or the practice of chiropractic.

(4)

(a) Beginning on March 1, 2021, the longest-serving member on the Peer Review committee shall be replaced by a member with a three (3) year appointment.

(b) In 2022, the next longest-serving member of the Peer Review committee shall be replaced by a member with a three (3) year appointment.

(c) In 2023, the next longest-serving member on the Peer Review committee shall be replaced by a member with a three (3) year appointment.

(d) In 2024, the next longest-serving member shall be replaced by a member with a three-year appointment.

(e) Thereafter, each appointee to the Peer Review committee shall be appointed to a three (3) year term.

(f) This subsection shall not prohibit any member of the peer review committee from serving consecutive terms.

Section 2. Procedures and Fees of Peer Review Committee.

(1) Peer review shall not take place until the patient has submitted a release permitting photocopies of the applicable treatment or billing records prepared by the chiropractor in the regular course of business.

(a) Treatment records shall not be released for peer review without the patient's authorization.

(b) The acceptance of, or the request for, payment by a chiropractor shall constitute the consent of the chiropractor to the submission of all necessary records and other information concerning the treatment or the cost to the peer review committee.

(2)

(a) Each claim shall be assigned to an individual member of the committee who shall review the submitted records and response from the charged party and report his findings to the full committee, which shall review the findings and either adopt those findings or modify them as determined by majority vote.

(b) A copy of the findings shall be forwarded to the board, the patient, the chiropractor, and insurer or other third party payor.

(3)

(a) The peer review committee shall elect a chair.

(b) The committee may recommend for the board's approval a contract with or employment of third parties to perform administrative functions or to aid in obtaining records necessary for appropriate review of claims.

(c)

1. The peer review committee shall recommend to the board that a complaint be filed against a chiropractor if it appears from the review of a claim that reasonable cause exists to believe that the chiropractor has violated any portion of KRS Chapter 312 or 201 KAR Chapter 21 for which a chiropractor may be disciplined.

2. The peer review committee shall transmit all complaint

information the committee possesses to the board.

(4)

(a) A chiropractor, insurer, or other third party payor requesting review shall submit with the request a service fee of fifty (50) dollars payable to "B.C.E. Peer Review."

(b) An additional fee shall be charged for claims requiring more than one (1) hour of review by the committee calculated at fifty (50) dollars per hour, which sum shall be due prior to the delivery of committee findings to all parties.

(c) All fees shall be paid by the chiropractor, insurer, or other third party payor requesting the review.

(5) Each member of the peer review committee shall comply with the requirements and standards established in 201 KAR 21:095.

Section 3. Annual Report.

(1) An annual summary of the findings of the peer review committee shall be prepared by the committee and submitted to the board.

(2) The report shall be made available to interested persons upon request and upon payment of the cost of reproduction.

(3) A report or summary submitted to the public by the board shall not disclose the name or identity of any patient without the patient's consent.

DR. JAMES ENGLAND, Chair

APPROVED BY AGENCY: March 13, 2023

FILED WITH LRC: March 14, 2023 at 1:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 25, 2023 at 12:00 noon EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference: Join from PC, Mac, Linux, iOS or Android:

<https://us06web.zoom.us/j/82428127008?pwd=blg4a3hSZVkvTnFtUnpMWDFaNkY5QT09//Password:059844> // Or Telephone: Dial: USA 713 353 0212; USA 8888227517 (US Toll Free) // Conference code: 446599. Individuals interested in attending this hearing shall notify this agency in writing by May 20, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 11:59 pm on May 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: Clayton Patrick, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (502) 782-0562 (office), fax (502) 564-4818, email Clayton.Patrick@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clayton Patrick

(1) Provide a brief summary of:

(a) What this administrative regulation does:

KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes peer review committee procedures and fees.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes peer review committee procedures and fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 make a technical correction to conform to KRS 312.200 relating to the number of members who can be appointed to the peer review committee.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make technical corrections to be consistent with KRS 312.200.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation makes a technical correction regarding the peer review committee.

(d) How the amendment will assist in the effective administration of the statutes: See 2(c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the administrative regulation will have no affect other than to make a technical correction to be consistent with KRS 312.200.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be needed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no affected parties by the amendment.

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

(a) Initially: None. This administrative regulation does not create a cost for the administrative body

(b) On a continuing basis: None. This administrative regulation does not create a cost for the administrative body

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.

(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, fires, or school districts) for the first year? This regulation will not generate revenue for state or local government. This regulation will not generate revenue for state or local government.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

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

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

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

Cost Savings (+/-): None

Expenditures (+/-): None

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.

BOARDS AND COMMISSIONS
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:095. Licensure, registration, and standards of persons performing peer review.

RELATES TO: KRS 312.175, 312.200(3)

STATUTORY AUTHORITY: KRS 312.019(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the board to promulgate administrative regulations consistent with KRS Chapter 312 governing the practice of chiropractic. KRS 312.200(3) requires that persons performing peer review of chiropractic claims be licensed by the board, complete annually a board approved utilization review course, and

annually register with the board and pay a registration fee. This administrative regulation establishes the requirements for the licensure, review course, registration, and registration fee for persons to perform peer review services.

Section 1. Requirements for Licensure and Registration. A person performing chiropractic peer review shall:

(1) Hold a current active license to practice chiropractic within the Commonwealth of Kentucky;

(2)

(a) For the first year that a person seeks to register to perform peer review, have previously successfully completed a course consisting of a minimum of 100 hours of utilization review and independent medical examination from a chiropractic college or university accredited by the Council on Chiropractic Education; and

(b) For each year thereafter that a person seeks to register to perform peer review, have completed six (6) hours of continuing education in topics specifically related to utilization review and approved by the board to meet this requirement; and ~~which shall be obtained at a live, in-person event within the Commonwealth of Kentucky; and~~

(3) Register annually with the board, by June 1 of each year, by:

(a) Presenting evidence of satisfactory compliance with the requirements established in this section and of having met the education requirements of KRS 312.175;

(b) Completing the Registration Form for Persons Performing Peer Review of Kentucky Chiropractic Claims; and

(c) Paying a registration fee of fifty (50) dollars.

Section 2. In performing peer review activities, a licensee shall:

(1) Render the actual review service and documented report;

(2) Personally retain a copy of all records associated with each peer review case for a minimum of seven (7) years;

(3) Employ minimum standards associated with the practice of chiropractic and comply with the code of ethical conduct established in 201 KAR 21:015;

(4) Provide a report that includes the rationale for the determination in order that the licensee provider is given adequate information to appeal;

(5) Sign all reports, unless the review is performed under the Kentucky Chiropractic Board of Examiners Peer Review Committee, in which case, the board's administrator or designee shall sign the determination;

(6) Review in accordance with accepted standards as defined in 201 KAR 21:001;

(7) Review thoroughly and rely on all documents provided to the reviewer;

(8) List in the resulting report all documents provided to the reviewer and list all documents reviewed; and

(9) Personally conduct the review and prepare the report.

Section 3. Complaint Procedure Related to Peer Reviewers. A complaint against a peer reviewer alleging a violation of this administrative regulation or any other provision of KRS Chapter 312 or 201 KAR Chapter 21 shall be filed and processed according to the procedure established in 201 KAR 21:051.

Section 4. Incorporation by Reference.

(1) Application for Chiropractic Peer Reviewer, DPL-KBCE-02, March 2023, ["Registration Form for Persons Performing Peer Review of Kentucky Chiropractic Claims" 2013] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m.

DR. JAMES ENGLAND, Chair

APPROVED BY AGENCY: March 13, 2023

FILED WITH LRC: March 14, 2023 at 1:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 25, 2023 at 12:00 noon EST in Room 127CW, The Mayo-

Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference: Join from PC, Mac, Linux, iOS or Android:

[https://us06web.zoom.us/j/82428127008?pwd=blg4a3hSZVkvTnFtUnpMWDFaNAkY5QT09//Password:059844//OrTelephone:Dial:USA7133530212;USA8888227517\(USTollFree\)//Conferencecode:446599](https://us06web.zoom.us/j/82428127008?pwd=blg4a3hSZVkvTnFtUnpMWDFaNAkY5QT09//Password:059844//OrTelephone:Dial:USA7133530212;USA8888227517(USTollFree)//Conferencecode:446599). Individuals interested in attending this hearing shall notify this agency in writing by May 20, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 11:59 pm on May 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: Clayton Patrick, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (502) 782-0562 (office), fax (502) 564-4818, email Clayton.Patrick@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clayton Patrick

(1) Provide a brief summary of:

(a) What this administrative regulation does:

KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes the procedures relating to licensure, registration, and standards of persons performing peer review.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to licensure, registration, and standards of persons performing peer review.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for licensure, registration, and standards, including continuing education, for persons performing peer review.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: How the amendment will change this existing administrative regulation: The Amendment will establish licensing standards persons performing peer review and will allow continuing education requirements to be met using on-line sources without limitation on the number of hours.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for consistency in the profession to allow continuing education requirements to be met through on-line classes without limitation and with no mandate for in-person continuing education.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This amendment to the administrative regulation

regulates the requirements related to continuing education for seekers of peer review.

(d) How the amendment will assist in the effective administration of the statutes: See 2(c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 919 active licensed chiropractors and 119 inactive licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of initial applicants; and an unknown number of their patients who depend on their chiropractor having the appropriate licensing standards and remaining current with their training.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will allow persons seeking to perform peer review to obtain continuing education from sources other than live, in-person providers.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will allow licensees seeking to perform peer reviews to obtain continuing education from other than live, in-person providers, which is a convenience that cuts down on the cost of travel and related accommodations, as well as the time for travel to attend in-person continuing education events.

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

(a) Initially: This administrative regulation does not create an additional cost for the administrative body. There is no cost to the administrative body to implement this amendment.

(b) On a continuing basis: None. See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost.

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.

(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, fires, or school districts) for the first year? This regulation will not generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first

year? There are no additional costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

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 is indeterminable but could occur due to reduction in time and travel expenses for continuing education.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings is indeterminable but could occur due to reduction in time and travel expenses for continuing education.

(c) How much will it cost the regulated entities for the first year? The cost of continuing education is annually required and indeterminable.

(d) How much will it cost the regulated entities for subsequent years? The cost of continuing education is annually required and indeterminable.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: This regulation will allow licensees seeking to perform peer reviews to obtain continuing education from other than live, in-person providers, which is a convenience that cuts down on the cost of travel and related accommodations, as well as the time for travel to attend in-person continuing education events.

(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 2:222. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010(42) [(44)], 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions.

(1) "Blind" means a:

(a) Concealing enclosure;

(b) Pit; or

(c) Boat.

(2) "Department blind" means a permanently fixed blind structure built by the department.

(3) "Drawn hunter" means a hunter who applied for a limited access hunt and was selected by the department to participate in the hunt.

(4) "Guest hunter" means a hunter invited by a waterfowl permit holder to participate in a limited access hunt.

(5) "Hunt site" means a specific location where waterfowl hunting is allowed, as assigned by the department or the U.S. Army Corps of Engineers and marked with a sign.

(6) "Hunt unit" means a tract of land with defined boundaries where a party may hunt waterfowl as approved by the department.

(7) "Limited-access hunt" means a hunting opportunity where public access is limited by the department to those who are selected in a random drawing.

(8) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind, hunt unit, or hunt site.

(9) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(10) "Quota hunt" means a class of limited access hunt that includes the word quota in the name of the hunt as established in regulation.

(11) "Regular waterfowl season" means the open waterfowl season that does not include the Light Geese Conservation Order season, special youth waterfowl season, special veterans and active military personnel waterfowl season, or the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

(12) "Special commission waterfowl permit holder" means a person who has been assigned a special commission permit for waterfowl, issued pursuant to 301 KAR 3:100, which allows the permit recipient to participate in the waterfowl quota hunt and receive priority selection for hunting dates during hunts at Ballard and Sloughs WMAs.

(13) "Waterfowl permit holder" means a special commission waterfowl permit holder or drawn hunter who has been assigned to a limited-access department blind, hunt unit, or hunt site by the department or the U.S. Army Corps of Engineers.

(14) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Waterfowl Seasons on Wildlife Management Areas.

(1) Waterfowl season provisions shall apply, as established in 301 KAR 2:221 and 301 KAR 2:225, except as established in this section or in Section 3 of this administrative regulation.

(2) On a wildlife management area, a person hunting waterfowl shall not:

(a) Establish or hunt from a permanent waterfowl blind;

(b) Hunt within 200 yards of another legal waterfowl hunting party;

(c) Hunt in a designated recreation area or access point;

(d) Hunt on an area marked by sign as closed to hunting;

(e) Enter an area marked by signs as closed to public access;

or

(f) Hunt a species on an area marked by signs as closed to hunting for that species.

(3) More than one (1) party shall not occupy a waterfowl blind or hunt site.

(4) A party shall remove decoys and personal items daily, except that a party assigned a multi-day hunt may choose to leave decoys in place for the duration of the hunt.

(5) A permanent blind, department blind, or blind site not occupied by the waterfowl permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) Restrictions established in this section shall not apply to a

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falconer if regular waterfowl season, special youth waterfowl season, or special veteran's active military personnel season, as established in 301 KAR 2:221, are not open.

Section 3. Wildlife Management Area Requirements.

(1) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(2) On wildlife management areas in Ballard County:

(a) The shotgun shell possession limit shall be twenty-five (25):

(b) At least one (1) person in each party shall be eighteen (18) years of age or older; and

(c) A person hunting waterfowl shall:

1. Not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day;

2. Hunt in a party that includes a waterfowl permit holder;

3. Hunt in the department blind, hunt unit, or hunt site assigned to that waterfowl permit holder through a drawing as established in Section 4 of this administrative regulation;

4. Hunt in close proximity to other party members so that each member of the party is within twenty-five (25) feet of another party member and no two (2) party members are more than seventy-five (75) feet apart;

5. Stop hunting and exit the hunting area by 2 p.m. during the regular waterfowl season, except as authorized by the department as necessary due to flooding, weather, or other safety concerns; and

6. Check out of the area by accurately completing the Daily Post-hunt Survey provided by the department and submitting the survey at the department-designated drop point by 3 p.m. the day of the hunt or be declared ineligible to hunt in a department limited access waterfowl hunt for the remainder of the current and following waterfowl season.

(3) Ballard WMA.

(a) Ballard WMA shall be closed to the public from October 15 through March 15, except for persons participating in department-managed activities.

(b) During periods of high water or flood, the public shall not enter upon the premises of the Ballard WMA by boat for any purpose. High water or flood conditions do not affect or change the management area boundary.

(c) A person hunting waterfowl shall not hunt waterfowl on the Ohio River from fifty (50) yards upstream of the northern border of Ballard WMA to fifty (50) yards downstream from the southern border of Ballard WMA from October 15 through March 15.

(4) Boatwright WMA.

(a) The Swan Lake Unit shall be closed to the public from October 15 through March 15, except for persons participating in department-managed activities.

(b) The area open to hunting during the regular waterfowl season shall be open for the Light Geese Conservation Order season as established in 301 KAR 2:221.

(c) Blind, hunt unit, or hunt site restrictions shall not apply to the Light Geese Conservation Order season.

(d) Boatwright WMA shall be closed to boats from December 1 through January 31, except for persons participating in department-managed activities.

(5) Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a hunt site.

(b) Waterfowl refuge areas:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile 51, at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile 55.5, shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(6) Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the

Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(7) Big Rivers WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(8) Cedar Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(9) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(10) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road, and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(11) Dix River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(12) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall stop hunting and exit the hunting area by 2 p.m. during the regular waterfowl season, except as authorized by the department as necessary due to flooding, weather, or other safety concerns.

(d) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, Number Four Lake, Town Creek Moist Soil Unit, Twin Ponds Moist Soil Unit and Upper Goose Pond Field, all waterfowl hunting shall be from a permanent blind or within ten (10) yards of a hunt site assigned by the department through a drawing as established in Section 4 of this administrative regulation.

(13) Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; or

(d) Within three-quarters (3/4) of a mile from the dam.

(14) Green River Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(15) Kaler Bottoms WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(16) Kentucky River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(17) Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys.

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

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(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(18) Obion Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(19) Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15.

(c) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(d) A person shall not enter a hunting area prior to 4 a.m. daily.

(20) Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and

2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(21) Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(22) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(23) Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall stop hunting and exit the hunting area by 2 p.m. during the regular waterfowl season, except as authorized by the department as necessary due to flooding, weather, or other safety concerns.

(d) If hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit or the Jenny Hole Unit:

1. A person shall not hunt on a Tuesday or Wednesday;

2. A person shall not possess more than twenty-five (25) shotgun shells;

3. At least one (1) person in each party shall be eighteen (18) years of age or older.

4. Hunt in a party that includes a waterfowl permit holder;

5. Hunt in the department blind, hunt unit, or hunt site assigned to that waterfowl permit holder through a drawing as established in Section 4 of this administrative regulation;

6. Hunt in close proximity to other hunt party members so that each member of the party is within twenty-five (25) feet of another party member and no two (2) party members are more than seventy-five (75) feet apart; and

7. Check out of the area by accurately completing the Daily Post-Hunt Survey provided by the department and submitting the survey at the designated drop point by 3 p.m. the day of the hunt or be ineligible to hunt in department limited access waterfowl hunts for the remainder of the current and following waterfowl season.

(e) The Sauerheber Unit shall be closed to the public from November 1 through March 15, except for persons participating in department-managed activities.

(f) The Jenny Hole Unit shall be closed to boats from Thanksgiving Day through January 31, except for persons participating in department-managed activities.

(g) The area open to hunting during the regular waterfowl season shall be open for the Light Geese Conservation Order season as established in 301 KAR 2:221.

(h) Blind, hunt unit, or hunt site restrictions shall not apply to the

Light Geese Conservation Order season.

(24) South Shore WMA. The WMA shall be closed to hunting from November 15 through January 15, except for waterfowl and dove hunting.

(25) Taylorsville Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(26) Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(27) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(28) J.C. Williams WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

Section 4. Limited Access Waterfowl Hunts.

(1) Permanent waterfowl blinds or hunt sites on Lake Barkley, Barren River Lake, Green River Lake, or Doug Travis Wildlife Management Area.

(a) The department shall announce the time and location of drawings on the department's Web site at fw.ky.gov at least two (2) weeks prior to the drawing.

(b) Applicants:

1. Shall apply in person;

2. Shall fill out the provided index card with the requested information completely and accurately;

3. Shall not mark or mutilate the index card in an attempt to increase the probability of being selected;

4. Shall not apply more than once per drawing;

5. Be at least eighteen (18) years of age; and

6. Possess:

a. A valid Kentucky hunting license;

b. A valid Kentucky migratory game bird and waterfowl permit; and

c. A valid federal duck stamp.

(c) Drawing.

1. The department or U.S. Army Corps of Engineers shall conduct a random drawing of applicants.

2. A drawn hunter shall choose from available hunt sites before the next drawn hunter may select a hunt site.

3. Selected hunt sites will not be available for the next drawn hunter.

4. If a drawn hunter is not present, or does not select a hunt site, then the next drawn hunter may select a hunt site.

5. The drawing shall continue until all available hunt sites are selected or all applicants have been drawn.

(d) The department or U.S. Army Corps of Engineers shall designate the drawn hunter as the waterfowl permit holder for the selected hunt site.

(e) The drawn hunter may designate one (1) additional applicant to be a waterfowl permit holder for the selected hunt site.

(f) An applicant may not be a waterfowl permit holder for more than one (1) permanent blind or hunt site at Doug Travis WMA.

(g) Waterfowl permit holders for hunt sites shall:

1. Construct permanent blinds, if desired, before the start of any special or regular waterfowl season as established in 301 KAR 2:221;

2. Not lock a waterfowl blind; and

3. Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year unless an extension of time is granted by the department due to weather or water level conflicts.

(h) Waterfowl permit holders may take guest hunters to their

assigned permanent blind or hunt site, but the total number of people in the party may not exceed four (4).

(1) A permanent blind or blind site not occupied by a waterfowl permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(2) Ballard WMA and Sloughs WMA waterfowl quota hunts.

(a) General procedures. A person applying to hunt in waterfowl quota hunts on Ballard WMA or Sloughs WMA shall:

1. Apply by completing the Ballard or Sloughs Waterfowl Quota Hunt online application on the department's Web site at fw.ky.gov;

2. Apply from September 1 through September 30;

3. Pay a three (3) dollar application fee for each application;

4. Select preferred hunt/hunts or select the no-hunt option; and

5. Not apply more than one (1) time for each hunt.

(b) Preference points.

1. A quota hunt applicant who is not selected shall be given one (1) preference point.

2. A quota hunt applicant who selects the no-hunt option shall be given one (1) preference point.

3. A person who applies for the no-hunt option shall not be drawn for a waterfowl quota hunt.

4. An applicant can accumulate preference points across years.

5. For each hunt:

a. A random selection of applicants with the highest number of preference points shall be made; and

b. If there are still openings, a random selection of applicants with the next highest number of preference points shall be made.

6. If selected for a quota hunt, a person shall lose all accumulated preference points.

7. A person shall forfeit all accumulated preference points if the person does not apply or is ineligible to apply for:

a. A waterfowl quota hunt; or

b. The no-hunt option.

(c) The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(d) Ballard WMA waterfowl quota hunts.

1. A drawn hunter and special commission waterfowl permit holder must check in the morning of their hunt in person by 5 a.m. CST.

2. A drawn hunter and special commission waterfowl permit holder shall fill out the provided check-in card completely and accurately.

3. A random drawing of all drawn hunters and special commission waterfowl permit holders will begin after the check-in period.

4. A selected drawn hunter or special commission waterfowl permit holder shall choose from available hunting units or department blinds before the next applicant is drawn.

5. A drawn hunter or special commission waterfowl permit holder who selects a hunting unit or department blind becomes the waterfowl permit holder for that hunting unit or department blind.

6. Waterfowl permit holders may take up to three (3) guest hunters.

7. Selected hunting units or department blinds will not be available for the next drawn hunter.

8. Waterfowl hunt units or department blinds not claimed by drawn hunters will be available in a stand-by drawing.

(e) Sloughs WMA waterfowl quota hunts.

1. A drawn hunter shall be assigned a department blind or hunting unit and become waterfowl permit holders at the time of the drawing.

2. A waterfowl permit holder shall check in by midnight CST on the Sunday prior to their hunt by sending an email to sloughsquotahunt@ky.gov which includes the waterfowl permit holder's name, hunt unit, hunt dates, and hunt confirmation number or forfeit their spot.

3. A waterfowl permit holder may take up to three (3) guest hunters.

4. Waterfowl hunt units or department blinds forfeited by waterfowl permit holders will be available in a stand-by drawing.

(3) Boatwright WMA limited access waterfowl hunts.

(a) A person applying to hunt waterfowl on Boatwright WMA shall:

1. Apply by completing the online Boatwright WMA Waterfowl Quota Hunt Form process on the department's Web site at <https://app.fw.ky.gov/HuntDraw/Index>;

2. Apply during the period Wednesday thru Sunday before their intended hunt period.

3. Be eighteen (18) years of age or older;

(b) A drawn hunter shall be assigned a department blind or hunting unit and become a waterfowl permit holder at the time of the drawing.

(c) A waterfowl permit holder may surrender a Boatwright WMA department blind or hunting unit on the department's Web site at <https://app.fw.ky.gov/HuntDraw/Index>.

(d) Surrendered department blind or hunting unit will be assigned by the department to a new drawn hunter.

(e) A waterfowl permit holder must check in the morning of their hunt in person by 4:45 a.m. CST.

(f) A waterfowl permit holder shall fill out the provided check-in card completely and accurately.

(g) A waterfowl hunt unit or department blind not claimed by a drawn hunter will be available in a stand-by drawing.

(h) A waterfowl permit holder may take up to three (3) guest hunters.

(4) Stand-by drawings.

(a) Ballard WMA.

1. An applicant must apply in person before 5 a.m. CST the day of their intended hunt.

2. An applicant shall fill out the provided check-in card completely and accurately.

3. A random drawing for unclaimed department blinds or hunting units will be conducted following the drawing for drawn hunters.

4. A selected applicant will choose an available department blind or hunting unit and be designated a waterfowl permit holder.

(b) Boatwright WMA.

1. An applicant must apply in person before 4:45 a.m. CST the day of their intended hunt.

2. An applicant shall fill out the provided check-in card completely and accurately.

3. A random drawing for an unclaimed department blind or hunting unit will occur after 4:45 a.m. CST.

4. Selected applicants will choose an available department blind or hunting unit and be designated waterfowl permit holder.

(c) Sloughs WMA.

1. An applicant must apply in person before 6 p.m. CST the Monday before their intended hunt.

2. An applicant shall fill out the provided check-in card completely and accurately.

3. A random drawing for an unclaimed department blind or hunting unit will occur after 6:00 p.m. CST.

4. Selected applicants will choose an available department blind or hunting unit and be designated waterfowl permit holder.

(5) A person shall be declared ineligible to hunt in department limited-access waterfowl hunts during the remaining portion of the regular waterfowl season and declared ineligible to hunt in or apply for any department limited-access hunt or department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs during a limited-access waterfowl hunt.

Section 5. State Parks. Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 7 through January 31 on designated areas of state parks at:

(1) Greenbo Lake;

(2) Nolin Lake;

(3) Paintsville Lake; and

(4) Yatesville Lake.

Section 6. Youth-Mentor and Mobility-Impaired Waterfowl Hunts.

(1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.

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(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) There shall be a waterfowl blind at Doug Travis WMA assigned by a random pre-season electronic drawing among all mobility-impaired applicants.

(4) A youth or mobility-impaired person shall:

(a) Apply on the department's Web site at fw.ky.gov between November 1 and November 15; and

(b) Carry a department-provided selection notification on the day of the hunt.

(5) A mobility-impaired person shall carry a mobility-impaired access permit pursuant to 301 KAR 3:026.

(6) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(7) At the youth-mentor hunts:

(a) Each youth shall not be accompanied by more than one (1) adult; and

(b) One (1) adult may accompany two (2) youths.

(8) A person shall:

(a) Hunt from an established blind; and

(b) Not change blinds.

(9) A blind shall not be used by more than four (4) individuals.

(10) A person shall only discharge a firearm from a blind.

(11) A person shall not possess more than twenty-five (25) shotshells.

(12) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(13) A person shall encase a firearm if traveling to or from a blind.

(14) A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall:

(a) Cease hunting by noon; and

(b) Exit the area by 1 p.m.

(15) All decoys and equipment shall be removed at the end of each day's hunt.

(16) A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall report harvest by depositing a completed hunt permit at the designated location.

[Section 1. Definitions.

(1) "Blind" means a:

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

(2) "Department blind" means a permanently fixed blind structure built by the department.

(3) "Hunt site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind or hunt site.

(6) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(7) "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order or the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

(8) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. 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 3.

(1) Except as established in this section or in Section 4 of this administrative regulation, on a Wildlife Management Area:

(a) A person hunting waterfowl shall not:

1. Establish or hunt from a permanent waterfowl blind; or

2. Hunt within 200 yards of:

a. Another occupied hunt site; or

b. Another legal waterfowl hunting party.

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and

(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) In order to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas, a person:

(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

1. A valid Kentucky hunting license;

2. A Kentucky migratory game bird and waterfowl permit; and

3. A federal duck stamp.

(4) The holder of a hunt site permit shall:

(a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department due to weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements.

(1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access; or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

1. The daily bag limit for ducks is greater than three (3); and

2. The daily bag limit for Canada goose is greater than or equal to two (2); and

(b) At least one (1) person shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site.

(5) At Ballard WMA:

(a) The duck, coot, merganser, and goose season shall be December 7 through January 31;

(b) Youth waterfowl season shall be the first full weekend in

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February;

(c) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day; and

(d) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 5 of this administrative regulation;

2. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard WMA from October 15 through March 15;

3. Stop hunting and exit the hunting area by 2 p.m. during the regular waterfowl season, except as authorized by the department;

4. Check out of the area by accurately completing the Daily Post-Hunt Survey provided by the department and submitting the survey at the department-designated drop point by 3 p.m. the day of the hunt, or be declared ineligible to hunt at Ballard WMA for the remainder of the current and following waterfowl season; and

5. Hunt in close proximity to other hunt party members so that each member of the party is within twenty-five (25) feet of another party member and no two (2) party members are more than 100 feet apart.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from December 7 through January 31; and

3. Check out the same day by:

a. Visiting the designated check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.;

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting;

(c) A department blind or hunt site shall be assigned through a daily drawing from December 7 through January 31;

(d) A department blind or hunt site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt site has not been assigned during the daily drawing;

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season;

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat; and

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt site during the regular waterfowl season.

(7) On the Peal unit of Boatwright WMA:

(a) More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

(b) More than four (4) parties shall not hunt at the same time on Fish Lake;

(c) More than three (3) parties shall not hunt at the same time on First Lake or Second Lake; and

(d) A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt site during the regular waterfowl season.

(8) On the Swan Lake Unit of Boatwright WMA:

(a) A person shall not hunt waterfowl from Thanksgiving Day through December 6;

(b) The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

(c) Blind restrictions shall not apply to the Light Goose Conservation Order season.

(9) Lake Barkley WMA:

(a) A permanent blind shall only be established within ten (10) yards of a blind site.

(b) Waterfowl refuge areas.

1. The area west of the Cumberland River channel, as marked by buoys, between river mile 51, at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river

mile 55.5, shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(10) Barron River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(11) Big Rivers WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(12) Cedar Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(13) Miller Welch Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(14) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road, and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(15) Dix River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(16) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(d) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, Number Four Lake, Town Creek Moist Soil Unit, and Upper Goose Lake, all waterfowl hunting after November 1 shall be:

1. From hunt sites assigned by a random preseason drawing; and

2. Within ten (10) yards of a hunt site, including periods of Mississippi River flooding.

(17) Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; or

(d) Within three-quarters (3/4) of a mile from the dam.

(18) Green River Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(19) Kaler Bottoms WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(20) Kentucky River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(21) Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys.

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A person hunting waterfowl shall remove decoys and personal items daily.

(22) Obion Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(23) Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15.

(c) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(d) A person shall not enter a hunting area prior to 4 a.m. daily.

(24) Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and

2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(25) Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(26) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(27) Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.

(d) On the Highlands Creek and Grassy Pond Powell's Lake units, a person hunting waterfowl shall:

1. Hunt:

a. From a department blind;

b. Within twenty-five (25) yards of a hunt site; or

c. No closer than 200 yards of another hunting party; and

2. Remove decoys and personal items from the area on a daily basis.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f) If hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit or the Jenny Hole Unit:

1. A person shall not hunt on a Tuesday or Wednesday;

2. A person shall hunt from a blind or a hunt site assigned by the department through a drawing as established in Section 5 of this administrative regulation;

3. A person shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-

five (25) if:

a. The daily bag limit for ducks is greater than three (3); and

b. The daily bag limit for Canada goose is greater than or equal to two (2);

4. If under eighteen (18) years of age, a person shall be accompanied by an adult.

(g) The Crenshaw and Duncan tracts of the Sauerheber Unit shall be closed to hunting except for:

1. Waterfowl from November 1 through March 15; and

2. The modern gun deer season.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(i) The Jenny Hole Unit shall be closed to boats from Thanksgiving Day through the last Sunday in January, except for persons participating in department managed activities.

(j) A hunter participating in a quota waterfowl hunt at Sloughs WMA shall:

1. Hunt in close proximity to other hunt party members so that each member of the party is within twenty-five (25) feet of another party member and no two (2) party members are more than 100 feet apart; and

2. Check out of the area by accurately completing the Daily Post-Hunt Survey provided by the department and submitting the survey at the designated drop point by 3 p.m. the day of the hunt or be ineligible to hunt at Sloughs WMA for the remainder of the current and following waterfowl season.

(28) South Shore WMA.

(a) The WMA shall be closed to hunting from November 15 through January 15, except for waterfowl and dove hunting.

(b) A hunter shall use a department blind.

(c) A department blind shall be available daily on a first-come, first-served basis.

(29) Taylorsville Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(30) Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(31) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(32) J.C. Williams WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

Section 5. Ballard WMA and Sloughs WMA Quota Hunts.

(1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply by completing the online Ballard or Sloughs Waterfowl Quota Hunt Form process on the department's Web site at fw.ky.gov;

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt at Sloughs WMA shall check in on the Sunday prior to their hunt on the department's Web site at fw.ky.gov.

(3) A person drawn to hunt may bring up to three (3) additional hunters.

(4) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason

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or daily drawing.

(5) A party applying to hunt waterfowl on the Jenny Hole Unit of Sloughs WMA shall:

(a) Apply by attending a weekly on-site drawing at the WMA; and

(b) Designate any other party members, if applicable, prior to the drawing.

(6) A party drawn to hunt on the Jenny Hole Unit of Sloughs WMA, as established in subsection (5) of this section, shall not be allowed to change any party members after being drawn.

Section 6. State Parks.

(1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of state parks at:

- (a) Greenbo Lake;
- (b) Lake Barkley;
- (c) Lincoln Homestead;
- (d) Nolin Lake;
- (e) Paintsville Lake; and
- (f) Yatesville Lake.

(2) Hunters shall check in and out each day at the designated check station.

(3) During check-in, hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts.

(1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) There shall be a waterfowl blind at Doug Travis WMA assigned by a random pre-season electronic drawing among all mobility-impaired applicants.

(4) A youth or mobility-impaired person shall:

(a) Apply on the department's Web site at fw.ky.gov between November 1 and November 15; and

(b) Carry a department provided postcard notification on the day of the hunt.

(5) A mobility-impaired person shall carry a mobility-impaired access permit pursuant to 301 KAR 3:026.

(6) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(7) At the youth-mentor hunts:

(a) Each youth shall not be accompanied by more than one (1) adult; and

(b) One (1) adult may accompany two (2) youths.

(8) A person shall:

(a) Hunt from an established blind; and

(b) Not change blinds.

(9) A blind shall not be used by more than four (4) hunters.

(10) A person shall only discharge a firearm from a blind.

(11) A person shall not possess more than twenty-five (25) shotshells.

(12) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(13) A person shall encase a firearm if traveling to and from a blind.

(14) A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall:

(a) Cease hunting by noon; and

(b) Exit the area by 1 p.m.

(15) All decoys and equipment shall be removed at the end of each day's hunt.

(16) A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall report harvest by depositing a completed hunt permit at the designated location.]

Section 7. [Section 8.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Daily Post-hunt Survey", 2023 edition; ["Sloughs WMA Waterfowl Hunter Survey Report", 2014 edition;]

(b) "Ballard or Sloughs Waterfowl Quota Hunt Form", 2014 edition;

(c) "Boatwright WMA Waterfowl Quota Hunt Form", 2023 edition;

(d) "Hatcheries Youth-Mentor/Mobility-Impaired Canada Goose Hunt Application", 2017 edition; and

(e) [(d)] "Doug Travis WMA Mobility-Impaired Waterfowl Hunt Application", 2017 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be found on the department's Web site at fw.ky.gov.

RICH STORM, Commissioner

APPROVED BY AGENCY: March 14, 2023

FILED WITH LRC: March 14, 2023 at 10:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 31, 2023, at 11:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the waterfowl hunting requirements on public lands in accordance with the USFWS frameworks and Department management objectives.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to establish hunting season dates, bag limits and other hunting requirements. KRS 150.360 authorizes the department to restrict methods and hunting hours for taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the above statutes by managing waterfowl populations and hunting opportunity consistent with state and national management requirements and strategies.

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

(a) How the amendment will change this existing administrative regulation: This is an extensive rewrite of an old regulation. Many portions have been changed to improve organization and clarity. Functional changes to the regulation include: 1) Expanded and clarified definitions section. 2) Changes to how Boatwright WMA allows waterfowl hunting to be similar to rules at adjacent Ballard

WMA including: allowing hunting units, removal of Peal Unit specific hunter/party number allowances, removal of rules associated with layout blinds, require check-station check-in and permits for any regular or special waterfowl season hunts, removes prohibition on boat blinds, and removes allowance for "first come-first serve" hunting. 3) removes a complicated formula driven shotshell allowance to be replaced with simple twenty-five (25) shell limit at Boatwright, Ballard and Sloughs WMAs 4) Limits boat access on Boatwright WMA from December 1 to January 31 to people participating in Department managed activities 5) Clarifies maximum distance party members may be apart is 75 feet at Ballard and Sloughs WMA, 6) Adds relevant language from 301 KAR 4:020 (Ballard) and 301 KAR 4:050 (Boatwright) so that these regulations may be repealed, 7) Removes specific dates allowances at WMAs for Special Youth Waterfowl seasons and allows for these Special seasons based on 301 KAR 2:221 timing, 8) Changes northern boundary of no-hunting zone at Ballard WMA to remove reference to the now removed Dam 53 9) Removes the requirement for the department to provide blinds and for hunters to hunt from blinds at South Shore WMA 10) Expands section describing rules associated with department limited access waterfowl hunts.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to simplify regulations by making rules at two major, adjacent waterfowl hunting WMAs similar and to clarify rules associated with limited access hunts that were not previously clarified in regulation. Also, to provide quality public hunting opportunity with minimal area use conflict that is consistent with meeting state and federal waterfowl management objectives.

(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 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunters will need to comply with all application procedures and hunting requirements established for public lands in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional or amended costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment simplifies and clarifies an old regulation. It makes waterfowl hunting rules at two adjacent WMAs similar and thus makes compliance with rules easier. It includes relevant portions of old regulations so they can be consolidated into a single regulation. It clarifies the rules for limited access waterfowl hunting.

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

(a) Initially: There will not be an additional cost to the agency to implement this administrative regulation initially.

(b) On a continuing basis: There will not be an additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

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

administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied, as the requirements are the same for all 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 Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.360, 150.600(1), and 50 C.F.R. Parts 20 and 21.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

(2) State compliance standards. The Department of Fish and Wildlife Resources sets migratory bird hunting seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

(3) Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's migratory bird hunters. Restricting bag limits provides the state the ability to protect populations that may be of concern on the state level but not on a national scale. The greatest concentrations of migratory birds and the greatest hunting pressure often occur on public lands managed by the Department. The Department imposes more restrictive regulations on these lands in effort to meet migratory bird management objectives while still providing quality hunting opportunity.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 58:040. Requirements for asbestos abatement entities.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 29 C.F.R. 1910.1001, 40 C.F.R. 61.152

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) ~~authorizes[requires]~~ the ~~[Environmental and Public Protection—]~~Cabinet to ~~promulgate[prescribe]~~ administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of asbestos emissions from asbestos abatement projects.

Section 1. Definitions. As used in this administrative regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010 or 401 KAR 58:025.

(1) "Air lock" means a system of enclosures within the containment area consisting of two (2) doorways, curtained with polyethylene sheeting, at least three (3) feet apart.

(2) "Asbestos abatement entity" means a partnership, firm, association, corporation, sole proprietorship, or other business concern, any governmental agency, or any other organization, composed of one (1) or more employees or members, or an individual involved in any of the asbestos-related activities specified in subsection (3) of this section.

(3) "Asbestos abatement project" means any renovation or demolition activity at a facility which may cause a disturbance of friable asbestos material.

(4) "Certificate" means a permit issued by the cabinet pursuant to KRS 224.10-100(19) to allow an asbestos abatement entity to engage in asbestos abatement projects, including the use of

equipment or practices that control the emissions of asbestos fibers into the outside air.

(5) "Certification fee" means a fee, established by the cabinet pursuant to KRS 224.10-100(20), for the issuance of certificates to asbestos abatement entities according to this administrative regulation.

(6) "Clean room" means an uncontaminated area or room which is part of the worker decontamination enclosure system with provisions for storage of workers' street clothes and clean protective equipment.

(7) "Clearance air monitoring" means the monitoring of air conducted inside the work area after cleanup of an asbestos abatement project has been completed.

(8) "Containment area" means the entire area in which an asbestos abatement project is conducted; including the work area, equipment room, shower room, clean room, and all associated air locks.

(9) "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations.

(10) "Emergency operation" means a renovation operation that was not planned but results from a sudden, unexpected event. This term includes operations necessitated by nonroutine failures of equipment.

(11) "Equipment room" means a contaminated area or room which is part of the worker decontamination enclosure system with provisions for storage of contaminated clothing and equipment.

(12) "Facility" means an institutional, commercial, or industrial structure, installation, or building, excluding apartment buildings having no more than four (4) dwelling units.

(13) "Facility component" means a pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a facility; or a structural member of a facility.

(14) "Friable asbestos material" means material containing more than one (1) percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry.

(15) "Glove bag" means a manufactured device consisting of plastic with a thickness of six (6) mils or more, two (2) inward-projecting long-sleeve rubber gloves, one (1) inward-projecting water-wand sleeve, an internal tool pouch, and an attached, labeled receptacle for asbestos waste. The glove bag is constructed and installed so that it surrounds the object or area from which the asbestos containing material is to be removed, and contains all asbestos fibers released during the removal process.

(16) "Glove bag technique" means a method of removing asbestos from pipes, ducts, valves, joints, and other nonplanar surfaces, which uses one (1) or more glove bags.

(17) "HEPA filtration" means high efficiency particulate air filtration found in respirators and vacuum systems capable of filtering particles greater than or equal to three-tenths (0.3) microns in size, with 99.97 percent efficiency.

(18) "HVAC" means a heating, ventilation, and air conditioning system.

(19) "Lockdown agent" means a protective coating or sealant which is applied to a surface from which asbestos-containing material has been removed.

(20) "OSHA" means the Occupational Safety and Health Administration.

(21) "Polyethylene sheeting" or "polyethylene bags" means sheeting or bags of polyethylene plastic with a thickness of six (6) mils or more, except as otherwise specified.

(22) "Publicly owned facility" means a facility owned by the state, or any political subdivision thereof, municipality, or other public entity.

(23) "Renovation" means altering in any way one (1) or more facility components. Operations in which load-supporting structural members are wrecked or taken out are excluded.

(24) "Shower room" means a room between the clean room and the equipment room in the worker decontamination enclosure system with hot and cold running water controllable at the tap and suitably arranged for complete showering during decontamination.

(25) "Structure" means a whole facility, building, or a major portion thereof, such as a building wing.

(26) "Work area" means the contaminated area within the containment area that contains the friable asbestos material which is to be abated.

Section 2. Applicability. (1)(a) Except as provided in paragraph (b) of this subsection, the provisions of this administrative regulation shall apply to each asbestos abatement entity which is involved in any asbestos abatement project.

(b) An asbestos abatement entity shall not be required to obtain the certificate as required in Section 3 of this administrative regulation or attend the training required in Section 10 of this administrative regulation in order to conduct asbestos abatement projects which are not subject to the provisions of 401 KAR 58:025, however, the asbestos abatement[that] entity shall comply with the provisions of Sections 4(3) and 12 of this administrative regulation when performing such projects.

(2) Any person may request that the cabinet determine whether a project is an asbestos abatement project. Such a request shall include the type of disturbance involved, a description of the friable asbestos materials, and laboratory data sheets with bulk sample results, methods of analysis, and the signature of the analyst. The cabinet shall make its determination, in writing, not later than ten (10) working days after it has received a written request with complete and accurate information adequate to make a determination.

[Section 2. Definitions. As used in this administrative regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010 or 401 KAR 58:025.

(1) "Air lock" means a system of enclosures within the containment area consisting of two (2) doorways, curtained with polyethylene sheeting, at least three (3) feet apart.

(2) "Asbestos abatement project" means any renovation or demolition activity at a facility which may cause a disturbance of friable asbestos material.

(3) "Asbestos abatement entity" means any partnership, firm, association, corporation, sole proprietorship, or other business concern, any governmental agency, or any other organization, composed of one (1) or more employees or members, or any individual involved in any of the asbestos-related activities specified in subsection (2) of this section.

(4) "Certificate" means a permit issued by the cabinet pursuant to KRS 224.10-100(19) to allow an asbestos abatement entity to engage in asbestos abatement projects, including the use of equipment or practices that control the emissions of asbestos fibers into the outside air.

(5) "Certification fee" means a fee established by the cabinet pursuant to KRS 224.10-100(20) for the issuance of certificates to asbestos abatement entities according to the provisions of this administrative regulation.

(6) "Clean room" means an uncontaminated area or room which is part of the worker decontamination enclosure system with provisions for storage of workers' street clothes and clean protective equipment.

(7) "Clearance air monitoring" means the monitoring of air conducted inside the work area after cleanup of an asbestos abatement project has been completed.

(8) "Containment area" means the entire area in which an asbestos abatement project is conducted; this includes, but is not limited to, the work area, equipment room, shower room, clean room, and all associated air locks.

(9) "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations.

(10) "Emergency operation" means a renovation operation that was not planned but results from a sudden, unexpected event. This term includes operations necessitated by nonroutine failures of equipment.

(11) "Equipment room" means a contaminated area or room which is part of the worker decontamination enclosure system with provisions for storage of contaminated clothing and equipment.

(12) "Facility" means any institutional, commercial, or industrial structure, installation, or building, excluding apartment buildings having no more than four (4) dwelling units.

(13) "Facility component" means any pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a facility; or any structural member of a facility.

(14) "Friable asbestos material" means any material containing more than one (1) percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry.

(15) "Glove bag" means a manufactured device consisting of plastic with a thickness of six (6) mils or more, two (2) inward-projecting long-sleeve rubber gloves, one (1) inward-projecting water-wand sleeve, an internal tool pouch, and an attached, labeled receptacle for asbestos waste. The glove bag is constructed and installed in such a manner that it surrounds the object or area from which the asbestos-containing material is to be removed, and contains all asbestos fibers released during the removal process.

(16) "Glove bag technique" means a method of removing asbestos from pipes, ducts, valves, joints, and other nonplanar surfaces, which uses one (1) or more glove bags.

(17) "HEPA filtration" means high efficiency particulate air filtration found in respirators and vacuum systems capable of filtering particles greater than or equal to three-tenths (0.3) microns in size, with 99.97 percent efficiency.

(18) "HVAC" means a heating, ventilation, and air conditioning system.

(19) "Lockdown agent" means a protective coating or sealant which is applied to a surface from which asbestos-containing material has been removed.

(20) "OSHA" means the Occupational Safety and Health Administration.

(21) "Polyethylene sheeting" or "polyethylene bags" means sheeting or bags of polyethylene plastic with a thickness of six (6) mils or more, except as otherwise specified.

(22) "Publicly owned facility" means any facility owned by the state, or any political subdivision thereof, municipality, or other public entity.

(23) "Renovation" means altering in any way one (1) or more facility components. Operations in which load-supporting structural members are wrecked or taken out are excluded.

(24) "Shower room" means a room between the clean room and the equipment room in the worker decontamination enclosure system with hot and cold running water controllable at the tap and suitably arranged for complete showering during decontamination.

(25) "Structure" means a whole facility, building, or a major portion thereof, such as a building wing.

(26) "Work area" means the contaminated area within the containment area that contains the friable asbestos material which is to be abated.]

Section 3. Prohibition. An[No] asbestos abatement entity shall not engage in any asbestos abatement project subject to[which is subject to the provisions of] 401 KAR 58:025 after April 1, 1988, unless:

(1) A certificate to [se-]engage in an asbestos abatement project[such projects] has been issued by the cabinet in accordance with [the provisions of] this administrative regulation, and is currently in effect. [The provisions of.] This subsection shall not apply during the [demonstration of.] compliance demonstration required in Section 6(2) of this administrative regulation.

(2) At least one (1) person identified in Section 10 of this administrative regulation is in attendance at the site of the containment area during the execution of the project.

Section 4. Work Practice Requirements.

(1) [Except as specified,] The work practice requirements of subsections 2 and 3 of this section shall apply to asbestos abatement entities [which perform the indicated asbestos abatement projects]. [The provisions of.] This section shall not apply to asbestos abatement entities which perform asbestos abatement projects at the entities' own manufacturing or industrial facilities if[when] the projects are performed exclusively by employees of the manufacturer or industry.

[2](4) Work practice requirements for renovations addressed in 401 KAR 58:025. An[Any] asbestos abatement entity that engages in an[any] asbestos abatement project, including

emergency operations, ~~[which is determined to be]~~ subject to ~~[the provisions of]~~ 401 KAR 58:025 and involves renovation shall comply with the following work practice requirements:

(a) All objects and exposed surfaces in the work area shall be cleaned. Movable objects may then be removed. Objects not removed from the work area shall be covered with polyethylene sheeting secured in place. All openings within the containment area, including windows, doorways, elevator openings, corridor entrances, drains, ducts, grills, grates, diffusers, skylights, and openings created by the construction of any barriers, shall be sealed with polyethylene sheeting. Containment areas shall be established by permanent walls extending from the floor to the ceiling, or where permanent walls do not exist, by barriers. Barriers shall be constructed of polyethylene sheeting attached securely in place.

(b) Floor sheeting shall be installed within the containment area and shall ~~be~~ consist of at least two (2) layers of polyethylene sheeting. Floor sheeting shall extend up side walls at least twelve (12) inches and shall be sized to minimize seams. ~~Seams~~ No seams shall ~~not~~ be located at wall-to-floor joints.

(c) Wall sheeting shall be installed throughout the containment area ~~[according to the procedures specified in this paragraph]~~. All wall sheeting shall ~~be~~ consist of polyethylene sheeting, with each layer ~~[having a thickness of]~~ at least four (4) mils ~~thick~~, shall be securely installed to minimize seams, and shall extend beyond each wall-to-floor joint at least twelve (12) inches. ~~[No]~~ Seams shall ~~not~~ be located at wall-to-wall joints.

1. Within the work area. Wall sheeting on a permanent wall shall ~~be~~ consist of at least two (2) layers. Wall sheeting on a barrier shall ~~be~~ consist of at least one (1) layer.

2. Within all other areas of the containment area. Wall sheeting on a permanent wall shall ~~be~~ consist of at least one (1) layer. ~~[No]~~ Wall sheeting shall not be required where barriers are used.

(d) A worker decontamination enclosure system shall be provided, consisting of a clean room, shower room, and equipment room, each separated from each other and from the work area by air locks and accessible through doorways protected with two (2) overlapping polyethylene sheets.

(e) All HVAC equipment in or passing through the containment area shall be shut down, locked out, and tagged out to advise personnel not to activate the equipment. All intake and exhaust openings and any seams in system components shall be sealed with polyethylene sheeting and waterproof tape.

(f) Warning signs shall be displayed at all approaches to any location where airborne fiber levels can be expected to exceed background levels. Warning signs shall conform with OSHA 1910.1001 specifications. ~~[Such signs shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall contain the following information which shall be printed in letters of sufficient size and contrast as to be readily visible and legible:~~

~~DANGER-ASBESTOS-CANCER-AND-LUNG-DISEASE- HAZARD AUTHORIZED PERSONNEL ONLY- RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA]~~

(g) Negative pressure ventilation units with HEPA filtration and in sufficient number to provide one (1) workplace air change every fifteen (15) minutes shall ~~operate~~ be operated continuously for the duration of the project. The duration of the project ~~[for this requirement]~~ shall ~~be~~ considered to be from the time that a containment area is established and wall and floor sheeting are installed ~~until~~ through the time that acceptable final clearance air monitoring results are obtained.

(h) All friable asbestos material shall be thoroughly wetted through to the substrate prior to removal.

(i) Facility components shall be removed intact or in large sections ~~if~~ whenever possible and shall be carefully lowered to the floor. Other friable asbestos material shall be removed in small sections.

(j) Materials located at heights greater than fifteen (15) feet but less than or equal to fifty (50) feet above the floor shall be dropped into inclined chutes or onto scaffolding or containerized at their elevated levels for eventual disposal. For materials more than ~~located at heights greater than~~ fifty (50) feet above the floor, a dust-tight enclosed chute shall be constructed to transport removed

material to containers on the floor.

(k) ~~[At no time shall the]~~ Friable asbestos material that has been removed ~~shall not~~ be allowed to accumulate or become dry.

(l) For porous surfaces ~~[that have been]~~ stripped of friable asbestos materials, a lockdown agent shall be applied to securely seal any residual fibers ~~[that may be present]~~. The lockdown agent shall ~~[should be chosen so as to]~~ be compatible with subsequent covering.

(m) Following abatement, wall sheeting and floor sheeting shall be removed and containerized for disposal. A sequence of HEPA filtration vacuuming, wet wiping all exposed surfaces, and surface drying shall be performed until ~~[no]~~ visible residue is not observed in the work area. A minimum of twenty-four (24) hours after wet wiping shall be required to ensure that sufficient drying has occurred.

(n) All asbestos-containing waste, except for large facility components, shall be thoroughly wetted before being placed into containers for disposal. Large components shall be thoroughly wetted before being wrapped in polyethylene sheeting for disposal. Disposal shall occur at locations identified in paragraph (u) of this subsection.

(o) Wet asbestos-containing waste shall be double bagged in polyethylene bags placed in sealed, rigid containers such as steel drums, fiber drums, or heavy cardboard boxes ~~[for example: steel drums, fiber drums, or heavy cardboard boxes]~~ for transport to the approved landfill identified in paragraph (u) of this subsection. Large facility components may be wrapped in two (2) layers of polyethylene sheeting which are secured with waterproof tape for disposal.

(p) All polyethylene sheeting ~~[that is]~~ used in an asbestos abatement project shall be treated as asbestos-containing waste.

(q) All wrapping or containerizing of asbestos-containing waste shall be completed ~~[done in such a manner so as]~~ to prevent the outside of the wrapping or container from being contaminated with asbestos fibers.

(r) All packaged wastes including boxes, drums, and wrapped components ~~[boxes, drums, and wrapped components]~~ shall be labeled in accordance with ~~[according to the provisions of]~~ 40 C.F.R. 61.152, adopted ~~[filed]~~ by reference in 401 KAR 58:025.

(s) Clearance air monitoring shall be performed. At least five (5) samples of air per work area, or one (1) sample per room, whichever is greater, shall be obtained for the clearance air monitoring. A sample volume of 3,000 liters of air shall be used. The air samples shall be obtained when the air is being artificially circulated so ~~[that]~~ the fibers remain airborne during the sampling. Barriers shall not be dismantled, and openings shall not be uncovered, until the final samples show total fiber concentrations of less than or equal to 0.01 fibers per cubic centimeter of air. The method for determining compliance with ~~[the provisions of]~~ this paragraph shall be either of the methods specified in Appendix M to "Guidance for Controlling Asbestos-Containing Materials in Buildings" (U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances, EPA 560/5-85-024, June 1985). ~~[Appendix M, "Detailed Specifications for Sampling and Analyzing Airborne Asbestos," is hereby adopted and filed herein by reference.~~

1. Copies of Appendix M to "Guidance for Controlling Asbestos-Containing Materials in Buildings" are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

2. Copies of the material incorporated by reference in this administrative regulation shall be available for public review at the offices of the Division for Air Quality as listed in 401 KAR 50:015-.

(t) Transport and disposal of asbestos-containing waste shall ~~[occur in a manner that will]~~ not ~~[permit the]~~ release ~~[of]~~ asbestos fibers into the outside air.

(u) Disposal shall occur at a site approved by ~~[that has approval from]~~ the Division of Waste Management to accept asbestos-containing waste in accordance with 401 KAR Chapter 47 ~~[according to the provisions of Title 401, Chapter 47,]~~ and shall meet all other applicable local, state, and federal laws.

(v) The asbestos abatement entity shall submit copies of all results of sampling obtained during clearance air monitoring and all disposal receipts to the building owner and the cabinet.

(3)(f)(2) Work practice requirements for demolitions addressed in

401 KAR 58:025. ~~An[Any]~~ asbestos abatement entity that engages in any asbestos abatement project ~~[which is determined to be]~~ subject to 401 KAR 58:025 and involves demolition shall comply with the following work practice requirements:

(a) Any ~~partial or full demolition~~ of a structure ~~[or portion of a structure]~~ which contains facility components composed of or covered by friable asbestos material ~~be removed~~~~[be preceded by a removal of all such materials]~~ prior to demolition, according to the requirements of subsection (2)~~[(4)]~~ of this section.

(b) ~~Instead~~~~[In lieu]~~ of the requirements specified in subsection (2)~~[(1)]~~(a), (b), (c), (e), and (f) of this section, asbestos abatement entities engaging in demolition activities shall comply with the following requirements:

1. Before beginning a demolition project, all doors, windows, floor drains, vents, and other openings to the outside of the building and to areas within the building that do not contain asbestos materials, shall be sealed off with polyethylene sheeting and waterproof tape; and

2. If a structure is to be partially demolished, all HVAC equipment in the demolition area or passing through it but servicing areas of the building which will remain, shall be shut down, locked out, tagged out to advise personnel not to activate the equipment, and thoroughly sealed with polyethylene sheeting and waterproof tape.

(c) Clearance air monitoring as described in subsection (2)~~[(1)]~~(s) of this section shall be required, following abatement activities conducted for demolition purposes, prior to demolition.

(d) All other requirements of subsection (2)~~[(4)]~~ of this section, unless ~~specified~~~~[specifically deleted]~~ in paragraph (b) of this subsection, shall apply to demolition abatement activities.

~~(4)~~~~[(3)]~~ An[Any] asbestos abatement entity engaged in an asbestos abatement project, including emergency operations, not subject to the requirements of subsections (2) and (3)~~[(1) and (2)]~~ of this section shall take reasonable precautions to prevent the release of asbestos fibers to the outside air. ~~[Such]~~Precautions shall include~~[-, but not be limited to:]~~:

(a) Construction of adequate barriers or use of wall and floor sheeting to contain asbestos fibers released within the containment area;

(b) Wetting of all friable asbestos materials prior to removal and keeping them wet until containerized;

(c) Use of HEPA filtration vacuum equipment and wet cleaning techniques to clean up the work area following the project until there is no visible residue;

(d) Appropriately wrapping or containerizing asbestos-containing waste and labeling the packaged waste including wrapped components, boxes, or fiber or metal drums~~(wrapped components, boxes, or fiber or metal drums)~~; and

(e) Transportation to and disposal at a location identified in subsection (2)~~[(1)]~~(u) of this section in a manner that does not release fibers into the outside air.

~~(5)~~~~[(4)]~~ ~~Instead~~~~[In lieu]~~ of the work practice requirements of subsection (2)~~[(1)]~~(a) to (e), (g), (i), (m), (n), (p), and (s) of this section, subsection (3)~~[(2)]~~(b) and (c) of this section, and subsection (4)~~[(3)]~~(a) and (c) of this section, the asbestos abatement entity may elect to use the glove bag technique for an asbestos abatement project. The glove bag technique~~[Such technique]~~ is an acceptable alternative to those requirements. The cabinet may, on a case-by-case basis, approve other alternative work practice requirements for an asbestos abatement project provided that the asbestos abatement entity submits the alternative to the requirements to the cabinet, in writing prior to beginning the asbestos abatement project, and demonstrates to the satisfaction of the cabinet that compliance with the requirements ~~established~~~~[prescribed]~~ in this section is not practical or not feasible and that the proposed alternative to the requirements provides an equivalent control of asbestos and is not in conflict with any applicable local, state, or federal law.

Section 5. Applications. (1) ~~An~~~~[No]~~ asbestos abatement entity shall not be considered for certification unless the training requirements of Section 10 of this administrative regulation have

been completed prior to application.

(2) Applications for certification required under Section 3 of this administrative regulation shall be made on form DEP 7034, Asbestos Contractor Certification Application~~[a form prepared by the cabinet for such purpose and shall contain such information as the cabinet shall deem necessary to determine whether the certificate should be issued]~~.

(3) Applications for certification shall be signed by an~~[a duly]~~ authorized agent of the asbestos abatement entity. ~~The~~~~[Such]~~ signature shall constitute personal affirmation that the statements made in the application are true and complete.

(4) Failure to supply information required or deemed necessary by the cabinet to enable it to act upon the certification application shall result in denial of the certificate.

(5) ~~An~~~~[Any]~~ asbestos abatement entity which submits an application for certification shall include with the application a filing fee, as established~~[specified]~~ in Section 8 of this administrative regulation.

Section 6. Consideration of Applications. (1) Within thirty (30) days after receipt of an application for certification, the cabinet shall advise the asbestos abatement entity as to whether or not the application is complete, and if not complete, what additional information is necessary in order to evaluate the application.

(2) Within fifteen (15) days after the application for certification is deemed complete, the cabinet shall contact the asbestos abatement entity to establish a date when the cabinet can witness an asbestos abatement project which shall be performed by the entity to demonstrate compliance with ~~[the provisions of]~~this administrative regulation.

(3) The cabinet shall make its application determination ~~[concerning the application]~~, including its approval or denial, within thirty (30) days after attendance at the asbestos abatement project demonstration, unless the cabinet determines that an additional period of time is necessary to adequately review the application or its evaluation of the demonstration. The cabinet shall notify the asbestos abatement entity, in writing, of ~~the~~~~[its]~~ determination and include any reasons for denial~~[shall set forth its reasons for any denials]~~.

(4) If the application is approved, the asbestos abatement entity shall submit the certification fee, as established~~[specified]~~ in Section 8 of this administrative regulation. Upon receipt of the certification fee, the cabinet shall issue to the asbestos abatement entity the certificate to engage in asbestos abatement projects, in accordance with~~[according to the provisions of]~~ this administrative regulation.

(5) The cabinet shall deny an application for certification if the cabinet determines that the requirements~~[any provision]~~ of this administrative regulation or 401 KAR 58:025 ~~are~~~~[is]~~ not met, if the asbestos abatement entity knowingly~~[willfully]~~ made any misstatements in the application, or if the owner or operator of an asbestos abatement entity, or an entity with a different name to which a certificate had previously been issued, cannot reasonably be expected to conduct himself ~~[or herself]~~ in a manner that is consistent with the acceptance of responsibility for asbestos abatement projects. The cabinet shall make determinations regarding issuance or denial of the certification based upon the applicant's actions during any prior term of certification, the information contained in the application, and any other pertinent information that is available to the cabinet.

(6) Certificates issued in accordance with Section 5 of this administrative regulation~~[hereunder]~~ shall be subject to the~~[such]~~ terms and conditions ~~[as set forth and embodied in]~~ the certificate~~[as the cabinet shall deem necessary]~~ to ensure compliance with the requirements of this administrative regulation and of 401 KAR 58:025.

Section 7. Duration and Renewal of Certificates. (1) Unless the cabinet revokes a certificate, that certificate, including renewal of certification, shall remain in effect for one (1) year after the date of issuance.

(2) ~~An~~~~[No]~~ asbestos abatement entity shall not be considered for renewal of certification unless the training requirements of Section 10 of this administrative regulation have been completed

prior to application.

(3) Applications for renewal of certification shall be made on form DEP 7034, Asbestos Contractor Certification Application[a form prepared by the cabinet for such purpose and shall contain such information as the cabinet shall deem necessary to determine whether the certificate should be issued]. An application[applications] for renewal shall be submitted not earlier than ninety (90) days and not later than thirty (30) days before the date of expiration.

(4) Applications for renewal of certification shall be signed by an[a duly] authorized agent of the asbestos abatement entity. The signature[Such Signature] shall constitute personal affirmation that the statements made in the application are true and complete.

(5) Failure to supply information required or deemed necessary by the cabinet to enable it to act upon the renewal application shall result in denial of the[that] renewal application.

(6) An[Any] asbestos abatement entity which submits an application for renewal of certification shall include with the application a filing fee, as established[specified] in Section 8 of this administrative regulation.

(7) The cabinet shall make its renewal application determination[concerning the application], including its approval or denial, within thirty (30) days of receipt of a complete renewal application. The cabinet shall notify the asbestos abatement entity, in writing, of the[its] determination including[and shall set forth] its reasons for any denials.

(8) If the renewal is approved, the asbestos abatement entity shall submit the fee for renewal of certification, as established[specified] in Section 8 of this administrative regulation. Upon receipt of the fee, the cabinet shall issue to the asbestos abatement entity the renewed certificate to engage in asbestos abatement projects, in accordance with[according to the provisions of] this administrative regulation.

(9) The cabinet shall[may] deny an application for renewal of certification if the asbestos abatement entity has failed to comply fully with all applicable requirements of this administrative regulation or of 401 KAR 58:025 during the year preceding the renewal application.

Section 8. Fees. [The provisions of.]This section shall not apply to any publicly owned facility, as defined in Section 1[2] of this administrative regulation. All fees shall be submitted to the cabinet as a certified check, cashier's check, or money order, payable to the Kentucky State Treasurer; or may be submitted electronically online.

(1) Filing fee. Each asbestos abatement entity shall submit with the application for certification or renewal of certification, a filing fee, as established[specified] in paragraph (a) or (b) of this subsection. The filing[Such] fee is not refundable if the certification is denied or the application is withdrawn. The filing fee, shall be applied toward the certification or renewal fee if[when] the certificate is issued, pursuant to Section 6 or 7 of this administrative regulation.

(a) The filing fee for certification shall be \$100.

(b) The filing fee for renewal of certification shall be fifty (50) dollars.

(2) Certification or renewal fee. A fee as established[specified] in paragraph (a) or (b) of this subsection, shall be submitted to the cabinet prior to the issuance of the certificate or renewed certificate to an[any] asbestos abatement entity.

(a) The certification fee shall be \$500.

(b) The fee for renewal of certification shall be \$250.

Section 9. Certification Revocation. The cabinet may revoke any certification issued pursuant to[under] this administrative regulation if the asbestos abatement entity:

(1) Knowingly[Willfully] makes any misstatements or [knowingly] omits information in the certification application, renewal application, or any amendments thereto;

(2) Fails to comply with the terms or conditions of the certification;

(3) Fails to comply with the work practice requirements in Section 4 of this administrative regulation; or

(4) Fails to properly dispose of friable asbestos materials.

Section 10. Training Requirements. (1) As a part of the certification as required in Section 3 of this administrative regulation, the asbestos abatement entity shall identify[provide] at least one (1) supervisor[supervisory person] who shall[will] be in attendance during the execution of each asbestos abatement project, and shall be trained with an initial training course approved by the cabinet, and an annual retraining course approved by the cabinet.

(2) Persons identified in subsection (1) of this section shall be required to successfully complete a written examination, administered by the training sponsors, at the completion of the training or retraining course [in order] to demonstrate familiarity with [those issues relevant to]the safe performance of asbestos abatement activities. Correct responses[response] to at least seventy (70) percent of the examination questions shall be necessary to meet the requirements of this subsection.

(3) As a part of the certification pursuant to[as required in] Section 3 of this administrative regulation, supervisors[persons] identified in subsection (1) of this section shall attend an orientation program sponsored by the cabinet, concerning the requirements, procedures, and standards established by this administrative regulation.

(4) If at any time, the supervisor[supervisory person] identified in subsections (1) through (3) of this section is no longer employed by the certified asbestos abatement entity[to which the certificate has been issued], or is no longer in attendance during the execution of asbestos abatement projects[for such entity], the entity shall immediately notify the cabinet. The cabinet may continue the certificate, if[based upon a showing that] there is another employee who has fulfilled the training requirements in this section, and who will be in attendance during the execution of asbestos abatement projects for the entity.

Section 11. Training Course Requirements. (1) The initial training course required in Section 10[4] of this administrative regulation shall provide[as a minimum,] information on the following topics:

(a) The physical characteristics of asbestos, including fiber size, aerodynamic characteristics, and physical appearance;

(b) The health hazards of asbestos;

(c) Employee personal protective equipment;

(d) Recommended medical monitoring procedures, benefits of medical monitoring, and employee access to records;

(e) Air monitoring procedures;

(f) State-of-the-art work practices for asbestos abatement activities;

(g) Personal hygiene;

(h) Additional safety hazards that may be encountered during abatement activities and how to deal with them;

(i) The requirements, procedures, and standards established by federal regulations;

(j) Contract specifications and bidding procedures, liability insurance and bonding, and legal consideration related to asbestos abatement; and

(k) Establishing respiratory protection programs, medical surveillance programs, and U.S. EPA and OSHA recordkeeping requirements.

(2) The yearly retraining course required in Section 10(1) of this administrative regulation shall[as a minimum, adequately] review the topics in subsection (1) of this section, update information on state-of-the-art procedures and equipment, and review regulatory changes and interpretations.

(3) The course entitled "Supervision of Asbestos Abatement Projects," as approved by the U.S. EPA, shall satisfy the requirements for initial training and retraining courses, as established[specified] in subsections (1) and (2) of this section.

(4) Training courses, except[other than] the course referenced in subsection (3) of this section, may be approved by the cabinet on a case-by-case basis. The cabinet may approve [such]training courses, based on the [cabinet's]determination that it provides[the course would provide] equivalent training as the course specified in subsection (3) of this section. A prospective course sponsor shall submit[as a minimum,] the following information:

(a) Information about the course sponsor;

- (b) Course location and fees;
- (c) Copies or description of course handouts;
- (d) A detailed description of course content and the amount of time allotted to each major topic;
- (e) A description of teaching methods ~~[to be utilized]~~ and a list of all audio-visual materials;
- (f) A list of all personnel to be involved in course preparation and presentation and a brief description of the background, special training, and qualifications of each;
- (g) A description of student evaluation methods ~~[to be used]~~;
- (h) A description of course evaluation methods ~~[to be used]~~;
- (i) Any restriction on attendance including language ~~(language, etc.);~~ and
- (j) A copy of the written examination to which will ~~to which will~~ be administered at completion of the course.

Section 12. Records. (1) Each asbestos abatement entity shall maintain records of all asbestos abatement projects ~~[which it performs]~~ and shall make these records available to the cabinet upon request. The asbestos abatement entity shall retain the records for at least six (6) years.

(2) The asbestos abatement entity shall record the following information for each project:

- (a) Name and address of supervisor responsible for the project;
- (b) The location and description of the project and the estimated amount of asbestos removed;
- (c) Starting and completion date. If the completion date differs from that originally scheduled, include reasons for delay;
- (d) Summary of the procedures used to comply with all applicable requirements, including copies of all notifications, if applicable;
- (e) Name and address of the waste disposal site and disposal receipts, including the amount of asbestos-containing material disposed; and
- (f) Results of all air sampling conducted during the asbestos abatement project, if applicable, including personal, area, and clearance samples.

Section 13. Penalties. ~~An~~[Any] asbestos abatement entity which violates any provision of this administrative regulation shall be subject to ~~[the appropriate enforcement action as provided under]~~KRS 224.99-010.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Appendix M (Detailed Specifications for Sampling and Analyzing Airborne Asbestos) to "Guidance for Controlling Asbestos-Containing Materials in Buildings" (U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances, EPA 560/5-85-024, June 1985); and

(b) DEP 7034, Asbestos Contractor Certification Application (February 2023).

(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(b) Copies of Appendix M to "Guidance for Controlling Asbestos-Containing Materials in Buildings" are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: March 14, 2023

FILED WITH LRC: March 15, 2023 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A virtual public hearing on this administrative regulation amendment will be held on May 24, 2023, at 10:00 a.m. (Eastern Time). The public hearing can be accessed at the following website address: <https://us02web.zoom.us/j/84744885330>; meeting ID: 980 691 4504 and can be accessed by phone: +1 (309)205-3325 using access code 042759#. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Christian.Ewing@ky.gov or mail this information to Chris Ewing,

Division for Air Quality, 300 Sower Building, 2nd Floor, Frankfort, Kentucky 40601. Please put "Requirements for Asbestos Abatement Entities Public Hearing" as the subject line, and state in the body of the message if you plan to speak during the hearing. If no one registers to speak by May 16, 2023, then the hearing will be cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person.

The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Chris Ewing, Environmental Scientist, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6604, fax (502) 564-4245, email Christian.Ewing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Ewing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements necessary for controlling emissions from asbestos abatement projects.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control emissions from asbestos abatement projects.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation controls the emissions from asbestos abatement projects.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS 224.10-100(5) by controlling emissions from asbestos abatement projects.

(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 adopts the warning signage language required by the Occupational Safety and Health Administration (OSHA) and fixes issues to conform to the requirements of KRS 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adopt the most recent federal warning signage requirements in 29 C.F.R. Subpart Z, Subsection 1910.1001 and to make the regulation consistent with the requirements of KRS 13A.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute by adopting the warning signage requirements consistent with OSHA.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by adopting the federal warning signage requirements for asbestos abatement projects.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects any owners or operators, with the exclusion of single family homes or apartments with four or fewer units, that is conducting a renovation impacting friable asbestos or conducting a friable asbestos abatement.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will comply with the most recent federal warning signage language required by the OSHA

Hazard Communication Standard.

(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 costs to the regulated entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the sources will work with the state instead of the US EPA.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this amendment initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this amendment on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this amendment to this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies to any owners or operators, with the exclusion of single family homes or apartments with four or fewer units, that is conducting a renovation impacting friable asbestos or conducting a friable asbestos abatement.

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 affect any owners or operators, with the exclusion of single-family homes or apartments with four or fewer units that is conducting a renovation impacting friable asbestos or conducting a friable asbestos abatement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-110, 224.20-120, 29 C.F.R. 1910.1001; 40 C.F.R. 61.152

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

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

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

(c) How much will it cost to administer this program for the first year? The Cabinet's current operating budget will be used to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Cabinet's operating budget will be used to administer 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 (+/-): There is no known effect on current revenues

Expenditures (+/-): There is no known effect on current expenditures

Other Explanation: There is no further explanation

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

the administrative regulation is to be in effect.

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

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

(c) How much will it cost the regulated entities for the first year? The cost to the regulated entity for the first year will be equal to the cost of amended or additional warning signage.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs 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 (+/-): There is no known effect on current cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further 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 proposed administrative regulation will not have a major economic impact because the proposed amendments comply with OSHA asbestos warning signage requirements as established in 2012.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation amendment is in 29 C.F.R. 1910.1001 pursuant to the Occupational Safety and Health Act and 40 C.F.R. 61.152.

(2) State compliance standards. This administrative regulation amendment adopts the federal standards for warning signage required by the Occupational Health and Safety Administration and the asbestos requirements in 40 C.F.R. 61.152.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise warning signage to be consistent with the federal language and to control emissions from asbestos abatement projects.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation establishes the same requirements as the federal requirements for OSHA and US EPA.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities or requirements are not imposed.

JUSTICE AND PUBLIC SAFETY CABINET Internal Investigation Branch (Amendment)

500 KAR 2:020. Filing and processing SLEO commissions.

RELATES TO: KRS 15.334, 15.383, 61.300, 61.900-61.930, 61.990, 61.991, 62.010, 62.990

STATUTORY AUTHORITY: KRS. 61.904

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.902 authorizes the Secretary of the Justice and Public Safety Cabinet to commission special law enforcement officers. KRS 61.904 requires the Secretary to promulgate administrative regulations that are reasonable and necessary to carry out the provisions of KRS 61.900 to 61.930. This administrative regulation establishes the criteria and

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procedures required for filing and processing applications for commissions to be a special law enforcement officer.

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 61.900(3).

(2) "Governmental unit" means the unit or agency of state, county, city, or metropolitan government or other governmental entity authorized by KRS 61.900(6) or 61.902 to employ SLEOs["Kentucky Law Enforcement Council" or "KLEC" means the administrative body established in KRS 15.315].

(3) "Secretary" is defined by KRS 61.900(5).

(4) "SLEO Act" means the Special Law Enforcement Officer Act found in KRS 61.900 to 61.930.

(5) "SLEO program administrator" means the person designated or appointed by the Secretary of the Justice and Public Safety Cabinet to administer the Special Law Enforcement Officer Program whose address is: SLEO Program Administrator, Internal Investigations Branch, 125 Holmes Street, Frankfort, Kentucky 40601[Kentucky Law Enforcement Council, 521 Lancaster Avenue, Suite 401, Richmond, Kentucky 40475].

(6) "Special Law Enforcement Officer" or "SLEO" is defined by KRS 61.900(6).

Section 2. Qualifications to Apply for Commission as a Special Law Enforcement Officer. To qualify for a commission as a SLEO[special law enforcement officer] pursuant to KRS 61.900 to 61.930, an individual shall comply with the conditions and requirements established in KRS 61.906.

Section 3. Application for Commission as a Special Law Enforcement Officer.

(1) An applicant shall meet [all of] the requirements of the SLEO Act before a commission is granted.

(2) An applicant shall provide to the governmental unit two (2) complete, signed and notarized Special Law Enforcement Officer (SLEO) Application Forms[SLEO Application Forms] (SLEO-1).

(3) The governmental unit shall submit both application forms to the [Justice and Public Safety Cabinet]SLEO program administrator.

(4) The application forms shall contain the following information:

(a) The name, address, telephone number, and detailed personal description of and information about the applicant; and

(b) All arrests and convictions, including traffic offenses committed within the past ten (10) years, violations, misdemeanors, or felonies as requested on the application and any other information necessary to conduct a criminal history check.

(5) Any false or[misleading information, or withholding of information requested on the application or by the cabinet investigator may be grounds for rejection without further consideration.

Section 4. Additional Requirements.

(1) In addition to the application form, an applicant shall provide to the governmental unit who shall submit to the SLEO program administrator the following with his or her application:

(a) A copy of the applicant's high school diploma, GED, official college transcript, or college degree[or GED];

(b) A certified copy of the applicant's birth certificate;

(c) Two (2) recent photographs of the individual (full face) measuring not larger than three (3) inches by five (5) inches and taken within [the last]thirty (30) days of the date the application is submitted;

(d) If the applicant is a veteran, a copy of his or her military release (Form DD-214);

(e) An Authority to Release Information Form, SLEO-2, which allows the release of all necessary information to the SLEO program administrator. It shall be signed by the applicant and witnessed by a second person;

(f) A Letter of Intent Form, SLEO-3, completed by the governmental unit giving the name of the applicant, the specific public property to be protected, and the signature of the authorizing official of the requesting governmental unit;

(g) Proof that the applicant has successfully completed first aid

and cardiopulmonary resuscitation (CPR) training provided according to the American Heart Association or the American Red Cross requirements and is certified in first aid and CPR; and

(h) The application fee required by KRS 61.908.

(2) [If not on file from a previous application,]An applicant shall be fingerprinted by an approved vendor. The governmental unit shall contact the SLEO program administrator for information related to an approved vendor[at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601 or at a local law enforcement office].

(3) The applicant shall arrange for and be interviewed by the SLEO program administrator or assigned cabinet investigator before a commission is granted.

(4) All SLEO applicants shall sign and the governmental unit shall submit to the cabinet the SLEO Acknowledgment Form, SLEO-4, which indicates that the applicant[he]:

(a) [Has]Received, read, and understands:

1. Provisions of the SLEO Act, KRS 61.900-61.930;

2. Administrative regulations in 500 KAR Chapter 2;

3. Penalties imposed for violating the SLEO Act and its administrative regulations; and

4. KRS 61.300, 61.990, 61.991, 62.010, and 62.990; and

(b) Acknowledges that the applicant's[his] authority is limited and restricted under the SLEO Act; and

(c) ~~Understands and acknowledges that his commission as a SLEO does not give him the right or authority to carry a concealed weapon off the premises of the public property, unless he holds a license to carry a concealed deadly weapon issued pursuant to KRS 237.110 or meets the requirements of 18 U.S.C. Section 926B or Section 926C.]~~

Section 5. Fees.

[All] All fees required by KRS 61.908 shall be:

(1) Submitted with the application form;[Paid in advance and are]

(2) Nonrefundable; and[.]

(3)[(2)] [Fees shall be]Paid in the form of a check or money order made payable to the Kentucky State Treasurer.

Section 6. Approval of Application.

(1) If the applications and all required documents are in order, and if the criminal history information record review and background investigation are favorably completed, the governmental unit for whom the SLEO applicant will be employed shall notify the Department of Criminal Justice Training concerning any training the applicant needs [in order]to satisfy the requirements of KRS 61.906(2)(f).

(2) In notifying the Department of Criminal Justice Training, the governmental unit shall describe the training needed by the applicant. The Department of Criminal Justice Training shall schedule and conduct the training and collect the related fees as prescribed in KRS 61.908(3), (4), and (5). An applicant who has successfully completed the training previously shall not be required to repeat the course.

(3) The Department of Criminal Justice Training shall notify the governmental unit of the results of the training upon completion.

Section 7. Receipt of Defective or Falsified Application.

(1) If the application is incomplete, or otherwise defective in some way other than those referenced in Section 3(5) of this regulation, or in conflict with the SLEO Act or its administrative regulations, 502 KAR Chapter 2, the cabinet shall notify the governmental unit.

(2) Upon notice that an applicant's application is incomplete or otherwise defective, the governmental unit shall notify the applicant. An application may be corrected and resubmitted at no additional cost if it is resubmitted to the SLEO program administrator within sixty (60) days of the date the governmental unit[applicant] is sent notice of the deficiencies by the SLEO program administrator.

(3) An application that has been falsified[or] contains material omissions, or contains incomplete information may be rejected, and the applicant shall be prohibited from submitting an application for commission as a SLEO for one (1) year.

Section 8. The Grant of the Commission and the Required Oath of Office.

(1) A commission for a SLEO~~[special-law-enforcement-officer]~~ shall be validated and granted as follows:

(a) If the applicant has successfully satisfied the requirements of the act and a commission has been recommended, a commission certificate ~~[and the recommendation]~~ shall be forwarded by the SLEO program administrator to the secretary or the secretary's designee for review.

(b) After the commission is issued by the secretary or the secretary's designee, a copy of the commission shall be placed in the SLEO's~~[officer's]~~ file maintained by the cabinet.

(2) The governmental unit shall be notified that the commission has been granted.

(a) One (1) of the original applications and two (2) County Clerk Oath verification forms (SLEO-6) shall be forwarded by the cabinet to the governmental unit whose property is to be protected.

(b) The governmental unit shall arrange for the appointed applicant to take the oath of office.

(3) The appointed applicant shall take:

(a) One (1) of the applications and the two (2) County Clerk Oath verification forms to the county clerk in the county where the applicant is to serve; and

(b) The constitutional oath of office within thirty (30) days after notice of appointment.

(4) The county clerk shall then:

(a) Complete and sign the clerk's attestation on both County Clerk Oath verification forms~~[SLEO-6s]~~;

(b) Retain the application and one (1) of the County Clerk Oath verification forms, for filing purposes in the county clerk's office; and

(c) Give the second County Clerk Oath verification form, signed by the clerk, to the applicant.

(5) The applicant shall return the second County Clerk Oath verification form, signed by the Clerk, to the governmental unit. The governmental unit shall return it to the ~~[cabinet]~~-SLEO program administrator within thirty (30) days of the grant of the commission to indicate that the oath was administered and that the application and oath verification form are filed with the county clerk.

(6) Upon receipt of the oath verification, the commission certificate shall be forwarded by the cabinet to the governmental unit whose property is to be protected.

(7) If the second County Clerk Oath verification form, signed by the clerk, is not returned to the SLEO program administrator within thirty (30) days of the granting of the commission, the commission shall be null and void and the applicant shall be required to repeat the application process.

(8) The applicant shall not exercise the authority of a SLEO until the governmental unit has received the commission certificate from the cabinet.

(9) The commission certificate shall be kept by the governmental unit so long as the SLEO~~[officer]~~ is employed or until his or her authority is terminated as a result of the expiration of the commission term or by action of the government unit or the secretary or the secretary's designee.

(10) The SLEO Commissions shall be issued for a period of two (2) years if the SLEO~~[officer]~~ continues to meet all statutory and regulatory criteria.

(11) After the governmental unit has received the SLEO commission certificate, the governmental unit shall issue an identification card that shall~~[which is to]~~ be carried by the SLEO ~~[officer]~~ whenever he or she is acting under the authority of KRS 61.900-61.930.

(12) The identification card shall be:

(a) Presented as requested by any duly sworn peace officer or cabinet official;

(b) Subject to control by the cabinet; and

(c) Comply with Section 11(4) of this administrative regulation.

(13) If for any reason a SLEO ~~[officer]~~ is terminated or otherwise relieved of his or her duties as a SLEO ~~[officer]~~ by the governmental unit or the cabinet, he or she shall immediately return this identification card to the SLEO's~~[officer's]~~ governmental unit.

(14) The SLEO commission certificate shall be held by the

governmental units and shall:

(a) Be available for inspection by the SLEO program administrator or his or her designee;

(b) Remain the property of the cabinet; and

(c) Be returned upon the SLEO's~~[officer's]~~ authority being withdrawn for any reason.

Section 9. Special Provisions.

(1) Training pursuant to KRS 61.906(2)(f)2. A SLEO applicant may request approval from the Kentucky Law Enforcement Council (KLEC) for eighty (80) or more hours of training, if that training is not currently approved, by providing documentation verifying successful completion of the training and detailed information concerning the contents of the training to the SLEO program administrator. The training approval request shall be provided to the KLEC to review the request and make a decision.

(2) Training waiver. A SLEO applicant may apply for a training waiver by providing sufficient proof of past police experience, military records, or examination records that substantiates that the applicant meets the waiver requirements set forth in KRS 61.906(2)(f)2.

(3) Firearms and First Aid Proficiency. A SLEO applicant shall:

(a) Be certified in first aid and cardiopulmonary resuscitation (CPR) through training provided according to the American Heart Association or the American Red Cross requirements; and

(b) One (1) of the following:

1. Meet the marksmanship qualification requirements for a retired peace officer as specified in KRS 237.140; or

2. Fire twenty (20) rounds at an adult size silhouette target at a range of twenty-one (21) feet, with a handgun, and shall hit the target not less than eleven (11) times. The range test shall be conducted and certified by a firearms instructor trainer or certified firearms instructor trained pursuant to KRS 237.122 or by other firearms instructor program provided by the Department of Criminal Justice Training.

Section 10. Renewals.

(1) A letter of intent from the governmental unit stating its request to renew a commission, ~~[and]~~ two (2) complete signed and notarized SLEO Renewal Application Forms (SLEO-5), and the renewal application fee required by KRS 61.908(2) for each individual involved shall be filed with the SLEO~~[cabinet]~~ program administrator at least sixty (60) days before the expiration date of the existing commission.

(2) The applicant for renewal shall be fingerprinted by an approved vendor and undergo a background investigation to bring the applicant's~~[his]~~ records up-to-date.

(3) In addition to the requirements set forth above in this section, for each renewed commission granted, the governmental unit and SLEO applicant shall comply with the requirements set forth in Section 8 of this administrative regulation.

Section 11. Governmental Units Employing SLEOs~~[SLEO Officers]~~ - Records, Reports, and Responsibility.

(1) All governmental units employing SLEOs~~[SLEO officers]~~ shall:

(a) Keep their files current as to the expiration date on each SLEO's~~[officer's]~~ commission;

(b) Keep the individual SLEO's~~[officer's]~~ commission certificates on file, to be returned to the cabinet upon termination of the SLEO~~[officer]~~ and his or her authority;

(c) Provide proof to the SLEO program administrator~~[coordinator]~~ at the time of request for renewal that its SLEOs:

1. Are currently certified in First Aid and CPR; and

2. Have met the same marksmanship qualification required of certified peace officers in KRS 15.383; and

(d) Mail or email to the SLEO program administrator by June 30 of each year:

1. A current list of all active SLEO personnel; and

2. The number of arrests made or citations issued by the agency the previous calendar year.

(2) The unit shall post a copy of the SLEO administrative regulations, 500 KAR Chapter 2, and a copy of KRS 61.900-61.930,

61.990, and 61.991 of the SLEO Act in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLEOs[SLEO officers].

(3) Complaints or unusual incidents involving SLEOs[SLEO officers] shall be handled by the governmental unit whose public property is being protected by the SLEO [officer]-involved except:

(a) The governmental unit shall notify the [cabinet]-SLEO program administrator by:

1. Direct verbal communication within twenty-four (24) hours of any reported incident involving the misconduct or unlawful act by any of its SLEOs[SLEO officers]; and

2. A follow-up written report to be filed with the SLEO program administrator, within thirty (30) days of the original oral report, stating the details of the incident and listing any action taken by the governmental unit; and

(b) If formal charges are pending, the governmental unit [or agency]-shall advise the SLEO program administrator as to the specific charge, trial date, and the final disposition of the charge.

(4) The governmental unit shall issue each SLEO[officer] an identification card upon the individual's appointment. The identification card shall be:

(a) Encased in plastic;

(b) Billfold size (approximately two and one-fourth (2 1/4) inches by three and one-half (3 1/2) inches); and

(c) Composed as follows:

1. One (1) side containing the following language: "The holder of this card has been commissioned as a Special Law Enforcement Officer (SLEO), pursuant to KRS 61.902. As a SLEO, the holder of this card is deemed to be a peace officer within the meaning of KRS 527.020 and may exercise the powers of a peace officer in accordance with KRS 61.900 to 61.930"; and

2. The other side containing a full-faced photograph of the SLEO[officer] with his or her:

a. Name;

b. Identification or notation that the SLEO[officer] has been commissioned a "Special Law Enforcement Officer";

c. Governmental unit employing the SLEO[officer];

d. Badge number, if any; and

e. Signature of the SLEO's[officer's] chief, supervisor, or employer.

(5) The governmental unit shall obtain and destroy the identification card from any SLEO[officer] whose employment is terminated.

Section 12. Violations.

(1) All governmental units utilizing SLEO's shall be subject to inspection and investigation by the cabinet as circumstances may warrant for possible violations.

(2) Violations may result in prosecution and recommendation to the secretary [of the cabinet] or the secretary's designee that the commission be revoked.

Section 13. Revocation or Suspension of SLEO Commissions.

(1) A SLEO may have his or her commission suspended or revoked in accordance with KRS 61.910.

(2) The SLEO program administrator shall notify the secretary or the secretary's designee of any violations of KRS 61.910, who shall send written notice of the alleged violation to the:

(a) SLEO; and

(b) Governmental unit employing the SLEO.

(3) The notice of alleged violation shall be sent to the SLEO and employing governmental unit by regular, first-class mail and by certified mail, return receipt requested to their last known addresses.

(4) The SLEO may request an administrative hearing before suspension or revocation is imposed. The request for hearing shall be in writing and shall be received by the SLEO program administrator within thirty (30) days of receipt by the SLEO of the notice of intent to seek suspension or revocation.

(5) The secretary or the secretary's designee shall suspend or revoke the commission of a SLEO who fails to request an administrative hearing within the thirty (30) days[day-time period].

(6) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(7) The cabinet may temporarily suspend the commission of a SLEO prior to holding a hearing pursuant to KRS Chapter 13B if the cabinet believes that the safety of the public requires that action. If a commission is temporarily suspended prior to holding a hearing pursuant to KRS Chapter 13B, the cabinet shall hold a Chapter 13B hearing not later than thirty (30) days from the date of the temporary suspension unless the SLEO requests an extension for a time certain. If the SLEO requests an extension for a time certain, then the commission shall remain suspended until the conclusion of the hearing.

(8) If a SLEO commission is suspended or revoked:

(a) The SLEO program administrator shall notify the governmental unit involved to return the commission of the SLEO[officer];

(b) The governmental unit responsible for the SLEO[officer] shall forward a letter to the SLEO[officer] stating that:

1. His or her commission has been revoked or suspended; and

2. He or she shall immediately return the SLEO identification card to the governmental unit;

(c) Upon receipt of the card, the governmental unit shall destroy it; and

(d) The SLEO program administrator shall notify the county clerk in the SLEO's[officer's] county of jurisdiction of the revocation or suspension.

Section 14. Procedures for Investigating Complaints or Unusual Incidents Involving SLEO Officers.

(1) Complaints or unusual incidents involving SLEO's[SLEO officers] shall be handled by the governmental units whose public property is being protected by the SLEO [officer]-involved. The governmental unit shall notify the cabinet of all incidents involving their SLEO personnel as required by Section 11(3) of this administrative regulation.

(2) The SLEO program administrator or other assigned officers may investigate [any and all]-complaints or unusual incidents involving SLEOs[SLEO officers], if there is reason to believe the provisions of KRS 61.900-61.930, 61.990, 61.991, or 500 KAR Chapter 2, or other applicable laws or administrative regulations have been violated and an investigation is necessary.

(3) Any investigation conducted by the cabinet shall become part of the official record of the SLEO [officer]-involved.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Special Law Enforcement Officer (SLEO) Application Form", SLEO-1, 2023[3/2019];

(b) "Authority to Release Information Form", SLEO-2, 2023[3/2019];

(c) "Letter of Intent Form", SLEO-3, 2023[3/2019];

(d) "SLEO Acknowledgment Form", SLEO-4, 2023[3/2019];

(e) "Special Law Enforcement Officer (SLEO) Renewal Application Form", SLEO-5, 2023[3/2019]; and

(f) "County Clerk Oath", SLEO-6, 2023[3/2019].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Internal Investigations Branch, 125 Holmes Street, Frankfort[Kentucky Law Enforcement Council, 521 Lancaster Avenue, Suite 401, Richmond], Kentucky 40601[40475], 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 in the SLEO area at https://justice.ky.gov/Departments-Agencies/iib/Pages/sleo.aspx or https://justice.ky.gov/about/pages/lrcfilings.aspx.

KERRY HARVEY, Secretary

APPROVED BY AGENCY: March 8, 2023

FILED WITH LRC: March 15, 2023 at 10:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date,

the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goens, Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the application process for Special Law Enforcement Officers (SLEO) to protect specific public property; the responsibilities of employing governmental unit of SLEOs; renewals, suspension & revocation of SLEO commissions; and investigation of complaints or special incidents for SLEOs, pursuant to KRS 61.900-930.

(b) The necessity of this administrative regulation: As authorized by KRS 61.904, this administrative regulation is needed to carry out the provisions of KRS 61.900 to 61.930.

(c) How this administrative regulation conforms to the content of the authorizing statutes: As authorized by KRS 61.904, this administrative regulation sets forth the reasonable and necessary provisions to carry out the contents of KRS 61.900 to 61.930.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the application process for Special Law Enforcement Officers (SLEO) to protect specific public property; the responsibilities of employing governmental units of SLEOs; renewals, suspension & revocation of SLEO commissions; and investigation of complaints or special incidents for SLEOs, pursuant to KRS 61.900-930.

(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 adds a definition for governmental unit. It updates terminology throughout and updates the SLEO Program Administrator to the Internal Investigations Branch. The amendment also adds alternative methods to provide notice of violation to the SLEO and updates the SLEO forms.

(b) The necessity of the amendment to this administrative regulation: The instant amendments to the existing administrative regulation are necessary as it reflects the changing of SLEO Program Administrator from the Kentucky Law Enforcement Council to the Internal Investigations Branch.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the existing administrative regulation updated the SLEO Program Administrator to the Internal Investigations Branch as reasonable and necessary to carry out the provisions of KRS 61.900-930 as authorized by KRS 61.904.

(d) How the amendment will assist in the effective administration of the statutes: The amendment streamlines the SLEO commission process; addresses changes to the entity responsible for SLEO program administration; provides updates to the renewal, suspension, and revocation process of SLEO commissions; and sets forth updates related to the investigation of complaints or special incidents for SLEOs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Capitol police, the Capital Plaza police, public school district security officers, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property.

(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 governmental units and their applying employees will have to comply with the application process and other program requirements to be commissioned and renew commissions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees are established by statute (KRS 61.908) and are not imposed by the regulation. There is an initial \$25.00 application fee to be paid to the Kentucky State Treasurer. The commissions must be renewed every two years requiring a \$25.00 fee. There is a \$15.00 written exam fee, \$20.00 practical exam fee, and reasonable training fees to be paid by the applicant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have a commissioned officer for the protection of their public property with law enforcement authority.

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

(a) Initially: This regulation has already been implemented and there will only be nominal costs related to these amendments.

(b) On a continuing basis: There will no costs to the administrative body for continual implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cost is part of the budget for the Justice and Public Safety Cabinet.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees, which are established by statute (KRS 61.908) and are not imposed by the regulation itself.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does not establish any fees. Fees associated with SLEO are established in KRS 61.908.

(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 administrative regulation will impact the Capitol police, the Capital Plaza police, public school district security officers, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.900-61.930

(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 fees are established by statute (KRS 61.908) and are not imposed by the regulation. However, for every SLEO commission, there is an initial \$25.00 application fee to be paid to the Kentucky State Treasurer. The commissions must be renewed every two years requiring a \$25.00 fee. There is also a \$15.00 written exam fee, \$20.00 practical exam fee, and reasonable training fees to be paid by the applicant.

(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 fees are established by statute (KRS 61.908) and are not imposed by the

regulation. However, for every SLEO commission, there is an initial \$25.00 application fee to be paid to the Kentucky State Treasurer. The commissions must be renewed every two years requiring a \$25.00 fee. There is also a \$15.00 written exam fee, \$20.00 practical exam fee, and reasonable training fees to be paid by the applicant.

(c) How much will it cost to administer this program for the first year? The cost associated with administering the program, including application review and investigation, for the first year is approximately \$36,500.00.

(d) How much will it cost to administer this program for subsequent years? The cost associated with administering the program, including application review and investigation, is approximately \$36,500.00 for each subsequent year.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: The fees are established by statute (KRS 61.908) and are not imposed by the 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? The administrative regulation is not anticipated to generate any cost savings for the regulated entity for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The administrative regulation is not anticipated to generate any cost savings for the regulated entity for subsequent years.

(c) How much will it cost the regulated entities for the first year? The fees associated with the SLEO Program are established by statute (KRS 61.908) and are not imposed by the regulation. However, for every SLEO commission, there is an initial \$25.00 application fee to be paid to the Kentucky State Treasurer. The commissions must be renewed every two years requiring a \$25.00 fee. There is also a \$15.00 written exam fee, \$20.00 practical exam fee, and reasonable training fees to be paid by the applicant. for the first year. It is anticipated completion of the application to take around one (1) hour.

(d) How much will it cost the regulated entities for subsequent years? The fees associated with the SLEO Program are established by statute (KRS 61.908) and are not imposed by the regulation. However, for every SLEO commission, there is an initial \$25.00 application fee to be paid to the Kentucky State Treasurer. The commissions must be renewed every two years requiring a \$25.00 fee. There is also a \$15.00 written exam fee, \$20.00 practical exam fee, and reasonable training fees to be paid by the applicant. for the first year. It is anticipated completion of the application to take around one (1) hour.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Fire Commission (Amendment)

739 KAR 2:060. Certification and qualifications of fire and emergency services instructors.

RELATES TO: KRS 75.400(2), (4), (5), 95.010(1)(c), 95A.040(1)(c), (3)(b), 95A.210(1), (6)

STATUTORY AUTHORITY: KRS 95A.050(3)(b), 95A.050(3) NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.040(3)(b) authorizes the Kentucky Fire Commission ~~on Fire Protection Personnel Standards and Education~~ to certify fire protection instructors. This administrative regulation sets forth the criteria for instructor certification, including the training and educational requirements of applicants for certification.

Section 1. Definitions. (1) "Commission" means the Kentucky Fire Commission as defined by KRS 95A.210(1).

(2) "Fire and Emergency Services instructor" means an individual trained and certified pursuant to KRS 95A.040(1)(c), this administrative regulation, and the National Fire Protection Association, as a person qualified to instruct fire protection personnel or supervise the training of fire protection personnel. This term is synonymous with the term "fire and emergency services instructor" as referenced in the National Fire Protection Association 1041 standard.

(3) "Fire department" means a fire department, fire protection district, or fire taxing district recognized by the commission as defined in KRS 75.400(2), (4) and (5) and 95.010(1)(c).

(4) "Firefighter I" means an individual who has demonstrated the knowledge and skills to function as an integral member of a firefighting team under direct supervision in hazardous conditions and is certified by the commission as accredited by the International Fire Service Accreditation Congress within the Commonwealth of Kentucky.

(5) "Firefighter II" means an individual who has demonstrated the skills and depth of knowledge to function under general supervision and is certified by the commission as accredited by the International Fire Service Accreditation Congress within the Commonwealth of Kentucky.

(6) "IFSAC" means the International Fire Service Accreditation Congress.

(7) "KCTCS" means the Kentucky Community and Technical College System.

(8) "MOI" means an educational methodology course meeting the job performance requirements within NFPA 1041 and conducted by:

- (a) The Kentucky Fire Commission State Fire Rescue Training;
- (b) KCTCS;
- (c) A regionally accredited college or university; or
- (d) An agency approved by the commission to train within its jurisdiction.

(9) "Professional firefighter" is defined by KRS 95A.210(6).

(10) "Reciprocity" means the recognition of an accredited certification from another state, territory, province, or nation following verification that the certification is current, valid, and without restriction.

(11) "Volunteer Firefighter" means an individual who meets the requirements of 739 KAR 2:100.

Section 2. Levels of Certification and Scope. (1) The commission shall certify fire and emergency services instructors at the following levels:

- (a) Fire and Emergency Services Instructor Level I;
 - (b) Fire and Emergency Services Instructor Level II;
 - (c) Live Fire Instructor; ~~and~~
 - (d) Live Fire Instructor-In-Charge; ~~and~~ and
 - (e) Live Fire Instructor-In-Charge (Non-Acquired Structure).
- (2) A fire and emergency services instructor shall only teach a fire service related curricula upon meeting all requirements for certification mandated by this administrative regulation. An instructor

shall only teach curricula within the scope of the instructor's respective fire and emergency services instructor level, subject to the conditions established in this section.

(3) An instructor certified as a Level I fire and emergency services instructor may conduct firefighter training at any fire department or agency located in the Commonwealth pursuant to paragraphs (a) and (b) of this subsection.

(a) Training shall only be conducted at the request of a fire department or agency.

(b) Upon invitation, a person certified as a Level I fire and emergency services instructor shall conduct training using curricula approved by the commission.

(4) A person certified as a Level II fire and emergency services instructor may conduct firefighter training at any fire department or agency located in the Commonwealth pursuant to paragraphs (a) through (c) of this subsection.

(a) Training shall only be conducted at the request of a fire department or agency.

(b) Upon invitation, a person certified as a Level II fire and emergency services instructor may conduct training using curricula approved by the commission or curricula developed by a Level II fire and emergency services instructor.

(c) At a fire department of which the Level II fire and emergency services instructor is a member, the Level II fire and emergency services instructor may allow a Level I fire and emergency services instructor to conduct training under the Level II fire and emergency services instructor's direction, using lesson plans developed by the Level II fire and emergency services instructor.

(5) The commission shall not certify new Level III fire and emergency services instructors after January 1, 2022. An instructor certified as a Level III fire and emergency services instructor on or before January 1, 2022, shall be eligible for certification renewal pursuant to Section 5 of this administrative regulation and shall retain his or her Level III fire and emergency services instructor certification until:

(a) The certification expires pursuant to Section 5 of this administrative regulation;

(b) The certification is revoked pursuant to Section 6 of this administrative regulation; or

(c) The instructor is no longer an active member of a Kentucky fire department.

(6) A Level III fire and emergency services instructor shall meet the intent of NFPA 1041 and have the ability to develop fire service related curricula.

Section 3. Instructor Certification Requirements. (1) An instructor shall not teach without first meeting all requirements for certification established in this administrative regulation.

(2) An applicant for initial certification as a Level I fire and emergency services instructor shall complete and submit:

(a) A Kentucky Fire and Emergency Services Instructor Level I webform;

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or a recognized federal fire department within the Commonwealth;

(c) Verification of at least one (1) year of experience as a certified professional or volunteer firefighter in the Commonwealth of Kentucky, or in another state, preceding the application date for Level I fire and emergency services instructor certification;

(d) Verification of IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, Firefighter I and II certificates on which the applicant's seal numbers shall be denoted and provides proof of completion of both written and skill performance tests;

(e) A copy of the applicant's high school diploma or transcript, general equivalency diploma (GED), college degree, or transcript from a regionally accredited institution of higher learning; and

(f) 1. Verification of MOI, IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, Fire Instructor I certification on which the applicant's seal numbers shall be denoted and provides proof of completion of both written and skill performance tests;

2. Verification of MOI, a Bachelor's degree in education issued by a regionally accredited institution of higher education; or

3. Verification of MOI, individual who holds a position as an instructor or instructional faculty member of a regionally accredited institution of higher education in the subject of fire service or a related field.

(3) An applicant for initial certification as a Level II fire and emergency services instructor shall complete and submit:

(a) A Kentucky Fire and Emergency Services Instructor Level II webform;

(b) Verification of active member status of a Kentucky fire department, degree program at a regionally accredited institution of higher education, or a recognized federal fire department within the Commonwealth; and

(c) Verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Level I Fire and Emergency Services Instructor for at least one (1) year.

(4) An applicant for certification as a Live Fire Instructor shall complete and submit:

(a) A Kentucky Live Fire Instructor webform;

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or a recognized federal fire department within the Commonwealth;

(c) If certified as a Level I Fire and Emergency Services Instructor on or after September 6, 2003, verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Fire and Emergency Services Level I instructor for at least two (2) years; and

(d) Proof of successful completion of the commission approved NFPA 1403 class and written examination.

(5) An applicant for certification as a Live Fire Instructor-In-Charge shall complete and submit:

(a) A Kentucky Live Fire Instructor-In-Charge webform;

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or recognized federal fire department within the Commonwealth;

(c) If certified as a Level II Fire and Emergency Services Instructor on or after June 28, 2011, verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Fire and Emergency Services Level II instructor for at least two (2) years; and

(d) Proof of successful completion of the commission approved NFPA 1403 class and written examination; and

(e) Proof of successful completion of the Kentucky Fire Commission Live Fire Instructor-In-Charge course to include all associated skills.

(6) An applicant for certification as a Live Fire Instructor-In-Charge (Non-Acquired Structure) shall complete and submit:

(a) A Kentucky Live Fire Instructor-In-Charge webform;

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or recognized federal fire department within the Commonwealth;

(c) If certified as a Level II Fire and Emergency Services Instructor on or after June 28, 2011, verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Fire and Emergency Services Level II instructor for at least two (2) years;

(d) Proof of successful completion of the commission approved NFPA 1403 class and written examination; and

(e) Proof of successful completion of the Kentucky Fire Commission Live Fire Instructor-In-Charge course to include all associated skills except the acquired structure skills.

Section 4. Reciprocity. (1) Individuals seeking certification as a Level I or Level II fire and emergency services instructor through reciprocity from any state, territory, or country shall be granted approval by the commission if the applicant meets all certification requirements for Level I or Level II fire and emergency services instructor certification pursuant to Section 3 of this administrative regulation.

(2) The applicant shall complete and provide proof of completion of at least eight (8) hours of continuing education in methodology taught by Kentucky State Fire Rescue Training.

Section 5. Instructor Certification Terms and Renewal. (1) Unless renewed, certification for Levels I, II, and III fire and emergency services instructors shall expire after four (4) years from the date of certification and approval, and every four (4) years thereafter.

(2) The commission shall grant certification renewal for Level I, II, and III fire and emergency services instructors who submit:

(a) Documentation of at least twenty (20) hours of training per year during the renewal cycle; and

(b) Verification of attendance of at least eight (8) hours of methodology training during the renewal cycle.

Section 6. Suspension or Revocation of Certification and Appeal. (1) The commission's Eligibility Committee shall revoke or suspend an instructor's certification if, after reasonable notice and a hearing, it is determined that the instructor committed misconduct with regard to fire and emergency services instructor certification or job duties. Misconduct shall include conduct such as the following:

(a) A material misstatement or misrepresentation in any document furnished to the commission to obtain the issuance or renewal of certification;

(b) Falsification of training records; or

(c) An act of negligence or malfeasance.

(2) An instructor whose certification is subject to suspension or revocation shall be entitled to thirty (30) days' notice and a hearing before the commission's Eligibility Committee.

(3) If the commission's Eligibility Committee hearing results in a decision to revoke or suspend an instructor's certification, the instructor shall be notified in writing of the action and the right to appeal before the commission no later than ten (10) days following the hearing.

(4) An instructor shall request an appeal in writing within fifteen (15) days of receipt of the notification of the commission's intent to revoke or suspend the instructor's certification.

(5) If the individual appeals the commission's intent to revoke or suspend his or her instructor certification, a hearing shall be conducted at the next regular meeting of the commission, or within thirty (30) days of the appeal request, whichever is first.

(6) If the commission's hearing results in a decision to revoke or suspend an instructor's certification, the instructor shall be notified in writing of the action and the right to appeal pursuant to KRS Chapter 13B no later than ten (10) days following the hearing of the appeal.

(7) The certification of an instructor who fails to maintain active status with a commission-recognized Kentucky fire department, degree program, federal fire department, or Kentucky State Fire Rescue Training shall be automatically suspended until active status with a commission-recognized Kentucky fire department, degree program, federal fire department, or Kentucky State Fire Rescue Training is reinstated and all requirements for recertification are met.

Section 7. Reinstatement of Certification. (1) The commission shall reinstate the certification of an instructor whose certification has lapsed for a period not exceeding one (1) year, unless the applicant has been subjected to discipline that would prevent reinstatement, upon submission of:

(a) A completed Kentucky Fire and Emergency Services Instructor Reinstatement webform;

(b) Proof of completion of at least eight (8) hours of methodology training provided by State Fire Rescue Training; and

(c) Verification of attendance of at least twenty (20) hours of recognized fire service training following the date of reactivation by a commission recognized Kentucky fire department of which the applicant is a member.

(2) The commission shall not reinstate the certification of an instructor whose certification has lapsed for a period exceeding one (1) year.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Fire and Emergency Services Instructor Level I webform", 2021;

(b) "Kentucky Fire and Emergency Services Instructor Level II webform", 2021;

(c) "Kentucky Live Fire Instructor webform", 2021;

(d) "Kentucky Live Fire Instructor-In-Charge webform", 2021; and

(e) "Kentucky Fire and Emergency Services Instructor Reinstatement webform", 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Fire Commission office, 110 Cleveland Drive, Paris, Kentucky 40361, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at: <http://kyfires.acadisonline.com/>.

RICKY KING, Chairman

APPROVED BY AGENCY: February 24, 2023

FILED WITH LRC: March 2, 2023 at 1:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2023 at 1:00 p.m. ET at 110 Cleveland Drive, Paris, Kentucky 40361. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan L. Gay, Counsel for the Kentucky Fire Commission, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan L. Gay

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the criteria for fire and emergency services instructor certification, including the training and educational requirements of applicants.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for fire and emergency services instructors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 95A.040(3)(b) authorizes the Kentucky Fire Commission to certify fire protection instructors. This administrative regulation conforms to the content of this authorizing statute by establishing the criteria for instructor certification, including the training and educational requirements of applicants for certification.

(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 KRS 95A.040 by establishing requirements for fire and emergency services instructors.

(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 fixes a substantive, but clerical error in Section 3(5)(c). Specifically, this amendment changes "Level I" in Section 3(5)(c) to "Level II". This amendment removes the requirement that Live Fire Instructors submit verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Level I Instructor if the applicant was previously certified as a Level I Instructor on or after September 6, 2003. This amendment removes the requirement that Live Fire Instructors-In-Charge submit verification of IFSAC accredited Kentucky or IFSAC accredited

reciprocity certification as a Level II Instructor if the applicant was previously certified as a Level II Instructor on or after June 28, 2011. Finally, this amendment requires Live Fire Instructors-In-Charge to successfully complete the Commission's Live Fire Instructor-In-Charge course and clarifies the permitted scope of instruction of Live Fire Instructors-In-Charge by creating a new certification level, Live Fire Instructor-In-Charge (Non-Acquired Structure), for instructors that cannot teach acquired structure skills.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct a substantive clerical error and to clarify the requirements of Fire and Emergency Services Instructors.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 95A.040(3)(b) authorizes the Kentucky Fire Commission to certify fire protection instructors. This amendment conforms to the content of this authorizing statute by establishing the criteria for instructor certification, including the training and educational requirements of applicants for certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of KRS 95A.040 by establishing requirements for fire and emergency services instructors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Commission, Kentucky professional and volunteer fire departments, Kentucky emergency medical services providers, and fire and emergency services instructors will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Commission will be required to implement this amendment, Kentucky professional and volunteer fire departments and Kentucky emergency medical services providers will be required to use instructors on fire protection who are certified pursuant to this amendment, and fire and emergency services instructors must satisfy the requirements established 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): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from instructors who are certified based on requirements consistent with National Fire Protection Association standards.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation initially or in the future.

(a) Initially: This administrative regulation will not add any further cost to the administrative body.

(b) On a continuing basis: The above paragraph is accurate for continuing costs. This administrative regulation will not add any further cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission is a state agency that receives its annual budget from the state government. The implementation and enforcement of this administrative regulation will be funded through the Commission's general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation because all fire and emergency services

instructors are required to satisfy the standards mandated by this administrative regulation.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Commission, Kentucky professional and volunteer fire departments, Kentucky emergency medical services providers, and fire and emergency services instructors 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 95A.040(3)(b) authorizes the Kentucky Fire Commission to certify fire protection instructors.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation will not impose any costs on state or local government.

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs on state or local government.

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not impose any costs.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not impose any costs.

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

Cost Savings (+/-): This administrative regulation will not generate any cost savings.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

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

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

**810 KAR 7:040. Kentucky Standardbred Development Fund
and Kentucky Standardbred Breeders' Incentive Fund.**

RELATES TO: KRS 230.215, 230.260, 230.770, 230.802
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting. KRS 230.770(1) establishes the Kentucky standardbred development fund. KRS 230.770(6) and (7) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky standardbred breeders' incentive fund. KRS 230.802(2)(b) requires the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, criteria for the distribution of moneys from these funds, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions.

- (1) "Commission" means the Kentucky Horse Racing Commission.
- (2) "Consolation" means the race following a series of preliminary legs for the next preferred horses, as established in Section 6 of this administrative regulation, which did not qualify for the finals of each racing division of the Kentucky Sire Stakes program.
- (3) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sire Stakes Program.
- (4) "Kentucky-bred" means a standardbred horse that is:
 - (a) Foaled out of a standardbred mare that is registered with the commission and meets the requirements of this administrative regulation~~[is a resident of Kentucky]~~; or
 - (b) Sired by a standardbred stallion residing in Kentucky that meets the requirements of this administrative regulation.
- (5) "Kentucky Sire Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year old Kentucky-bred fillies and colts, both trotting and pacing, and funded in whole or in part by the Kentucky Standardbred Development Fund or the Kentucky Standardbred Breeders' Incentive Fund.
- (6) "KSBIF" means the Kentucky Standardbred Breeders' Incentive Fund as established in KRS 230.802.
- (7) "KSDF" means the Kentucky Standardbred Development Fund as established in KRS 230.770.
- (8) "Stallion residing in Kentucky" means a stallion physically located and standing in Kentucky for 180 days of the calendar year in which the stallion is registered that does not service mares in any other state, jurisdiction, or country outside Kentucky during the calendar year in which the stallion is registered.
- (9) "USTA" means the United States Trotting Association.

Section 2. Domicile Requirements.

- (1)
 - (a) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion residing in Kentucky who desires to use the stallion to breed and to have his progeny eligible for the KSDF or KSBIF shall register the stallion with the commission by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBIF Stallion Certificate of

Eligibility Form", KHRC 7-040-2.

(b) Standardbred stallions not residing in Kentucky are not required to register with the commission. The progeny of a standardbred stallion not residing in Kentucky is not eligible for the KSDF or KSBIF unless the progeny is that of a standardbred mare registered under and meeting the requirements of this administrative regulation.

(c) All standardbred stallions shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency whether residing in Kentucky or not.

(2)

(a) An owner, lessee, manager, or syndicate manager of a standardbred mare who desires to use the mare for breeding purposes and to have her progeny eligible for the KSDF or KSBIF shall register the mare by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC 7-040-3.

(b) To be eligible for registration, the mare shall:

1. Be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency; and
2. Have resided in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(c) If a horse is conceived by embryo and ovum transplant (ET), both the donor mare and recipient mare shall be registered during the year of conception, and the recipient mare shall reside in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(3) Registrations shall be received by the commission by the close of business or postmarked on the deadline established in this section in order to be eligible.

(4) An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBIF shall be responsible for:

- (a) The registrations and records of the farm where the stallion stands or the mare resides; and
- (b) Complying with all applicable requirements of this administrative regulation.

Section 3. Eligibility.

(1) In order to qualify for the Kentucky Sire Stakes, a foal shall be a two (2) or three (3) year old Kentucky-bred and maintain eligibility for the KSDF and KSBIF.

(2)

(a) Except as provided by paragraph (b) of this subsection, only a foal that is the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo and ovum transplant (ET), shall be eligible for the Kentucky Sire Stakes.

(b) Natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare shall also be eligible.

(3) Any future offspring of foals ineligible for racing under this section shall be ineligible for the Kentucky Sire Stakes.

Section 4. Distance. Each Kentucky Sire Stakes race shall be a one (1) mile dash.

Section 5. Post Positions. Post positions for the final, consolation, and all preliminary legs of the Kentucky Sire Stakes race shall be an open draw with two (2) horses drawn for the final and consolation races that are designated as "also eligibles" under Section 6(7) of this administrative regulation.

Section 6. Eligibility for the Final and Consolation Races.

(1) Beginning with the 2018 Kentucky Sire Stakes races, consolation races may be eligible for funding.

(2) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final or consolation.

(a) All horses earning points may enter in the final with:

1. The top eight (8) point earners, if the horses raced on a half (1/2) mile track or five-eighths (5/8) mile track; or
2. Top ten (10) point earners, if the horses raced on a one (1) mile track, to be declared eligible.

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(b) On a half (1/2) mile track or five-eighths (5/8) mile track, the top eight (8) point earners shall not be eligible for the consolation. On a one (1) mile track, the top ten (10) point earners shall not be eligible for the consolation.

(c) A horse that is eligible to race in the final shall only be eligible to race in the final, unless the horse is qualified as an also eligible.

(d) A horse that is eligible to race in the consolation shall only be eligible to race in the consolation, unless qualified in the final as an also eligible.

(e) A horse that scratches from the final shall not race in the consolation.

(f) A horse that has qualified for the final or consolation shall remain eligible for the final or consolation.

(g) At least seven (7) eligible horses shall be declared for a consolation race to be contested.

(h) A horse that is automatically eligible to race in the final race shall not start in the consolation race.

(3) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements established in subsection (2) of this section and toward determining tiebreaker status as established in subsection (6)(b) of this section.

(4) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements established in subsection (2) of this section.

(5) A horse, in order to start in the final or consolation, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

(6)

(a) If the number of horses eligible and declared into any final or consolation event exceeds the maximum number specified by the KSDF or KSBIF or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

1. 1st place - fifty (50) points;
2. 2nd place - twenty-five (25) points;
3. 3rd place - twelve (12) points;
4. 4th place - eight (8) points;
5. 5th place - five (5) points;
6. 6th place and all other starters - one (1) point; and

7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(b) If there is a tie among horses after the awarding of points pursuant to paragraph (a) of this subsection, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.

(c) If a horse that is qualified for the final or consolation is not declared, the horse with the next highest point total, pursuant to paragraph (a) of this subsection, that is declared shall be eligible for the final or consolation.

(7) Also eligibles.

(a) The two (2) horses accumulating the highest point total, pursuant to subsection (6) of this section, that are declared into the final or consolation, but do not qualify for the final or consolation, shall be designated "also eligible". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final or consolation shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final or consolation as a replacement after the official scratch time deadline that is in effect at the host track.

Section 7. Final Order of Finish. The judges' "official order of

finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry box for final events.

Section 8. Detention. All starters shall be subject to the detention policy of the racetrack.

Section 9. Number of Starters.

(1) There shall not be more than:

(a) Ten (10) starters in each final race on a one (1) mile track; and

(b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.

(2) All horses shall be on the gate for the final race.

Section 10. Declaration Fees.

(1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of one-half of one percent (0.5%) of the total purses distributed or to be distributed for each race in which the horse is declared. ~~[\$500. If a preliminary leg splits into two (2) or more divisions, the declaration fee shall be \$500 per division.]~~

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the KSDF and KSBIF shall consist of money from:

- (a) Nominating fees;
 - (b) Sustaining fees;
 - (c) Declaration fees; and
 - (d) Added money from the Commonwealth of Kentucky.
- (4)

(a) Distribution of revenue for Kentucky Sire Stakes races shall be reviewed and addressed annually, not later than December 15 of each calendar year, by an advisory panel appointed by the Chairman of the commission and consisting of one (1) representative from each of the following:

1. The commission, who shall serve as the chairman of the panel;

2. The Kentucky Harness Horseman's Association;

3. The Kentucky Harness Association;

4. The host racetrack; and

5. One (1) participant in the fund nominated by the chairman of the commission from a group of up to four (4) nominees recommended by each of the above four (4) members having one (1) nomination each.

(b) Each member of the panel shall serve from July 1 through June 30 of the following year and shall be a resident of Kentucky.

(c) The final determination regarding distribution of revenue shall be made by the commission.

Section 11. Divisions of Preliminary Legs.

(1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:

1. Twelve (12) horses or less entered - one (1) division race.

2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.

3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.

4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.

5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.

6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.

(b) One-half (1/2) and five-eighths (5/8) mile track:

1. Nine (9) to ten (10) horses entered - one (1) division.

2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.

3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.

4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.

5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.

6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.

(c) If the need exists for seven (7) or more divisions, eligibility to

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the final shall be determined in a manner consistent with the published conditions.

Section 12. Gait.

(1) Gait shall be specified by the owner of the horse on or before the first two (2) year old payment.

(2)

(a) Change of gait may be made at the time of declaration at the track.

(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 13. Divisions. A race shall be raced in separate divisions as follows:

(1) Colt, gelding, ridgeling divisions; and

(2) Filly divisions.

Section 14. Purse Distributions.

(1) The purses awarded for all races shall be distributed on the following percentage basis:

(a) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(b) Four (4) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund;

(c) Three (3) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13) percent reverts back to the fund;

(d) Two (2) starters - fifty (50) percent, and twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund; and

(e) One (1) starter - fifty (50) percent, and the remaining fifty (50) percent reverts back to the fund.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

Section 15. Cancellations.

(1) If circumstances prevent the racing of an event and the race is not drawn, all funds allocated to the division in each of the preliminary legs or the final shall be refunded and prorated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 20 of this administrative regulation.

(3) The added monies provided by the Commonwealth of Kentucky for use in the KSDF and KSBIF shall be disbursed by December 15 of each calendar year in accordance with the formula created by the panel as set out in Section 10(4) of this administrative regulation.

Section 16. Qualifying.

(1) Any horse declared into a Kentucky Sires Stakes race shall:

(a) Show at least one (1) charted race line with no breaks within forty-five (45) days or prior to the day of the race; and

(b) Have satisfied the following time requirements:

1. On a track larger than five-eighths (5/8) of a mile:

a. A two (2) year old trotter shall have been timed in two minutes and six seconds (2:06) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and four seconds (2:04) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and two seconds (2:02) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and zero seconds (2:00) or faster.

2. On a five-eighths (5/8) mile track:

a. A two (2) year old trotter shall have been timed in two minutes and seven seconds (2:07) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and five seconds (2:05) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and three seconds (2:03) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and one second (2:01) or faster.

3. On a one-half (1/2) mile track:

a. A two (2) year old trotter shall have been timed in two minutes and eight seconds (2:08) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and six seconds (2:06) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and four seconds (2:04) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and two seconds (2:02) or faster.

(2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.

(3) The requirements of this section shall apply both to wagering and nonwagering races.

Section 17. Purse Allocations.

(1) At a scheduled meeting of the commission, the commission shall:

(a) Establish the distribution of funds for stakes races for the upcoming year; and

(b) Authorize expenditures at a time it designates.

(2) The racing dates for KSDF and KSBIF stakes shall be issued after the track has established its race dates.

Section 18. Promotions. The KSDF or KSBIF may[shall] provide a trophy for each event, and the program that provides the trophy shall purchase the trophy out of its fund.

Section 19. Nomination Fees.

(1) After payment of the mare or stallion nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year, as set forth in Section 20. The "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, shall be filed with the commission along with the nomination and sustaining fees.

(2) After payment of the yearling nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year, as set forth in Section 20. The "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, shall be filed with the commission along with the nomination and sustaining fees.

(3)[(2)] The two (2) year old March 15 payment shall be made [in order] to remain eligible to the KSDF and KSBIF as a three (3) year old without penalty, except as provided in Section 20.

(4)[(3)] Nomination and sustaining payments shall be made to the KSDF and KSBIF in U.S. funds by a money order or a check drawn on a U.S. bank account.

Section 20. Nomination Schedule.

(1) Mares or Stallions shall be nominated by December 31 of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBIF Stallion Certificate of Eligibility Form," KHRC 7-040-2, or "KSDF/KSBIF Mare Certificate of Eligibility Form," KHRC 7-040-3. The nomination fee shall be set forth in KHRC 7-040-2 or 7-040-3, except as provided in subsection (4) of this section.[Yearlings shall be nominated by May 15 of their yearling year, except as provided in subsection (4) of this section.]

(2) For yearlings sired by a standardbred stallion or mare that resided in Kentucky during the year of conception for a period no less than 180 days[residing in Kentucky] and registered with the KSDF and KSBIF, the nomination fee shall be set forth in the "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, except as provided in subsection (5) of this section[forty (40) dollars per yearling]. [For yearlings sired by a standardbred stallion not residing in Kentucky, the nomination fee shall be eighty (80) dollars per yearling.]

(3) Nominated horses shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall be properly identified to the satisfaction of the commission at the time of the nomination. Identification shall be determined by the official registration maintained by the USTA, Standardbred Canada, or other appropriate international harness racing governing agency.

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(4) If a mare is not nominated to the KSDF and KSBIF by December 31 of the year of conception, the mare shall be nominated by submitting a "Late KSDF/KSBIF Mare Certificate of Eligibility Form," KHRC 7-040-4, and paying a penalty as set forth in KHRC 7-040-4.

(5) If a horse sired by a standardbred stallion or mare that resided in Kentucky during the year of conception, for a period no less than 180 days, and registered with the KSDF and KSBIF is not nominated during its yearling year, the horse may be nominated by [prior to] March 15 of its two (2) year old year by submitting the "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, and paying a penalty as set forth in KHRC 7-040-1. [if:]

[(a) For horses sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, a nomination fee of \$500 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section; or

(b) For horses sired by a standardbred stallion not residing in Kentucky, a nomination fee of \$600 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section.]

(6) For three (3) year old horses that fail to make the mandatory March 15 two (2) year old sustaining payment, the horse may be nominated by February 15 of its three (3) year old year by submitting a KHRC 7-040-1 and paying a penalty as set forth in KHRC 7-040-1.

[(5) Sustaining payments shall be as follows:

(a) TWO (2) YEAR OLD PAYMENTS	
March 15	\$300
April 15	\$300
May 15	\$300
March 15 payment shall be mandatory to make entry eligible as a three (3) year old.	
(b) THREE (3) YEAR OLD PAYMENTS	
February 15	\$300
March 15	\$300
April 15	\$300

Section 21. Early Closing Events. The commission may provide for separate early closing events for Kentucky-bred horses.

Section 22. Stallion and Breeder Awards. The commission may provide for stallion and breeder awards for Kentucky-bred horses.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 7-040-1, 11/2018;

(b) "KSDF/KSBIF Stallion Certificate of Eligibility Form", KHRC 7-040-2, 11/2018; and

(c) "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC 7-040-3, 11/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at https://khrc.ky.gov/new_docs.aspx?cat=32.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: March 13, 2023

FILED WITH LRC: March 14, 2023 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on May 22, 2023 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be

heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing; General Counsel; 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511; phone +1 (859) 246-2040; fax +1 (859) 246-2039; email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the conditions under which standardbred racing shall be conducted in Kentucky. Specifically, KRS 230.770(6) authorizes the commission to promulgate regulations establishing the eligibility requirements for horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund ("KSDF/KSBIF"). This particular regulation establishes the eligibility requirements to receive funds from KSDF/KSBIF.

(b) The necessity of this administrative regulation: This regulation is necessary to exercise the statutory authority of the KHRC set forth in KRS 230.215(2) to "promulgate administrative regulations prescribing conditions under which all legitimate standardbred horse racing and wagering thereon is conducted in the Commonwealth of Kentucky" and the statutory authority set forth in KRS 230.240(1). Specifically, this regulation is necessary to establish the eligibility requirements for those desiring to receive distributions from the KSDF/KSBIF.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority granted to the Kentucky Horse Racing Commission by KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), and KRS 230.802(2)(b).

(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 outlining the qualifications a horse owner and breeder need to follow to be eligible to receive KSDF/KSBIF monies.

(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 four main proposed changes to this regulation are as follows:

1) Create an opportunity to participate in cases where the Mare Certificate of Eligibility Nomination was missed;

2) Adjust the fees for a horse to late nominate within its two-year-old year if the mare was not nominated during the calendar year of the breeding season;

3) Allow for a three-year-old to participate even if no sustaining payments were made as a two-year-old, but keep the initial March 15 sustaining payment mandatory to encourage two-year-old participation; and

4) Change the declaration/starting fees to 0.5% of the total purses distributed or to be distributed for each race in which the horse is declared.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to create opportunities for horse owners to participate in the Sire Stakes, even if the mare was not nominated or the foal was nominated late.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.770 (2) requires the commission "to use the development fund to promote races, and to provide purses for races, for Kentucky-bred Standardbred horses." KRS 230.802 (2)(a) requires the commission to "use moneys deposited in the Kentucky Standardbred breeders incentive fund to provide rewards

for breeders or owners of Kentucky-bred standardbred horses." This amendment fulfills that statutory mandate by implementing the changes outlined above to enhance the fund.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing incentives for stallion owners to stand their horses in Kentucky and breeders to keep their mares in Kentucky.

(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 standardbred breeders; owners; boarding farm owners and employees; Kentucky veterinarians and equine healthcare facilities; horse transportation companies; farriers; farmers and suppliers of hay, feed and grain; equine supply companies; daily maintenance care and tack; Kentucky Standardbred sale companies; retail stores and maintenance services; and state and local payroll tax.

(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: Breeders will have an additional opportunity to earn breeder awards, owners will have an additional incentive to buy Kentucky-bred horses, and stallion owners will be provided incentives to relocate their stud horses to Kentucky. All other entities identified in (3) will not acquire any additional responsibilities, but will reap the benefits of a stronger breeding industry in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in question (3) will incur any costs in complying with the amendment if they nominate the mare or foal timely. Rather, this amendment specifically offers more opportunities to receive distributions from the fund by allowing late nominations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will allow owners to participate in the Kentucky Sire Stakes program and will reap the benefits of a stronger breeding industry in Kentucky.

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

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

(b) On a continuing basis: There is no continuing cost of implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The nomination fees are used for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Yes, there are fee changes in the proposed changes to this regulation. First, timely mare nomination used to be free. Mares who are timely registered by December 31 in the foal's year of conception will now pay \$20 per nomination. However, this fee is being made up b/c the yearling fee for 95% of our nominations, coming from the mare residing in Kentucky during the breeding season was \$80, whereas now it is \$60. Second, it used to be impossible to late register a mare. Now, mares who are late registered between January 1 of their foaling year and May 15 of the foal's yearling year will pay \$750 per nomination. Mares who are late registered between May 16 of the foal's yearling year and December 31 of the foal's yearling year will pay \$1,500 per nomination. Yearling registration used to be \$40 if the foal was registered through the stallion and \$80 if the foal was registered through the mare. Now, those fees are averaged, so that foals who are timely nominated by May 15 of their yearling year will pay \$60 per nomination during that yearling year, regardless of whether they are registered through the stallion or the mare. Foals who are timely nominated in their yearling year used to pay three \$300 sustaining payments to maintain eligibility during their two-

year-old year. This will not change; timely nominated foals will still pay three \$300 sustaining payments during their two-year-old year. However, foals who were late nominated during their two-year-old year used to pay a single penalty of either \$500 or \$600, depending on whether they were nominated through their stallion or mare, respectively. Now, foals that are not timely nominated as a yearling will pay one \$500 penalty, regardless of whether they were nominated through their stallion or mare. Foals who are timely nominated by May 15 of their yearling year or are untimely nominated during their two-year-old year used to pay three \$300 sustaining payments to maintain eligibility during their three-year-old year. This will not change; foals nominated during their yearling or two-year-old years will still pay three \$300 sustaining payments to maintain eligibility during their three-year-old year. There used to be no option to nominate a foal in its three-year-old year. Now, foals who are nominated for the first time in their three-year-old year will pay a \$1,200 additional penalty and will pay three \$600 sustaining payments, in order to be nominated during their three-year-old year.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, there are fee changes in the proposed changes to this regulation. First, timely mare nomination used to be free. Mares who are timely registered by December 31 in the foal's year of conception will now pay \$20 per nomination. However, this fee is being made up b/c the yearling fee for 95% of our nominations, coming from the mare residing in Kentucky during the breeding season was \$80, whereas now it is \$60. Second, it used to be impossible to late register a mare. Now, mares who are late registered between January 1 of their foaling year and May 15 of the foal's yearling year will pay \$750 per nomination. Mares who are late registered between May 16 of the foal's yearling year and December 31 of the foal's yearling year will pay \$1,500 per nomination. Yearling registration used to be \$40 if the foal was registered through the stallion and \$80 if the foal was registered through the mare. Now, those fees are averaged, so that foals who are timely nominated by May 15 of their yearling year will pay \$60 per nomination during that yearling year, regardless of whether they are registered through the stallion or the mare. Foals who are timely nominated in their yearling year used to pay three \$300 sustaining payments to maintain eligibility during their two-year-old year. This will not change; timely nominated foals will still pay three \$300 sustaining payments during their two-year-old year. However, foals who were late nominated during their two-year-old year used to pay a single penalty of either \$500 or \$600, depending on whether they were nominated through their stallion or mare, respectively. Now, foals that are not timely nominated as a yearling will pay one \$500 penalty, regardless of whether they were nominated through their stallion or mare. * Foals who are timely nominated by May 15 of their yearling year or are untimely nominated during their two-year-old year used to pay three \$300 sustaining payments to maintain eligibility during their three-year-old year. This will not change; foals nominated during their yearling or two-year-old years will still pay three \$300 sustaining payments to maintain eligibility during their three-year-old year. There used to be no option to nominate a foal in its three-year-old year. Now, foals who are nominated for the first time in their three-year-old year will pay a \$1,200 additional penalty and will pay three \$600 sustaining payments, in order to be nominated during their three-year-old year.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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. The statutory authority for this administrative regulation is found in KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Although specific dollar estimates cannot be determined, the greatest impact of this regulation to the state and local government will be the increase in payroll taxes by all participants noted in the Regulatory Impact Analysis & Tiering Statement.

(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? Continued growth and participation in the program will increase payroll taxes by all participants noted in the Regulatory Impact Analysis & Tiering Statement.

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program in subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This regulation is not anticipated to generate cost savings in the first year. Although the regulation will likely save many of our licensees \$20.00 on yearling nominations, that cost is recouped by an additional \$20.00 fee for mare or stallion registrations during the breeding season.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This regulation is not anticipated to generate cost savings in subsequent years. Although the regulation will likely save many of our licensees \$20.00 on yearling nominations, that cost is recouped by an additional \$20.00 fee for mare or stallion registrations during the breeding season.

(c) How much will it cost the regulated entities for the first year? This regulation is not anticipated to generate additional costs in the first year. While some entities may pay late fees, that will be a voluntary fee paid by those who nominate late. The KHRC normally receives 5 to 10 late nominations per year, and does not anticipate a large number of additional late nominations.

(d) How much will it cost the regulated entities for subsequent years? This regulation is not anticipated to generate additional costs in subsequent years. While some entities may pay late fees, that will be a voluntary fee paid by those who nominate late. The KHRC normally receives 5 to 10 late nominations per year, and does not anticipate a large number of additional late nominations.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: 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 KHRC does not anticipate a major economic impact, as set forth in the answer to the question above.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

810 KAR 8:020. Drug, medication, and substance classification schedule.

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the drug classification schedule in effect in Kentucky for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule.

(1) This administrative regulation shall establish the respective classifications of all substances contained herein.

(2)

(a) Class A drugs, medications, and substances are those that:

1. Have the highest potential to influence performance in the equine athlete, regardless of their approval by the United States Food and Drug Administration; or

2. Lack approval by the United States Food and Drug Administration, but have pharmacologic effects similar to certain Class B drugs, medications, or substances that are approved by the United States Food and Drug Administration.

(b) Class A shall include:

Acetacarbromal
Acetophenazine
Adinazolam
Alcuronium
Alfentanil
Almotriptan
Alphaprodine
Alpidem
Alprazolam
Alprenolol
Althesin
Aminorex
Amisulpride
Amitriptyline
Amobarbital
Amoxapine
Amperozide
Amphetamine
Amyl nitrite
Anileridine
Anilopam
Apomorphine
Aprobarbital
Arecoline
Atracurium
Atomoxetine
Azacylonol
Azaperone
Barbital
Barbiturates

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Bemegride	Cocaine
Benazepril	Codeine
Benperidol	Conorphone
Bentazepam	Conotoxin
Benzactizine	Corticaïne
Benzoctamine	Crotetamide
Benzonatate	Cyamemazine
Benzphetamine	Cyclandelate
Benztropine	Cyclobarbitol
Benzylpiperazine	Darbepoetin
Bethanidine	Decamethonium
Biperiden	Dehydrochloromethy-testosterone
Biriperone	Delorazepam
Bitolterol	Demoxepam
Bolasterone	Dermorphin
Boldione	Desipramine
Brimondine	Desoxymethyl-testosterone
Bromazepam	Dextromoramide
Bromfenac	Dezocine
Bromisovalum	Diamorphine
Bromocriptine	Dichloralphenazone
Bromperidol	Diethylpropion
Brotizolam	Diethylthiambutene
Bufexamac	Dihydrocodeine
Bupivacaine	Dimeflin
Buprenorphine	Diprenorphine
Buspirone	Divalproex
Bupropion	Dixyrazine
Butabartital	Donepezil
Butacaine	Dopamine
Butalbital	Doxacurium
Butanilcaine	Doxapram
Butaperazine	Doxazosin
Butoctamide	Doxefazepam
Calusterone	Doxepin
Camazepam	Droperidol
Cannabinoids, Synthetic	Duloxetine
Captadiame	Eletriptan
Carazolol	Enalapril
Carbidopa	Enciprazine
Carbromal	Endorphins
Carfentanil	Enkephalins
Carphenazine	Ephedrine
Carpipramine	Epibatidine
Cathinone	Epinephrine
Chloral betaine	Ergaloid Mesylates
Chloral hydrate	Erthritol tetranitrate
Chloraldehyde	Erythropoietin
Chloralose	Eszopiclone
Chlordiazepoxide	Estazolam
Chlorhexadol	Ethamivan
Chlormezanone	Ethanol
Chloroform	Ethchlorvynol
Chloroprocaine	Ethinamate
Chlorproethazine	Ethoheptazine
Chlorpromazine	Ethopropazine
Chlorprothixene	Ethosuximide
Cimaterol	Ethylisobutrazine
Citalopram	Ethylmorphine
Clibucaine	Ethylnorepinephrine
Clobazam	Ethylphenidate
Clocapramine	Etidocaine
Clomethiazole	Etifoxin
Clomipramine	Etizolam
Clonazepam	Etodroxizine
Clorazepate	Etomidate
Clormecaine	Etorphine HCL
Clostebol	Fenarbamate
Clothiapine	Fenfluramine
Clotiazepam	Fentanyl
Cloxazolam	Fluanisone
Clozapine	Fludiazepam
Cobratoxin	Flunitrazepam

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Fluopromazine	Mestanolone
Fluoresone	Mesterolone
Fluoxetine	Metaclazepam
Flupenthixol	Metaminol
Flupirtine	Metazocine
Flurazepam	Methachloline
Fluspirilene	Methadone
Flutoprazepam	Methamphetamine, when detected exclusively as d-methamphetamine or in combination with l-methamphetamine
Fluvoxamine	Methandriol
Formebolone	Methandrostenolone
Fosinopril	Methaqualone
Furzabol	Metharbital
Galantamine	Methasterone
Gallamine	Methcathinone
Gepirone	Methenolone
Gestrinone	Methixene
Glutethimide	Methohexital
Guanadrel	Methotrimeprazine
Guanethidine	Methoxamine
Halazepam	Methoxyphenamine
Haloperidol	3-Methoxytyramine
Haloxazolam	Methyl-1-testosterone
Hemoglobinglutamers	Methylandriostenediol
Hemopure	Methyldienolone
Hexafluorenum	Methyldopa
Hexobarbital	MethyleneDioxypyrovalene(MDPV; 3,4Methylenedioxy-pyrovalerone)
Homophenazine	Methylhexaneamine
Hydrocodone	Methylnortestosterone
Hydromorphone	Methylphenidate
Hydroxyamphetamine	Methypylon
Ibomal	Metocurine
Iloprost	Metomidate
Imipramine	Metopon
InositolTrispyrophosphate	Mexazolam
Ipsapirone	Mirtazapine
Irbesarten	Mivacurium
Isocarboxazid	Modafinil
Isomethadone	Molindone
Isoproterenol	Moperone
Ketazolam	Morphine
Ketorolac	Mosapramine
Lamotrigine	Muscarine
Lenperone	Naepaine
Levodopa	Nalbuphine
Levomethorphan	Nalorphine
Levorphanol	Nebivolol
Lisinopril	Nefazodone
Lithium	Nefopam
Lobeline	Nikethamide
Lofentanil	Nimetazepam
Loflazepate, Ethyl	Nitrazepam
Loprazolam	Norbolethone
Lorazepam	Norclostebol
Lormetazepam	Nordiazepam
Loxapine	Norepinephrine
Mabuterol	Norethandrolone
Maprotiline	Nortriptyline
Mazindol	Nylidrin
Mebutamate	Olanzapine
Meclofenoxate	Olmesartan
Medazepam	Oxabolone
Meldonium	Oxazepam
Melperone	Oxazolam
Memantine	Oxcarbazepine
Meparfynol	Oxilofrine
Mepazine	Oxprenolol
Meperidine	Oxycodone
Mephenoqualone	Oxymesterone
Mephentermine	Oxymorphone
Mephentoin	
Mephobarbital	
Meproamate	
Mesoridazine	

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Oxypertine	Ritanserlin
Paliperidone	Rivastigmine
Pancuronium	Rocuronium
Papaverine	Ropivacaine
Paraldehyde	Secobarbital
Paramethadione	Selegiline
Pargyline	Sertraline
Paroxetine	Sildenafil
Pemoline	Snake Venoms
Penfluridol	Somatrem
Pentaerythritol	Somatropin
Pentobarbital	Spiclomazine
Pentylene-tetrazol	Spiperone
Perazine	Spirapril / Spiraprilat
Perfluorocarbons	Stenbolone
Perfluorodecahydro-naphthalene	Succinylcholine
Perfluorodecalin	Sufentanil
Perfluorooctylbromide	Sulfonyl-diethylmethane
Perfluorotripropylamine	Sulfonmethane
Periciazine	Sulforidazine
Perindopril	Sulpiride
Perlazine	Sultopride
Perphenazine	Tadalafil
Phenaglycodol	Talbutal
Phenazocine	Tandospirone
Phencyclidine	Temazepam
Phendimetrazine	Terazosin
Phenelzine	Tetrabenazine
Phenmetrazine	Tetracaine
Phenobarbital	Tetrahydrogestrinone
Phentermine	Tetrazepam
Physostigmine	Thebaine
Picrotoxin	Thialbarbital
Piminodine	Thiamylal
Pimozide	Thiethylperazine
Pinazepam	Thiopental
Pipamperone	Thiopropazate
Pipecuronium	Thiopropazine
Pipequaline	Thioridazine
Piperacetazine	Thiothixene
Piperocaine	Tiapride
Pipotiazine	Tiletamine
Pipradrol	Timiperone
Piquindone	Tofisopam
Piritramide	Topirimate
Prazepam	Torsemide
Procaterol	Tranlycypromine
Prochlorperazine	Trazodone
Propanidid	Tretoquinol
Propiomazine	Triazolam
Propionylpromazine	Tribromethanol
Propiram	Tricaine
Propofol	Trichloroethanol
Propoxycaine	Trichloroethylene
Prostanazol	Triclofos
Prothipendyl	Trifluomepazine
Protokylol	Trifluoperazine
Protriptyline	Trifluoperidol
Proxibarbitol	Trifluoromazine
Pyridylidone	Trihexylphenidyl
Quazipam	Trimethaphan
Quetiapine	Trimipramine
Quinapril / Quinaprilat	Tubocurarine
Quinbolone	Tybamate
Racemethorphan	Urethane
Racemorphan	Valerianic Acid
Raclopride	Valnoctamide
Ractopamine	Vardenafil
Ramipril / Ramiprilat	Venlafaxine
Remifentanyl	Veralpride
Remoxipride	Vercuronium
Rilmazafone	Viloxazine
Risperidone	Vinbarbital

Vinylbital
Zaleplon
Ziconotide
Zilpaterolhydrochloride
Ziprasidone
Zolazepam
Zolpidem
Zopiclone
Zotepine
Zuclopenthixol

(3)

(a) Class B drugs, medications, and substances are those that:

1. Are approved by the United States Food and Drug Administration and have a high potential to influence performance in the equine athlete, but less potential than Class A drugs, medications, and substances that are classified at that level because they have the highest potential to influence performance; or

2. Lack approval by the United States Food and Drug Administration, but have pharmacologic effects similar to certain Class C drugs, medications, or substances that are approved by the United States Food and Drug Administration.

(b) Class B shall include:

2-Aminoheptane
Acebutolol
Acepromazine
Acetanilid
Acetophenetidin
Adrenochromemonosemicarbazonesalicylate
Albuterol
Alclofenac
Aldosterone
Ambenonium
Ambroxol
Amiloride
Aminophylline
Aminopyrine
Amiodarone
Amisometradine
Amitraz
Amlodipine
Amrinone
Anisotropine
Antipyrine
Apazone
Aprindine
Arformoterol
Articaine
Atenolol
Atropine
Baclofen
Bendroflumethiazide
Benoxaprofen
Benzocaine
Benzthiazide
Bepidil
Betaxolol
Bisoprolol
Boldenone
Bretylum
Bromhexine
Bromodiphenhydramine
Brompheniramine
Bumetanide
Butorphanol
Butoxycaine
Caffeine
Candesartan
Captopril
Carbachol
Carbamezapine
Carbazochrome
Carbinoxamine
Carisoprodol

Carprofen
Carteolol
Carticaine
Carvedilol
Celecoxib
Chlormerodrin
Chlorothiazide
Chlorpheniramine
Chlorthalidone
Chlorzoxazone
Cilostazol
Clanobutin
Clemastine
Clenbuterol
Clidinium
Clofenamide
Clonidine
Colchicine
Cyclizine
Cyclobenzaprine
Cyclothiazide
Cycrimine
Cyproheptadine
Danazol
Deracoxib
Detomidine
Dextromethorphan
Dextropropoxyphene
Diazepam
Diazoxide
Dibucaine
Diflunisal
Digitoxin
Digoxin
Dihydroergotamine
Diltiazem
Dimethisoquin
Diphenhydramine
Diphenoxylate
Dipyridamole
Disopyramide
Dobutamine
Doxylamine
Dromstanolone
Dyphylline
Edrophonium
Eltanac
Enalapril
Ergotamine
Esmolol
Etamiphylline
Etanercept
Ethacrynic acid
Ethotoin
Ethylestrenol
Etodolac
Felbamate
Felodipine
Fenbufen
Fenclozic acid
Fenoldopam
Fenoprofen
Fenoterol
Fenspiride
Fentiazac
Flecainide
Floctafenine
Flufenamic acid
Flumethiazide
Flunarizine
Fluoroprednisolone
Fluoxymesterone
Fluphenazine

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Flurbiprofen	Naratriptan
Formoterol	Neostigmine
Fosphenytoin	Nicardipine
Gabapentin	Nifedipine
Guanabenz	Niflumic acid
Heptaminol	Nimesulide
Hexocyclium	Nimodipine
Hexylcaine	Nitroglycerin
Homatropine	Nortestosterone
Hydralazine	Orphenadrine
Hydrochlorthiazide	Oxandrolone
Hydroflumethiazide	Oxaprozin
Hydroxyzine	Oxymetazoline
Ibutilide	Oxymetholone
Indomethacin	Oxyphenacylimine
Infliximab	Oxyphenonium
Ipratropium	Penbutolol
Isoetharine	Pentazocine
Isometheptene	Pergolide
Isopropamide	Phenacemide
Isosorbide dinitrate	Phenoxybenzamine
Isoxicam	Phensuximide
Isradipine	Phentolamine
Kebuzone	Phenylephrine
Ketamine	Phenylpropanolamine
L-methamphetamine, when detected by itself and not in combination with d-methamphetamine	Phenytol
Labetalol	Pindolol
Levamisole	Pirbuterol
Levobunolol	Piretanide
Lidocaine	Piroxicam
Loperamide	Polythiazide
Losartan	Prazosin
Mecamylamine	Prilocaine
Meclizine	Primidone
Medetomidine	Procainamide
Mefenamic acid	Procaine
MelMepenzolate	Procydiline
Mephensesin	Promazine
Mepivacaine	Promethazine
Meralluride	Propafenone
Merbaphen	Propantheline
Mercaptoproterin	Propentophylline
Mercumatin	Propranolol
Mersalyl	Propylhexedrine
Metaproterenol	Pseudoephedrine
Metaxalone	Pyridostigmine
Methantheline	Pyrilamine
Methapyrilene	Quinidine
Methdilazine	Reserpine
Methosuxamide	Ritodrine
Methotrexate	Rizatriptan
Methscopolamine	Rofecoxib
Methylatropine	Romifidine
Methylchlorthiazide	Salmeterol
Methysergide	Scopolamine
Methyltestosterone	Sibutramine
Metiamide	Sotalol
Metolazone	Spiroonolactone
Metoprolol	Stanozolol
Mexilitine	Strychnine
Mibefradil	Sumatriptan
Mibolerone	Telmisartan
Midazolam	Tenoxicam
Midodrine	Tepoxalin
Milrinone	Terbutaline
Minoxidil	Terfenadine
Moexipriloxiam	Testolactone
Nadol	Testosterone
Naloxone	Tetrahydrozoline
Naltrexone	Theobromine
Nandrolone	Theophylline
Naphazoline	Thiosalicylate
	Thiphenamil

Tiaprofenic acid
Timolol
Tocainide
Tolazoline
Tolmetin
Tramadol
Trandolapril
Trenbolone
Triamterene
Tridihexethyl
Trimeprazine
Trimethadione
Tripelennamine
Triprolidine
Valdecocix
Valsartan
Vedaprofen
Verapamil
Xylazine
Xylometazoline
Yohimbine
Zolmitriptan
Zomepirac
Zonisamide

(4)

(a) Class C drugs, medications, and substances are those that:

1. Are approved by the United States Food and Drug Administration and have a lesser potential to influence performance in the equine athlete than Class A drugs, medications, and substances and those Class B drugs, medications, and substances that are classified at that level because they have a high potential to influence performance and are approved by the United States Food and Drug Administration; or

2. Lack approval by the United States Food and Drug Administration, but have pharmacologic effects similar to certain Class D drugs, medications, or substances that are approved by the United States Food and Drug Administration.

(b) Class C shall include:

Acenocoumarol
Acetaminophen
Acetazolamide
Acetylsalicylic acid
Alclometasone
Amcinonide
Aminocaproic acid
Beclomethasone
Benoxinate
Betamethasone
Bethanechol
Budesonide
Butamben
Camphor
Cetirizine
Chlorophenesin
Chloroquine
Ciclesonide
Clobetasol
Clocortolone
Cortisone
Cyclomethylcaine
Dantrolene
Dembroxol
Deoxycorticosterone
Desonide
Desoximetasone
Dexamethasone
Dibucaine
Dichlorphenamide
Diclofenac
Diflorasone
Diflucortolone
Dimethylsulfoxide
Diphenadione

Dipyron
Dyclonine
Ergonovine
Ethoxzalamide
Ethylaminobenzoate
Fexofenadine
Firocoxib
Fludrocortisone
Flumethasone
Flunisolide
Flunixin
Fluocinolone
Fluocinonide
Fluorometholone
Fluprednisolone
Flurandrenolide
Fluticasone
Furosemide
Glycopyrrolate
Guaifenesin
Halcinonide
Halobetasol
Hydrocortisone
Ibuprofen
Isoflupredone
Ketoprofen
Letosteine
Loratidine
Meclofenamic acid
Medrysone
Mesalamine
Methazolamide
Methocarbamol
Methylergonovine
Methylprednisolone
Metoclopramide
Mometasone
Montelukast
N-butylscopolamine
Nabumetone
Naproxen
Olsalazine
Oxyphenbutazone
Paramethasone
Phenylbutazone
Pirenzapine
Pramoxine
Prednisolone
Prednisone
Probenecid
Proparacaine
Salicylamide
Salicylate
Sulfasalazine
Sulindac
Tranexamic acid
Triamcinolone acetonide
Trichlormethiazide
Zafirlukast
Zeranol
Zileuton

(5)

(a) Class D drugs, medications, and substances are those that:

1. Have a lesser potential to influence performance in the equine athlete than Class A and B drugs, medications, and substances or those Class C drugs, medications, and substances that are classified at that level because they have a lesser potential to influence performance and are not approved by the United States Food and Drug Administration; or

2. Have a lesser potential to influence performance in the equine athlete than any Class A, B, or C drugs, medications or substances.

(b) Class D shall include:

Anisindione

Cimetidine
Cromolyn
Dicumarol
Esomeprazole
Famotidine
Isoxsuprine
Lansoprazole
Misoprostol
Nedocromil
Nizatidine
Omeprazole
Pantoprazole
Pentoxifylline
Phenindione
Phenprocoumon
Polyethylene glycol
Rabeprazole
Ranitidine
Warfarin

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: February 23, 2023

FILED WITH LRC: March 6, 2023 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on May 22, 2023 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing; General Counsel; 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511; phone +1 (859) 246-2040; fax +1 (859) 246-2039; email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets a medication classification schedule.

(b) The necessity of this administrative regulation: This regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications before and during race meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the drug classification schedule in effect in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on and before racing dates, and in a manner that is consistent with the integrity of racing.

(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 proposed amendment adds levamisole as a Class B medication.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the status of levamisole as a Class B substance, particularly following the results of equine studies involving levamisole administration.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses participating in a race. The amendment to this regulation is necessary to ensure that racing participants have easier access to the commission's regulatory requirements and guidance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 230.215(2), 230.260(8), KRS 230.240(2) by ensuring that racing participants have easier access to regulations establishing appropriate requirements and prohibitions pertaining to the use of medications in horse racing in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred and standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In 2017, the commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Participants in horse racing, and especially owners, trainers, and veterinarians, will be required to adhere to the requirements and rules set forth in these medication classifications, which pertain to the use of medications in horse racing. In this case, participants will be required to adhere to the rule regarding levamisole.

(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 anticipated to comply with this administrative regulation, as Kentucky's licensees have operated in accordance with similar requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

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

(b) On a continuing basis: There is no continuing cost 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: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

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

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

increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.300.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for the subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This bill is not anticipated to save costs during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This bill is not anticipated to save costs in subsequent years.

(c) How much will it cost the regulated entities for the first year? This bill is not anticipated to generate new costs in the first year.

(d) How much will it cost the regulated entities for subsequent years? This bill is not anticipated to generate new costs in subsequent years.

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

Cost Savings (+/-): None.
Expenditures (+/-): None.
Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This regulation will not need to a major economic impact; it will neither save nor generate costs.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amendment)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference.

(1) The "2023[2022] Update to the State Health Plan", March 2023[July 2022], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 10, 2023

FILED WITH LRC: March 15, 2023 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 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 May 15, 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 May 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the current State Health Plan as defined by KRS 216B.015(28) and as required by KRS 216B.040(2)(a).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a., by establishing the State Health Plan's review criteria used for determinations regarding the issuance and denial of certificates of need.

(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 review criteria for certificate of need determinations.

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

(a) How the amendment will change this existing administrative regulation: In response to suggestions and comments submitted to the cabinet by interested groups, the amendment to this administrative regulation makes the following changes to the State Health Plan (SHP):

1. Updates the title and edition date of the SHP on page i of the Plan;

2. Updates the Table of Contents on page ii to show deletions and revised page numbers;

3. Updates the title of the SHP on page iii of the Plan under the heading "Purpose";

4. Adds new language to the review criteria on pages 23 and 24 to allow acute care hospitals to convert existing acute care beds to psychiatric beds for adult patients under the following conditions:

a. The occupancy of acute care beds in the applicant's facility is less than seventy (70) percent according to the most recent edition of the Kentucky Annual Hospital Utilization and Services Report;

i. All of the proposed psychiatric beds are being converted from licensed acute care beds; and

ii. No more than twenty-five (25) acute care beds will be converted to psychiatric beds;

b. All of the psychiatric beds will be implemented on-site at the applicant's existing licensed facility; and

c. All of the psychiatric beds shall be dedicated exclusively to the treatment of adult patients, aged eighteen (18) to sixty-four (64);

5. Deletes outdated language on page 24 referring to tuberculosis beds. That is no longer a bed category in Kentucky

6. Adds language on page 33 to allow a long-term care pediatric facility to add fifty (50) or fewer beds if:

a. It is certified under Title XVIII and XIX of the Social Security Act;

b. It provides high and low intensity nursing facility services to children, including resident admitted to the facility prior to age twenty-one (21) and remain in the facility after reaching age twenty-one (21);

7. Amends language on page 35 to allow an acute care hospital, a critical access hospital, or a nursing facility to establish or expand a home health service to provide services exclusively to their patients who require home health services at the time of discharge;

8. Deletes the criteria on page 47 for megavoltage radiation, thereby making it subject to nonsubstantive review;

9. Deletes the criteria on page 52 for magnetic resonance imaging, thereby making it subject to nonsubstantive review; and

10. Amends the criteria on page 55 for ophthalmological ambulatory surgical centers to:

a. Allow joint ownership by ophthalmologists with optometrists;

b. Decrease the time required that the group has been practicing from 10 years to 5 years;

c. Delete the requirement for a \$300,000 investment in laser technology; and

d. Allow the facility to be located in any county in which one of the owners is located. These changes align with the proposed amendment of 900 KAR 6:075, Section 2(3)(h) – (l), filed concurrently with this administrative regulation to grant nonsubstantive review status to certificate of need applications for:

1. Applications by licensed hospitals to convert existing acute

care beds to psychiatric beds for adult patients if certain criteria are met;

2. Applications by a licensed hospital to provide megavoltage radiation therapy;

3. Applications to provide positron emission tomography services;

4. Applications to provide magnetic resonance imaging services; and

5. Applications by a licensed acute care hospital, critical access hospital, or nursing facility proposing to establish or expand a home health service to serve patients discharged from its facility.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to expand health services throughout the state, including rural areas, to enhance immediate access to resources.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes because it incorporates by reference the State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing the review criteria for certificate of need determinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities that submit certificate of need applications and affected persons as defined by KRS 216B.015(3). A total of 81 applications were submitted to the cabinet in calendar year 2022; 70 certificate of need applications were submitted in calendar year 2021; and 60 certificate of need applications were submitted in calendar year 2020.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit a certificate of need application are subject to the criteria set forth in the State Health Plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The certificate of need application filing fee for nonsubstantive review and formal review is established in a separate administrative regulation, 900 KAR 6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities subject to certificate of need approval must demonstrate that their proposal is consistent with the State Health Plan pursuant to KRS 216B.040(2)(a)2.a.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is used as there are different certificate of need review criteria for each licensure category addressed in the State Health Plan.

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 Cabinet for Health and Family Services, Office of Inspector General, and may impact any government owned or controlled health care facility.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

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

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

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

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

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

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General
Division of Certificate of Need
(Amendment)

900 KAR 6:075. Certificate of need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.062, 216B.090, 216B.095, 216B.115, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1., 216B.095
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1. requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

(4) "Days" means calendar days, unless otherwise specified.

(5) "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7) "Public notice" means notice given through the cabinet's Certificate of Need Newsletter.

Section 2. Nonsubstantive Review.

(1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(3)(f), the Office of Inspector General shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital and was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent certificate of need approval;

2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one

(1) year from the date the hospital last provided the service that the applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours;

(c)1. The proposal involves an application to establish an ambulatory surgical center that does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation;

(d) The proposal involves an application to establish an industrial ambulance service;

(e) Prior to July 1, 2026, the proposal involves an application by:

1. An ambulance service that is owned by a city or county government seeking to provide ambulance transport services pursuant to KRS 216B.020(9)(a)1. or 2.; or

2. A licensed hospital seeking to provide transport from a location that is not a health care facility pursuant to KRS 216B.020(9)(a)3. and (b);

(f) The proposal involves an application to transfer acute care beds from one (1) or more existing Kentucky-licensed hospitals to establish a new hospital under the following circumstances:

1. The existing hospital and new facility shall be under common ownership and located in the same county;

2. No more than fifty (50) percent of the existing hospital's acute care beds shall be transferred to the new facility; and

3.a. If the existing hospital is a state university teaching hospital, the existing hospital exceeded, by at least one (1), the minimum number of quality measures required to receive supplemental university directed payments from Kentucky Medicaid for the state fiscal year preceding the date the application was filed; or

b. If the existing hospital is not a state university teaching hospital, the existing hospital's overall rating by the Centers for Medicare and Medicaid Services Hospital Compare was three (3) stars or higher on the most recent annual update to the overall star ratings preceding the date the application was filed; [or]

(g)1. The proposal involves an application from a Program of All-Inclusive Care for the Elderly (PACE) program that:

a. Has met the requirements of the State Readiness Review (SRR) according to a report submitted by the Department for Medicaid Services (DMS) to the Centers for Medicare and Medicaid Services (CMS);

b. Seeks to provide, directly to its members, a health service that is not exempt from certificate of need (CON) under KRS 216B.020(1); and

c. Ensures that all services authorized under the PACE agreement are provided exclusively to its members who reside within the service area. The service area shall be:

(i) Located within the Commonwealth of Kentucky; and

(ii) Approved by both CMS and DMS.

2. Only an approved PACE program operating within the applicant's service area shall qualify as an affected person for the purpose of opposing a PACE program application.

3. A PACE program shall not be required to obtain certificate of need (CON) approval if the program:

a. Provides direct patient health services that are exempt from CON under KRS 216B.020(1) and provides other services subject to CON approval through contracts with licensed providers; or

b. Has already obtained CON approval within the approved PACE service area to provide a health service that is not exempt from CON;

(h) The proposal involves an application to establish an inpatient psychiatric unit in an existing licensed acute care hospital under the following conditions:

1. The hospital is located in a county that has no existing, freestanding psychiatric hospital;

2. The occupancy of acute care beds in the applicant's facility is less than seventy (70) percent according to the most recent edition

of the Kentucky Annual Hospital Utilization and Services Report;

3.a. All of the proposed psychiatric beds are being converted from licensed acute care beds; and

b. No more than twenty-five (25) acute care beds will be converted to psychiatric beds;

4. All of the psychiatric beds will be implemented on-site at the applicant's existing licensed facility; and

5. All of the psychiatric beds shall be dedicated exclusively to the treatment of adult patients, aged eighteen (18) to sixty-four (64);

(i) The proposal involves an application to provide megavoltage radiation therapy by an applicant that is majority owned by a Kentucky-licensed acute care hospital accredited by the American College of Surgeons Commission on Cancer;

(j) The proposal involves an application to provide positron emission tomography services;

(k) The proposal involves an application to provide magnetic resonance imaging services by an applicant that will be accredited by the American College of Radiology within twelve (12) months of licensure; or

(l) The proposal involves an application by a Kentucky-licensed acute care hospital, critical access hospital, or nursing facility proposing to establish or expand a home health service to serve exclusively patients discharged from its facility.

(4) A certificate of need approved for an application submitted under subsection (3)(c) of this section shall state the limitations specified under subsection (3)(c)1. and 2. of this section.

(5) If an application is denied nonsubstantive review status by the Office of Inspector General, the application shall automatically be placed in the formal review process.

(6) If an application is granted nonsubstantive review status by the Office of Inspector General, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(7)(a) If an application is granted nonsubstantive review status by the Office of Inspector General, any affected person who believes that the application is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2. of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.

2. If the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.

(d) Nonsubstantive review applications may be consolidated for hearing purposes.

(8) If an application for certificate of need is granted nonsubstantive review status by the Office of Inspector General, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan.

(9) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.

(10) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Inspector General shall approve each application for a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply.

(11) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8) of this section has been rebutted by clear and convincing evidence by an affected party.

(12) In determining whether an application is consistent with the

State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing that is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(14) A decision to approve or disapprove an application that has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted, as required by KRS 216B.095(1). A hearing officer shall prioritize rendering decisions regarding applications granted nonsubstantive review status pursuant to Section 2(3)(g) of this administrative regulation.

(15) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

Section 3. Exemption from Certificate of Need.

(1) A city or county government-owned ambulance service that meets the criteria established by KRS 216B.020(8) shall not be required to obtain a certificate of need to provide emergency ambulance transport services.

(2) A hospital-owned ambulance service shall not be required to obtain a certificate of need to provide non-emergency or emergency transport that originates from its hospital pursuant to KRS 216B.020(7).

(3)(a) If a hospital-owned ambulance service has certificate of need approval prior to the most recent effective date of this administrative regulation to provide transport services from another health facility to its hospital, the service shall not be required to obtain authorization in accordance with paragraph (b) of this subsection.

(b) A hospital-owned ambulance service that is exempt from certificate of need under KRS 216B.020(7) may provide transport services from another health facility to its hospital if authorized as set out in KRS 311A.025(4).

(c)1. As used in paragraph (b) of this subsection, a hospital is authorized to provide inter-facility transport of a patient if:

a. The hospital contacts by phone at least one (1) ground ambulance provider with jurisdiction in the territory in which the other health facility is located, using contact information from the most recent edition of the agency directory maintained by the Kentucky Board of Emergency Medical Services at the following link (<https://kbems.kctcs.edu/legal/EMS%20Directory.aspx>); and

b. The ground ambulance provider:

(i) Declines the hospital's request for patient transport; or

(ii) Is not able to initiate the patient's transport within four (4) hours of receiving the hospital's request.

2. For purposes of this paragraph, a provider initiates transport when it arrives at the hospital to transport the patient.

3. The hospital shall document the ambulance service contacted and the reason for authorization to provide transport from another health facility to its hospital.

(4)(a) In accordance with KRS 216B.020(12)(a), the provisions of this section and Section 2(3)(e) of this administrative regulation shall expire on July 1, 2026.

(b) In accordance with KRS 216B.020(12)(b), a certificate of need exemption granted to an ambulance service under this section of this administrative regulation shall remain in effect on and after July 1, 2026.900 KAR 6:075

ADAM MATHER, Inspector General
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 10, 2023

FILED WITH LRC: March 15, 2023 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 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 May 15, 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 May 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kara Daniel; Stephanie Brammer-Barnes; Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the nonsubstantive review of certificate of need applications. Nonsubstantive review is an expedited review process granted to certain applications pursuant to KRS 216B.095. This administrative regulation expands upon the types of applications that qualify for nonsubstantive review per the statute.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(18), 216B.040, and 216B.095.

(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 adding types of certificate of need applications that qualify for nonsubstantive review status, setting forth the procedure for granting nonsubstantive review status, and setting forth the procedure for affected parties to request a hearing to dispute the review status or application.

(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 adding types of certificate of need applications that qualify for nonsubstantive review status, setting forth the procedure for granting nonsubstantive review status, and setting forth the procedure for affected parties to request a hearing to dispute the review status or application.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds the following types of certificate of need applications to those that are granted nonsubstantive review status:

1. Applications by licensed hospitals to convert existing acute care beds to psychiatric beds for adult patients if certain criteria are met;
2. Applications by a licensed hospital to provide megavoltage radiation therapy;
3. Applications to provide positron emission tomography services;
4. Applications to provide magnetic resonance imaging services; and

5. Applications by a licensed acute care hospital, critical access hospital, or nursing facility proposing to establish or expand a home health service to serve patients discharged from its facility.

FISCAL NOTE

(b) The necessity of the amendment to this administrative regulation: This amendment is being proposed pursuant to KRS 216B.095(3)(f), which permits the cabinet to grant nonsubstantive review status to a certificate of need application in accordance with circumstances prescribed by the cabinet via administrative regulation. These changes were requested by providers to allow them to add needed health care services more quickly and efficiently in response to their patient's changing needs. This amendment is needed to expand access to health services throughout the state, including in rural areas, to enhance immediate access to resources.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 216B.095(3)(f), which permits the cabinet to grant nonsubstantive review status to a certificate of need application in accordance with circumstances prescribed by the cabinet via administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing the procedures for review of certificate of need applications granted nonsubstantive review status.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities that submit certificate of need applications subject to the nonsubstantive review process. The number of entities that submit certificate of need applications subject to nonsubstantive review varies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will permit nonsubstantive review of certificate of need applications for the applicants and healthcare services added in Section 2(3)(h) – (l) of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The certificate of need application filing fee is the same for nonsubstantive review and formal review and is established in a separate administrative regulation, 900 KAR 6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment will help improve access to health care services by making it easier to obtain a certificate of need to provide these services. This will increase access to services that are closer to home for many patients, particularly in rural areas of the state.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is used as certificate of need applications are reviewed under a formal review process (900 KAR 6:070) or nonsubstantive review process (this administrative regulation). The list of applications granted nonsubstantive review is being amended to add two (2) new categories.

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects entities that are subject to the certificate of need program's nonsubstantive review process. This administrative regulation also impacts the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(8), 216B.040, 216B.095

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**PERSONNEL CABINET
(Repealer)**

101 KAR 2:181. Repeal of 101 KAR 2:180.

RELATES TO: KRS 18A.110(7)(j)
STATUTORY AUTHORITY: KRS 18A.110(7)(k)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(k) authorizes the Secretary of Personnel to promulgate administrative regulations consistent with the provisions of KRS Chapter 18A. This administrative regulation repeals 101 KAR 2:180, which has been replaced by 101 KAR 2:190, Employee performance management system.

Section 1. 101 KAR 2:180, Employee performance evaluation system, is hereby repealed.

GERINA D. WHETHERS, Secretary

APPROVED BY AGENCY: March 14, 2023

FILED WITH LRC: March 15, 2023 at 9:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2023, at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rosemary Holbrook

Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 101 KAR 2:180, Employee performance evaluation system.

(b) The necessity of this administrative regulation: This administrative regulation eliminates an outdated regulation. It has been replaced with 101 KAR 2:190, Employee performance management system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.110(7)(k) authorizes the Secretary of Personnel to promulgate administrative regulations consistent with the provisions of KRS Chapter 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation eliminates an outdated regulation. It has been replaced with 101 KAR 2:190, Employee performance management system.

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

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative

regulation: NA

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees with status and the agencies in which they serve are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue to any entity identified in question (3).

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

(a) Initially: This regulation is not anticipated to generate any new costs.

(b) On a continuing basis: This regulation is not anticipated to generate any new costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation is not anticipated to generate any new costs.

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

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

(9) TIERING: Is tiering applied? No. This regulation treats all impacted employees the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All KRS Chapter 18A classified employees with status and the agencies in which they serve are affected by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110(7)(k)

(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? None

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

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: NA

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None

(c) How much will it cost the regulated entities for the first year? None

(d) How much will it cost the regulated entities for subsequent years? None

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

Cost Savings (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: NA

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

**GENERAL GOVERNMENT CABINET
Department for Local Government
(New Administrative Regulation)**

109 KAR 17:010. County attorney annual settlement.

RELATES TO: KRS 69.370, 64.830

STATUTORY AUTHORITY: KRS 69.370(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 69.370(3) requires the Department for Local Government to promulgate administrative regulations under KRS Chapter 13A to provide standardized forms for a county attorney in preparing the settlements required under this section and KRS 64.830.

Section 1. Applicability. Beginning on July 1, 2023, a county attorney currently in office shall file an annual settlement, as required by KRS Chapter 69.

Section 2. Incorporation by Reference.

(1) The "County Attorney Settlement Form", March 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Local Government, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. 109 KAR 17:010

DENNIS KEENE, Commissioner

APPROVED BY AGENCY: March 15, 2023

FILED WITH LRC: March 15, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 24, 2023, at 10:00 a.m. at 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by May 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 cancelled. 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 May 31, 2023, at 11:59 p.m. 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: Matt Stephens, Executive Director, Department for Local Government, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601; phone 502-564-0318; email Matt.Stephens@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Matt Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides standardized forms for a county attorney in preparing the settlements required under KRS 69.370 and KRS 64.830.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide an accounting of all funds received, disbursed, or held by the county attorney in his or her official capacity during any portion of the fiscal year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 69.370(3) by providing standardized forms for a county attorney in preparing the settlements required under KRS 69.370 and KRS 64.830.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will assist in the effective administration of the statutes by providing an accounting of all funds received, disbursed, or held by the county attorney in his or her official capacity during any portion of the fiscal year.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation and will not change any existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation and will not change any existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation and will not change any existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation and will not change any existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All county attorney offices will be impacted by the implementation of this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The county attorney will be required to use the incorporated forms when providing an accounting, as required by KRS.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administrative and financial expenses are estimated to be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of the administrative regulation include ensuring the Prosecutors Advisory Council, county fiscal court, and successor to the county attorney office

receive a standardized accounting of all funds.

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

(a) Initially: The expenses incurred by DLG will be minimal.

(b) On a continuing basis: The expenses incurred by DLG will be minimal.

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

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

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

(9) TIERING: Is tiering applied? 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? This administrative regulation will impact local government, specifically the county attorney offices.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 69.370(3) requires the DLG to promulgate administrative regulations to provide standardized forms for a county attorney to complete annual accounting of funds.

(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 administrative regulation will have minimal impact on the generation of revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will have minimal impact on the generation of revenue.

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

(d) How much will it cost to administer this program for subsequent years? The cost to administer this program will be minimal.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: At this time, it is unknown whether any, if at all, revenue will be generated or expended by the implementation of this regulation.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None anticipated.

(c) How much will it cost the regulated entities for the first year? The cost will be minimal.

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

years? The cost will be minimal.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: At this time, it is unknown whether any, if at all, revenue will be generated or expended by the implementation of this regulation.

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

BOARDS AND COMMISSIONS

Board of Chiropractic Examiners (New Administrative Regulation)

201 KAR 21:105. Telehealth chiropractic services.

RELATES TO: KRS 312.019, 312.220, 211.332, 211.334, 211.335, 211.336

STATUTORY AUTHORITY: KRS 312.220, 211.332, 211.336.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.220(2) requires the board to promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to: (a) Prevent abuse and fraud through the use of telehealth services; (b) Prevent fee-splitting through the use of telehealth services; and (c) Utilize telehealth in the provision of chiropractic services and in the provision of continuing education. Additionally, KRS 312.220(1) requires that a treating chiropractor utilizing telehealth ensures the patient's informed consent and maintains confidentiality. KRS 211.336 establishes requirements for state agencies that promulgate administrative regulations relating to telehealth. This administrative regulation establishes the requirements for telehealth for chiropractic services.

Section 1. Definitions.

(1) "Client" means the person receiving the services of the chiropractor.

(2) "Telehealth" is defined by KRS 312.220(3) and KRS 211.332(5).

(3) "Telehealth chiropractic services" means the practice of chiropractic as defined by KRS 312.220(3), between the chiropractor and the patient that is provided, using:

(a) Interactive audio, video, or other electronic media; or

(b) Electronic media for diagnosis, consultation, treatment, and transfer of health or medical data.

Section 2. Client Requirements. A practitioner-patient relationship may commence via telehealth. An in-person initial meeting shall not be required unless the provider determines it is medically necessary to perform those services in person as set forth in KRS 211.336(2)(a). A licensed health care practitioner may represent the client at the initial meeting. A credential holder using telehealth to deliver chiropractic services shall, upon initial contact with the client:

(1) Make reasonable attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically such as by the use of a telephone number or mailing address;

(3) Provide to the client alternative means of contacting the credential holder other than electronically such as by the use of a telephone number or mailing address;

(4) Provide contact methods of alternative communication the credential holder shall use for emergency purposes such as an emergency on call telephone number;

(5) Document if the client has the necessary knowledge and skills to benefit from the type of telehealth provided by the credential holder;

(6) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications;

(7) In accordance with KRS 312.220(1)(a) and 900 KAR 12:005, Section 2(3), obtain the informed consent of the client; and

(8) Inform the client in writing about:

(a) The limitations of using technology in the provision of telehealth chiropractic services;

(b) Potential risks to confidentiality of information, or inadvertent access of protected health information, due to technology in the provision of telehealth chiropractic services;

(c) Potential risks of disruption in the use of telehealth chiropractic services;

(d) When and how the credential holder will respond to routine electronic messages;

(e) In what circumstances the credential holder will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the credential holder;

(g) How communications can be directed to a specific credential holder;

(h) How the credential holder stores electronic communications from the client; and

(i) How the credential holder may elect to discontinue the provision of services through telehealth.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A credential holder using telehealth to deliver telehealth chiropractic services shall:

(1) Limit the practice of telehealth chiropractic services to the area of competence in which proficiency has been gained through education, training, and experience;

(2) Maintain current competency in the practice of telehealth chiropractic through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

(3) Document the client's presenting problem, purpose, or diagnosis;

(4) Follow the record-keeping requirements of 201 KAR 21:100;

(5) Use methods for protecting health information, which shall include authentication and encryption technology as required by KRS 312.220(1)(b) and 211.332(5)(c); and

(6) Ensure that confidential communications obtained and stored electronically shall not be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver telehealth chiropractic services shall:

(1) Maintain patient privacy and security in accordance with 900 KAR 12:005, Section 2(2);

(2) Comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities;

(3) Be licensed or otherwise authorized by law to practice chiropractic where the client is physically present; and

(4) Comply with applicable state laws and regulations in the event the credential holder provides telehealth services from a location outside of Kentucky.

Section 5. Representation of Services and Code of Conduct. A credential holder using telehealth to deliver chiropractic services or who practices telehealth chiropractic:

(1) Shall not engage in false, misleading, or deceptive advertising of telehealth chiropractic services;

(2) Shall comply with the Code of Ethics, 201 KAR 21:015;

(3) Shall not allow fee-splitting through the use of telehealth chiropractic services in compliance with KRS 312.220(2)(b); and

(4) Shall conform to the statutes and regulations governing the provision of chiropractic services in Kentucky and in consideration

of the scope of practice relating to chiropractic.

Section 6. A person holding a license as a chiropractor who provides telehealth services to a person physically located in Kentucky shall be subject to the laws and regulations governing chiropractic services in Kentucky.

DR. JAMES ENGLAND, Chair

APPROVED BY AGENCY: March 13, 2023

FILED WITH LRC: March 14, 2023 at 1:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 25, 2023 at 12:00 noon EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference: Join from PC, Mac, Linux, iOS or Android:

<https://us06web.zoom.us/j/82428127008?pwd=blg4a3hSZVkvTnFtUnpMWDFaKkY5QT09> // Password: 059844 // Or Telephone: Dial: USA 713 353 0212; USA 8888227517 (US Toll Free) // Conference code: 446599. Individuals interested in attending this hearing shall notify this agency in writing by May 20, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 11:59 pm on May 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: Clayton Patrick, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (502) 782-0562 (office), fax (502) 564-4818, email Clayton.Patrick@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clayton Patrick

(a) What this administrative regulation does: This administrative regulation establishes the requirements for telehealth for chiropractic services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that licensees understand the requirements for rendering services remotely via telehealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(1) authorizes the board to promulgate administrative regulations related to the practice of chiropractic, and KRS 312.220(2) requires the Board to promulgate administrative regulations related to telehealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for licensees to provide services via telehealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: See (2)(a).

(c) How the amendment conforms to the content of the authorizing statutes: See (2)(a).

(d) How the amendment will assist in the effective administration of the statutes: See (2)(a).

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: This regulation will affect any of the 916 Active and 131 Inactive licensees who choose to provide telehealth chiropractic services.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees must now abide by the new regulations when providing telehealth chiropractic services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs unknown but include those associated with technology and safeguards needed for telehealth in order to maintain patient confidentiality and compliance with state and federal law.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will more clearly understand which services they can provide using telehealth, and the standards that are required, which may allow them to expand their services.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board is funded through license fees in a restricted fund. However, there is no cost to the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase fees to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted 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 Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.019(1) and KRS 312.220(2).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will generate no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 is indeterminable, if any.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings is indeterminable, if any.

(c) How much will it cost the regulated entities for the first year? The cost of obtaining and/or updating technical equipment to comply with state and federal requirements is indeterminable and will vary among licensees depending on current data systems.

(d) How much will it cost the regulated entities for subsequent years? The cost of obtaining and/or updating technical equipment to comply with state and federal requirements is indeterminable and will vary among licensees depending on current data systems.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: The cost of obtaining and/or updating technical equipment to comply with state and federal requirements is indeterminable and will vary among licensees depending on current data systems.

(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 (New Administrative Regulation)

301 KAR 1:001. Definitions for 301 KAR Chapter 1.

RELATES TO: KRS 150.010, 150.025

STATUTORY AUTHORITY: 150.025(1)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(h) requires the department to promulgate administrative regulations to carry out the purpose of the chapter. This administrative regulation establishes definitions for terms used in 301 KAR Chapter 1.

Section 1. Definitions.

(1) "Adjacent landowner" means the owner of real property that shares a common boundary with department property.

(2) "Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are fishing license exempt as established in KRS 150.170.

(3) "APHIS" means U.S. Department of Agriculture Animal and Plant Health Inspection Service.

(4) "APHIS-approved laboratory" means a laboratory authorized by a state, tribal, or federal primacy authority to analyze aquatic animal health and perform assays for the detection of the VHS virus.

(5) "Aquarium species" means the species of fish that are legally sold in the pet and ornamental trade business and not stocked into waters of the Commonwealth.

(6) "Aquatic organisms" means fish, frog, crayfish, and other aquatic vertebrate and invertebrate.

(7) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(8) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(9) "Bar mesh size" means the distance between two (2) knots

on a line of a net.

(10) "Boat dock" means a privately owned floating or fixed structure that is used by an adjacent landowner to moor a boat on department property.

(11) "Boat dock tag" means a metal tag provided by the department that has a unique combination of letters and numbers and is permanently affixed to an approved boat dock so that it is visible from the lake.

(12) "Boating access area" means property owned or managed by the department and identified by signs as a public facility for launching and retrieving boats, including:

(a) Ramps, parking lots, courtesy docks, and access roads; and

(b) A zone extending fifty (50) feet into the water adjacent to the department property described in paragraph (a) of this subsection.

(13) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.

(14) "Buffer zone" means the area from the lake pool level of Cedar Creek Lake to the marked boundary.

(15) "Buyer's permit" means a Commercial Roe-bearing Fish Buyer's Permit.

(16) "By-catch" means any fish that is not an invasive carp or scaled rough fish.

(17) "Camp" means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy.

(18) "Catfish" means a blue catfish, channel catfish, or flathead catfish.

(19) "Certified VHS free facility" means a fish-rearing facility that has been certified VHS free by an APHIS approved laboratory.

(20) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(21) "Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license.

(22) "Commercial gear tag" means a metal tag provided by the department that is attached to legal commercial fishing gear as established in 301 KAR 1:146.

(23) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.

(24) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily limit and replace it with another fish of the same species.

(25) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily limit and replacing it with another fish of the same species.

(26) "Daily limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(27) "Department property" means lands or waters controlled by the department through ownership, lease, license, easement, or cooperative agreement at department-owned lakes.

(28) "Different body of water" means a body of water that is separate and not contiguous to another body of water, including a man-made reservoir that is separated from a downstream river by a dam, but does not include a river, stream, or creek that is separated by a low-level dam.

(29) "Diploid grass carp" means a fish of the genus and species *Ctenopharyngodon idella* that is reproductively fertile and has not been genetically altered and therefore has the normal set of somatic chromosomes as determined by blood sample.

(30) "Existing structure" means an exempted access or nonaccess structure built on department property prior to April 2, 2010.

(31) "Flag net" means a gill or trammel net that is anchored on one (1) end, with the other end of the net unanchored, allowing this end of the gill or trammel net to float freely.

(32) "Harvester permit" means a Commercial Roe-bearing Fish Harvester's Permit.

(33) "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

(34) "Immediate family" means a person's spouse, mother,

father, daughter, brother, sister, grandparent, or son.

(35) "Invasive carp" means:

(a) Bighead carp *Hypophthalmichthys nobilis*;

(b) Black carp *Mylopharyngodon piceus*;

(c) Grass carp *Ctenopharyngodon idella*; or

(d) Silver carp *Hypophthalmichthys molitrix*.

(36) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(37) "Live bait" means the organisms established in paragraphs (a) through (h) of this subsection if they are alive:

(a) Live bait fish;

(b) Crayfish;

(c) Salamander;

(d) Frog, except bullfrog;

(e) Tadpole;

(f) Native lamprey;

(g) Asiatic clam (Genus *Corbicula*); or

(h) Other aquatic invertebrate organisms, except for mussel.

(38) "Live bait fishes" means:

(a) Rough fish, except invasive carp and federally threatened or endangered species, as established in 50 C.F.R. 17.11; or

(b) Redear sunfish less than six (6) inches in length.

(39) "Lower Ohio River Trophy Catfish" means, for the area downstream of Cannelton Lock and Dam in the Ohio River and its tributaries open to commercial fishing:

(a) Blue or flathead catfish that is a minimum of forty (40) inches in length; or

(b) Channel catfish that is a minimum of thirty (30) inches in length.

(40) "Lower Ohio River Trophy Catfish Harvest Permit" means a permit that allows a commercial fisherman to harvest Lower Ohio River Trophy Catfish.

(41) "Normal pool" means a water level equal to the elevation of the lake's principal spillway.

(42) "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(43) "Pay lake" means a privately-owned, impounded body of water where a daily fee is charged to fish and is open to the public.

(44) "Pay lake operator" means a person who holds a valid pay lake license, as established in 301 KAR 3:022.

(45) "Permanent dwelling" means a private residence on an adjacent landowner's property that is both fixed in location and of durable permanent construction, but does not include tents, motorized vehicles, trailers, camp trailers, or any type of interim construction or residence.

(46) "Pneumatic arrow launching device" means a device designed to fire an arrow using a compressed air cartridge.

(47) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(48) "Processed fish" means a fish that has been gutted, with the head removed.

(49) "Rebuild" means to totally reconstruct.

(50) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(51) "Restricted water" means those areas, as established in 301 KAR 1:140, 1:146, 1:150, and 1:155, where:

(a) Commercial fishing is prohibited;

(b) Commercial fishing with gill or trammel nets is prohibited; or

(c) Commercial fishing with gill or trammel nets of restricted net mesh size is prohibited.

(52) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(53) "Roe-bearing Fish Buyer's Permit" means a permit issued by the department that entitles the permit holder to buy roe-bearing species or roe in accordance with this administrative regulation.

(54) "Roe-bearing Fish Harvester's Permit" means a permit issued by the department to a licensed commercial fisherman that entitles the permit holder to harvest and sell roe-bearing species in accordance with this administrative regulation.

(55) "Rough fish" is defined by KRS 150.010(37).

(56) "Scaled rough fish" means any scaled fish that is not an

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invasive carp, sport fish as established in 301 KAR 1:060, roe bearing fish, or a species ineligible for commercial harvest as established in 301 KAR 1:155.

(57) "Shad" means a live gizzard shad or threadfin shad.

(58) "Shoreline use permit" means a permit issued by the department that allows an adjacent landowner to construct a new access structure or to keep or rebuild an existing structure on department land.

(59) "Single hook" means a hook with no more than one (1) point.

(60) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(61) "Slot limit" means a size range of a fish species that shall be released by an angler.

(62) "Slow speed" means speed attained with the throttle of the motor set at its slowest forward position.

(63) "Speeding and reckless operation" means any operation of a boat in any area of a lake that may endanger other persons or craft using the lake by intimidation, direct contact or by waves created by the speed or reckless operation of a boat.

(64) "Sport fish" means those species established in 301 KAR 1:060.

(65) "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes a person who is license exempt pursuant to KRS 150.170.

(66) "Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(67) "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

(68) "Traditional fishing methods" means the act of taking or attempting to take for non-commercial purposes any freshwater fish species using:

(a) Hook and line in hand; or

(b) Rod in hand.

(69) "Triploid grass carp" means a fish of the genus and species *Ctenopharyngodon idella* that is reproductively sterile because it has been genetically altered to have an additional or extra set of somatic chromosomes as determined by blood sample.

(70) "Trophy catfish" means a:

(a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or

(b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

(71) "Turtle" means a:

(a) Common snapping turtle (*Chelydra serpentina*);

(b) Smooth softshell turtle (*Apalone mutica*); or

(c) Spiny softshell turtle (*Apalone spinifer*).

(72) "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

(73) "Unprocessed fish" means the whole fish prior to being processed.

(74) "Unprocessed roe" means roe that has been removed from a roe-bearing fish by a food processing plant prior to its sale at a roe-bearing fish buyer's facility.

(75) "VHS" means Viral Hemorrhagic Septicemia, a disease of fish.

(76) "VHS positive state" means any state in the United States, or any Canadian province, listed on the APHIS Web site www.aphis.usda.gov as being positive for Viral Hemorrhagic Septicemia (VHS).

(77) "VHS-regulated fish species" means any species of fish deemed susceptible to VHS and listed on the APHIS Web site at www.aphis.usda.gov.

(78) "Water supply lake" means a lake that:

(a) Is owned by a municipality or other public water supply entity;

(b) Provides potable water supply for the public;

(c) Is not owned by the state; and

(d) Is not managed by the department.

(79) "Whip set" means a gill net or a trammel net rigged so it is free-floating.

RICH STORM, Commissioner

APPROVED BY AGENCY: March 14, 2023

FILED WITH LRC: March 14, 2023 at 10:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 31, 2023, at 10:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

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 definitions for terms used in 301 KAR Chapter 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to avoid confusion when interpreting the meaning of terms used in 301 KAR Chapter 1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(h) requires the department to promulgate administrative regulations to carry out the purpose of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing definitions for the terms used in 301 KAR Chapter 1, misinterpretation of the regulations should be minimized.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals reading this regulation or any regulation in 301 KAR Chapter 1 will be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will need to be taken to comply with this regulation. This regulation simply provides definitions for terms in 301 KAR Chapter 1.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All individuals interpreting regulations within 301 KAR Chapter 1 will have a better understanding of the terms and all definitions will be located in one regulation.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: There will be no cost initially

(b) On a continuing basis: There will be no cost on a continuous 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: 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: No direct or indirect fees will be established.

(9) TIERING: Is tiering applied? (Explain why or why not) No tiering is applied. This regulation applies to all individuals, businesses, and organizations impacted by the regulations in 301 KAR Chapter 1.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This regulation will not have a major economic impact on state or local government or regulated entities.

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 Fisheries and Law Enforcement will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 150.025 (1)(h)

(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 from this administrative regulation in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated from this administrative regulation in the subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no 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 costs to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings outside of preventing fines assessed to users due to confusion in interpreting the terms found in 301 KAR Chapter 1.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings except as stated in (4)(a) above.

(c) How much will it cost the regulated entities for the first year? There will be no cost to regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to regulated entities for subsequent years.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of March 7, 2023

Call to Order and Roll Call

The March meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, March 7, 2023 at 8:00 a.m. in Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken.

Present were:

Members: Senator Stephen West, Co-Chair; Representative Derek Lewis, Co-Chair; Senators Julie Raque Adams 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: Mark Bowman, Dwayne Edwards, Tamara Reid-McIntosh, Juan Renaud, Department of Veterans' Affairs; Graham Gray, Farrah Petter, Auditor of Public Accounts; Carrie Bass, Jessica Beaubien, Kentucky Retirement Systems; Eden Davis, Christopher Harlow, Board of Pharmacy; Cory Meadows, Kentucky Medical Association; Ben Mudd, Kentucky Pharmacists Association; John Park, Michelle Shane, Board of Veterinary Examiners; Stephen Curley, Board of Physical Therapy; Marc Kelly, Board of Social Work; Eddie Sloan, John Wood, Board of Emergency Medical Services; Brian Clark, Steven Fields, Jenny Gilbert, Department of Fish & Wildlife Resources; Amy Barker, Amelia Howell, Brandon Lynch, Department of Corrections; Todd Allen, Matthew Courtney, Micki Ray, Matt Ross, Department of Education; Oran McFarlan, Matt Lynch, Office of Unemployment Insurance; Abigail Gall, Shaun Orme, Department of Insurance; Julie Brooks, Department for Public Health; Kara Daniel, Adam Mather, Office of Inspector General; Alex Kuhn, American Heart Association; Lisa Lee, Johnathan Scott, Department for Medicaid Services.

Administrative Regulations Reviewed by this Subcommittee:

The subcommittee determined that the following emergency administrative regulation was deficient pursuant to KRS 13A.030(2)(a):

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. Ben Mudd, executive director, Kentucky Pharmacists Association, appeared in support of this administrative regulation. Cory Meadows, director of advocacy, Kentucky Medical Association, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Mr. Harlow stated that the board had been working with Kentucky Medical Association stakeholders to reach an agreement on this administrative regulation.

In response to a question by Co-Chair West, Mr. Mudd stated that the Kentucky Pharmacists Association supported board-authorized protocols and had also been working with the Board of Pharmacy regarding this administrative regulation. Pharmacists were well educated and qualified to provide protocol-driven care. Pharmacists were trained how to assess patients and under what circumstances it was appropriate to refer a patient to a primary care physician or to an emergency department. The intent of the board-authorized protocols was to provide safe and efficient care to the appropriate patients. Each protocol included exclusion and inclusion criteria in order to determine which patients were appropriate for pharmacy treatment and which patients should be referred for care from other types of providers. To date, the board had not reported any complaints pertaining to safety related to care by a pharmacist. These protocols were collaborative and required to be signed by a licensed prescriber.

In response to a question by Co-Chair West, Mr. Meadows stated that Kentucky Medical Association (KMA) had been working with the Board of Pharmacy to address concerns about board-authorized protocols. KMA previously expressed concerns regarding the removal of training and education provisions, as well as significant concerns regarding removing the list of conditions applicable to protocols. KMA also had process and transparency concerns. While the Board of Pharmacy seemed willing to amend the ordinary administrative regulation that was companion to this emergency version, there were lingering concerns that were more substantive. KMA preferred that the protocols be established statutorily in order to prevent future process concerns. KMA considered some of the conditions applicable for protocols inappropriate for treatment at the pharmacy counter, and physicians should have input in the protocols and the protocol process.

In response to a question by Co-Chair Lewis, Mr. Harlow stated

that pharmacists were federally authorized to prescribe Paxlovid. The Department for Medicaid Services (DMS) contacted the board to request amendments to facilitate that process. It had been prohibited for a pharmacist to both prescribe and dispense the prescription; therefore, DMS requested an amendment to establish a protocol pertaining to Paxlovid. The emergent nature of the situation established the necessity for an emergency administrative regulation; however, the board determined to only establish the Paxlovid-related protocol and not others until the ordinary administrative regulation became effective.

In response to questions by Co-Chair West, Mr. Meadows stated that KMA had immediate concerns about this emergency administrative regulation and more comprehensive concerns about the overall protocol process. In the short term, the goal was to reinstate the education and training components and limit new protocols to Paxlovid only. The registry and protocol committee should be retained. In the long term, these protocols should not be established through administrative regulation and, instead, should be statutorily established. Stakeholder meetings about this matter had resulted in some progress toward agreement on some specific matters.

In response to a question by Senator Raque Adams, Mr. Meadows stated that this emergency administrative regulation did not have conditions established for the protocols and did not have education or training provisions.

Co-Chair West made a motion, seconded by Senator Raque Adams, to find this emergency administrative regulation deficient. A roll call vote was conducted and, with six (6) votes for deficiency and one (1) vote against deficiency, this emergency administrative regulation was found deficient.

In response to a question by Ms. Davis, Co-Chair West stated that this subcommittee found this emergency administrative regulation deficient pursuant to KRS 13.030(2)(a)1., 6., 8., and 11.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 4 was added to this administrative regulation to reflect the finding of deficiency.

Administrative Regulations Reviewed by this Subcommittee:

OFFICE OF THE GOVERNOR: Department of Veterans Affairs: State Veteran's Nursing Home

017 KAR 003:020. Charges for room and board, goods, and services at state veterans' nursing homes. Mark Bowman, executive director; Tamara Reid-McIntosh, executive director; and Juan Renaud, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY

AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Auditor of Public Accounts: Audits

045 KAR 001:030. Audits of sheriffs' tax settlements. Graham Gray, general counsel, and Farrah Petter, assistant state auditor, represented the auditor.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 001:001. Definitions for Title 105 of the Kentucky Administrative Regulations. Carrie Bass, staff attorney supervisor, and Jessica Beaubien, policy specialist, represented the systems.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and 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.

105 KAR 001:365. Hybrid cash balance plan.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 11 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 Veterinary Examiners

201 KAR 016:550. Authorization for animal control agencies to apply for restricted controlled substances certificate from DEA. Dr. John Park, veterinarian and board member, and Michelle Shane, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:552. Responsibilities for certified animal control agencies; limitations on drugs.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 7, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:560. Certification as an animal euthanasia specialist.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, Section 9, 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 016:562. Duties and responsibilities of an animal euthanasia specialist.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:572. Certificate renewal for animal control agencies and animal euthanasia specialists; renewal notice.

A motion was made and seconded to approve the following

amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:610. Procedures for grievances, investigations, and administrative charges.

Board of Physical Therapy

201 KAR 022:170. Physical Therapy Compact Commission. Stephen Curley, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Social Work

201 KAR 023:051. Renewal, termination, reinstatement of license. Marc Kelly, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Emergency Medical Services

202 KAR 007:201. Emergency medical responders. Eddie Sloan, interim executive director, and John Wood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 5, 6, 8, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 007:301. Emergency medical technician.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 4, 6, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 007:330. Advanced emergency medical technician.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4, 5, 10, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Steven Fields, staff attorney, and Brian Clark, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Hunting and Fishing

301 KAR 003:120. Commercial nuisance wildlife control.

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, 8, 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.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 006:040. Kentucky State Penitentiary. Amy Barker, assistant general counsel, and Brandon Lynch, branch manager, represented the office.

A motion was made and seconded to approve the following amendments: to amend the TITLE, Section 1, and the material incorporated by reference to: (1) align provisions with other departmental policies; and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND LABOR CABINET: Department of Education: Charter Schools

701 KAR 008:010. Charter school student application, lottery, and enrollment. Todd Allen, general counsel; Matthew Courtney, policy advisor; Micki Ray, chief academic officer; and Matt Ross, policy advisor, represented the department.

In response to a question by Co-Chair West, Mr. Allen stated that 701 KAR 008:010, 008:020, 008:030, 008:040, and 008:050 were in response to House Bill 9 from the 2022 Regular Session of the General Assembly.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

701 KAR 008:020. Evaluation of charter school authorizers.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

701 KAR 008:030. Charter school appeal process.

701 KAR 008:040. Conversion charter school petition, conversion, and operation.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

701 KAR 008:050. Charter school funding.

Office of Instruction

704 KAR 003:303. Required academic standards.

Academic Standards

704 KAR 008:120. Required Kentucky academic standards for science.

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.

Exceptional and Handicapped Programs

707 KAR 001:002. Definitions.

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.

Office of Unemployment Insurance: Unemployment Insurance

787 KAR 001:090E. Unemployed worker's reporting requirements. Matt Lynch, staff attorney, and Oran McFarlan, deputy general counsel, represented the office.

787 KAR 001:100E. Week of unemployment defined.

PUBLIC PROTECTION CABINET: Department of Insurance: Authorization of Insurers and General Requirements

806 KAR 003:250. Cybersecurity reporting procedures. Abigail Gall, executive director, and Shaun Orme, executive advisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Health Services and Facilities

902 KAR 020:470. Kentucky heart attack response and treatment recognition process. Julie Brooks, regulation coordinator, represented the department.

Office of Inspector General

902 KAR 020:490E. Rural emergency hospitals. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the office.

Department for Medicaid Services

907 KAR 001:038E. Hearing Program coverage provisions and requirements. Lisa Lee, commissioner, and Jonathan Scott, regulation coordinator, represented the department.

Co-Chair Lewis stated that, for clarity, nothing seemed to prohibit the cabinet from negotiating new reimbursement rates. Ms. Lee stated that, regarding dental reimbursement rates, negotiated reimbursement rate increases were based on an expected increase in services. Reimbursement rates were targeted to services that would most benefit recipients and prevent disease progression. The cabinet was considering the options for moving forward after this administrative regulation and the other companion administrative regulations in this package were found deficient.

In response to questions by Representative Frazier Gordon, Ms. Lee stated that this administrative regulation pertained to hearing tests and hearing technology. The economic data provided in the department's analysis was based only on state contributions, which were approximately twenty-five (25) percent of total costs. Federal contributions were approximately seventy-five (75) percent of total costs. Mr. Scott stated that funding was complex, including federal and state funding, negotiated reimbursement rates, and capitation. Ms. Lee stated that the department was acting strategically to develop rates that were intended to have the biggest positive impact for recipients, rather than raising reimbursement rates across the board.

In response to questions by Co-Chair West, Ms. Lee stated that reimbursement rates were related to administrative regulations but were not directly adjusted through the administrative regulation process. Recent rate increases were negotiated based on the expectation of expanded services. These administrative regulations were intended to assist employment opportunities and to prevent progression of disease, thus creating long-term cost savings. Mr. Scott stated that, if these administrative regulations became null, void, and unenforceable, there were services that would no longer be covered; therefore, those reimbursement rates would essentially be moot.

Co-Chair West stated that there did not seem to be impediments to the department filing replacement emergency administrative regulations to address this subject if these administrative regulations became null, void, and unenforceable. Legislators were available to further discuss this matter if the department so chose.

Pursuant to KRS 13A.030(2)(a), this administrative regulation was found deficient at the February 14, 2023 meeting of this subcommittee.

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The following administrative regulations were deferred or removed from the March 7, 2023, subcommittee agenda:

DEPARTMENT OF LAW: Kentucky Opioid Abatement Advisory Commission

040 KAR 009:010E. General application procedure.

040 KAR 009:020E. Local government application procedure.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:380. Board authorized protocols.

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.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice: Child Welfare

505 KAR 001:120E. Department of Juvenile Justice Policies and Procedures Manual; Health and Safety Services.

505 KAR 001:140E. Department of Juvenile Justice Policies and Procedures Manual: Detention Services.

EDUCATION AND LABOR CABINET: Department of Education: Academic Standards

704 KAR 008:060. Required academic standards for social studies.

Department of Workplace Standards: Labor Standards; Wages and Hours

803 KAR 001:006. Employer-employee relationship.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: General Provisions

808 KAR 001:170. Licensing and registration.

CABINET FOR HEALTH AND FAMILY SERVICES: Health Services and Facilities

902 KAR 020:480. Assisted living communities.

Controlled Substances

902 KAR 055:110. Monitoring system for prescription controlled substances.

Department for Medicaid Services

907 KAR 001:026E. Dental services' coverage provisions and requirements.

907 KAR 001:082. Coverage provisions and requirements regarding rural health clinic services.

907 KAR 001:632E. Vision program coverage provisions and requirements.

The subcommittee adjourned at 9 a.m. The next meeting of this subcommittee was tentatively scheduled for April 11, 2023, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

HOUSE STANDING COMMITTEE ON TRANSPORTATION
Meeting of February 14, 2023

The House Transportation met on 2/14/23 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on 12/7/2022, pursuant to KRS 13A.290(6):

600 KAR 004:010 and 603 KAR 005:350

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 2/14/23 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON TRANSPORTATION
Meeting of March 1, 2023

The Senate Transportation met on 3/1/23 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on 12/7/2022, pursuant to KRS 13A.290(6):

600 KAR 004:010
603 KAR 005:350

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 3/1/23 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 March 8, 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 March 8, 2023, having been referred to the Committee on March 1, 2023, pursuant to KRS 13A.290(6):

March 1, 2023

201 KAR 002:360 Proposed
201 KAR 002:450 Proposed
201 KAR 008:016 Proposed
201 KAR 008:520 Proposed
201 KAR 008:571 Proposed
201 KAR 008:601 Proposed
201 KAR 009:470 Proposed
201 KAR 020:370 Proposed
907 KAR 001:680 Proposed
907 KAR 003:010 Proposed
907 KAR 020:050 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the March 8, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH SERVICES
Meeting of March 8, 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 March 8, 2023, having been referred to the Committee on March 1, 2023, pursuant to KRS 13A.290(6):

March 1, 2023

201 KAR 002:360 Proposed
201 KAR 002:450 Proposed
201 KAR 008:016 Proposed
201 KAR 008:520 Proposed
201 KAR 008:571 Proposed
201 KAR 008:601 Proposed
201 KAR 009:470 Proposed
201 KAR 020:370 Proposed
907 KAR 001:680 Proposed
907 KAR 003:010 Proposed
907 KAR 020:050 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the March 8, 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

J - 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

J - 15

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

J - 27

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

J - 29

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

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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 <i>Register</i> year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior <i>Registers</i> , please visit our online Administrative Registers of Kentucky .					
SYMBOL KEY:			Am Comments	1243	
*	Statement of Consideration not filed by deadline		200 KAR 017:110E	48 Ky.R. 5	6-2-2021
**	Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))		As Amended	1098	9-14-2021
***	Withdrawn before being printed in Register		Expired		2-27-2022
IJC	Interim Joint Committee		200 KAR 017:111E	49 Ky.R. 247	6-21-2022
(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 002:106E	48 Ky.R. 1997	12-14-2021
			Replaced	2116	6-2-2022
			201 KAR 002:380E	49 Ky.R. 523	8-8-2022
			Withdrawn		3-23-2023
			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
			Withdrawn		3-22-2023
			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
			Expired		10-8-2022
			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
			Replaced	2274	7-20-2022
			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

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Replaced	49 Ky.R. 1062	1-31-2023	902 KAR 002:240E	48 Ky.R. 1476	10-1-2021
503 KAR 001:140E	49 Ky.R. 277	7-13-2022	As Amended	2014	12-9-2021
Replaced	1074	1-31-2023	Expired		6-28-2022
503 KAR 003:130E	49 Ky.R. 732	8-18-2022	902 KAR 002:250E	48 Ky.R. 1477	10-1-2021
505 KAR 001:120E	49 Ky.R. 1567	1-13-2023	Expired		6-28-2022
Am Comments	1886		902 KAR 020:490E	49 Ky.R. 1576	12-29-2022
505 KAR 001:140E	49 Ky.R. 1569	1-13-2023	907 KAR 001:026E	49 Ky.R. 1579	12-29-2022
Am Comments	1888		As Amended	1731	
601 KAR 002:233E	47 Ky.R. 2335	4-12-2021	Am Comments	1890	
Replaced	48 Ky.R. 429	11-30-2021	907 KAR 001:038E	49 Ky.R. 1586	12-29-2022
603 KAR 010:011E	48 Ky.R. 736	7-30-2021		1736	
Expired		4-26-2022	907 KAR 001:065E	49 Ky.R. 288	7-1-2022
701 KAR 008:010E	49 Ky.R. 984	10-13-2022	Replaced	1313	1-12-2023
701 KAR 008:020E	49 Ky.R. 989	10-13-2022	907 KAR 001:632E	49 Ky.R. 1590	12-29-2022
701 KAR 008:030E	49 Ky.R. 998	10-13-2022		1738	
701 KAR 008:040E	49 Ky.R. 1001	10-13-2022	907 KAR 003:160E	49 Ky.R. 1008	9-30-2022
701 KAR 008:050E	49 Ky.R. 1005	10-13-2022	Replaced	1622	2-16-2023
702 KAR 001:192E	48 Ky.R. 1999	12-8-2021	907 KAR 004:020E	49 Ky.R. 532	7-19-2022
Am Comments	2374	2-11-2022	Replaced	1273	1-12-2023
As Amended		3-7-2022	907 KAR 004:030E	49 Ky.R. 535	7-19-2022
Expired		9-4-2022	Replaced	1275	1-12-2023
787 KAR 001:090E	49 Ky.R. 1571	12-22-2022	907 KAR 020:020E	49 Ky.R. 538	7-19-2022
787 KAR 001:100E	49 Ky.R. 1575	12-22-2022	Replaced	648	1-12-2023
787 KAR 001:360E	48 Ky.R. 2937	4-28-2022	907 KAR 020:100E	49 Ky.R. 542	7-19-2022
Replaced	49 Ky.R. 563	12-6-2022	Replaced	651	1-12-2023
800 KAR 001:020E	48 Ky.R. 2174	12-17-2021	907 KAR 023:020E	49 Ky.R. 9	6-1-2022
Am Comments	2554	3-15-2022	Replaced	49 Ky.R. 820	10-26-2022
Expired		9-13-2022	908 KAR 003:010E	48 Ky.R. 2550	2-21-2022
803 KAR 002:182E(r)	47 Ky.R. 2531	5-13-2021	Replaced	49 Ky.R. 370	8-25-2022
	48 Ky.R. 2531	11-2-2021	921 KAR 004:122E	48 Ky.R. 2005	12-1-2021
Expired		2-7-2022	Replaced	2146	6-2-2022
803 KAR 002:321E	48 Ky.R. 2001	11-23-2021	922 KAR 001:360E	48 Ky.R. 2176	12-28-2021
Replaced	2141	7-5-2022	Replaced	3014	7-20-2022
803 KAR 002:330E	48 Ky.R. 753	7-20-2021	922 KAR 002:160E	49 Ky.R.	7-1-2022
Expired		4-16-2022	As Amended	1015	
803 KAR 002:426E	48 Ky.R. 2003	11-23-2021	Replaced	1098	11-15-2022
Replaced	2143	7-5-2022	-----		
803 KAR 025:089E	49 Ky.R. 284	6-24-2022	ORDINARY ADMINISTRATIVE REGULATIONS		
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Replaced	1263	3-7-2023	As Amended	2955	7-19-2022
803 KAR 025:195E	48 Ky.R. 2710	4-15-2022	011 KAR 004:080		
Am Comments	49 Ky.R. 15		Amended	48 Ky.R. 2779	
Replaced	49 Ky.R. 813	1-3-2023	As Amended	49 Ky.R. 309	11-1-2022
803 KAR 025:305E	48 Ky.R. 1473	9-28-2021	Amended	1330	
Expired		6-25-2022	As Amended	1741	
807 KAR 005:001E	49 Ky.R. 734	9-14-2022	011 KAR 005:001		
900 KAR 005:020E	48 Ky.R. 2368	1-27-2022	Amended	49 Ky.R. 1332	
Am Comments	2715	4-15-2022	As Amended	1741	
As Amended	49 Ky.R. 306		011 KAR 005:037	49 Ky.R. 1370	
Replaced	347	8-25-2022	As Amended	1743	
900 KAR 006:075E	49 Ky.R. 1880	3-15-2023	011 KAR 005:145		
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As Amended	49 Ky.R. 306	4-15-2022	As Amended	49 Ky.R. 309	11-1-2022
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900 KAR 012:005E	49 Ky.R. 1882	3-15-2023	As Amended	1744	
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900 KAR 014:010E	49 Ky.R. 640	1-12-2023	Amended	48 Ky.R. 2783	
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As Amended	48 Ky.R. 2952		Amended	48 Ky.R. 2788	
Replaced	49 Ky.R. 308		As Amended	49 Ky.R. 314	11-1-2022
901 KAR 005:120E	49 Ky.R. 286	8-25-2022	011 KAR 022:010	48 Ky.R. 2875	
Am Comments	755	6-30-2022	As Amended	49 Ky.R. 315	11-1-2022
Replaced	1429	1-12-2023	011 KAR 023:010	48 Ky.R. 2877	
902 KAR 002:020E	48 Ky.R. 2939	4-26-2022	As Amended	49 Ky.R. 316	11-1-2022
Replaced	49 Ky.R. 830	11-15-2022	013 KAR 003:050		
902 KAR 002:230E	48 Ky.R. 1474	10-1-2021	Amended	49 Ky.R. 856	
Expired		6-28-2022	As Amended	1411	

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016 KAR 003:080 Amended	48 Ky.R. 2614	10-4-2022	As Amended 101 KAR 003:045 Amended	49 Ky.R. 553	9-27-2022
016 KAR 004:060 Amended	49 Ky.R. 1810		101 KAR 006:020	48 Ky.R. 2878	9-27-2022
016 KAR 009:100 As Amended	49 Ky.R. 479	1-31-2023	102 KAR 001:361 As Amended	49 Ky.R. 1199	
016 KAR 009:110 As Amended	49 Ky.R. 481		105 KAR 001:001 Amended	49 Ky.R.	
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017 KAR 003:020 Amended	49 Ky.R. 1469		105 KAR 001:071	49 Ky.R. 1201	
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030 KAR 002:010 Amended	48 Ky.R. 2111	7-5-2022	As Amended	1900	
As Amended	2558		105 KAR 001:371	49 Ky.R. 1202	
030 KAR 009:010 As Amended	49 Ky.R. 1198		105 KAR 001:390 Amended	48 Ky.R. 2811	9-27-2022
031 KAR 002:030	49 Ky.R. 937		As Amended	49 Ky.R. 317	
031 KAR 003:031 As Amended	48 Ky.R. 3108	1-31-2023	105 KAR 001:411 Am Comments	49 Ky.R. 1203	
031 KAR 004:071 As Amended	48 Ky.R. 3109	1-31-2023	As Amended	1750	
031 KAR 004:131 As Amended	49 Ky.R. 1027	1-31-2023	105 KAR 001:415 Am Comments	49 Ky.R. 485	
031 KAR 004:141 As Amended	48 Ky.R. 3111	1-31-2023	As Amended	1106	3-7-2023
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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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	701 KAR 008:050E		704 KAR 008:120
	701 KAR 008:050		707 KAR 001:002
160.1593	701 KAR 008:010E	160.345	704 KAR 003:535
	701 KAR 008:010	160.346	701 KAR 008:010E
	701 KAR 008:020E		701 KAR 008:010

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160.380	703 KAR 005:270		501 KAR 006:130
161.011	704 KAR 003:535	196.700-196.736	501 KAR 006:150
	701 KAR 008:040E		500 KAR 010:001
161.020	701 KAR 008:040		500 KAR 010:020
161.028	016 KAR 004:060		500 KAR 010:030
	016 KAR 004:060		500 KAR 010:040
	016 KAR 009:100	197	501 KAR 006:040
	016 KAR 009:110		501 KAR 006:050
161.030	016 KAR 004:060		501 KAR 006:080
	016 KAR 009:100		501 KAR 006:130
	016 KAR 009:110		501 KAR 006:150
161.048	016 KAR 009:100	198B.050-198B.090	922 KAR 001:300
	016 KAR 009:110	198B.260	908 KAR 001:374
161.141	701 KAR 008:010E	199	300 KAR 001:020
	701 KAR 008:010		300 KAR 001:021E
	701 KAR 008:020E	199.011	922 KAR 001:100
	701 KAR 008:020		922 KAR 001:300
	701 KAR 008:040E		922 KAR 001:350
	701 KAR 008:040	199.430	922 KAR 001:100
161.200	702 KAR 007:125	199.520	922 KAR 001:100
161.661	102 KAR 001:361E	199.525	922 KAR 001:100
	102 KAR 001:361	199.555	101 KAR 003:045
161.800	701 KAR 008:040E		106 KAR 002:031
	701 KAR 008:040	199.570	922 KAR 001:100
164.518	011 KAR 004:080	199.572	922 KAR 001:100
164.740-164.785	011 KAR 005:001	199.575	922 KAR 001:100
164.744	011 KAR 004:080	199.640	922 KAR 001:300
	011 KAR 005:037	199.642	922 KAR 001:300
	011 KAR 005:145	199.650	922 KAR 001:300
164.748	011 KAR 004:080	199.660	922 KAR 001:300
164.753	011 KAR 004:080	199.670	922 KAR 001:300
	011 KAR 005:037	199.881-888	922 KAR 002:165
	011 KAR 005:145	199.894	922 KAR 002:160
164.7535	011 KAR 004:080	199.8943	922 KAR 002:165
	011 KAR 005:037	199.896	922 KAR 002:160
	011 KAR 005:145	199.898	922 KAR 002:160
164.769	011 KAR 004:080	199.8982	922 KAR 002:160
164.780	011 KAR 004:080	199.899	922 KAR 002:160
164.785	011 KAR 004:080	200.080-200.120	505 KAR 001:120E
164.7889	011 KAR 005:145		505 KAR 001:120
164.7890	011 KAR 004:080		505 KAR 001:140E
164.7894	011 KAR 004:080		505 KAR 001:140
165A.330	806 KAR 009:025	200.460	911 KAR 001:060
174.020	603 KAR 005:350	200.460-200.499	911 KAR 001:085
176.010	603 KAR 005:155		911 KAR 001:090
176.050	603 KAR 005:155	200.654	911 KAR 001:090
176.5061-176.5069	601 KAR 014:050	202A.011	907 KAR 001:044
177.106	603 KAR 005:155		922 KAR 001:330
177.830	603 KAR 005:155	202B.010	922 KAR 001:100
177.990	603 KAR 005:155	205	921 KAR 002:040
186.401	601 KAR 014:050	205.010	910 KAR 001:180
186.450	601 KAR 014:050		921 KAR 002:006
186.531	601 KAR 014:050	205.170	921 KAR 002:060
186.535	601 KAR 014:050	205.175	921 KAR 002:035
189.125	922 KAR 001:300	205.177	921 KAR 002:035
189.281	603 KAR 005:350	205.193	921 KAR 002:050
189.390	603 KAR 005:350	205.200	921 KAR 002:016
189.515	603 KAR 005:350		921 KAR 002:017
189.520	603 KAR 005:350		921 KAR 002:035
194.540	201 KAR 020:620		921 KAR 002:050
194A.005	922 KAR 001:330		921 KAR 002:370
	922 KAR 001:350		921 KAR 002:500
194A.030	911 KAR 001:085		921 KAR 002:520
	911 KAR 001:090	205.201	910 KAR 001:180
194A.060	907 KAR 001:044	205.203	910 KAR 001:180
	921 KAR 002:035	205.2001	921 KAR 002:016
	922 KAR 001:100	205.2003	921 KAR 002:017
	922 KAR 001:350		921 KAR 002:500
	922 KAR 002:160	205.2005	921 KAR 002:006
194A.700	910 KAR 001:180	205.210	921 KAR 002:016
194A.700-194A.729	902 KAR 020:480	205.211	921 KAR 002:016
196	501 KAR 006:040		921 KAR 002:017
	501 KAR 006:050		921 KAR 002:500
	501 KAR 006:080		921 KAR 002:510

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205.232	921 KAR 002:520	206.10	921 KAR 002:035
205.240	921 KAR 002:050	209.005	500 KAR 016:010
205.245	921 KAR 002:035	209.030	910 KAR 001:180
	921 KAR 002:035	209.032	902 KAR 020:480
	921 KAR 002:050	210.366	201 KAR 026:175E
205.455	910 KAR 001:090	210.370-210.485	907 KAR 003:010
205.455-465	910 KAR 001:180	211.090	902 KAR 021:040
205.510	900 KAR 012:005	211.1751	902 KAR 008:160
205.510-205.647	907 KAR 004:020	211.180	902 KAR 021:040
205.520	907 KAR 001:008	211.332	201 KAR 021:105
	907 KAR 001:026E		900 KAR 012:005
	907 KAR 001:026	211.334	201 KAR 021:105
	907 KAR 001:038E	211.335	201 KAR 021:105
	907 KAR 001:038	211.336	201 KAR 021:105
	907 KAR 001:632E	211.340	902 KAR 020:470
	907 KAR 001:632	244.341	902 KAR 020:470
	907 KAR 001:680	211.342	902 KAR 020:470
	907 KAR 003:190	211.350-211.380	922 KAR 001:300
	907 KAR 020:020	211.461-211.466	907 KAR 004:030
	907 KAR 020:050	211.645	911 KAR 001:085
	907 KAR 020:100		911 KAR 001:090
	911 KAR 001:090	211.647	911 KAR 001:085
205.5375	907 KAR 020:050		911 KAR 001:090
205.5510-205.5520	907 KAR 023:020	211.684	922 KAR 001:330
205.557	907 KAR 003:160E	212.230	902 KAR 008:160
	907 KAR 003:160	212.240	902 KAR 008:160
205.559	900 KAR 012:005	212.245	902 KAR 008:160
205.5591	900 KAR 012:005	212.890	902 KAR 008:160
205.560	907 KAR 001:008	213.011	901 KAR 005:130
	907 KAR 003:010	213.046	911 KAR 001:085
	907 KAR 003:160E		911 KAR 001:090
	907 KAR 003:160		921 KAR 001:380
	907 KAR 023:020		921 KAR 001:400
205.5605	907 KAR 003:190	213.081	040 KAR 002:150
205.5606	907 KAR 003:190		901 KAR 005:140
	911 KAR 001:090	213.096	901 KAR 005:130
205.5607	907 KAR 003:190	213.098	040 KAR 002:150
205.561	907 KAR 023:020	213.101	901 KAR 005:120
205.5631	907 KAR 023:020	213.106	901 KAR 005:120
205.5632	907 KAR 023:020	213.991	901 KAR 005:140
205.5634	907 KAR 023:020	214.034	922 KAR 001:300
205.5636	907 KAR 023:020	214.036	922 KAR 001:330
205.5638	907 KAR 023:020		922 KAR 002:160
205.5639	907 KAR 023:020	214.615	201 KAR 008:533
205.565	907 KAR 003:010		201 KAR 008:563
205.592	907 KAR 020:050		201 KAR 008:571
205.622	907 KAR 001:026E	216.2970	911 KAR 001:085
	907 KAR 001:026		911 KAR 001:090
	907 KAR 001:038E	216.380	907 KAR 001:065
	907 KAR 001:038	216.515	902 KAR 020:480
	907 KAR 001:044	216.530	902 KAR 020:480
	907 KAR 001:632E	216.532	902 KAR 020:480
	907 KAR 001:632	216.595	902 KAR 020:480
	907 KAR 023:020	216.718	902 KAR 020:480
205.6316	907 KAR 023:020	216.718-216.728	906 KAR 001:210
205.6317	911 KAR 001:090	216.765	902 KAR 020:480
205.6481-205.6497	907 KAR 004:020	216.785-216.793	906 KAR 001:210
	907 KAR 004:030	216.789	902 KAR 020:480
205.703	921 KAR 002:006	216B.010	900 KAR 006:075E
205.705	921 KAR 001:380		900 KAR 006:075
205.710-205.802	921 KAR 001:380	216B.010-216B.130	900 KAR 005:020E
	921 KAR 001:400		900 KAR 005:020
205.720	921 KAR 002:006	216B.015	900 KAR 006:075E
205.8451	907 KAR 001:026E		900 KAR 006:075
	907 KAR 001:026		902 KAR 020:365
	907 KAR 001:038E		902 KAR 020:480
	907 KAR 001:038	216B.020	902 KAR 020:480
	907 KAR 001:044	216B.040	900 KAR 006:075E
	907 KAR 001:632E		900 KAR 006:075
	907 KAR 001:632	216B.062	900 KAR 006:075E
	910 KAR 001:090		900 KAR 006:075
205.900-205.925	910 KAR 001:090	216B.090	900 KAR 006:075E
205.990	921 KAR 001:400		900 KAR 006:075
205.992	921 KAR 001:380	216B.095	900 KAR 006:075E

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216B.105	900 KAR 006:075	238.505	820 KAR 001:032
	902 KAR 020:365	238.510	820 KAR 001:130
	902 KAR 020:480	238.515	820 KAR 001:005
216B.115	900 KAR 006:075E		820 KAR 001:130
	900 KAR 006:075	238.525	820 KAR 001:005
216B.160	902 KAR 020:480	238.530	820 KAR 001:005
216B.165	902 KAR 020:480		820 KAR 001:025
216B.200-216B.210	902 KAR 020:365		820 KAR 001:130
216B.400	201 KAR 020:411	238.535	820 KAR 001:005
216B.455	900 KAR 006:075E	238.540	820 KAR 001:005
	900 KAR 006:075	238.545	820 KAR 001:032
216B.990	900 KAR 006:075E	238.550	820 KAR 001:025
	900 KAR 006:075	238.555	820 KAR 001:005
217.015	907 KAR 023:020		820 KAR 001:025
217.177	201 KAR 016:550		820 KAR 001:130
217.186	201 KAR 002:360	238.560	820 KAR 001:025
217.211	806 KAR 017:280		820 KAR 001:130
217B	302 KAR 026:010	238.570	820 KAR 001:025
	302 KAR 026:020	238.995	820 KAR 001:130
	302 KAR 026:030	257.160	201 KAR 016:560
	302 KAR 026:040		201 KAR 016:562
	302 KAR 026:050	258.005	902 KAR 008:160
	302 KAR 026:060	258.015	922 KAR 001:350
	302 KAR 026:070	258.035	922 KAR 001:350
	302 KAR 026:080	258.065	301 KAR 002:081
	302 KAR 026:090		301 KAR 002:082
	302 KAR 026:100	258.085	301 KAR 002:081
	302 KAR 027:011		301 KAR 002:082
	302 KAR 028:011	260.020	302 KAR 040:010
	302 KAR 029:011	260.030	302 KAR 040:010
217B.120	302 KAR 026:150	260.038	302 KAR 040:010
	302 KAR 027:011	271B	922 KAR 001:300
	302 KAR 028:011	273.161	922 KAR 001:300
217B.190	302 KAR 029:011	275.206	808 KAR 010:450
217B.515	302 KAR 029:011	278.010	807 KAR 005:001E
217B.520	302 KAR 029:011	278.020	807 KAR 005:001E
217B.525	302 KAR 029:011	278.100	807 KAR 005:001E
217B.545	302 KAR 029:011	278.180	807 KAR 005:001E
217B.550	302 KAR 026:150	278.300	807 KAR 005:001E
	302 KAR 029:011	278.410	807 KAR 005:001E
217B.585	302 KAR 029:011	281.010	907 KAR 004:030
218A.010	902 KAR 055:110	286.4	808 KAR 001:170
218A.180	908 KAR 001:374	286.8-010	808 KAR 001:170
218A.200	902 KAR 020:480	286.8-020	808 KAR 001:170
218A.202	902 KAR 055:110	286.8-030	808 KAR 001:170
	908 KAR 001:374	286.8-032	808 KAR 001:170
218A.205	201 KAR 008:533	286.8-034	808 KAR 001:170
218A.240	902 KAR 055:110	286.8-036	808 KAR 001:170
222.231	908 KAR 001:374	286.8-060	808 KAR 001:170
222.462	908 KAR 001:374	286.8-070	808 KAR 001:170
224.10-100	401 KAR 058:040	286.8-080	808 KAR 001:170
	401 KAR 063:060	286.8-090	808 KAR 001:170
224.20-100	401 KAR 058:040	286.8-140	808 KAR 001:170
224.20-110	401 KAR 058:040	286.8-255	808 KAR 001:170
	401 KAR 063:060	286.8-260	808 KAR 001:170
224.20-120	401 KAR 058:040	286.8-290	808 KAR 001:170
224A.011	200 KAR 017:111	286.9-010	808 KAR 001:170
224A.020	200 KAR 017:111	289.9-020	808 KAR 001:170
224A.035	200 KAR 017:111	286.9-030	808 KAR 001:170
224A.040	200 KAR 017:111	286.9-040	808 KAR 001:170
224A.050-224A.314	200 KAR 017:111	286.9-050	808 KAR 001:170
230.215	810 KAR 007:040	286.9-060	808 KAR 001:170
	810 KAR 008:020	286.9-071	808 KAR 001:170
230.225	810 KAR 008:020	286.9-073	808 KAR 001:170
230.240	810 KAR 008:020	286.9-080	808 KAR 001:170
230.260	810 KAR 007:040	286.12-030	808 KAR 016:010
	810 KAR 008:020	286.12-040	808 KAR 016:010
230.265	810 KAR 008:020	286.12-050	808 KAR 016:020
230.290	810 KAR 008:020	286.12-060	808 KAR 016:010
230.320	810 KAR 008:020	286.12-070	808 KAR 016:010
230.370	810 KAR 008:020	286.12-080	808 KAR 016:020
230.770	810 KAR 007:040	292	808 KAR 010:450
230.802	810 KAR 007:040	292.337	808 KAR 010:440
238.500	820 KAR 001:001	292.480	808 KAR 010:440

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304.1-050	806 KAR 006:072	304.9-270	806 KAR 009:025
	806 KAR 017:290	304.9-295	806 KAR 009:025
	806 KAR 037:010	304.9-320	806 KAR 009:025
304.2-100	806 KAR 017:290	304.9-430	806 KAR 009:025
304.2-140	806 KAR 017:280	304.9-642	806 KAR 009:025
304.2-230	806 KAR 017:290	304.39-110	603 KAR 005:350
304.2-290	806 KAR 006:072	304.47-050	806 KAR 017:280
304.2-310	806 KAR 017:280	311	911 KAR 001:090
	806 KAR 017:290	311.530-311.620	201 KAR 009:470
304.3-240	806 KAR 006:072	311.595	901 KAR 005:120
304.6	806 KAR 006:072	311.5975	900 KAR 012:005
304.14-110	900 KAR 010:120	311.621-311.643	201 KAR 009:470
304.15-410	806 KAR 006:072	311.720	901 KAR 005:120
304.17-412	806 KAR 017:280		902 KAR 020:365
304.17A-005	806 KAR 017:280		922 KAR 001:350
	806 KAR 017:290	311.732	901 KAR 005:140
	900 KAR 012:005	311.7731	902 KAR 020:365
	907 KAR 004:020	311.7733	902 KAR 020:365
	907 KAR 004:030	311.7734	902 KAR 020:365
304.17A-138	900 KAR 012:005	311.774	901 KAR 005:120
304.17A.163	806 KAR 017:280	311.781	901 KAR 005:120
304.17A.1631	806 KAR 017:280	311.782	901 KAR 005:120
	806 KAR 017:290	311.783	901 KAR 005:120
304.17A.167	806 KAR 017:280	311.840	907 KAR 003:010
304.17A-168	806 KAR 017:280		922 KAR 001:350
	806 KAR 017:290	311.901	201 KAR 009:305
304.17A-243	900 KAR 010:120	311.905	201 KAR 009:305
304.17A-245	900 KAR 010:120	311.909	201 KAR 009:305
304.17A-505	806 KAR 017:290	311.990	201 KAR 009:470
304.17A-535	806 KAR 017:280	311A.010	202 KAR 007:201
	806 KAR 017:290		202 KAR 007:301
304.17A-600	806 KAR 017:280		202 KAR 007:330
	806 KAR 017:290	311A.020	202 KAR 007:330
304.17A-607	806 KAR 017:280	311A.025	202 KAR 007:201
	806 KAR 017:290		202 KAR 007:301
304.17A-617	806 KAR 017:290		202 KAR 007:330
304.17A-619	806 KAR 017:280		202 KAR 007:401
304.17A-621-304.17A.-631	806 KAR 017:290	311A.030	202 KAR 007:201
304.17A-623	806 KAR 017:280		202 KAR 007:401
304.17B-021	806 KAR 017:351		202 KAR 007:555
304.17B-023	806 KAR 017:351	311A.050	202 KAR 007:330
304.17C-010	806 KAR 017:280		202 KAR 007:601
304.17C-030	806 KAR 017:280	311A.050-311A.100	202 KAR 007:401
304.18-045	806 KAR 017:280	311A.060	202 KAR 007:201
304.24-390	806 KAR 037:010		202 KAR 007:301
304.24-400	806 KAR 037:010	311A.090	202 KAR 007:330
304.24-415	806 KAR 037:010	311A.095	202 KAR 007:201
304.3-750	806 KAR 003:250		202 KAR 007:301
304.3-768	806 KAR 003:250		202 KAR 007:330
304.32-147	806 KAR 017:280	311A.100	202 KAR 007:330
304.32-330	806 KAR 017:280	311A.120	202 KAR 007:401
304.33	806 KAR 037:010		202 KAR 007:601
304.37-010	806 KAR 037:010	311A.130	202 KAR 007:301
304.37-020	806 KAR 037:010		202 KAR 007:601
304.37-030	806 KAR 037:010	311A.135	202 KAR 007:401
304.37-110	806 KAR 037:010		202 KAR 007:701
304.37-120	806 KAR 037:010	311A.140	202 KAR 007:201
304.37-130	806 KAR 037:010		202 KAR 007:301
304.38-225	806 KAR 017:280		202 KAR 007:330
304.39-060	806 KAR 039:030		202 KAR 007:701
304.4-010	806 KAR 009:025	311A.142	202 KAR 007:401
304.40-075	201 KAR 008:533	311A.145	202 KAR 007:201
	201 KAR 008:563		202 KAR 007:301
304.40-320	900 KAR 012:005		202 KAR 007:330
304.5-040	907 KAR 004:020	311A.150	202 KAR 007:330
	907 KAR 004:030	311A.160	202 KAR 007:201
304.6	806 KAR 037:010		202 KAR 007:701
304.9-030	806 KAR 009:025	311A.165	202 KAR 007:301
304.9-105	806 KAR 009:025		202 KAR 007:701
304.9-130	806 KAR 009:025	311A.170	202 KAR 007:401
304.9-150	806 KAR 009:025		202 KAR 007:701
304.9-160	806 KAR 009:025	311A.175	202 KAR 007:701
304.9-230	806 KAR 009:025	311A.185	202 KAR 007:401

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	202 KAR 007:555	314.137	201 KAR 020:472
311A.195	202 KAR 007:330		201 KAR 020:476
312.019	201 KAR 021:025		201 KAR 020:478
	201 KAR 021:105	314.142	201 KAR 020:411
312.055	201 KAR 021:025	314.400-314.414	201 KAR 020:620
312.085	201 KAR 021:041	314.404-314.416	201 KAR 020:650
	201 KAR 021:042	314.475	201 KAR 020:310
312.095	201 KAR 021:041		201 KAR 020:370
	201 KAR 021:042		201 KAR 020:411
312.145	201 KAR 021:041	314.991	201 KAR 020:478
	201 KAR 021:042	315.010	201 KAR 002:380
312.175	201 KAR 021:041		201 KAR 002:413E
	201 KAR 021:042	315.020	201 KAR 002:413E
	201 KAR 021:095	315.025	201 KAR 002:450
312.200	201 KAR 021:075	315.030	201 KAR 002:450
	201 KAR 021:095	315.0351	201 KAR 002:450
312.207	201 KAR 016:572		201 KAR 002:460
312.220	201 KAR 021:105	315.050	201 KAR 002:030
313.010	201 KAR 008:533		201 KAR 002:413E
	907 KAR 001:026E	315.065	201 KAR 002:413E
	907 KAR 001:026	315.121	201 KAR 002:450
313.021	201 KAR 008:016	315.131	201 KAR 002:450
	201 KAR 008:601	315.135	201 KAR 002:413E
313.022	201 KAR 008:016	315.191	201 KAR 002:030
	201 KAR 008:601		201 KAR 002:380
313.030	201 KAR 008:533		201 KAR 002:460
	201 KAR 008:563	315.205	201 KAR 002:413E
	201 KAR 008:571	315.210	201 KAR 002:030
313.035	911 KAR 001:060	317A.020	201 KAR 012:030
313.040	201 KAR 008:563		201 KAR 012:082
	907 KAR 001:026E		201 KAR 012:290
	907 KAR 001:026	317A.050	201 KAR 012:030
313.045	201 KAR 008:571		201 KAR 012:082
313.050	201 KAR 008:571		201 KAR 012:260
313.060	201 KAR 008:563		201 KAR 012:290
313.080	201 KAR 008:563	317A.060	201 KAR 012:030
	201 KAR 008:571		201 KAR 012:060
313.130	201 KAR 008:563		201 KAR 012:230
	201 KAR 008:571		201 KAR 012:290
313.254	201 KAR 008:533	317A.062	201 KAR 012:260
	201 KAR 008:563	317A.070	201 KAR 012:190
313.550	201 KAR 008:016	317A.090	201 KAR 012:082
314.011	201 KAR 020:390	317A.140	201 KAR 012:060
	201 KAR 020:411		201 KAR 012:190
	201 KAR 020:490	317A.145	201 KAR 012:030
	907 KAR 003:160E		201 KAR 012:190
	907 KAR 003:160	319	911 KAR 001:090
	922 KAR 001:350	319.032	201 KAR 026:175E
	922 KAR 002:160	319.050	201 KAR 026:175E
314.021	201 KAR 020:478	319.053	201 KAR 026:175E
314.025	201 KAR 020:390	319.064	201 KAR 026:175E
314.026	201 KAR 020:390	319.071	201 KAR 026:175E
314.027	201 KAR 020:390		201 KAR 026:225E
314.035	201 KAR 020:472	320	907 KAR 001:632E
	201 KAR 020:476		907 KAR 001:632
	201 KAR 020:478	320.230	201 KAR 005:002
314.041	201 KAR 020:260	320.295	201 KAR 005:002
	201 KAR 020:370	320.300	201 KAR 005:002
314.042	201 KAR 020:370		201 KAR 005:055
314.051	201 KAR 020:370	320.310	201 KAR 005:002
314.071	201 KAR 020:370	320.390	201 KAR 005:055
314.089	201 KAR 020:478	320.295	201 KAR 005:038
314.091	201 KAR 020:370	320.310	201 KAR 005:045
	201 KAR 020:478		201 KAR 005:105
314.103	201 KAR 020:370	321.185	301 KAR 002:075
	201 KAR 020:411	321.190	201 KAR 016:610
	201 KAR 020:476	321.207	201 KAR 016:550
	201 KAR 020:478		201 KAR 016:552
314.111	201 KAR 020:260		201 KAR 016:560
	201 KAR 020:310		201 KAR 016:562
	201 KAR 020:360	321.235	201 KAR 016:550
314.131	201 KAR 020:260		201 KAR 016:552
	201 KAR 020:472		201 KAR 016:560

KRS SECTION	REGULATION	KRS SECTION	REGULATION
321.351	201 KAR 016:562 201 KAR 016:610 201 KAR 016:550 201 KAR 016:552 201 KAR 016:560 201 KAR 016:562 201 KAR 016:610	342.1231 342.340 342.650 362 363.900-363.908 365 365.015	803 KAR 030:010 803 KAR 030:010 803 KAR 030:010 202 KAR 007:601 302 KAR 079:009 202 KAR 007:601 807 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 031:031 201 KAR 031:040	367.93117 367.97501	040 KAR 002:150 040 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 031:010 201 KAR 031:050	367.97514 367.97517	040 KAR 002:150 040 KAR 002:150
322A.070	201 KAR 031:010 201 KAR 031:050	367.97521 367.97524	040 KAR 002:150 040 KAR 002:150
325.261	201 KAR 001:190	367.97527	040 KAR 002:150
325.270	201 KAR 001:190	369.101-369.120	907 KAR 001:026E
326	907 KAR 001:632E 907 KAR 001:632		907 KAR 001:026 907 KAR 001:044
326.030	907 KAR 001:632E 907 KAR 001:632		907 KAR 001:632E 907 KAR 001:632
326.040	907 KAR 001:632E 907 KAR 001:632	369.102	807 KAR 005:001E 907 KAR 001:026E
326.060	201 KAR 005:002 201 KAR 005:038		907 KAR 001:026 500 KAR 016:010
327.300	201 KAR 022:170	381.280	701 KAR 008:010E
334.010	907 KAR 001:038E 907 KAR 001:038	387.010	701 KAR 008:010
334A	911 KAR 001:090	391.010	040 KAR 002:150
334A.020	907 KAR 001:038E 907 KAR 001:038	400.203	907 KAR 001:026E 907 KAR 001:026
	911 KAR 001:085 911 KAR 001:090		907 KAR 001:038E 907 KAR 001:038
334A.030	907 KAR 001:038E 907 KAR 001:038		907 KAR 001:044 907 KAR 001:632E
335.010-335.160	201 KAR 023:051E 201 KAR 023:051	403.160	907 KAR 001:632 907 KAR 003:010
335.080	201 KAR 023:016E 201 KAR 023:016	403.210-403.240 403.211	921 KAR 001:400 921 KAR 001:400
335.090	201 KAR 023:016E 201 KAR 023:016	403.707 403.720	921 KAR 001:380 201 KAR 020:411
335.100	201 KAR 023:016E 201 KAR 023:016		921 KAR 002:006 921 KAR 002:370
335.990	201 KAR 023:051E 201 KAR 023:051	405.430	921 KAR 001:380 921 KAR 001:400
337	803 KAR 001:006	405.440	921 KAR 001:400
337.275	803 KAR 001:081 922 KAR 002:160	405.450 405.467	921 KAR 001:400 921 KAR 001:380
337.285	803 KAR 001:081	405.520	921 KAR 001:380
337.355	201 KAR 002:450	405.991	921 KAR 001:400
337.365	201 KAR 002:450	406.021	921 KAR 001:380
341.350	787 KAR 001:090E 787 KAR 001:090	406.025	921 KAR 001:400 921 KAR 001:380
341.360	787 KAR 001:090E 787 KAR 001:090	407.5101-407.5903 414	921 KAR 001:380 907 KAR 003:010
341.370	787 KAR 001:090E 787 KAR 001:090	415.110 415.152	907 KAR 003:010 907 KAR 001:026E
341.380	787 KAR 001:090E 787 KAR 001:090 787 KAR 001:100E	415.170	907 KAR 001:026 907 KAR 001:026E
	787 KAR 001:100	415.172	907 KAR 001:026 907 KAR 001:026E
342.0011	803 KAR 025:089 803 KAR 030:010	415.174	907 KAR 001:026 907 KAR 001:026E
342.019	803 KAR 025:089		907 KAR 001:026
342.020	803 KAR 025:089	415.208	907 KAR 001:044
342.035	803 KAR 025:089	416.164	907 KAR 001:008
342.122	803 KAR 030:010	416.166	907 KAR 001:008
342.1221	803 KAR 030:010	421.500-421.575	201 KAR 020:411
342.1222	803 KAR 030:010	422.317	907 KAR 001:044
342.1223	803 KAR 030:010	424	922 KAR 001:300

KRS SECTION	REGULATION	KRS SECTION	REGULATION
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
	501 KAR 006:080		922 KAR 001:350
	501 KAR 006:050	620.363	922 KAR 001:350
440.40	501 KAR 006:150	620.990	922 KAR 001:330
	907 KAR 001:632E	625	922 KAR 001:350
	907 KAR 001:632	625.045	922 KAR 001:100
440.50	907 KAR 003:010	625.108	922 KAR 001:100
440.60	907 KAR 001:632E	654.1-654.5	011 KAR 004:080
	907 KAR 001:632	654.30-654.52	011 KAR 004:080
440.120	907 KAR 023:020	7 C.F.R.	302 KAR 040:010
446.400	202 KAR 007:401		902 KAR 008:160
447	907 KAR 001:632E		922 KAR 002:160
	907 KAR 001:632	16 C.F.R.	302 KAR 079:009
447.10	907 KAR 003:010		603 KAR 005:350
447.200-447.205	907 KAR 003:010		922 KAR 001:350
447.271	907 KAR 001:008	17 C.F.R.	808 KAR 010:450
447.325	907 KAR 003:010	20 C.F.R.	922 KAR 002:160
447.45	907 KAR 023:020	21 C.F.R.	902 KAR 020:480
447.500-447.520	907 KAR 023:020		908 KAR 001:374
454.220	921 KAR 001:400	26 C.F.R.	900 KAR 010:120
457.310	907 KAR 001:038E	29 C.F.R.	202 KAR 007:555
	907 KAR 001:038		401 KAR 058:040
485.500-485.546	902 KAR 020:490		803 KAR 001:081
485.618	902 KAR 020:490		900 KAR 010:120
503.110	922 KAR 001:330	34 C.F.R.	011 KAR 004:080
508.125	922 KAR 001:330		707 KAR 001:002
527.100	922 KAR 001:350		922 KAR 002:160
527.110	922 KAR 001:350	40 C.F.R.	302 KAR 026:020
529.010	922 KAR 001:330		302 KAR 026:150
531.31-531.58	803 KAR 001:081		302 KAR 027:011
532.045	922 KAR 001:330		302 KAR 028:011
600-645	505 KAR 001:120		302 KAR 079:009
	505 KAR 001:140		401 KAR 058:040
600.010	922 KAR 001:330		401 KAR 063:060
600.020	921 KAR 002:500	42 C.F.R.	900 KAR 010:120
	922 KAR 001:100		902 KAR 020:490E
	922 KAR 001:300		902 KAR 020:490
	922 KAR 001:330		902 KAR 055:110
	922 KAR 001:350		907 KAR 001:008
	922 KAR 002:160		907 KAR 001:026E
605.080	922 KAR 001:300		907 KAR 001:026
605.090	922 KAR 001:100		907 KAR 001:038E
	922 KAR 001:300		907 KAR 001:038
	922 KAR 001:330		907 KAR 001:044
	922 KAR 001:350		907 KAR 001:065
605.120	922 KAR 002:160		907 KAR 001:632E
605.130	922 KAR 001:330		907 KAR 001:632
610.010	922 KAR 001:330		907 KAR 003:010
610.110	922 KAR 001:300		907 KAR 004:020
	922 KAR 001:350		907 KAR 004:030
610.170	921 KAR 001:380		907 KAR 020:020
615.010	922 KAR 001:300		907 KAR 023:020
615.030	922 KAR 001:100		908 KAR 001:374
	922 KAR 001:300		911 KAR 001:090
615.040	922 KAR 001:300		922 KAR 001:350
620.010-620.050	922 KAR 001:330	45 C.F.R.	807 KAR 005:001E
620.020	201 KAR 020:620		900 KAR 010:120

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	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
	922 KAR 002:160	42 U.S.C.	105 KAR 001:411
47 C.F.R.	807 KAR 005:001E		401 KAR 063:060
50 C.F.R.	301 KAR 002:075		701 KAR 008:010E
	301 KAR 003:120		701 KAR 008:010
7 U.S.C.	302 KAR 026:010		902 KAR 020:480
	302 KAR 026:020		902 KAR 020:490E
	302 KAR 026:150		902 KAR 020:490
	302 KAR 027:011		907 KAR 001:026E
	302 KAR 028:011		907 KAR 001:026
	302 KAR 029:011		907 KAR 001:038E
	921 KAR 002:006		907 KAR 001:038
	922 KAR 002:160		907 KAR 001:632E
8 U.S.C.	921 KAR 002:006		907 KAR 001:632
	921 KAR 002:016		907 KAR 001:680
	922 KAR 001:350		907 KAR 003:010
10 U.S.C.	202 KAR 007:330		907 KAR 003:190
15 U.S.C.	808 KAR 010:450		907 KAR 020:050
	908 KAR 001:374		910 KAR 001:180
20 U.S.C.	011 KAR 004:080		911 KAR 001:090
	701 KAR 008:010E		921 KAR 002:035
	701 KAR 008:010		921 KAR 002:040
	703 KAR 005:270		921 KAR 002:050
	707 KAR 001:002		921 KAR 002:060
	807 KAR 005:001E		921 KAR 002:370
	921 KAR 002:016		922 KAR 001:100
	922 KAR 001:300		922 KAR 002:165
21 U.S.C.	921 KAR 002:006	49 U.S.C.	922 KAR 001:330
22 U.S.C.	921 KAR 002:006	50 U.S.C.	302 KAR 029:011
25 U.S.C.	921 KAR 002:016		106 KAR 001:141
	922 KAR 001:100		106 KAR 001:171
	922 KAR 002:160	52 U.S.C.	921 KAR 002:035
26 U.S.C.	105 KAR 001:365		
	105 KAR 001:411		
	900 KAR 010:120		
	921 KAR 002:016		
29 U.S.C.	701 KAR 008:010E		
	701 KAR 008:010		
	921 KAR 002:016		
	922 KAR 002:160		
	900 KAR 012:005		
	921 KAR 002:370		
	922 KAR 002:160		
30 U.S.C.	803 KAR 030:010		
31 U.S.C.	045 KAR 001:050		
33 U.S.C.	803 KAR 030:010		
38 U.S.C.	017 KAR 003:020		
	105 KAR 001:365		
	105 KAR 001:415		
	106 KAR 001:141		
	106 KAR 001:171		
	106 KAR 001:181		
	106 KAR 001:191		
	106 KAR 001:201		
	106 KAR 001:221		

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
009 KAR 001:025	02-21-2023	Remain in Effect without Amendment
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
200 KAR 005:021	02-22-2023	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 033:020	03-03-2023	Remain in Effect without Amendment
201 KAR 033:030	03-03-2023	Remain in Effect without Amendment
201 KAR 044:010	07-01-2022	Remain in Effect without Amendment
301 KAR 001:122	08-04-2022	To be amended, filing deadline 02-04-2022

301 KAR 001:146	08-04-2022	To be amended, filing deadline 02-04-2024
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 003:010	03-02-2023	To be amended, filing deadline 09-02-2024
501 KAR 003:020	03-02-2023	Remain in Effect without Amendment
501 KAR 003:030	03-02-2023	Remain in Effect without Amendment
501 KAR 003:040	03-02-2023	Remain in Effect without Amendment
501 KAR 003:050	03-02-2023	Remain in Effect without Amendment
501 KAR 003:060	03-02-2023	To be amended, filing deadline 09-02-2024
501 KAR 003:070	03-02-2023	Remain in Effect without Amendment
501 KAR 003:080	03-02-2023	To be amended, filing deadline 09-02-2024
501 KAR 003:090	03-02-2023	To be amended, filing deadline 09-02-2024
501 KAR 003:100	03-02-2023	To be amended, filing deadline 09-02-2024
501 KAR 003:140	03-02-2023	To be amended, filing deadline 09-02-2024
501 KAR 003:160	03-02-2023	Remain in Effect without Amendment
501 KAR 006:050	09-14-2022	To be amended, filing deadline 3-14-2024
501 KAR 007:010	03-02-2023	To be amended, filing deadline 09-02-2024
501 KAR 007:020	03-02-2023	Remain in Effect without Amendment
501 KAR 007:030	03-02-2023	Remain in Effect without Amendment
501 KAR 007:050	03-02-2023	Remain in Effect without Amendment
501 KAR 007:070	03-02-2023	Remain in Effect without Amendment
501 KAR 007:080	03-02-2023	To be amended, filing deadline 09-02-2024
501 KAR 007:090	03-02-2023	To be amended, filing deadline 09-02-2024
501 KAR 013:010	03-02-2023	To be amended, filing deadline 09-02-2024
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

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804 KAR 010:031	09-13-2022	Remain in Effect without Amendment
806 KAR 003:210	03-21-2023	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
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

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The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 49th year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
010 KAR 006:010	11-10-2022	803 KAR 002:181	11-10-2022
013 KAR 003:020	11-10-2022	803 KAR 002:300	11-10-2022
013 KAR 003:030	11-10-2022	803 KAR 002:301	11-10-2022
013 KAR 003:040	11-10-2022	803 KAR 002:303	11-10-2022
013 KAR 003:060	11-10-2022	803 KAR 002:304	11-10-2022
101 KAR 002:102	01-12-2023	803 KAR 002:305	11-10-2022
201 KAR 012:010	07-14-2022	803 KAR 002:307	11-10-2022
201 KAR 020:390	07-12-2022	803 KAR 002:310	11-10-2022
201 KAR 020:600	07-12-2022	803 KAR 002:311	11-10-2022
201 KAR 020:670	07-12-2022	803 KAR 002:312	11-10-2022
505 KAR 001:080	12-14-2022	803 KAR 002:313	11-10-2022
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703 KAR 005:080	03-08-2023	803 KAR 002:315	11-10-2022
704 KAR 003:455	11-18-2022	803 KAR 002:316	11-10-2022
705 KAR 003:141	11-18-2022	803 KAR 003:317	11-10-2022
725 KAR 001:010	11-10-2022	803 KAR 002:318	11-10-2022
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