



# ADMINISTRATIVE REGISTER OF KENTUCKY

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

## MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on June 13, 2023, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - [2197](#) [Online agenda updated as needed](#)

## INDEXES & OTHER INFORMATION

Regulation Review Procedure .....	<a href="#">2199</a>
ARRS Report.....	<a href="#">2447</a>
Other Committee Reports .....	<a href="#">2452</a>
Locator Index - Effective Dates.....	<a href="#">L-2</a>

KRS Index.....	<a href="#">L-16</a>
Certifications.....	<a href="#">L-31</a>
Technical Amendments .....	<a href="#">L-33</a>
Subject Index.....	<a href="#">L-35</a>

## EMERGENCIES

### Education Professional Standards Board

016 KAR 009:080E. University-based alternative certification program.....	2200
016 KAR 009:100E. Alternative Route to Certification Program.....	2205

### Department of Juvenile Justice

505 KAR 001:200E. Cell entry teams, emergency response teams, and emergency response training .....	2208
505 KAR 001:210E. Restraints and control methods ...	2211
505 KAR 001:220E. Transportation of juveniles.....	2213

### Department of Insurance

806 KAR 017:570E. Minimum standards for Medicare supplement insurance policies and certifications.....	2215
--	------

### Department for Medicaid Services

907 KAR 020:010E. Medicaid procedures for determining initial and continuing eligibility other than procedures related to a modified adjusted gross income eligibility standard or related to former foster care individuals .....	2234
907 KAR 020:045E. Special income requirements for hospice and 1915© home and community based services .....	2237
907 KAR 020:075E. Eligibility provisions and requirements regarding former foster care individuals, and individuals who were in out-of-state equivalents to foster care.....	2240
907 KAR 020:100E. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.....	2243

### Department for Community Based Services

922 KAR 001:360E. Private child care placement, levels of care, and payment .....	2248
---	------

## AMENDED IN-PROCESS EMERGENCIES

### Office of Inspector General

900 KAR 005:020E. State Health Plan for facilities and services .....	2256
900 KAR 006:075E. Certificate of need nonsubstantive review .....	2257

### Department for Medicaid Services

#### Medicaid Services

907 KAR 001:038E. Hearing Program coverage and requirements .....	2261
907 KAR 001:126E. Dental services' coverage provisions and requirements .....	2263
907 KAR 001:632E. Vision program coverage provisions and requirements .....	2268

## AS AMENDED

### Kentucky Opioid Abatement Advisory Commission

040 KAR 009:010. General application procedure .....	2272
040 KAR 009:020. Local government application procedure.....	2273

### Board of Dentistry

201 KAR 008:533. Licensure of dentists .....	2273
201 KAR 008:563. Licensure of dental hygienists.....	2276

### Board of Nursing

201 KAR 020:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs.....	2280
201 KAR 020:390. Nursing Incentive Scholarship Fund ...	2282

### Department of Fish and Wildlife Resources

301 KAR 002:015. Feeding of wildlife.....	2284
301 KAR 004:110. Administration of drugs to wildlife.....	2284

### Workers' Compensation Funding Commission

803 KAR 030:010. Special fund assessments .....	2285
---	------

### Department of Financial Institutions

808 KAR 001:170. Licensing and registration .....	2289
---	------

### Office of Inspector General

902 KAR 020:480. Assisted living communities .....	2292
902 KAR 020:490. Rural emergency hospitals.....	2303

<b>Department for Aging and Independent Living</b>	
910 KAR 001:180. Homecare program for the elderly .....	2304

#### **AMENDED AFTER COMMENTS**

<b>Board of Nursing</b>	
201 KAR 020:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements .....	2309
<b>Department of Juvenile Justice</b>	
505 KAR 001:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.....	2311
505 KAR 001:140. Department of Juvenile Justice Policies and Procedures Manual: Detention Services.....	2313
<b>Department for Community Based Services</b>	
922 KAR 001:100. Public agency adoptions.....	2315
922 KAR 001:330. Child protective services.....	2319

#### **PROPOSED AMENDMENTS**

<b>Education Professional Standards Board</b>	
016 KAR 009:080. University-based alternative certification program.....	2327
016 KAR 009:100. Alternative Route to Certification Institute .....	2332
<b>Kentucky Public Pensions Authority</b>	
105 KAR 001:220. Periodic disability review.....	2335
<b>Kentucky State Board of Accountancy</b>	
201 KAR 001:050. License application .....	2340
<b>Board of Architects</b>	
201 KAR 019:225. Examinations required; general provisions.....	2342
<b>Board of Nursing</b>	
201 KAR 020:240. Fees for applications and service.....	2344
<b>Board of Physical Therapy</b>	
201 KAR 022:045. Continued competency requirements and procedures .....	2346
<b>Board of Emergency Medical Services</b>	
202 KAR 007:510. Air ambulance services.....	2348
<b>Department of Justice</b>	
501 KAR 016:310. Pre-execution medical actions .....	2356
<b>Department of Juvenile Justice</b>	
505 KAR 001:010. Definitions .....	2358
505 KAR 001:100. Admissions.....	2363
505 KAR 001:180. Day treatment admissions .....	2366
<b>Horse Racing Commission</b>	
810 KAR 004:090. Owners.....	2368
810 KAR 007:030. Kentucky Thoroughbred Development Fund.....	2371
810 KAR 007:060. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund.....	2374
<b>Office of Inspector General</b>	
906 KAR 001:210. Health care services agencies .....	2378
<b>Department for Medicaid Services</b>	
907 KAR 020:010. Medicaid procedures for determining initial and continuing eligibility other than procedures related to a modified adjusted gross income eligibility standard or related to former foster care individuals .....	2381
907 KAR 020:045. Special income requirements for hospice and 1915(c) home and community based services .....	2384
907 KAR 020:075. Eligibility provisions and requirements regarding former foster care individuals, and individuals who were in out-of-state equivalents to foster care .....	2386
907 KAR 020:100. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards .....	2389

<b>Department for Aging and Independent Living</b>	
910 KAR 003:030. Traumatic brain injury trust fund operations program .....	2394
<b>Department for Community-Based Services</b>	
921 KAR 001:400. Establishment, review, and modification of child support and medical support orders .....	2401
922 KAR 001:360. Private child care placement, levels of care, and payment .....	2404
922 KAR 002:180. Requirements for registered relative child care providers in the Child Care Assistance Program .....	2410

#### **NEW ADMINISTRATIVE REGULATIONS**

<b>Board of Nursing</b>	
201 KAR 020:700. Medication aide training programs and credentialing of medication aides.....	2417
<b>Department of Fish and Wildlife Resources</b>	
301 KAR 011:020. Procurement of architectural and engineering services.....	2420
<b>Department of Juvenile Justice</b>	
505 KAR 001:185. Day treatment programs.....	2423
505 KAR 001:200. Cell entry teams, emergency response teams, and emergency response training .....	2425
505 KAR 001:210. Restraints and control methods.....	2427
505 KAR 001:220. Transportation of juveniles .....	2429
505 KAR 001:230. Facility, capacity, staffing, and population count .....	2431
<b>Horse Racing Commission</b>	
810 KAR 002:100. Self-exclusion.....	2432
<b>Department for Community-Based Services</b>	
922 KAR 002:245. Kentucky infant and toddler credential.....	2434
922 KAR 002:255. Kentucky school-aged youth development credential.....	2437

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

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

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

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

**ADMINISTRATIVE REGISTER OF KENTUCKY**

(ISSN 0096-1493)

© 2023 Legislative Research Commission, All Rights Reserved

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

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

**KENTUCKY LEGISLATIVE RESEARCH COMMISSION**

**Chairmen**

Senator Robert Stivers  
Senate President

Representative David W. Osborne  
Speaker of the House

**Senate and House Members**

Senator David Givens  
President Pro Tempore

Representative David Meade  
Speaker Pro Tempore

Senator Damon Thayer  
Majority Floor Leader

Representative Steven Rudy  
Majority Floor Leader

Senator Gerald A. Neal  
Minority Floor Leader

Representative Derrick Graham  
Minority Floor Leader

Senator Julie Raque Adams  
Majority Caucus Chair

Representative Suzanne Miles  
Majority Caucus Chair

Senator Reginald Thomas  
Minority Caucus Chair

Representative Cherlynn Stevenson  
Minority Caucus Chair

Senator Mike Wilson  
Majority Whip

Representative Chad McCoy  
Majority Whip

Senator David Yates  
Minority Whip

Representative Angie Hatton  
Minority Whip

Jay D. Hartz, Director  
Joe Cox, Printing and Publications Officer

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

**Members**

Senator Stephen West, Co-Chair  
Representative Derek Lewis, Co-Chair  
Senator Julie Raque Adams  
Senator Damon Thayer  
Senator David Yates  
Representative Randy Bridges  
Representative Deanna Frazier Gordon  
Representative Daniel Grossberg

**Staff**

Sarah Amburgey  
Stacy Auterson  
Emily Caudill  
Ange Darnell  
Emily Harkenrider  
Karen Howard  
Carrie Nichols  
Christy Young



**VOLUME 49, NUMBER 12– JUNE 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.



**Administrative Regulation Review Subcommittee  
TENTATIVE Meeting Agenda  
Tuesday, June 13, 2023 at 1 p.m.  
Annex Room 149**



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

**GENERAL GOVERNMENT CABINET**

**Auditor of Public Accounts**

**Audits**

045 KAR 001:040. Audits of county fee officials.

**PERSONNEL CABINET**

**Personnel Cabinet; Classified**

101 KAR 002:095. Classified service general requirements.

101 KAR 002:181. Repeal of 101 KAR 002:180.

**Personnel Cabinet; Unclassified**

101 KAR 003:045. Compensation plan and pay incentives for unclassified service.

**GENERAL GOVERNMENT CABINET**

**Department for Local Government**

**County Attorney**

109 KAR 017:010. County Attorney Annual Settlement.

**BOARDS AND COMMISSIONS**

**Board of Optometric Examiners**

201 KAR 005:055. Telehealth.

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

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

**Board of Nursing**

201 KAR 020:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements. (Amended After Comments)

**Board of Chiropractic Examiners**

201 KAR 021:025. Board; officers, duties, and compensation.

201 KAR 021:041. Licensing; standards, fees.

201 KAR 021:042. Standards, applications and approval of continuing education.

201 KAR 021:075. Peer review committee procedures and fees.

201 KAR 021:095. Licensure, registration, and standards of persons performing peer review.

201 KAR 021:105. Telehealth chiropractic services.

**Board of Social Work**

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

**TOURISM, ARTS AND HERITAGE CABINET**

**Department of Fish and Wildlife Resources**

**Fish**

301 KAR 001:001. Definitions for 301 KAR Chapter 1.

**Game**

301 KAR 002:222. Waterfowl hunting requirements on public lands.

**ENERGY AND ENVIRONMENT CABINET**

**Department for Environmental Protection**

**Asbestos**

401 KAR 058:040. Requirements for asbestos abatement entities.

**JUSTICE AND PUBLIC SAFETY CABINET**

**Internal Investigation Branch**

**Special Law Enforcement Officers**

500 KAR 002:020. Filing and processing SLEO commissions.

**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)

## VOLUME 49, NUMBER 12– JUNE 1, 2023

(Amended After Comments)

505 KAR 001:140. Department of Juvenile Justice Policies and Procedures Manual: Detention Services. (Filed with Emergency)  
(Amended After Comments)

### COMMUNITY AND TECHNICAL COLLEGE SYSTEM

#### Fire Commission

##### Commission on Fire Protection Personnel Standards and Education

739 KAR 002:060. Certification and qualifications of fire and emergency services instructors.

### PUBLIC PROTECTION CABINET

#### Horse Racing Commission

##### Flat and Steeplechase Racing

810 KAR 004:010E. Horses. ("E" expires 12-24-2023)

##### Incentive and Development Funds

810 KAR 007:040. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.

##### Medication Guidelines

810 KAR 008:020. Drug, medication, and substance classification schedule.

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Office of Inspector General

##### State Health Plan

900 KAR 005:020E. State Health Plan for facilities and services. ("E" expires 12-10-2023) (Filed with Ordinary) (Emergency Amended After Comments)

900 KAR 005:020. State Health Plan for facilities and services. (Filed with Emergency)

##### Certificate of Need

900 KAR 006:075E. Certificate of need nonsubstantive review. ("E" expires 12-10-2023) (Filed with Ordinary) (Emergency Amended After Comments)

900 KAR 006:075. Certificate of need nonsubstantive review. (Filed with Emergency)

##### Essential Personal Care Visitor Program

900 KAR 014:010E. Essential personal care visitor programs; visitation guidelines. ("E" expires 12-24-2023)

##### Controlled Substances

902 KAR 055:015E. Schedules of controlled substances. (Filed with Ordinary) ("E" expires 12-18-2023)

#### Department for Medicaid Services

##### Medicaid Services

907 KAR 001:038E. Hearing Program coverage and requirements. (Filed with Ordinary) ("E" expires 01-07-2024)

907 KAR 001:126E. Dental services' coverage provisions and requirements. (Filed with Ordinary) ("E" expires 01-07-2024)

907 KAR 001:632E. Vision program coverage provisions and requirements. (Filed with Ordinary) ("E" expires 01-07-2024)

#### Department for Community Based Services

##### Child Welfare

922 KAR 001:100. Public agency adoptions. (Amended After Comments)

922 KAR 001:330. Child protective services. (Amended After Comments)

### 3. REGULATIONS REMOVED FROM JUNE'S AGENDA

#### PERSONNEL CABINET

##### Personnel Cabinet; Classified

101 KAR 002:034. Classified compensation administrative regulations. (Comments Received; SOC due 06-15-2023)

#### BOARDS AND COMMISSIONS

##### Board of Pharmacy

201 KAR 002:414E. Ordering and administering vaccinations. ("E" expires 12-17-2023) (Withdrawn by Agency; 05-11-2023)

#### JUSTICE AND PUBLIC SAFETY CABINET

##### Department of Corrections

##### Office of the Secretary

501 KAR 006:150. Eastern Kentucky Correctional Complex policies and procedures. (Comments Received; SOC ext. due 06-15-2023)

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Payment and Services

907 KAR 003:190. Reimbursement for treatment related to clinical trials. (Comments Received; SOC ext. due 06-15-2023)

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

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

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

**Filing and Publication**

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

**Public Hearing and Public Comment Period**

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

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

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

**Review Procedure**

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

## 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**  
**16 KAR 9:080E**

This emergency administrative regulation is being promulgated to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. During the 2023 legislative session, the General Assembly passed Senate Bill 49 and the Governor signed it into law on March 22, 2023. This legislation, which became effective on the Governor's signature, amends KRS 161.048(7) to extend the renewal for the temporary provisional certificate issued to candidates pursuing the Option 6 alternative route to certification from two (2) renewals to four (4) renewals. Per KRS 161.048(1)(e) the Education Professional Standards Board (EPSB) has the authority to promulgate administrative regulations establishing the standards and procedures for the Option 6 alternative route to certification. Since this emergency legislation became effective upon the Governor's signature, the emergency regulation is necessary to establish the requirements for the extended renewal period immediately. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the extended renewal period is expected to remain in statute. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
 JUSTIN MITCHELL, Chair

**EDUCATION AND LABOR CABINET**  
**Education Professional Standards Board**  
**(Emergency Amendment)**

**16 KAR 9:080E. University-based alternative certification program.**

EFFECTIVE: April 26, 2023

RELATES TO: KRS 156.111, 160.345(2)(h), 160.380(5)(c), 161.027, 161.028(1)(k), (s), (t), 161.030(10), 161.048, 34 C.F.R. 300.156 (c)(2)

STATUTORY AUTHORITY: KRS 161.027(1), 161.048(1)(d), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(d) and (7) require the Education Professional Standards Board (EPSB) to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification. This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

**Section 1. Definitions.**

(1) "Alternative certification administrator program" means a college or university post baccalaureate or post masters administrator preparation program for an individual enrolled concurrently with employment in a local school district as an assistant principal, principal, assistant superintendent, school[guidance] counselor, director of special education, director of pupil personnel, supervisor of instruction, or superintendent.

(2) "Alternative certification teacher program" means a college or university post baccalaureate teacher preparation program for an individual enrolled concurrently with employment as a teacher.

**Section 2. Admission Requirements.**

(1) An applicant for an alternative certification teacher program shall meet the admission standards for an initial certification

program established in 16 KAR 5:020.

(2) An applicant for an alternative certification administrator program shall meet the admission standards for the corresponding administrator certification program established in 16 KAR Chapter 3.

~~[(3) An applicant for any alternative certification teacher or administrator program shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 2 or 3 except completion of the corresponding educator preparation program and the required assessments.]~~

**Section 3. University Requirements for Alternative Certification Teacher Program.**

(1) An accredited college or university seeking to offer an alternative certification teacher program shall apply to the EPSB~~[Education Professional Standards Board]~~ for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation provider~~[institution]~~ seeking alternative certification teacher program approval shall design the alternative certification teacher program to provide a candidate with the coursework and mentoring necessary to permit a candidate to maintain employment in an eligible position and to successfully complete any applicable assessments, including internship programs, within a period of three (3) years for those enrolled in an alternative certification teacher program for teachers of exceptional children or interdisciplinary early childhood education, or a period of five (5) years for all other alternative certification teacher programs.

(3) Upon approval, the alternative certification teacher program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification teacher program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. ~~A~~~~[Prior to the candidate's enrollment in the Kentucky Teacher Internship Program pursuant to KRS 161.030 and 16 KAR 7:040, a]~~ minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. A minimum of five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;

3. The name, contact person, and role for the collaborating educator preparation provider~~[institution]~~ mentor; and

4. The name and role of all school district mentor teachers;

(e) Establish a process to maintain regular communication with the employing school so that the educator preparation provider~~[institution]~~ and employing school may assist the candidate as needed and address identified areas of improvement; and



(f) Notify the ~~EPSB~~[Education Professional Standards Board] in writing if a candidate's employment in a covered position or enrollment in the alternative certification teacher program permanently ceases.

(4) Student teaching shall not be required for program completion.

#### Section 4. Temporary Provisional Certificate for Teaching.

(1) The temporary provisional certificate for teaching shall be issued and renewed in accordance with KRS 161.048(7).

(2) The temporary provisional certificate for teaching shall be issued in accordance with a grade level and specialization as recommended by the educator preparation provider and valid for employment consistent with the area of certification being sought through the preparation program.[:

(a)

1. Until December 31, 2014, issued in accordance with a grade level and specialization as recommended by the educator preparation institution on Form TC-TP; or

2. Beginning January 1, 2015, issued in accordance with a grade level and specialization as recommended by the educator preparation institution on Form CA-TP; and

(b) Valid for employment consistent with the area of certification being sought through the preparation program.];

(3) The temporary provisional certificate for teaching shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in KRS 161.1211 and 16 KAR Chapter 8[16 KAR 8:020].

#### Section 5. Issuance of a Temporary Provisional Certificate for Teaching.

(1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the educator preparation provider[institution] written and dated documentation of eligibility for the alternative certification teacher program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the ~~EPSB~~[Education Professional Standards Board] an official college transcript from each college or university attended.

(4) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).

~~(5)~~[(4)] The employing school district shall submit [with Form TC-TP or Form CA-TP] a completed and signed copy of the mentoring collaboration agreement with the alternative certification teacher program as required by Section 3(3)(d) of this administrative regulation.

(6) The educator preparation provider shall submit a recommendation for the grade level and specialization of the temporary provisional certificate.

~~[(5) Beginning January 1, 2015, a candidate who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.]~~

#### Section 6. Requirements for Renewal of the Temporary Provisional Certificate for Teaching.

(1) A candidate shall be eligible for renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area or areas indicated on the initial certificate; and

(b) Recommendation from the educator preparation provider based on continued enrollment, completion of annual observation hours and progress towards the completion of the alternative teacher preparation program.

(2) If a candidate is required to complete an internship in accordance with KRS 161.030, they shall complete the required

assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional and shall complete the internship during the final temporary provisional certificate.

(3) A candidate for exceptional children or interdisciplinary early childhood certification may only renew the temporary provisional certificate two (2) times.

(4) All other alternative certification teacher candidates may renew the temporary provisional certificate four (4) times.[A candidate shall be eligible for the first renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and

(c)

1. Until December 31, 2014, completion of Form TC-TP; or

2. Beginning January 1, 2015, completion of Form CA-TP.

(2) A candidate shall be eligible for the final renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;

(b) A minimum of six (6) new semester hours or its equivalent from the approved preparation program;

(c) The required assessments as established in 16 KAR 6:010; and

(d)

1. Until December 31, 2014, completion of Form TC-TP; or

2. Beginning January 1, 2015, completion of Form CA-TP.];

#### Section 7. Alternative Certification Teacher Program Completion Requirements.

(1) An applicant for teacher certification shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 2 and the assessment requirements established in 16 KAR 6:010.

(2) Upon completion of all program requirements of the university based alternative teacher program, the candidate may apply to the EPSB for the professional certificate.

(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue a professional certificate.[If the candidate has successfully passed the required assessments as outlined in 16 KAR 6:010, and completed the required coursework, the institution shall provide written notice to the employing school district that a candidate is eligible to participate in the Kentucky Teacher Internship Program in each subject area covered by the temporary provisional certificate and in accordance with 16 KAR 7:010.

(2) When the candidate is prepared to enroll in the Kentucky Teacher Internship Program, the recommending institution shall complete and sign page five (5) of the TC-TP or page four (4) of the CA-TP form and deliver it to the employing school district for submission to the Education Professional Standards Board.

(3) Upon completion of all program requirements of the alternative certification teacher program, including successful completion of the Kentucky Teacher Internship Program established in KRS 161.030 and 16 KAR 7:010, the candidate may make application to the Education Professional Standards Board for the professional certificate on the form TC-1 or CA-1, which are incorporated by reference in 16 KAR 2:010.

(4) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate.

(5) A candidate who failed to successfully complete the assessments, the internship, or the required coursework during the initial issuance and two (2) renewals of the temporary certificate, in accordance with KRS 161.048(7), and who has been transitioned into an institution's traditional educator preparation program, shall be eligible for a Teacher Internship Statement of Eligibility-

Confirmation of Employment as a Teacher upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

~~(6) If a candidate fails to complete all alternative certification program requirements during the initial issuance and two (2) renewals of the temporary provisional certificate, in accordance with KRS 161.048(7), the employing school district may, pursuant to 16 KAR 2:010, 2:120, and 2:180, submit an application for emergency or conditional certification on behalf of the former employee to allow the individual to continue employment.]~~

Section 8. University Requirements for an Alternative Certification Administrator Program.

(1) An accredited college or university seeking to offer an alternative certification administrator program shall apply to the EP SB[~~Education Professional Standards Board~~] for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation provider[~~institution~~] seeking alternative certification administrator program approval shall design the alternative certification administrator program to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including any internship or training programs, within a period of two (2) years for those enrolled in an alternative certification administrator program.

(3) Upon approval, the alternative certification administrator program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification administrator program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing in the appropriate administrative role, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. Five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate to assist the candidate in meeting the candidate's administrative responsibilities;

3. The name, contact person, and role for the collaborating educator preparation provider[~~institution~~] mentor; and

4. The name and role of all school district mentors;

(e) Establish a process to maintain regular communication with the employing school so that the educator preparation provider[~~institution~~] and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the EP SB[~~Education Professional Standards Board~~] in writing if a candidate's employment in a covered position or enrollment in the alternative certification administrator program permanently ceases.

Section 9. Temporary Provisional Administrative Certificate.

(1) The temporary provisional administrative certificate shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional administrative certificate may be

renewed a maximum of one (1) time.

(3) The temporary provisional administrative certificate shall be valid for employment in a position consistent with the area of certification being sought through the preparation program.

Section 10. Issuance of a Temporary Provisional Administrative Certificate.

(1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the educator preparation provider[~~institution~~] written and dated documentation of eligibility for the university based alternative certification administrator program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the EP SB[~~Education Professional Standards Board~~] an official college transcript from each college or university attended.

(4) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).

~~(5)[(4)]~~ The employing school district shall submit [with Form TC-TP or Form CA-TP] a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 8(3)(d) of this administrative regulation.

(6) The educator preparation provider shall submit a recommendation for the specialization of the temporary provisional certificate.

~~[(5) Beginning January 1, 2015, a candidate who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.]~~

Section 11. Requirements for Renewal of the Temporary Provisional Certificate for an Administrator.

(1) A candidate shall be eligible for no more than one (1) renewal of the temporary provisional certificate.

(2) A candidate shall be eligible for renewal of the temporary provisional certificate upon application to the EP SB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the position indicated on the initial certificate; and

(b) Recommendation from the educator preparation provider based on continued enrollment, completion of annual observation hours and progress towards the completion of the alternative administrator program.

(3) If a candidate is seeking principal certification and is required to complete an internship in accordance with KRS 161.030, they shall complete the required assessments as established in 16 KAR 3:090 prior to renewal of the temporary provisional and shall complete the internship during the final temporary provisional certificate.

~~[(2) A candidate shall be eligible for renewal of the temporary provisional certificate upon successful completion of the following requirements:~~

~~(a) Evidence of employment in a Kentucky school district or nonpublic school in the position indicated on the temporary provisional certificate;~~

~~(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and~~

~~(c)~~

~~1. Until December 31, 2014, completion of Form TC-TP; or~~

~~2. Beginning January 1, 2015, completion of Form CA-TP.]~~

Section 12. Alternative Certification Administrator Program Completion Requirements.

(1)

~~[(a) If the alternative certification administrator candidate for principal certification has successfully passed the required~~

assessments, as outlined in 16 KAR 6:030, and completed the required coursework, the institution shall provide written notice to the district that the candidate is eligible to participate in the Kentucky Principal Internship Program in accordance with 16 KAR 7:020.

(b) When a principal candidate is ready to enroll in the Kentucky Principal Internship Program, the recommending institution shall complete page five (5) of the TC-TP form or Form CA-TP and deliver the form to the employing school district for submission to the Education Professional Standards Board.

(2)

(a) An alternative certification administrator candidate who failed to complete the assessments, the internship, or the required coursework during the initial issuance and one (1) renewal of the temporary provisional certificate and who has been transitioned into an institution's traditional preparation program, shall be eligible for an administrative certificate in the area of study upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(b) If the candidate was initially enrolled in the alternative certification program for principal, the candidate shall be eligible for a Principal Internship Statement of Eligibility Confirmation of Employment as a Principal/Assistant Principal in an Accredited Kentucky School upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(3)]

(a) During the period of enrollment in the alternative certification administrator program, a candidate seeking superintendent certification and serving in a local school district as a superintendent or assistant superintendent shall successfully complete both the coursework in the institution's alternative certification administrator program as well as the Superintendents Training Program and assessments required in KRS 156.111.

(b) The college or university faculty shall maintain contact with the employing school district and the Kentucky Department of Education regarding the completion of coursework to ensure that a superintendent candidate has completed the required coursework to prepare for the assessments and participation in the Superintendents Training Program.

(2) An applicant for administrator certification shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 3.

(3) Upon completion of all program requirements of the alternative administrator program the candidate may apply to the EPSB for the professional certificate.

(4) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue a professional certificate.

[(4) Upon completion of the alternative certification administrator program, the assessments, and the internship or Superintendents Training Program as applicable, the university shall provide a recommendation for the professional certificate on the candidate's TC-1 or CA-1 form, which are incorporated by reference in 16 KAR 2:010.

(5) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate.

#### Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Temporary Provisional Certification", Form TC-TP, May 2007;

(b) "Application for Temporary Provisional Certification", Form CA-TP, June 2014;

(c) "Teacher Internship Statement of Eligibility Confirmation of Employment as a Teacher", November 2004; and

(d) "Principal Internship Statement of Eligibility Confirmation of Employment as a Principal/Assistant Principal in an Accredited Kentucky School", May 2005.

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

Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.].

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: April 10, 2023

FILED WITH LRC: April 26, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 21, 2023, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5<sup>th</sup> Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for the teacher and administrator university-based alternative certification options.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.028(1)(p) creates the alternative administrator preparation program. KRS 161.048(7) creates the Option 6 alternative route to certification and KRS 161.048(1)(e) requires the Education Professional Standards Board to promulgate administrative regulations establishing standards and procedures for the alternative certification options.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the requirements for the teacher and administrator university-based alternative certification options.

(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 extends the renewals for the temporary provisional certificate under the Option 6 alternative route to teacher certification from two (2) renewals to four (4) renewals unless the candidate is pursuing certification to teach exceptional children or interdisciplinary early childhood education. The amendment also updates the regulation to remove the reference to an outdated application and allow the educator preparation provider to recommend the candidate for renewal based on continued enrollment, completion of annual observation hours and progress towards the completion of the program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with recent amendments to KRS 161.048(7) created by Senate Bill 49 from the 2023 Legislative Session. It extends the renewal of the one-year

temporary provisional certificate from two (2) renewals to four (4) renewals unless the candidate is pursuing certification to teach exceptional children or interdisciplinary early childhood education.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by extending the renewal period for the Option 6 alternative route to certification but complies with federal limitations for teachers of exceptional children under the Individuals with Disabilities Education Act. 34 C.F.R. § 300.156 (c)(2)(i)(C), provides that those teaching under alternative certifications can only assume functions as a special education teacher for a maximum of three years.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will set the requirements for the renewal of the Option 6 alternative route to teacher certification and will remove the reference to an outdated application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, 31 Institutions of Higher Education with an approved educator preparation program, and those pursuing the Option 6 alternative route to certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals wishing to utilize the extended renewal of the temporary provisional certificate will have to maintain employment with a district and progress towards completion of the Option 6 program. Districts will have to provide the EPSB with verification of continued employment, and the educator preparation provider will have to base any recommendation for renewal of the temporary provisional certificate on continued enrollment, completion of annual observation hours and progress towards the completion of the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no fee established by the Education Professional Standards Board in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those pursuing Option 6 certification will have an extended period to complete the alternative route. Districts can also employ individuals under this route on a temporary provisional certificate for two additional years unless the teacher is pursuing certification for teaching exceptional children or interdisciplinary early childhood education.

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

(a) Initially: There are no costs expected to implement this amendment.

(b) On a continuing basis: There are no expected continuing costs with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund and certification fees collected pursuant to 16 KAR 4:040.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this time, it is not expected that an increase in fees or funding will be necessary for the Education Professional Standards Board to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public-school districts, and public institutions of higher education with approved educator preparation programs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030. 34 C.F.R. § 300.156 (c)(2)(i)(C).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this administrative regulation are not expected to generate any revenue during the first year for the Education Professional Standards Board. Applicants for certification are required to pay the certification fees established in 16 KAR 4:040, but there is no fee for the one-year temporary provisional certificate. This will not generate revenue for participating school districts but may generate revenue in the form of tuition for participating institutions of higher education.

(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? When an applicant completes the Option 6 alternative route to certification and is ready to apply for the full professional certificate, they will be required to pay the certification fee established in 16 KAR 4:040. Those fees are used to offset the costs of renewing the certificate. In subsequent years, this will not generate revenue for participating school districts but may generate revenue in the form of tuition for participating institutions of higher education.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs expected with this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: At this time, it is unknown how many will pursue the extended renewal through the Option 6 alternative route. Once an applicant completes the route and is ready to apply for full certification, they are required to pay the certification fee established in 16 KAR 4:040. The certification fees collected for these applications will offset the costs of renewal.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None anticipated.

(c) How much will it cost the regulated entities for the first year? There are no costs created by this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs created by this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 34 C.F.R. § 300.156 (c)(2) establishes standards for a teacher participating in an alternate route to special education certification program to meet personnel qualifications under the Individuals with Disabilities Education Act.

(2) State compliance standards. The standards for Option 6 contained in this administrative regulation comply with the requirement in 34 C.F.R. § 300.156 (c)(2) because candidates using the alternative pathway to obtain special education certification will receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, assume functions as a teacher only for a specified period not to exceed three years, and demonstrate satisfactory progress toward full certification.

(3) Minimum or uniform standards contained in the federal mandate. 34 C.F.R. § 300.156 (c)(2) requires teachers participating in an alternate route to special education certification program to receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, assume functions as a teacher only for a specified period not to exceed three years, and demonstrate satisfactory progress toward full certification as prescribed by the State.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation will not impose stricter requirements, or additional or different responsibilities or requirements. All candidates in the Option 6 alternative route to certification will receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, and demonstrate satisfactory progress toward full certification. The regulation will limit temporary provisional certification for special education instructors to three years as required by the federal regulation.

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

**STATEMENT OF EMERGENCY**  
**16 KAR 9:100 E**

This emergency administrative regulation is being promulgated to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. During the 2023 legislative session, the General Assembly passed Senate Bill 49 and the Governor signed it into law on March 22, 2023. This legislation, which became effective on the Governor's signature, amends KRS 161.048(8) to extend the renewal for the temporary provisional certificate issued to candidates pursuing the Option 7 alternative route to certification from two (2) renewals to four (4) renewals. Per KRS 161.048(1)(e) the Education Professional Standards Board (EPSB) has the authority to promulgate administrative regulations establishing the standards and procedures for the Option 7 alternative route to certification. Since this emergency legislation became effective upon the Governor's signature, the emergency regulation is necessary to establish the requirements for the extended renewal period immediately. This

emergency administrative regulation will be replaced by an ordinary administrative regulation because the extended renewal period is expected to remain in statute. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
JUSTIN MITCHELL, Chair

**EDUCATION AND LABOR CABINET**  
**Education Professional Standards Board**  
**(Emergency Amendment)**

**16 KAR 9:100E. Alternative Route to Certification Institute.**

EFFECTIVE: April 26, 2023

RELATES TO: KRS 161.028, 161.030, 161.048, 34 C.F.R. 300.156 (c)(2)

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048(1)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(e) requires the Education Professional Standards Board (EPSB) to promulgate administrative regulations establishing standards and procedures for the Alternative Route to Certification Institute and the approval criteria for these programs. This administrative regulation establishes the required elements of the alternative route to certification and the application review process.

Section 1. Institute Providers.

(1) A provider not currently accredited by the EPSB in accordance with 16 KAR 5:010, may demonstrate a partnership with an institution of higher education accredited by the EPSB and a school district or cooperative recognized by the Kentucky Department of Education.

(2) A provider shall submit an application to the EPSB in accordance with the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

Section 2. Application Review.

(1) An application to provide an alternative route to certification institute shall be submitted to EPSB staff.

(2) EPSB staff shall complete an initial review to ensure that the application addresses the requirements of KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(a) If EPSB staff determines that the application addresses the requirements of this subsection, the application shall be forwarded to an external review team.

(b) If EPSB staff determines that the application does not address all the requirements of this subsection, staff shall notify the provider of the deficiencies.

(3) An external review team of trained reviewers appointed by EPSB pursuant to subsection (4) of this section, staff shall review the application in accordance with KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(4) The external review team shall be comprised of:

(a) One (1) representative from an EPSB accredited postsecondary institution;

(b) One (1) representative from a Kentucky education cooperative; and

(c) One (1) representative from a Kentucky public school district.

(5) The external review team shall review the application to provide an alternative route to certification institute and determine the quality of the application based on compliance with subsection (2) of this section. The review team shall recommend acceptance or denial of the application to the EPSB and shall include a supporting rationale for the recommendation.

(6) The EPSB shall review the external review team's recommendation, shall approve or deny each application, and shall transmit the decision and rationale for the decision to the provider.

(7) The provider may revise and resubmit a plan that has been

denied.

(8) Any approval granted by the EPSB shall specify the period of approval of the institute, which shall not exceed two (2) years for initial approval. A provider may apply for an extension of approval as established in Section 3 of this administrative regulation.

#### Section 3. Continuance of Program Approval.

(1) An institute provider may apply for continuance of an approved alternative route to certification institute for an additional period of time not to exceed seven (7) years. The request for continuance shall specify any changes in program components that have occurred since the institute received prior EPSB approval and that are planned for implementation in subsequent training periods.

(2) The request for continuance shall provide specific examples of demonstrating program quality as established in this section and the application required by this administrative regulation. The request for continuance shall include statistical information related to teacher retention for all prior candidates who have completed the institute. Standards for program approval established under this administrative regulation shall be maintained under any program extension.

#### Section 4. Revocation for Cause.

(1) If an area of concern or an allegation of misconduct arises after an institute has been approved, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter to the external review team for further investigation.

(3)

(a) Notice of the EPSB's decision to refer the matter and the complaint shall be sent to the provider.

(b) Within thirty (30) days of receipt of the complaint, the provider shall respond to the allegations in writing and provide information pertaining to the allegations in the complaint to the EPSB.

(4)

(a) The external review team shall review any evidence supporting the allegations and any information submitted by the provider.

(b) The external review team may conduct on-site evaluations to evaluate the quality of the program.

(c) Upon completion of the review, the external review team shall issue a report recommending to the EPSB continued approval of the institute or revocation of institute approval if the institute no longer meets the standards and requirements for approval established in this administrative regulation.

(5) The provider shall receive a copy of the external review team's report and may file a response to the recommendation.

(6)

(a) The recommendation from the external review team and the provider's response shall be presented to the EPSB.

(b) The EPSB shall consider the findings and recommendations of the external review team and make a final determination regarding the approval of the institute.

#### Section 5. Reconsideration.

(1) If a provider seeks reconsideration of an EPSB decision, the provider shall submit a request within thirty (30) days of receipt of the EPSB official notification. A provider shall submit the request on the grounds that:

(a) A prescribed standard was disregarded;

(b) A procedure was not followed; or

(c) Evidence of compliance in place at the time of the review and favorable to the provider was not considered.

(2) A panel of no fewer than three (3) members shall be appointed by the EPSB chair from members of the EPSB who do not have a conflict of interest regarding the provider or institute. The ad hoc committee shall recommend action on the request to the full EPSB.

#### Section 6. Data Reports.

(1) The EPSB shall maintain data reports related to:

(a) Approval status of all EPSB approved Option 7 programs;

(b) Contact information for the person responsible for the institute;

(c) Year of last program review;

(d) Tables relating the institute total enrollment disaggregated by ethnicity and gender for the last three (3) years;

(e) Tables relating the institute faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;

(f) Table of the number of program completers for the last three (3) years;

(g) Table relating pass rates on the required assessments;

(h) Table relating program completer satisfaction with the preparation program; and

(i) Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.

(2) A provider shall report to the EPSB staff at the end of each school year continuous improvement efforts relating to the institute.

#### Section 7. Temporary Provisional Certificate.

(1) An eligible candidate who meets the requirements of KRS 161.048(8)(a)1. through 4. and 16 KAR 2:010, Section 3(1), shall be issued a one (1) year provisional teaching certificate.

(2) The candidate shall apply to the EPSB and provide:

(a) Official transcripts of all college work undertaken by the candidate establishing proof of a bachelor's degree or graduate degree and grade point average;

(b) Proof of a passing score on the admission assessments as established in 16 KAR 5:020, unless the applicant holds a terminal degree;

(c) Proof of a passing score on the academic content assessment, as established in 16 KAR 6:010, in the area in which certification is being sought;

(d) Verification by the institute provider of completion of half of the requisite institute hours; and

(e) Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area of the certification.

~~(3) [The temporary provisional certificate may be renewed for a maximum of two (2) additional years.]~~

~~(4) [A candidate shall be eligible for first renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and:~~

~~(a) Verification of completion of:~~

~~1. 240 hour institute for elementary or K-12 certification; or~~

~~2. 180 hour institute for middle or high school certification; and~~

~~(b) Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area of the certification.~~

~~(4) A candidate shall be eligible for subsequent renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:~~

~~(a) Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area or areas indicated on the initial certificate; and~~

~~(b) Recommendation from the institute provider based on continued enrollment, completion of mentoring and progress towards the completion of the program.~~

~~(5) If a candidate is required to complete an internship in accordance with KRS 161.030, they shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional and shall complete the internship during the final temporary provisional certificate.~~

~~(6) A candidate for exceptional children or interdisciplinary early childhood certification may only renew the temporary provisional certificate two (2) times.~~

~~(7) All other candidates may renew the temporary provisional certificate four (4) times.~~

Section 8. Professional Certificate.

(1) Upon completion of all program requirements established in this administrative regulation, the applicant may apply for the professional certificate.

(2) Prior to issuance of the professional certificate, the candidate shall obtain a passing score on the pedagogy assessment, as established in 16 KAR 6:010, for the certificate being sought.

(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue the candidate a professional certificate.

Section 9. Incorporation by Reference.

(1) "Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7)", 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: April 10, 2023

FILED WITH LRC: April 26, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 21, 2023, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards and procedures of the Option 7 institute route to certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards and procedures for the Option 7 institute route to certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.048(8) creates the Option 7 alternative route to certification and KRS 161.048(1)(e) requires the Education Professional Standards Board to promulgate administrative regulations establishing standards and procedures for the alternative certification options.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for providing an Option 7 alternative route to certification program as well as the requirements for candidates of the route to obtain certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment extends the renewals for the temporary provisional certificate under the Option 7 alternative route to teacher certification from two (2) renewals to four (4) renewals unless the candidate is pursuing certification to teach exceptional children or interdisciplinary early childhood education.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with recent amendments to KRS 161.048(8) created by Senate Bill 49 from the 2023 Legislative Session. It extends the renewal of the one-year temporary provisional certificate from two (2) renewals to four (4) renewals unless the candidate is pursuing certification to teach exceptional children or interdisciplinary early childhood education.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by extending the renewal period for the Option 7 alternative route to certification but complies with federal limitations for teachers of exceptional children under the Individuals with Disabilities Education Act. 34 C.F.R. § 300.156 (c)(2)(i)(C), provides that those teaching under alternative certifications can only assume functions as a special education teacher for a maximum of three years.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will set the requirements for the renewal of the Option 7 alternative route to teacher certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, 31 Institutions of Higher Education with and approved educator preparation program, and applicants for certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals wishing to utilize the extended renewal of the temporary provisional certificate will have to maintain employment with a district and progress towards completion of the Option 7 program. Districts will have to provide the EPSB with verification of continued employment, and the Option 7 provider will have to base any recommendation for renewal of the temporary provisional certificate on continued enrollment, completion of mentoring and progress towards the completion of the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no fee established by the Education Professional Standards Board in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those pursuing Option 7 certification will have an extended period to complete the alternative route. Districts can also employ individuals under this route on a temporary provisional certificate for two additional years unless the teacher is pursuing certification for teaching exceptional children or interdisciplinary early childhood education.

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

(a) Initially: There are no costs expected to implement this amendment.

(b) On a continuing basis: There are no expected continuing costs with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund and certification fees collected pursuant to 16 KAR 4:040.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this time, it is not expected that an increase in fees or funding will be necessary for the Education Professional Standards Board to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established

by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public-school districts, and public institutions of higher education with approved educator preparation programs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.030, KRS 161.048, 34 C.F.R. § 300.156 (c)(2)(i)(C).

(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 will not generate any revenue for the Education Professional Standards Board in the first year. This will not generate revenue for participating school districts but may generate revenue in the form of tuition for participating institutions of higher education.

(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? Each applicant for certification through this route will have to pay the certification fee established in 16 KAR 4:040. In the past, this route has not garnered much interest so it is unknown how many applications will be received through it. Certification fees are a part of the Education Professional Standards Board's restricted funds, that in accordance with KRS 161.028 (1)(m) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder. In subsequent years, this will not generate revenue for participating school districts but may generate revenue in the form of tuition for participating institutions of higher education.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs expected with this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: At this time, it is unknown how many future educators will pursue extended renewal through this route. Once an applicant completes the route and is ready to apply for full certification, they are required to pay the certification fee established in 16 KAR 4:040. The certification fees collected for these applications will offset the costs of renewal.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None anticipated.

(c) How much will it cost the regulated entities for the first year? There are no costs created by this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs created by this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 34 C.F.R. § 300.156 (c)(2) establishes standards for a teacher participating in an alternate route to special education certification program to meet personnel qualifications under the Individuals with Disabilities Education Act.

(2) State compliance standards. The standards for Option 7 contained in this administrative regulation comply with the requirement in 34 C.F.R. § 300.156 (c)(2) because candidates using the alternative pathway to obtain special education certification will receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, assume functions as a teacher only for a specified period not to exceed three years, and demonstrate satisfactory progress toward full certification.

(3) Minimum or uniform standards contained in the federal mandate. 34 C.F.R. § 300.156 (c)(2) requires teachers participating in an alternate route to special education certification program to receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, assume functions as a teacher only for a specified period not to exceed three years, and demonstrate satisfactory progress toward full certification as prescribed by the State.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation will not impose stricter requirements, or additional or different responsibilities or requirements. All candidates in the Option 7 alternative route to certification will receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, and demonstrate satisfactory progress toward full certification. The regulation will limit temporary provisional certification for special education instructors to three years as required by the federal regulation.

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

#### STATEMENT OF EMERGENCY 505 KAR 1:200E

An emergency regulation, pursuant to KRS 13A.190(1)(a)(1), is necessary to comply with Section 4 of Senate Bill (SB) 162 enacted during the 2023 Regular Session and meet an imminent threat to public health, safety, and welfare posed by increasingly violent juveniles housed in Department of Juvenile Justice (DJJ) detention centers and post-adjudication facilities. Recent violent events by juveniles at DJJ facilities necessitate immediate action to change options available to the department for control of the facilities and the juveniles contained within them. Section 4 of SB 162 amended KRS 15A.305, and the changes became effective on March 27, 2023. An ordinary administrative regulation is not sufficient because the statutory changes became effective immediately due to SB 162's emergency declaration, and it will take approximately eight months for an ordinary administrative regulation to become effective. Further, an ordinary administrative regulation is not sufficient because of recent violent events by



juveniles at DJJ facilities that put other juveniles in custody as well as DJJ staff at risk of harm. This administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. An emergency administrative regulation governing a portion of the same subject matter has been filed within the previous nine months. This emergency administrative regulation is different from the previously filed administrative regulation because it places the relevant policy or policies directly in regulation rather than incorporating them by reference. It also includes additional provisions required by SB 162's changes to KRS 15A.305 and applies to additional types of DJJ facilities.

ANDY BESHEAR, Governor  
VICKI REED, Commissioner

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Juvenile Justice  
(New Emergency Administrative Regulation)**

**505 KAR 1:200E. Cell entry teams, emergency response teams, and emergency response training.**

EFFECTIVE: May 15, 2023

RELATES TO: KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 15A.305, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 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. KRS 15A.305(8)(b) requires the department to conduct monthly documented trainings related to emergency response. KRS 15A.305(8)(d) requires the department to establish emergency response teams at juvenile detention centers and youth development centers and further requires the emergency response teams to conduct monthly drills. KRS 15A.305(8)(e) requires memoranda of understanding with local law enforcement for emergency response and the inclusion of local law enforcement in emergency response training. This administrative regulation authorizes the creation of cell entry teams and requires emergency response teams and training.

Section 1. Definitions. (1) "Cell entry team" means a team of staff that are deployed to remove a juvenile from a cell or other confined area.

(2) "Emergency Response Team" or "ERT" means a team of staff trained and equipped to respond to emergencies within facilities operated by the department, including:

- (a) Natural disaster;
- (b) Riot, fire, or any other occurrence that create a risk to the safety or security of the facility, juveniles, staff, or volunteers;
- (c) The escape of a juvenile from a facility operated by the department; or
- (d) Other similarly emergent events.

Section 2. Cell Entry Team. (1) The department may establish and train cell entry teams.

(2) The department shall use reasonable force necessary to gain the compliance of a juvenile during a cell entry or other action by a cell entry team.

(3) A juvenile shall comply with the orders of a cell entry team.

Section 3. Emergency Response Team. (1) The department shall establish and train emergency response teams for detention centers and youth development centers.

(2) If a use of force is necessary during any emergency to which the ERT responds, the ERT shall use only reasonable force to resolve the emergency.

(3) The ERT shall conduct monthly drills for emergency

response. The monthly drills may include:

- (a) Riot;
- (b) Fire;
- (c) Tornado;
- (d) Mass evacuation;
- (e) Facility infrastructure failure;
- (f) Search; or
- (g) Other topics related to proper response to unexpected or emergent circumstances.

Section 4. Emergency Response Training and Coordination.

(1) DJJ shall contact local law enforcement to:

- (a) Obtain memoranda of understanding with local law enforcement for emergency response; and
- (b) Include them in emergency response training involving DJJ facilities.

(2) A juvenile detention center or a youth development center shall conduct monthly training for staff concerning emergency response. The monthly training may include:

- (a) Riot;
- (b) Fire;
- (c) Tornado;
- (d) Mass evacuation;
- (e) Facility infrastructure failure;
- (f) Search; or
- (g) Other topics related to proper response to unexpected or emergent circumstances.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy 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 administrative regulation authorizes the creation of cell entry teams and requires emergency response teams.

(b) The necessity of this administrative regulation is: This administrative regulation is needed to comply with requirements in KRS 15A.305(8).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation complies with the requirement in KRS 15A.305(8)(d) for emergency response teams in juvenile detention centers and youth development centers.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of: This is a new administrative regulation.

(a) How the amendment will change this existing administrative regulation: Not applicable

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 518 DJJ employees, 300 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: DJJ must establish the teams, train the teams, and establish monthly drills for the emergency response team. Staff will have to follow the requirements in the administrative regulation. Juveniles and their families will be made aware of the establishment of the cell entry teams and ERTs and their activities.

(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 tasers or pepper spray. These costs are for the numerous 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 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 numerous 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: This administrative regulation does establish 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, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

(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 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? This administrative 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 numerous 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? This administrative regulation is not anticipated to generate any cost savings.

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

(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 numerous 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.

# **STATEMENT OF EMERGENCY** **505 KAR 1:210E**

An emergency regulation, pursuant to KRS 13A.190(1)(a)(1), is necessary to comply with Section 4 of Senate Bill (SB) 162 enacted during the 2023 Regular Session and meet an imminent threat to public health, safety, and welfare posed by increasingly violent juveniles housed in Department of Juvenile Justice (DJJ) detention centers and post-adjudication facilities. Recent violent events by juveniles at DJJ facilities necessitate immediate action to change options available to the department for control of the facilities and the juveniles contained within them. Section 4 of SB 162 amended KRS 15A.305, and the changes became effective on March 27, 2023. An ordinary administrative regulation is not sufficient because the statutory changes became effective immediately due to SB 162's emergency declaration, and it will take approximately eight months for an ordinary administrative regulation to become effective. Further, an ordinary administrative regulation is not sufficient because of recent violent events by juveniles at DJJ facilities that put other juveniles in custody as well as DJJ staff at risk of harm. This administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. An emergency administrative regulation governing a portion of the same subject matter has been filed within the previous nine months. This emergency administrative regulation is different from the previously filed administrative regulation because it places the relevant policy or policies directly in regulation rather than incorporating them by reference. It also includes additional provisions required by SB 162's changes to KRS 15A.305 and applies to additional types of DJJ facilities.

ANDY BESHEAR, Governor  
VICKI REED, Commissioner

## **JUSTICE AND PUBLIC SAFETY CABINET** **Department of Juvenile Justice** **(New Emergency Administrative Regulation)**

### **505 KAR 1:210E. Restraints and control methods.**

EFFECTIVE: May 15, 2023

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 15A.305, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 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. KRS 15A.305(8)(c) requires that appropriate staff working with detained youth have controlled access to and are properly trained in the use of appropriate defensive equipment comparable to that used by the Department of Corrections, including tasers, pepper spray, and shields. This

administrative regulation establishes the use of restraints and control methods for juveniles in the custody of or placed with the department.

**Section 1. Definitions.** (1) "Planned use" means the prearranged use of a chemical agent or conductive energy device to prevent loss of life, injury to staff or juveniles, damage to state property, escape, or to maintain the secure and orderly operation of the facility.

(2) "Reactive use" means the emergency use of a chemical agent or conductive energy device in response to a specific act to prevent loss of life, injury to staff or juveniles, damage to state property, or escape.

**Section 2. Restraint or Control Actions.** (1) In addition to verbal commands and de-escalation, the restraint or control actions allowed shall include physical restraints, mechanical restraints, chemical agents, shields, and conductive energy devices including stun shields.

(2) The restraint or control action shall not be used as punishment.

(3) Staff shall not use any force-related equipment other than what is authorized.

(4) Only the minimum force necessary to accomplish the control action shall be used.

(5) Staff shall use only reasonable force to control the juvenile during a physical restraint.

(6) A show of force may be employed if it is deemed practical and appropriate to the situation. A show of force may include maneuvering by the cell entry team or display of force and equipment available for use if the necessity arises.

**Section 3. Mechanical Restraints.** (1) Authorized mechanical restraints shall include handcuffs, flex-cuffs, leg shackles, waist chains, and other items authorized in writing by the commissioner of the department.

(2) Mechanical restraints shall be applied with only reasonable force necessary to restrain the juvenile.

(3) DJJ shall not use any type of mechanical restraint on a female juvenile during active labor and delivery of a child. Any exception shall require approval by and guidance on methodology from the Director of Medical Services and shall be based on documented security risks. The Director of Medical Services shall provide guidance on the use of restraints on a pregnant juvenile prior to active labor and delivery.

**Section 4. Chemical Agents.** (1) The only chemical agent authorized for use on a juvenile shall be oleoresin capicum (OC).

(2) Reactive use of a chemical agent shall be authorized by the trained staff being issued the chemical agent canister.

(3) A planned use of a chemical agent shall require authorization from the Superintendent or designee. If time and circumstances reasonably permit, the juvenile's individual client record and medical file, if available, shall be examined by appropriate staff to determine if the juvenile has a significant:

(a) Medical problem that may be adversely affected by the chemical agent; or

(b) History of psychotic behavior and whether the individual may react significantly different than anticipated to chemical agents.

(4) A juvenile shall receive a medical evaluation after being exposed to a chemical agent.

(5) If not in use or issued to staff, chemical agents shall be stored in a secure location with controlled access.

**Section 5. Conductive Energy Devices.** (1) Conductive energy devices shall be used only after all lesser degrees of force have been tried or given due deliberate consideration.

(2) Use of a conductive energy device shall require authorization from the Superintendent or designee.

(3) If time and circumstances permit, the juvenile's individual client record and medical file, if available, shall be examined by appropriate staff to determine if the juvenile has a significant:

(a) Medical problem that may be adversely affected by the conductive energy device; or

(b) History of psychotic behavior and whether the individual may react significantly different than anticipated to conductive energy device.

(4) A juvenile shall receive a medical evaluation after the use of a conductive energy device.

(5) When not in use, conductive energy devices shall be stored in a secure location with controlled access.

Section 6. Reporting. An incident report shall be completed any time a physical restraint, chemical agent, or conductive energy device is used outside of authorized training. An incident report shall be completed any time a mechanical restraint is used on a juvenile outside of transport.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy 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 administrative regulation establishes the use of restraints and control methods for juveniles in the custody of or placed with the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.160, 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody 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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 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 will be instructed and trained on proper restraint techniques as well as the use of chemical agents and conductive energy devices. Juveniles and their families will be informed of the type of restraints used as well as the possibility of chemical agents and conductive energy devices being used.

(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 tasers or pepper spray. These costs are for the numerous administrative regulations being filed.

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

(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 numerous 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: This administrative regulation does establish 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, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

(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 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? This administrative 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 numerous 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? This administrative regulation is not anticipated to generate any cost savings.

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

(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 numerous 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.

**STATEMENT OF EMERGENCY  
505 KAR 1:220E**

An emergency regulation, pursuant to KRS 13A.190(1)(a)(1), is necessary to comply with Section 4 of Senate Bill (SB) 162 enacted during the 2023 Regular Session and meet an imminent threat to public health, safety, and welfare posed by increasingly violent juveniles housed in Department of Juvenile Justice (DJJ) detention centers and post-adjudication facilities. Recent violent events by juveniles at DJJ facilities necessitate immediate action to change options available to the department for control of the facilities and the juveniles contained within them. Section 4 of SB 162 amended KRS 15A.305, and the changes became effective on March 27, 2023. An ordinary administrative regulation is not sufficient because the statutory changes became effective immediately due to SB 162's emergency declaration, and it will take approximately eight months for an ordinary administrative regulation to become effective. Further, an ordinary administrative regulation is not sufficient because of recent violent events by juveniles at DJJ facilities that put other juveniles in custody as well as DJJ staff at risk of harm. This administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. An emergency administrative regulation governing a portion of the same subject matter has been filed within the previous nine months. This emergency administrative regulation is different from the previously filed administrative regulation because it places the relevant policy or policies directly in regulation rather than incorporating them by reference. It also includes additional provisions required by SB 162's changes to KRS 15A.305 and applies to additional types of DJJ facilities.

ANDY BESHEAR, Governor

VICKI REED, Commissioner

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Juvenile Justice  
(New Emergency Administrative Regulation)**

**505 KAR 1:220E. Transportation of juveniles.**

EFFECTIVE: May 15, 2023

RELATES TO: KRS 15A.065, 15A.0652, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 196.173, 605.080, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, 15A.210, 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. KRS 15A.305(8)(c) requires that appropriate staff working with detained youth have controlled access to, and are properly trained in the use of, appropriate defensive equipment comparable to that used by the Department of Corrections, including tasers, pepper spray, and shields. This administrative regulation establishes requirements for the transportation of juveniles in the custody of the department.

Section 1. (1) A juvenile shall be searched before being placed in a vehicle for transport. Cross-gender searches shall only be conducted under exigent circumstances. Otherwise, searches shall be conducted by same gendered staff.

(2) Department staff shall determine if a juvenile may be notified in advance of a pending transportation trip.

(a) The default shall be to not give notice unless consideration of the factors in paragraph (b) of this subsection allow for notice.

(b) Consideration shall be given to:

1. The purpose of or reason for the transport;

2. Classification and behavior of the juvenile;

3. Whether the juvenile's parent or caregiver is being informed or will be present;

4. Safety and security issues, including:

- a. Timing of the notice; and
- b. Escape or AWOL risk.

(3) A juvenile in detention or a level 4 youth development center being transported shall be restrained with mechanical restraints and shall be transported in a vehicle with a security screen. Other juveniles may be transported in mechanical restraints if needed. However, juveniles shall not be secured or restrained to any part of the vehicle. A pregnant juvenile shall be restrained in compliance with KRS 196.173.

(4) Staff transporting juveniles may be equipped with chemical agents, conductive energy devices, additional mechanical restraints, and a cell phone.

(5) Seat belts shall be used in a vehicle.

(6) Transporting staff shall not allow a juvenile to visit or contact any person except a parent or caregiver by any means unless authorized in advance by the Superintendent or designee.

(7) A juvenile shall not leave the vehicle at any stop unless the transporting staff escorts the juvenile.

(8) In an emergency or a collision, restraints may be removed from the juvenile only if the transportation staff determines that an urgent situation exists requiring removal of the restraints. Any restraints removed shall be limited to those restraints that compromise the health or safety of the juvenile.

(9) If the transportation of a juvenile is expected to extend through a mealtime, a sack lunch shall be prepared and placed in the transport vehicle or provision shall be made to feed the juvenile upon arrival.

(10) DJJ staff transporting a juvenile shall observe the same gender requirements of KRS 605.080.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy 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 administrative regulation establishes requirements for the transportation of juveniles in the custody of the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation

provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody 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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 699 DJJ employees, 504 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 will be trained in search, restraint, and transportation requirements. Juveniles and families will be informed that juveniles will be searched, restrained, and that chemical agents and conductive energy devices may be used.

(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 tasers or pepper spray. These costs are for the numerous administrative regulations being filed.

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

(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 numerous 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: This administrative regulation does establish 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, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

(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 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? This administrative 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 numerous 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? This administrative regulation is not anticipated to generate any cost savings.

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

(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 numerous 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.

STATEMENT OF EMERGENCY

806 KAR 17:570E

This emergency regulation is being promulgated to meet an imminent threat to public health, safety, or welfare as prescribed in KRS 13A.190(1)(a). An ordinary administrative regulation would not be sufficient due to the timing of this imminent threat imposed. This administrative regulation will not be followed by an ordinary administrative regulation because it addresses a one-time Medicaid disenrollment action that is occurring due to the passage of the 2023 Consolidated Appropriations Act, which will not arise on a recurring basis. National analyses have estimated that up to 15 million current Medicaid enrollees will lose PHE-induced Medicaid coverage through this redetermination. In addition, data provided by the Kentucky Cabinet for Health and Family Services ("CHFS") indicates that approximately 17,986 Kentuckians will be negatively impacted if this emergency administrative regulation is not promulgated (Exhibit 1).

During the spring of 2020, CHFS received approval from the Centers for Medicare & Medicaid Services ("CMS") to stop disenrolling Kentucky Medicaid members. CHFS took this action to prevent persons enrolled in Medicaid from having a lapse in healthcare coverage during the Covid-19 pandemic. Accordingly, during the Public Health Emergency ("PHE"), CHFS did not disenroll Kentuckians whose Medicaid eligibility would have otherwise expired because they no longer met Medicaid eligibility standards. Typically, persons who become eligible for Medicare receive a Medicare supplement "open enrollment" period of six (6) months, pursuant to 806 KAR 17:570 Section 13. During this period, insurers are required to offer "guaranteed issue" rights to all applicants and are prohibited from discriminating in the pricing of Medicare supplement policies due to an applicant's health status. See 806 KAR 17:570 Section 14(1)(b). Insurers are also prohibited from selling Medicare supplement policies to individuals on Medicaid under Federal Law. See 42 U.S.C. § 1395ss(d)(3)(B)(iii).

The PHE will remain in place through May 11, 2023. Nevertheless, on December 29, 2022, the Consolidated Appropriations Act, 2023 (the "2023 CAA") was enacted by the federal government. The newly enacted 2023 CAA does not specifically address the end date of the COVID-19 PHE but does address the end of the continuous enrollment condition, the temporary Federal Medical Assistance Percentage (FMAP) increase, and the PHE Medicaid unwinding process. The continuous enrollment condition will end on March 31, 2023. Beginning April 1, 2023, states will be able to terminate Medicaid enrollment for individuals who are no longer eligible. As a result, CMS has begun a process known as "Medicaid Unwinding," through which it will conduct Medicaid and CHIP eligibility reviews and resume regular Medicaid eligibility operations for enrollees beginning on May 1, 2023. As part of Medicaid Unwinding, CMS is requiring CHFS to remove Medicaid members that no longer meet eligibility requirements. However, many Medicaid members who became eligible for Medicare during the PHE will have exhausted their six (6)-month Medicare supplement open enrollment period.

To help ensure low-income Kentucky seniors have access to affordable Medicare supplement policies, the Department is amending 806 KAR 17:570 by emergency regulation. The

Department is requiring that guaranteed issue rights for Medicare supplement policies are offered to any applicants who have exhausted their initial Medicare supplement open enrollment period because of their continued enrollment in Medicaid during the PHE. These applicants will be required to provide verification of a Kentucky Medicaid disenrollment. CHFS plans to begin issuing verification of disenrollment to persons 65 or older on May 1, 2023. After such verification, insurers will be required to: (1) treat such applicants as "eligible persons," pursuant to 806 KAR 17:570 Section 14(2); and (2) permit such applicants to enroll in a Medicare supplement policy with guaranteed issue rights and a new enrollment period starting on the date of the applicant's Medicaid disenrollment and continuing for sixty-three (63) days afterwards.

Without this emergency administrative regulation, insurers would not be required to provide open enrollment for these individuals to seek out the coverages they need. As a baseline, ensuring that eligible persons remain enrolled or can successfully transition to other coverage minimizes gaps in coverage. Elderly and ailed Kentuckians would be unable to enroll into the supplemental medical coverage they need to sustain life. Medicare supplement insurance provides seniors and those with an eligible disability supplemental coverage for hospitalizations, outpatient visits and diagnostic testing, and costs related to copays, coinsurance, or deductibles. Because there is only a one-time open enrollment into a Medicare Supplement plan, many Kentuckians were not afforded the opportunity to apply for a guaranteed issue Medicare Supplement plan when they would have first been eligible due to being enrolled in Medicaid during the PHE.

Without access to this mandated special open enrollment, seniors, and those with eligible disabilities, would have to apply for Medicare supplement coverage outside of their specified open enrollment period. This could result in individuals not being issued a Medicare supplement policy at all, or it could require them to pay significantly higher premiums. Medicare Supplement plans cover up to 20% of what standard Medicare plans (Parts A and B) do not cover. Requiring Kentuckians to incur out-of-pocket costs associated with that 20% would create a substantial burden. Late enrollment penalties can cause a 10% increase for premium payments. Based on the median of premiums presented in the attached chart for Part A Medicare supplement policies (Exhibit 2), this would mean an additional \$28.05 a month for that coverage alone.

Furthermore, failure to provide an open enrollment period increases the possibility that these individuals avoid medical treatment altogether. By avoiding necessary medical treatment, these already vulnerable individuals exacerbate their vulnerabilities and have a high probability of becoming ill or experiencing a worsened condition. Lack of adequate coverage has been known to keep individuals from seeking the care they need. Without certain coverages provided by Medicare supplement policies, these individuals will be left to pay out-of-pocket cost for healthcare services that are vital to their physical and mental well-being. This is especially imperative for seniors and those with disabilities who have chronic health needs, and who therefore rely on this gap coverage to meet their daily needs. This emergency administrative regulation is imperative to protect vulnerable Kentuckians.

SHARON P. CLARK, Commissioner  
ANDY BESHEAR, Governor

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health, Life and Managed Care**  
**(Emergency Amendment)**

**806 KAR 17:570E. Minimum standards for Medicare supplement insurance policies and certificates.**

EFFECTIVE: April 28, 2023

RELATES TO: KRS 304.2-310, 304.2-320, 304.3-240, 304.12-020, 304.14-120, 304.14-500-304.14-550, 304.17-311, 304.17A-005, 304.18-034, 304.32-275, 304.33-030, 304.38-205, 42 C.F.R. 409.87, 45 C.F.R. Part 46, 74 F.R. 18808 (2009), 29 U.S.C. 1002, 42 U.S.C. 426, 42 U.S.C. 1320c-3, 1320d, 1320d-2, 42 U.S.C.

1395-1395ggg, 42 U.S.C. 1396, Pub. L. 108-173

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150

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, as defined in KRS 304.1-010. KRS 304.14-510 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations necessary for the proper administration of KRS Chapter 304.38. This administrative regulation establishes minimum standards for Medicare supplement insurance policies and certificates.

Section 1. Definitions.

- (1) "Applicant" is defined by KRS 304.14-500(1).
- (2) "Bankruptcy" means a petition for declaration of bankruptcy filed by or filed against a Medicare Advantage organization that is not an insurer and has ceased doing business in the state.
- (3) "Certificate" is defined by KRS 304.14-500(2).
- (4) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.
- (5) "Commissioner" means Commissioner of the Department of Insurance.
- (6) "Compensation" means monetary or non-monetary remuneration of any kind relating to the sale or renewal of the policy or certificate including bonuses, gifts, prizes, awards, and finder's fees.
- (7) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select insurer or its network providers.
- (8) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.
- (9) "Creditable coverage" is defined by KRS 304.17A-005(8).
- (10) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. Section 1002 of the Employee Retirement Income Security Act.
- (11) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual.
- (12) "Genetic information" means except for information relating to the sex or age:
  - (a) With respect to any individual:
    1. Information about the individual's genetic tests, the genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members of the individual; or
    2. Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual.
  - (b) Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, including:
    1. Genetic information of any fetus carried by a pregnant woman; or
    2. With respect to an individual or family member utilizing reproductive technology, genetic information of any embryo legally held by an individual or family member.
- (13) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.
- (14) "Genetic test":
  - (a) Means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes;
  - (b) Except for an analysis of proteins or metabolites that does



not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that may reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(15) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select insurer or its network providers.

(16) "Health care expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

(17) "Insolvency" is defined by KRS 304.33-030(18).

(18) "Insurer" means insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(19) "Insurer of a Medicare supplement policy or certificate" means an insurer or third-party administrator, or other person acting for or on behalf of the insurer.

(20) "Medicare" is defined by KRS 304.14-500(4).

(21) "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1), including:

(a) A coordinated care plan, which provides health care services, including the following:

1. A health maintenance organization plan, with or without a point-of-service option;

2. A plan offered by provider-sponsored organization; and

3. A preferred provider organization plan;

(b) A medical savings account plan coupled with a contribution into a Medicare Advantage plan medical savings account; and

(c) A Medicare Advantage private fee-for-service plan.

(22) "Medicare Select insurer" means an insurer offering, or seeking to offer, a Medicare Select policy or certificate.

(23) "Medicare Select policy" or "Medicare Select certificate" means, respectively, a Medicare supplement policy or certificate that contains restricted network provisions.

(24) "Medicare supplement policy" is defined by KRS 304.14-500(3).

(25) "Network provider" means a provider of health care, or a group of providers of health care, that has entered into a written agreement with the insurer to provide benefits insured under a Medicare Select policy.

(26) "Policy form" means the form on which the policy is delivered or issued for delivery by the insurer.

(27) "Pre-Standardized Medicare supplement benefit plan," "Pre-Standardized benefit plan," or "Pre-Standardized plan" means a group or individual policy of Medicare supplement insurance issued prior to January 1, 1992.

(28) "Restricted network provision" means any provision that conditions the payment of benefits, in whole or in part, on the use of network providers.

(29) "Secretary" means the Secretary of the U.S. Department of Health and Human Services.

(30) "Service area" means the geographic area approved by the commissioner within which an insurer is authorized to offer a Medicare Select policy.

(31) "Structure, language, designation, and format" means style, arrangement, and overall content of a benefit.

(32) "Underwriting purposes" means:

(a) Rules for, or determination of, eligibility, including enrollment and continued eligibility, for benefits under the policy;

(b) The computation of premium or contribution amounts under the policy;

(c) The application of any pre-existing condition exclusion under the policy; and

(d) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(33) "1990 Standardized Medicare supplement benefit plan," "1990 Standardized benefit plan," or "1990 plan" means a group or individual policy of Medicare supplement insurance issued on or

after January 1, 1992, with an effective date for coverage prior to June 1, 2010 including Medicare supplement insurance policies and certificates renewed on or after that date that are not replaced by the insurer at the request of the insured.

(34) "2010 Standardized Medicare supplement benefit plan," "2010 Standardized benefit plan," or "2010 plan" means a group or individual policy of Medicare supplement insurance issued with an effective date for coverage on or after June 1, 2010.

Section 2. Purpose. The purpose of this administrative regulation shall be to:

(1) Provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies;

(2) Facilitate public understanding and comparison of the policies;

(3) Eliminate provisions contained in the policies that may be misleading or confusing in connection with the purchase of the policies or with the settlement of claims; and

(4) Provide for full disclosures in the sale of accident and sickness insurance coverage to persons eligible for Medicare.

Section 3. Applicability and Scope.

(1) Except as provided in Sections 6, 15, 16, 19, and 24, the requirements of this administrative regulation shall apply to:

(a) All Medicare supplement policies delivered or issued for delivery in Kentucky on or after January 4, 2010; and

(b) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in Kentucky.

(2) This administrative regulation shall not apply to a policy or contract:

(a) Of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof;

(b) For employees or former employees, or a combination thereof; or

(c) For members or former members, or a combination thereof, of the labor organizations.

Section 4. Policy Definitions and Terms. A policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms that conform to this section.

(1) "Accident", "accidental injury", or "accidental means" shall be defined to employ "result" language and shall not include words that establish an accidental means test or use words including "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless the definition is prohibited by law.

(2) "Activities of daily living" shall include bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(3) "At-home recovery visit" shall mean the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider shall be one (1) visit.

(4) "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

(5) "Care provider" shall mean a duly qualified or licensed home health aide or homemaker, personal care aide, or nurse provided through a licensed home health care agency or referred

by a licensed referral agency or licensed nurses registry.

(6) "Convalescent nursing home", "extended care facility", or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.

(7) "Emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(8) "Home" shall mean any place used by the insured as a place of residence, if the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(9) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but shall not be defined more restrictively than as defined in the Medicare program.

(10) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(11) "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

(12) "Physician" shall not be defined more restrictively than as defined in the Medicare program.

(13) "Preexisting condition" shall not be defined more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(14) "Sickness" shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

#### Section 5. Policy Provisions.

(1) Except for permitted preexisting condition clauses as described in Sections 6(2)(a), 7(1)(a), and 8(1) of this administrative regulation, a policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) A Medicare supplement policy or certificate shall not:

(a) Contain a probationary or elimination period; or

(b) Use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(3) A Medicare supplement policy or certificate in force in the state shall not contain benefits that duplicate benefits provided by Medicare.

(4)(a) Subject to Sections 6(2)(d), (e), and (g), and 7(1)(d) and (e) of this administrative regulation, a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006, shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(b) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(c) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs shall not be renewed after the policyholder enrolls in Medicare Part D unless:

1. The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and

2. Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at Medicare Part D enrollment, accounting for any claims paid, if applicable.

Section 6. Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to January 1, 1992.

(1) A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards, which shall not preclude the inclusion of other provisions or benefits that are not inconsistent with these standards.

(2) General standards. The following standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition and the policy or certificate shall not define a preexisting condition more restrictively than Section 4(13) of this administrative regulation.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with the changes.

(d) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

2. Be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(e)1. An insurer shall not cancel or nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

2. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in paragraph (e)4 of this subsection, the insurer shall offer certificate holders an individual Medicare supplement policy with at least the following choices:

a. An individual Medicare supplement policy currently offered by the insurer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

b. An individual Medicare supplement policy that provides the benefits as are required to meet the minimum standards as defined in Section 8(2) of this administrative regulation.

3. If membership in a group is terminated, the insurer shall:

a. Offer the certificate holder the conversion opportunities described in subparagraph 2 of this paragraph; or

b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination, and coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.

(g) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization

Act of 2003, Pub. L. 108-173, the modified policy shall satisfy the guaranteed renewal requirements of this subsection.

(3) Minimum benefit standards. The following minimum benefit standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part B;

(f) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible; and

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part A, subject to the Medicare deductible amount.

Section 7. Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan and Policies or Certificates Issued or Delivered on or After January 1, 1992, and With an Effective Date for Coverage Prior to June 1, 2010. The following standards shall apply to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992, and with an effective date for coverage prior to June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General Standards. The following standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition and the policy or certificate shall not define a preexisting condition more restrictively than Section 4(13) of this administrative regulation.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with the changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable.

1. The insurer shall not cancel or nonrenew the policy solely on health status of the individual.

2. The insurer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subparagraph 5 of this paragraph, the insurer shall offer certificate holders an option to choose an individual Medicare supplement policy which, at the option of the certificate holder:

a. Provides for continuation of the benefits contained in the group policy; or

b. Provides for benefits that meet the requirements of this subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the insurer shall:

a. Offer the certificate holder the conversion opportunity described in subparagraph 3 of this paragraph; or

b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

6. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, the modified policy shall satisfy the guaranteed renewal requirements of this paragraph.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.

(g) 1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed twenty-four (24) months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., but only if the policyholder or certificate holder notifies the insurer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

2. If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted, effective as of the date of termination of entitlement, as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by 42 U.S.C. 1395ss(q)(5), at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act, 42 U.S.C. 426(b), and is covered under a group health plan, as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act, 42 U.S.C. 1395y(b)(1)(A)(v). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

4. Reinstitution of coverages as described in subparagraphs 2 and 3 of this paragraph:

a. Shall not provide for any waiting period with respect to treatment of preexisting conditions;

b. Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstatement of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

c. Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(h) If an insurer makes a written offer to the Medicare Supplement policyholders or certificate holders of one or more of its plans, to exchange during a specified period from his or her 1990 Standardized plan, as described in Section 9 of this administrative regulation, to a 2010 Standardized plan, as described in Section 10 of this administrative regulation, the offer and subsequent exchange shall comply with the following requirements:

1. An insurer shall not be required to provide justification to the commissioner if the insured replaces a 1990 Standardized policy or certificate with an issue age rated 2010 Standardized policy or certificate at the insured's original issue age. If an insured's policy or certificate to be replaced is priced on an issue age rate schedule at offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured. The method proposed to be used by an insurer shall be filed with the commissioner in accordance with KRS 304.14-120 and 806 KAR 14:007.

2. The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage.

3. An insurer shall not apply new pre-existing condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 Standardized policy or certificate of the insured, but may apply pre-existing condition limitations of no more than six (6) months to any added benefits contained in the new 2010 Standardized policy or certificate not contained in the exchanged policy.

4. The new policy or certificate shall be offered to all policyholders or certificate holders within a given plan, except if the offer or issue would be in violation of state or federal law.

5. An insurer may offer its policyholders or certificate holders the following exchange options:

- a. Selected existing plans; or
- b. Certain new plans for a particular existing plan.

(2) Standards for basic (core) benefits common to benefit plans A to J. Every insurer shall make available a policy or certificate including at a minimum the following basic "core" package of benefits to each prospective insured. An insurer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2); and

(e) Coverage for the coinsurance amount or for hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this administrative regulation:

(a) Medicare Part A Deductible, which is coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Skilled Nursing Facility Care, which is coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(c) Medicare Part B Deductible, which is coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(d) Eighty (80) Percent of the Medicare Part B Excess Charges, which is coverage for eighty (80) percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.

(e) 100 Percent of the Medicare Part B Excess Charges, which is coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare Program or state law, and the Medicare-approved Part B charge.

(f) Basic Outpatient Prescription Drug Benefit which is coverage for fifty (50) percent of outpatient prescription drug charges, after a \$250 calendar year deductible, to a maximum of \$1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(g) Extended Outpatient Prescription Drug Benefit, which is coverage for fifty (50) percent of outpatient prescription drug charges, after a \$250 calendar year deductible to a maximum of \$3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(h) Medically Necessary Emergency Care in a Foreign Country, which is coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000.

(i)1. Preventive Medical Care Benefit, which is coverage for the following preventive health services not covered by Medicare:

a. An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph 2 of this paragraph and patient education to address preventive health care measures; and

b. Preventive screening tests or preventive services, the selection and frequency of which are determined to be medically appropriate by the attending physician.

2. Reimbursement shall be for the actual charges up to 100 percent of the Medicare approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of \$120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(j) At-Home Recovery Benefit, which is coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

1. Coverage requirements and limitations.

a. At-home recovery services provided shall be primarily services that assist in activities of daily living.

b. The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

c. Coverage shall be limited to:

(i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment;

(ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit;

(iii) \$1,600 per calendar year;

(iv) Seven (7) visits in any one (1) week;

(v) Care furnished on a visiting basis in the insured's home;

(vi) Services provided by a care provider as described in Section 4(5) of this administrative regulation;

(vii) At-home recovery visits while the insured is covered under the policy or certificate and not excluded; and

(viii) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

2. Coverage shall be excluded for:

a. Home care visits paid for by Medicare or other government programs; and

b. Care provided by family members, unpaid volunteers, or providers who are not care providers.

(4) Standards for Plans K and L.

(a) Standardized Medicare supplement benefit plan "K" shall consist of the following:

1. Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

2. Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

3. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

4. Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

5. Skilled Nursing Facility Care, which is coverage for fifty (50) percent of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

6. Hospice Care, which is coverage for fifty (50) percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

7. Coverage for fifty (50) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2)), unless replaced in accordance with 42 C.F.R. 409.87(c)(2), until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

8. Except for coverage provided in subparagraph 9 of this paragraph, coverage for fifty (50) percent of the cost sharing applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

9. Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

10. Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of \$4,000 in 2006, indexed each year by the appropriate inflation adjustment specified by the secretary.

(b) Standardized Medicare supplement benefit plan "L" shall consist of the following:

1. The benefits described in paragraph (a)1, 2, 3, and 9 of this section;

2. The benefit described in paragraph (a)4, 5, 6, 7, and 8 of this section, but substituting seventy-five (75) percent for fifty (50) percent; and

3. The benefit described in paragraph (a)10 of this section, but substituting \$2,000 for \$4,000.

Section 8. Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010. The following standards shall apply to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky with an effective date for coverage on or after June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards. An insurer shall not offer any 1990 Standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010, remain subject to the requirements of Sections 7 and 9 of this administrative regulation. (1) General Standards. The general standards of Section 7(1)(a) through (g), except 7(1)(e)6, shall apply to all policies under Section 8 of this administrative regulation.

(2) Standards for Basic (Core) Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, High Deductible F, G, M and N. Every insurer of Medicare supplement insurance benefit plans shall make available a policy or certificate including, at a minimum, the following basic "core" package of benefits to each prospective insured. An insurer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(a) The basic core benefits included within Section 7(2)(a) through (e) of this administrative regulation shall be applied to plans under this section; and

(b) Hospice Care, which is coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, High Deductible F, G, M, and N as provided by Section 10 of this administrative regulation.

(a) Medicare Part A Deductible, which is coverage for 100 percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(c) Skilled Nursing Facility Care, which is coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(d) Medicare Part B Deductible, which is coverage for 100 percent of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(e) 100 percent of the Medicare Part B Excess Charges, which is coverage for the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.

(f) Medically Necessary Emergency Care in a Foreign Country, which is coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses

for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000.

Section 9. Standard Medicare Supplement Benefit Plans for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After January 1, 1992, and with an Effective Date for Coverage Prior to June 1, 2010. (1) An insurer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in Section 7(2) of this administrative regulation.

(2) Groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in Kentucky, except as may be permitted in subsection (7) of this section and Section 11 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans "A" through "L" listed in this section and conform to the definitions in Section 1 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Sections 7(2) and 7(3) or 7(4) of this administrative regulation and shall list the benefits in the order shown in this section.

(4) An insurer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit Plan "A" shall be limited to the basic (core) benefits common to all benefit plans, as described in Section 7(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan "B" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible as described in Section 7(3)(a).

(c) Standardized Medicare supplement benefit Plan "C" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as described in Sections 7(3)(a), (b), (c), and (h) respectively.

(d) Standardized Medicare supplement benefit Plan "D" shall include only the following: The core benefit, as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as described in Sections 7(3)(a), (b), (h), and (j) respectively.

(e) Standardized Medicare supplement benefit Plan "E" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as described in Sections 7(3)(a), (b), (h), and (i) respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section 7(3)(a), (b), (c), (e), and (h) respectively.

(g) Standardized Medicare supplement benefit high deductible Plan "F" shall include only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan "F" deductible. The covered expenses shall include the core benefits as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section

7(3)(a), (b), (c), (e), and (h) respectively. The annual high deductible Plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be \$1,500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(h) Standardized Medicare supplement benefit Plan "G" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty (80) percent of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as described in Section 7(3)(a), (b), (d), (h), and (j) respectively.

(i) Standardized Medicare supplement benefit Plan "H" shall consist of only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as described in Section 7(3)(a), (b), (f), and (h) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(j) Standardized Medicare supplement benefit Plan "I" shall consist of only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as described in Section 7(3)(a), (b), (e), (f), (h), and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(k) Standardized Medicare supplement benefit Plan "J" shall consist of only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as described in Section 7(3)(a), (b), (c), (e), (g), (h), (i), and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(l) Standardized Medicare supplement benefit high deductible Plan "J" shall consist of only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan "J" deductible. The covered expenses shall include the core benefits as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as described in Section 7(3)(a), (b), (c), (e), (g), (h), (i) and (j) respectively. The annual high deductible Plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be \$1,500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(6) Design of two (2) Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization

Act of 2003 (MMA), Pub. L. 108-173.

(a) Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in Section 7(4)(a) of this administrative regulation.

(b) Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in Section 7(4)(b) of this administrative regulation.

(7) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

Section 10. Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates with an Effective Date for Coverage on or After June 1, 2010. The following standards shall apply to all Medicare supplement policies or certificates with an effective date for coverage in this state on or after June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010, shall remain subject to the requirements of Section 7 and 9 of this administrative regulation. (1)(a) An insurer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic (core) benefits, as described in Section 8(2) of this administrative regulation.

(b) If an insurer makes available any of the additional benefits described in Section 8(3), or offers standardized benefit Plans K or L, as described in Sections 10(5)(h) and (i) of this administrative regulation, then the insurer shall make available to each prospective policyholder and certificate holder, in addition to a policy form or certificate form with only the basic (core) benefits as described in paragraph (a) of this subsection of this section, a policy form or certificate form containing either standardized benefit Plan C, as described in Section 10(5)(c) of this administrative regulation, or standardized benefit Plan F, as described in 10(5)(e) of this administrative regulation.

(2) Groups, packages or combinations of Medicare supplement benefits other than those listed in this Section shall not be offered for sale in this state, except as may be permitted in Section 10(6) and in Section 12 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans listed in this subsection and conform to the definitions in Section 1 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Sections 8(2) and 8(3) of this administrative regulation; or, in the case of plans K or L, in subsection(5)(h) or (i) of this section and list the benefits in the order shown.

(4) In addition to the benefit plan designations required in subsection (3) of this section, an insurer may use other designations if approved by the commissioner in accordance with subsection (6) of this section.

(5) 2010 Standardized Benefit Plans:

(a) Standardized Medicare supplement benefit Plan A shall include only the following: The basic (core) benefits as described in Section 8(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan B shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible as described in Section 8(3)(a) of this administrative regulation.

(c) Standardized Medicare supplement benefit Plan C shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of

the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as described in Section 8(3)(a), (c), (d), and (f) of this administrative regulation, respectively.

(d) Standardized Medicare supplement benefit Plan D shall include only the following: The basic (core) benefit, as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c), and (f) of this administrative regulation, respectively.

(e) Standardized Medicare supplement Plan F shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, the skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c), (d), (e), and (f), respectively.

(f) Standardized Medicare supplement Plan High Deductible F shall include only the following: 100 percent of covered expenses following the payment of the annual deductible set forth in subparagraph 2 of this paragraph of this subsection.

1. The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c), (d), (e), and (f) of this administrative regulation, respectively.

2. The annual deductible in High Deductible Plan F shall consist of out-of-pocket expenses, other than premiums, for services covered by Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be \$1,500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(g)1. Standardized Medicare supplement benefit Plan G shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c), (e), and (f), respectively.

2. Beginning January 1, 2020, the standardized benefit plans described in Section (11)(1)(d) of this administrative regulation (Redesignated Plan G High Deductible) may be offered to any individual who was eligible for Medicare prior to January 1, 2020.

(h) Standardized Medicare supplement Plan K is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, and shall include only the following:

1. Part A Hospital Coinsurance 61st through 90th days: Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

2. Part A Hospital Coinsurance, 91st through 150th days: Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

3. Part A Hospitalization After 150 Days: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

4. Medicare Part A Deductible: Coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described

in subparagraph 10 of this paragraph;

5. Skilled Nursing Facility Care: Coverage for fifty (50) percent of the coinsurance amount for each day used from the twenty-first (21) day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

6. Hospice Care: Coverage for fifty (50) percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

7. Blood: Coverage for fifty (50) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, as described under 42 C.F.R. 409.87(a)(2) unless replaced in accordance with 42 C.F.R. 409.87(c)(2) until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

8. Part B Cost Sharing: Except for coverage provided in subparagraph 9 of this paragraph, coverage for fifty (50) percent of the cost sharing applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

9. Part B Preventive Services: Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

10. Cost Sharing After Out-of-Pocket Limits: Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of \$4,000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(i) Standardized Medicare supplement Plan L is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, and shall include only the following:

1. The benefits described in paragraph(h)1, 2, 3, and 9 of this subsection;

2. The benefit described in paragraph(h)4, 5, 6, 7, and 8 of this subsection, but substituting seventy-five (75) percent for fifty (50) percent; and

3. The benefit described in paragraph(h)10 of this subsection, but substituting \$2,000 for \$4,000.

(j) Standardized Medicare supplement Plan M shall include only the following: The basic core benefit as described in Section 8(2) of this administrative regulation, plus fifty (50) percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c) and (f) of this administrative regulation, respectively.

(k) Standardized Medicare supplement Plan N shall include only the following: The basic core benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c) and (f) of this administrative regulation, respectively, with copayments in the following amounts:

1. The lesser of twenty (20) dollars or the Medicare Part B coinsurance or copayment for each covered health care provider office visit, including visits to medical specialists; and

2. The lesser of fifty (50) dollars or the Medicare Part B coinsurance or copayment for each covered emergency room visit; however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

(6) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that complies with the applicable standards of this section. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not available, and are cost-effective. Approval of new or innovative benefits shall not adversely

impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

Section 11. Standard Medicare Supplement Benefit Plans for 2020 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery to individuals Newly Eligible for Medicare on or After January 1, 2020. The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), Pub. L. 114-10, requires the following standards to be applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. A policy or certificate providing coverage of the Medicare Part B deductible shall not be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies shall comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, shall remain subject to the requirements of Sections 9 and 10 of this administrative regulation.

(1) Benefit Requirements. The standards and requirements of Section 10 shall apply to all Medicare supplement policies and certificates delivered or issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions:

(a) Standardized Medicare supplement benefit Plan C is redesignated as Plan D and shall provide the benefits contained in Section (10)(5)(c) of this administrative regulation but shall not provide coverage for any portion of the Medicare Part B deductible.

(b) Standardized Medicare supplement benefit Plan F is redesignated as Plan G and shall provide the benefits contained in Section (10)(5)(e) of this administrative regulation but shall not provide coverage for 100 percent or any portion of the Medicare Part B deductible.

(c) Standardized Medicare supplement benefit plans C, F, and F with High Deductible shall not be offered to individuals newly eligible for Medicare on or after January 1, 2020.

(d)1. Standardized Medicare supplement benefit Plan F with High Deductible is redesignated as Plan G with High Deductible and shall provide the benefits contained in Section (10)(5)(f) of this administrative regulation but shall not provide coverage for any portion of the Medicare Part B deductible.

2. The Medicare Part B deductible paid by the beneficiary shall be considered an out of pocket expense in meeting the annual high deductible.

(2) Applicability to Certain Individuals. This section shall apply only to individuals that are newly eligible for Medicare on or after January 1, 2020:

(a) By reason of attaining age 65 on or after January 1, 2020; or

(b) By reason of entitlement to benefits under Part A pursuant to section 226(b) or 226A of the Social Security Act, 42 U.S.C. 426(b) or 426-1, or who is deemed eligible for benefits under section 226(a) of the Social Security Act, 42 U.S.C. 426(a), on or after January 1, 2020.

(3) Guaranteed Issue for Eligible Persons. For purposes of Section 14(5) of this administrative regulation, in the case of any individual newly eligible for Medicare on or after January 1, 2020, any reference to a Medicare supplement policy C or F (including F with High Deductible) shall be deemed to be a reference to Medicare supplement policy D or G (including G with High Deductible) respectively that meet the requirements of this section.

(4) Offer of Redesignated Plans to Individuals Other than Newly Eligible. On or after January 1, 2020, the standardized benefit plans described in subsection (1)(d) of this section may be offered to any individual who was eligible for Medicare prior to January 1, 2020 in addition to the standardized plans described in Section 10(5) of this administrative regulation.



Section 12. Medicare Select Policies and Certificates. (1)(a) This section shall apply to Medicare Select policies and certificates, as described in this section.

(b) A policy or certificate shall not be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(2) The commissioner may authorize an insurer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, 42 U.S.C. 1395ss and 42 U.S.C. 1320c-3, if the commissioner finds that the insurer has satisfied all of the requirements of this administrative regulation.

(3) A Medicare Select insurer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner pursuant to this section and KRS 304.14-120.

(4) A Medicare Select insurer shall file a proposed plan of operation with the commissioner. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services may be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall not be more than sixty (60) miles from the insured's place of residence.

2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

a. To deliver adequately all services that are subject to a restricted network provision; or

b. To make appropriate referrals.

3. There are written agreements with network providers describing specific responsibilities.

4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

5. If covered services are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subparagraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:

1. The formal organizational structure;

2. The written criteria for selection, retention, and removal of network providers; and

3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action if warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the insurer to comply with subsection (8) of this section.

(g) Any other information requested by the commissioner in accordance with this section, KRS 304.14-120, and KRS 304.14-130.

(5)(a) A Medicare Select insurer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after sixty (60) days unless specifically disapproved.

(b) An updated list of network providers shall be filed with the commissioner at least quarterly.

(6) A Medicare Select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:

(a) The services are for symptoms requiring emergency care or

are immediately required for an unforeseen illness, injury, or a condition;

(b) It is not reasonable to obtain services through a network provider; or

(c) There are no network providers available within sixty (60) miles of the insured's place of residence.

(7) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(8) A Medicare Select insurer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

1. Other Medicare supplement policies or certificates offered by the insurer; and

2. Other Medicare Select policies or certificates.

(b) A description, which shall include address, phone number and hours of operation of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(c) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers shall not count toward the out-of-pocket annual limit contained in plans K and L.

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate offered by the insurer.

(g) A description of the Medicare Select insurer's quality assurance program and grievance procedure.

(9) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select insurer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to subsection (8) of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(10) A Medicare Select insurer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(b) Upon issuance of the policy or certificate, the insurer shall provide detailed information to the policyholder describing how a grievance may be registered with the insurer.

(c) A grievance shall be considered in a timely manner and shall be transmitted to appropriate decision makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The insurer shall report no later than each March 31st to the commissioner regarding its grievance procedure, including the number of grievances filed in the past year and a summary of the subject, nature, and resolution of grievances.

(11) Upon initial purchase, a Medicare Select insurer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the insurer.

(12)(a) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select insurer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the insurer that has comparable or lesser benefits and that does not

contain a restricted network provision. The insurer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced, coverage for:

1. The Medicare Part A deductible;
2. At-home recovery services; or
3. Part B excess charges.

(13) Medicare Select policies and certificates shall provide for continuation of coverage if the secretary determines that Medicare Select policies and certificates issued pursuant to this section shall be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(a) Each Medicare Select insurer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the insurer that has comparable or lesser benefits and that does not contain a restricted network provision. The insurer shall make these policies and certificates available without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced, coverage for:

1. The Medicare Part A deductible;
2. At-home recovery services; or
3. Part B excess charges.

(14) A Medicare Select insurer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Section 13. Open Enrollment. (1)(a) An insurer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant if:

1. An application for a policy or certificate is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is sixty-five (65) years of age or older; and

2. The applicant is enrolled for benefits under Medicare Part B.

(b) Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(2)(a) If an applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the insurer shall not exclude benefits based on a preexisting condition.

(b) If the applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the insurer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The secretary shall specify the manner of the reduction under this subsection.

(3) Except as provided in subsection (2) and Sections 14 and 25 of this administrative regulation, subsection (1) of this section shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was diagnosed during the six (6) months

before the coverage became effective.

Section 14. Guaranteed Issue for Eligible Persons. (1) Guaranteed Issue:

(a) Eligible persons are those individuals described in subsection (2) of this section who seek to enroll under the policy during the period specified in subsection (3) of this section, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(b) With respect to eligible persons, an insurer shall not:

1. Deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (5) of this section that is offered and is available for issuance to new enrollees by the insurer;

2. Discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and

3. Impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.

(2) An eligible person shall include the following:

(a) An individual that is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all the supplemental health benefits to the individual;

(b) An individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and:

1. The individual is sixty (65) years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, 42 U.S.C 1395eee, and there are circumstances similar to those described in subparagraph 2 of this paragraph that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage plan; or

2. Any of the following circumstances apply:

a. The certification of the organization or plan has been terminated;

b. The organization has terminated or discontinued providing the plan in the area in which the individual resides;

c. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act, 42 U.S.C 1395w-21(g)(3)(B), if the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856, 42 U.S.C. 1395w-26, or the plan is terminated for all individuals within a residence area; or

d. The individual demonstrates, in accordance with guidelines established by the secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards;

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(iii) The individual meets the other exceptional conditions as the secretary may provide;

(c) 1. An individual is enrolled with:

a. An eligible organization under a contract under Section 1876 of the Social Security Act, 42 U.S.C. 1395mm regarding Medicare cost;

b. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

c. An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act, 42 U.S.C. 1395l(a)(1)(A), regarding health care prepayment plan; or

d. An organization under a Medicare Select policy; and

2. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph (b) of this subsection;

(d) The individual is enrolled under a Medicare supplement policy and the enrollment ceases due to any of the following reasons:

1.a. The insolvency of the insurer or bankruptcy of the non-insurer organization; or

b. The involuntary termination of coverage or enrollment under the policy;

2. The insurer of the policy substantially violated a material provision of the policy; or

3. The insurer, or an agent or other entity acting on the insurer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)1. An individual that was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any of the following:

a. A Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare;

b. An eligible organization under a contract under Section 1876 of the Social Security Act, 42 U.S.C. 1395mm regarding Medicare cost;

c. A similar organization operating under demonstration project authority;

d. A PACE provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee; or

e. A Medicare Select policy; and

2. The subsequent enrollment under subparagraph 1 of this paragraph is terminated by the enrollee during any period within the first twelve (12) months of subsequent enrollment during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act, 42 U.S.C. 1395w-21(e);

(f) An individual who, upon first becoming eligible for benefits under part A of Medicare at age 65, enrolls in:

1. A Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee; and

2. Disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment; or

(g) An individual that:

1. Enrolls in a Medicare Part D plan during the initial enrollment period;

2. Upon enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs; and

3. Terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in subsection (5)(d) of this section.

(h) An individual who:

1. Is sixty-five (65) years or older;

2. Has exhausted their options for open enrollment as a result of their continued enrollment in Medicaid under Section 6008 of the Families First Coronavirus Response Act, 42 U.S.C. 1396d(cc); and

3. Has received verification from the Kentucky Cabinet of Health and Family Services, Department of Medicaid Services of their Medicaid disenrollment as permitted under Section 6008 of the Families First Coronavirus Response Act, 42 U.S.C. 1396d(cc);

(3) Guaranteed Issue Time Periods.

(a) For an individual described in subsection (2)(a) of this section, the guaranteed issue period shall:

1. Begin on the later of the date:

a. The individual receives a notice of termination or cessation of all supplemental health benefits, or, if a notice is not received, notice that a claim has been denied because of a termination or cessation; or

b. That the applicable coverage terminates or ceases; and

2. End sixty-three (63) days thereafter;

(b) For an individual described in subsection (2)(b), (c), (e), [(f)](f), or (h) of this section whose enrollment is terminated

involuntarily, the guaranteed issue period shall begin on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated;

(c) For an individual described in subsection (2)(d)1 of this section, the guaranteed issue period shall end on the date that is sixty-three (63) days after the date the coverage is terminated and shall begin on the earlier of the date that:

1. The individual receives a notice of termination, a notice of the insurer's bankruptcy or insolvency, or other the similar notice if any; or

2. The applicable coverage is terminated;

(d) For an individual described in subsection (2)(b), (d)2, (d)3, (e), or (f) of this section who disenrolls voluntarily, the guaranteed issue period shall begin on the date that is sixty (60) days before the effective date of the disenrollment and shall end on the date that is sixty-three (63) days after the effective date;

(e) For an individual described in subsection (2)(g) of this section, the guaranteed issue period shall begin on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act, 42 U.S.C. 1395ss(v)(2)(B), from the Medicare supplement insurer during the sixty (60) day period immediately preceding the initial Part D enrollment period and shall end on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and

(f) For an individual described in subsection (2) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period shall begin on the effective date of disenrollment and shall end on the date that is sixty-three (63) days after the effective date.

(4) Extended Medigap Access for Interrupted Trial Periods.

(a) For an individual described in subsection (2)(e) of this section whose enrollment with an organization or provider described in Subsection (2)(e)1 of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection(2)(e)of this section;

(b) For an individual described in subsection (2)(f) of this section whose enrollment with a plan or in a program described in Subsection (2)(f) of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (2)(f) of this section; and

(c) For purposes of subsection (2)(e) and (f) of this section, enrollment of an individual with an organization or provider described in subsection (2)(e)1 of this section, or with a plan or in a program described in subsection (2)(f) of this section, shall not be deemed to be an initial enrollment under this paragraph after the two (2) year period beginning on the date on which the individual first enrolled with an organization, provider, plan, or program.

(5) Products to Which Eligible Persons are Entitled. The Medicare supplement policy to which eligible persons shall be entitled under:

(a) Section 14(2)(a), (b), (c) and (d) of this administrative regulation is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F, high deductible F, K, or L offered by any insurer;

(b)1. Subject to subparagraph 2 of this paragraph, a person eligible pursuant to subsection (2)(e) of this section is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same insurer, or, if not so available, a policy described in paragraph (a) of this subsection;

2. After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this subparagraph is:

a. The policy available from the same insurer but modified to remove outpatient prescription drug coverage; or

b. At the election of the policyholder, an A, B, C, F, high

deductible F, K, or L policy that is offered by any insurer;

(c) Subsection (2)(f) of this section shall include any Medicare supplement policy offered by any insurer;

(d) Subsection (2)(g) of this section is a Medicare supplement policy that:

1. Has a benefit package classified as Plan A, B, C, F, high deductible F, K, or L; and

2. Is offered and available for issuance to new enrollees by the same insurer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(6) Notification provisions.

(a) Upon an event described in subsection (2) of this section resulting in a loss of coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the insurer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of the individual's rights under this section, and of the obligations of insurers of Medicare supplement policies under subsection (1) of this section. This notice shall be communicated simultaneously with the notification of termination.

(b) Upon an event described in subsection (2) of this section resulting in an individual ceasing enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the insurer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the individual's rights under this section, and of the obligations of insurer of Medicare supplement policies under subsection (1) of this section. The notice shall be communicated within ten (10) working days of the insurer receiving notification of disenrollment.

Section 15. Standards for Claims Payment. (1) An insurer shall comply with 42 U.S.C. 1395ss, section 1882(c)(3) of the Social Security Act, by:

(a) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form required and making a payment determination on the basis of the information contained in that notice;

(b) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(c) Paying the participating physician or supplier;

(d) Upon enrollment, furnishing each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(e) Paying user fees for claim notices that are transmitted electronically or in another manner; and

(f) Providing to the secretary of, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

(2) Compliance with the requirements established in subsection (1) of this section shall be certified to the commissioner as part of the insurer's annual filing pursuant to KRS 304.3-240.

Section 16. Loss Ratio Standards and Refund or Credit of Premium. (1) Loss Ratio Standards.

(a)1. Pursuant to KRS 304.14-530, a Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery in Kentucky unless it is expected to return to policyholders and certificate holders in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form which total:

a. At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; or

b. At least sixty-five (65) percent of the aggregate amount of premiums earned in the case of individual policies.

2. The calculation shall be in accordance with accepted actuarial principles and practices; and

a. Based on:

(i) Incurred claims experience or incurred health care expenses if coverage is provided by a health maintenance organization on a service rather than reimbursement basis; and

(ii) Earned premiums for the period; and

b. Incurred health care expenses if coverage is provided by a health maintenance organization shall not include:

(i) Home office and overhead costs;

(ii) Advertising costs;

(iii) Commissions and other acquisition costs;

(iv) Taxes;

(v) Capital costs;

(vi) Administrative costs; and

(vii) Claims processing costs.

(b) A filing of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(c) For policies issued prior to October 14, 1990, expected claims in relation to premiums shall meet:

1. The originally filed anticipated loss ratio when combined with the actual experience since inception;

2. The appropriate loss ratio requirement from paragraph (a)1a and b of this subsection when combined with actual experience beginning with July 5, 1996, to date; and

3. The appropriate loss ratio requirement from paragraph (a)1a and b of this subsection over the entire future period for which the rates are computed to provide coverage.

(2) Refund or Credit Calculation.

(a) An insurer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable reporting form contained in HL-MS-1 for each type in a standard Medicare supplement benefit plan.

(b) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation shall be required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) For policies or certificates issued prior to October 14, 1990, the insurer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after July 5, 1996.

(d) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds the level as identified on the annual refund calculation form HL-MS-1. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but it shall not be less than the average rate of interest for thirteen (13) week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3) Annual filing of Premium Rates.

(a) An insurer of Medicare supplement policies and certificates issued before or after January 14, 1992, in this state shall file annually for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner in KRS 304-14-120:

1. Rates;

2. Rating schedule; and

3. Supporting documentation, including ratios of incurred losses to earned premiums by policy duration.

(b) The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves.

(c) An expected third-year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

(d) As soon as practicable, but prior to the effective date of

enhancements in Medicare benefits, every insurer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with KRS 304.14.120:

1.a. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

b. Appropriate premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and that are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer for the Medicare supplement policies or certificates. A premium adjustment that would modify the loss ratio experience under the policy other than the adjustments described in this subsection shall not be made with respect to a policy at any time other than upon its renewal date or anniversary date.

c. If an insurer fails to make premium adjustments acceptable to the commissioner in accordance with this section, the commissioner may order premium adjustments, refunds or premium credits necessary to achieve the loss ratio required by this section.

2. Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(4) Public Hearings. The commissioner may conduct a public hearing pursuant to KRS 304.2-310, to gather information concerning a request by an insurer for an increase in a rate for a policy form or certificate form issued before or after January 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance shall be made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in accordance with KRS 304.2-320.

Section 17. Filing and Approval of Policies and Certificates and Premium Rates. (1) An insurer shall not deliver or issue for delivery a policy or certificate to a resident of Kentucky unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures in KRS 304.14-120.

(2) An insurer shall file, with the commissioner, any riders or amendments to policy or certificate forms, issued in Kentucky, to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173.

(3) An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner in accordance with KRS 304.14-120.

(4)(a) Except as provided in paragraph (b) of this subsection, an insurer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(b) An insurer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

1. The inclusion of new or innovative benefits;
2. The addition of either direct response or agent marketing methods;
3. The addition of either guaranteed issue or underwritten coverage; and
4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(c) A type of a policy or certificate form shall include:

1. An individual policy;
2. A group policy;
3. An individual Medicare Select policy; or

4. A group Medicare Select policy.

(5)(a) Except as provided in subparagraph 1 of this paragraph, an insurer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the insurer has actively offered it for sale in the previous twelve (12) months.

1. An insurer may discontinue the availability of a policy form or certificate form if the insurer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the insurer shall not offer for sale the policy form or certificate form in Kentucky.

2. An insurer that discontinues the availability of a policy form or certificate form pursuant to subparagraph 1 of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the insurer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another insurer shall be considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under paragraph (a) of this subsection unless the insurer complies with the following requirements:

1. The insurer provides an actuarial memorandum, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates; and

2. The insurer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential that is in the public interest.

(6)(a) Except as provided in paragraph (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 16 of this administrative regulation.

(b) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

(7) An insurer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after October 4, 2005, based upon a structure or methodology with any groupings of attained ages greater than one (1) year. The ratio between rates for successive ages shall increase smoothly as age increases.

Section 18. Permitted Compensation Arrangements. (1) An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years shall be the same as that provided in the second year or period and shall be provided for no fewer than five (5) renewal years.

(3) An insurer or other entity shall not provide compensation to its agents or other producers and an agent or producer shall not receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies or certificates if an existing policy or certificate is replaced.

Section 19. Required Disclosure Provisions. (1) General Rules.

(a)1. Medicare supplement policies and certificates shall include a renewal or continuation provision.

2. The language or specifications of a renewal or continuation provision shall be consistent with the type of contract issued.

3. The renewal or continuation provision shall:

a. Be appropriately captioned;

b. Appear on the first page of the policy; and

c. Include any reservation by the insurer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(b)1. A rider or endorsement added to a Medicare supplement policy after date of issue or at reinstatement or renewal that reduces or eliminates benefits or coverage in the policy shall require a signed acceptance by the insured, except for a rider or endorsement by which an insurer:

a. Effectuates a request made in writing by the insured;

b. Exercises a specifically reserved right under a Medicare supplement policy; or

c. Is required to reduce or eliminate benefits to avoid duplication of Medicare benefits.

2. After the date of policy or certificate issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless:

a. The benefits are required by the minimum standards for Medicare supplement policies; or

b. If the increased benefits or coverage is required by law.

3. If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(c) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import.

(d) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, these limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(e) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached thereto, stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(f)1. Insurers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the language, format, type size, type proportional spacing, bold character, and line spacing developed jointly by the National Association of Insurance Commissioners and Centers for Medicare and Medicaid Services and in a type size no smaller than twelve (12) point type.

2. Delivery of the guide described in subparagraph 1 of this paragraph shall be made:

a. Whether or not the policies or certificates are advertised, solicited, or issued as Medicare supplement policies or certificates as described in this administrative regulation.

b. To the applicant upon application and acknowledgement of receipt of the guide shall be obtained by the insurer, except that direct response insurer shall deliver the guide to the applicant upon request but not later than at policy delivery.

(2) Notice requirements.

(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an insurer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies or certificates. The notice shall:

1. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

2. Inform each policyholder or certificate holder as to if any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(c) The notices shall not contain or be accompanied by any solicitation.

(3) Insurers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub.L. 108-173.

(4) Outline of Coverage Requirements for Medicare Supplement Policies.

(a) An insurer shall provide an outline of coverage to all applicants when an application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant.

(b) If an outline of coverage is provided at application and the Medicare supplement policy or certificate is issued on a basis that would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name: "NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINALLY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to this section shall consist of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the insurer. The outline of coverage shall be in the language and format prescribed in the HL-MS-4 or the Plan Benefit Chart in no less than twelve (12) point type. All plans shall be shown on the cover page, and the plans that are offered by the insurer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(5) Notice Regarding Policies or Certificates That Are Not Medicare Supplement Policies.

(a)1. Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy, a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, 42 U.S.C. 1395 et seq., disability income policy, or other policy identified in Section 3(2) of this administrative regulation, issued for delivery in Kentucky to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate.

2. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds.

3. The notice shall be in no less than twelve (12) point type and shall contain the following language: "THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(b) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in paragraph (a) of this subsection shall disclose, using the applicable statement in HL-MS-3 the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Section 20. Requirements for Application Forms and Replacement Coverage. (1) Comparison statement.

(a) If a Medicare Advantage or Medicare supplement policy or certificate is to replace another Medicare supplement or Medicare Advantage policy or certificate, there shall be presented to the applicant, no later than the application date, HL-MS-5.

(b) Direct response insurers shall present the comparison statement to the applicant not later than when the policy is delivered.

(c) Agents shall:

1. Obtain the signature of the applicant on the comparison statement;
2. Sign the comparison statement; and
3. Send the comparison statement to the insurer and attach a copy of the comparison statement to the replacement policy.

(2)(a) Application forms shall include the questions on HL-MS-6 designed to elicit information as to whether, as of the date of the application:

1. The applicant currently has Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force; or

2. A Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force.

(b) An agent shall provide the HL-MS-07 to the applicant.

(c) A supplementary application or other form to be signed by the applicant and agent containing the questions as found on the HL-MS-06 and statements on HL-MS-07 may be used.

(3) Agents shall list, on HL-MS-06 or on the supplementary form as identified in subsection (2)(c) of this section, any other health insurance policies they have sold to the applicant including:

(a) Policies sold that are still in force; and

(b) Policies sold in the past five (5) years that are no longer in force.

(4) For an insurer that uses direct response, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(5) Upon determining that a sale will involve replacement of Medicare supplement coverage, any insurer, other than an insurer that uses direct response, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except if the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the insurer. An insurer that uses direct response shall deliver to the applicant at issuance of the policy, the notice regarding replacement of Medicare supplement coverage. Upon receipt of the notice, the applicant or the applicant's designee shall notify the insurer who previously provided Medicare supplement coverage of the replacement coverage.

(6) The notice required by subsection (5) of this section for an insurer shall be provided as specified in HL-MS-08, in no less than twelve (12) point type or in a form developed by the insurer, which shall:

(a) Meet the requirements of this section; and

(b) Be filed with and approved by the commissioner prior to use.

**Section 21. Filing Requirements for Advertising and Policy Delivery.** (1) An insurer shall provide a copy of any Medicare supplement advertisement intended for use in Kentucky whether through written, electronic, radio, or television, or any other medium to the commissioner for review prior to use. Advertisements shall not require approval prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of the disapproval has been given to the insurer.

(2) Insurers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisement as required by this section. Insurers and agents shall not use "leads" if the solicitation materials have been disapproved by the commissioner.

(3) If a Medicare supplement policy is not delivered by mail, the agent or insurer shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipts to the insurer.

**Section 22. Standards for Marketing.** (1) An insurer, directly or through its agents or other representatives, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp or other appropriate means, on the first page of the policy the following disclosure:

"Notice to buyer: This policy may not cover all of your medical expenses."

(d) Inquire and make every reasonable effort to identify if a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any insurance.

(e) Establish auditable procedures for verifying compliance with this subsection.

(2) In addition to the practices prohibited in KRS Chapter 304.12 and 806 KAR 12:092, the following acts and practices shall be prohibited:

(a) Twisting. Making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(3) The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and similar words shall not be used unless the policy is issued in compliance with this administrative regulation.

**Section 23. Appropriateness of Recommended Purchase and Excessive Insurance.** (1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(2) Any sale of a Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate shall be prohibited.

(3) An insurer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

**Section 24. Reporting of Multiple Policies.** (1) On or before March 1 of each year, an insurer shall report to the commissioner the following information, using HL-MS-2, for every individual resident of Kentucky for which the insurer has in force more than one Medicare supplement policy or certificate:

(a) Policy and certificate number; and

(b) Date of issuance.

(2) The items set forth in subsection (1) of this section shall be grouped by individual policyholder.

**Section 25. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods, and Probationary Periods in Replacement Policies or Certificates.** (1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy or certificate to the extent time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces

another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods.

Section 26. Prohibition Against Use of Genetic Information and Requests for Genetic Testing. This Section shall apply to all policies with policy years beginning on or after the effective date of this administrative regulation. (1) An insurer of a Medicare supplement policy or certificate shall not:

(a) Deny or condition the issuance or effectiveness of the policy or certificate, including the imposition of any exclusion of benefits under the policy based on a pre-existing condition, on the basis of the genetic information with respect to any individual; and

(b) Discriminate in the pricing of the policy or certificate, including the adjustment of premium rates, of an individual on the basis of the genetic information with respect to any individual.

(2) Subsection (1) of this section shall not be construed to limit the ability of an insurer, to the extent permitted by law, from:

(a) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

(b) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy, and the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the group.

(3) Except as provided by subsection (6) of this section, an insurer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of an individual to undergo a genetic test.

(4) Subsection (3) of this section shall not be construed to prohibit an insurer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment, as described for the purposes of applying the regulations promulgated under part C of title XI of the Social Security Act, 42 U.S.C. 1320d et seq., and section 264 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-2, and consistent with subsection (1) of this section.

(5) For purposes of carrying out subsection (4) of this section, an insurer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

(6) Notwithstanding subsection (3) of this section, an insurer of a Medicare supplement policy may request, but shall not require, that an individual or a family member of the individual undergo a genetic test if each of the following conditions is met:

(a) The request shall be made pursuant to research that complies with 45 C.F.R. part 46, or equivalent federal regulations, and any applicable state or local law, or administrative regulations, for the protection of human subjects in research.

(b) The insurer clearly indicates to each individual, or if a minor child, to the legal guardian of the child, to whom the request is made that:

1. Compliance with the request shall be voluntary; and

2. Noncompliance shall have no effect on enrollment status or premium or contribution amounts.

(c) Genetic information collected or acquired under this subsection shall not be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.

(d) The insurer notifies the secretary in writing that the insurer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted.

(e) The insurer complies with other conditions as the secretary may by federal regulation require for activities conducted under this subsection.

(7) An insurer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

(8) An insurer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to an individual's enrollment under the policy in connection with enrollment.

(9) If an insurer of a Medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, the request, requirement, or purchase shall not be considered a violation of subsection (8) of this section if the request, requirement, or purchase is not in violation of subsection (7) of this section.

Section 27. Incorporated by Reference.

(1) The following material is corporate by reference:

(a) "HL-MS-1", July 2009 edition;

(b) "HL-MS-2", July 2009 edition;

(c) "HL-MS-3", July 2009 edition;

(d) "HL-MS-4", October 2009 edition;

(e) "HL-MS-5", May 2018 edition;

(f) "HL-MS-06", July 2009 edition;

(g) "HL-MS-07", July 2009 edition;

(h) "HL-MS-08", October 2009 edition; and

(i) "Plan Benefit Chart", April 2018 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: April 26, 2023

FILED WITH LRC: April 28, 2023 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on June 21st, 2023 at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on June 30th, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum standards for Medicare supplement insurance policies and certificates.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for Medicare supplement insurance policies and certificates in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.32-250 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations necessary for the proper administration of KRS Chapter 304.38.

(d) How this administrative regulation currently assists or will



assist in the effective administration of the statutes: This administrative regulation establishes the minimum standards for Medicare Supplement insurance policies and certificates.

(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 emergency regulation contains amendments to facilitate recent changes to eligibility due to the federal government's Medicaid Unwinding initiative under the Consolidate Appropriations Act of 2023. The Department is amending the regulation to allow a guaranteed issue date of 63 days for individuals 65 and over who were enrolled in Medicaid during the Public Health Emergency as prescribed by the Families First Coronavirus Response Act of 2020. These individuals were continuously enrolled in Medicaid and may not have been offered an opportunity to enroll in a Medicare plan. This Medicaid unwinding will begin May 1, 2023.

(b) The necessity of the amendment to this administrative regulation: Currently, Medicaid enrollees are not able to purchase Medicare supplement plans because, under federal law (see 42 U.S.C. 139ss(d)(3)(B)(iii)), carriers are prohibited from selling Medicare supplement policies to individuals enrolled in Medicaid. With a continuous enrollment those individuals did not have the ability to enroll in a Medicare Supplement policy and so the Department wants to ensure those individuals are provided an opportunity to purchase a Medicare supplement plan if they wish.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.1-010. KRS 304.14-510 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. This amendment will establish minimum requirements for individuals looking to enroll in a Medicare supplement policy after their change in Medicaid eligibility as a result of the Consolidate Appropriation Act of 2023 Medicaid Unwinding.

(d) How the amendment will assist in the effective administration of the statutes: The Department will allow this guaranteed issue period for the length of this emergency administrative regulation's amendments (270 days).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Medicaid unwinding beginning May 1, 2023 will affect 236,246 Kentuckians, 17,986 of which are 65 years or older.

(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: Eligible individuals will be able to enroll into a Medicare supplement plan outside of the standard guaranteed issue date. Insurers offering Medicare supplement insurance will be required to allow for the emergency guarantee issue date established 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): This emergency amendment will not impose additional costs for individuals, insurers, or agents.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are Medicare eligible will be able to enroll after they are dropped from Medicaid beginning May 1, 2023, to ensure they do not have a lapse in coverage.

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

(a) Initially: No associated cost

(b) On a continuing basis: No associated cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Insurance's operational budget.

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

regulation, if new, or by the change if it is an amendment: No, there is not a need to increase fees.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all individuals who are Medicare eligible and have and will lose Medicaid eligibility.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Insurance as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no expectation of any fiscal impact.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings are associated with this regulation or amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are associated with this regulation or amendments.

(c) How much will it cost the regulated entities for the first year? There is no cost expected.

(d) How much will it cost the regulated entities for subsequent years? There is no cost expected.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: There is no cost associated with this administrative regulation and therefore no fiscal impact.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation will not have a major economic impact.

**STATEMENT OF EMERGENCY  
907 KAR 20:010E**

This emergency administrative regulation is being promulgated to modify the Medicaid eligibility renewal standard for children. The department has the opportunity to implement a continuous eligibility standard for children pursuant to the mandate of the federal Consolidated Appropriations Act of 2023 which requires all state Medicaid programs to provide this coverage by January 1, 2024. At this time the following states have already implemented this coverage in advance of the federal mandate, and are providing twelve (12) month continuous eligibility for Medicaid: Alabama, Alaska, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Washington, West Virginia and Wyoming. This emergency administrative regulation will provide sustained access to healthcare for children and provide continued support to the network of providers who treat them. This emergency regulation will also ease the anticipated administrative burden of the COVID-19 Public Health Emergency unwinding process. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding and ensure the most efficient use of funds. In addition, the Department for Medicaid Services (DMS) needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of children Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
ERIC C. FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(Emergency Amendment)**

**907 KAR 20:010. Medicaid procedures for determining initial and continuing eligibility other than procedures related to a modified adjusted gross income eligibility standard or related to former foster care individuals.**

EFFECTIVE: April 20, 2023

RELATES TO: KRS 205.520, 42 C.F.R. 435.530, 435.531, 435.540, 435.541, 435.914, 435.916, 435.906, 435.926, 42 U.S.C. 416, 1382, 1396a, b, d

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes provisions relating to determining initial and continuing eligibility for assistance under the Medicaid Program except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1. Eligibility Determination Process. (1)(a) Except as provided in subsection (3) or (5) of this section, eligibility shall be determined prospectively.

(b) To receive or continue to receive assistance, a household shall meet technical and financial eligibility criteria, for the appropriate month of coverage, pursuant to:

1. This section;
2. Section 3 of this administrative regulation; and
3. As established in:

- a. 907 KAR 20:005;
- b. 907 KAR 20:020; and
- c. 907 KAR 20:025.

(2) A decision regarding eligibility or ineligibility for Medicaid shall be supported by facts recorded in the case record.

(a) The applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of financial and technical eligibility as required by 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025; and

2. Give written consent to those contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(b)1. The department may schedule an appointment with an applicant or recipient to receive specified information as proof of eligibility.

2. Failure to appear for the scheduled appointment or to furnish the required information shall be considered a failure to present adequate proof of eligibility if the applicant or recipient was informed in writing of the scheduled appointment and the required information.

(3) Retroactive eligibility for Medicaid not related to the receipt of SSI benefits shall be effective no earlier than the third month prior to the month of application if:

(a) A Medicaid service was received;

(b) Technical and financial eligibility requirements were met as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025; and

(c) The applicant is excluded from managed care organization participation in accordance with 907 KAR 17:010.

(4) Eligibility for qualified Medicare beneficiary coverage shall be effective the month after the month of case approval if technical and financial eligibility requirements were met as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025.

(5) Retroactive eligibility for benefits for a specified low-income Medicare beneficiary benefits, Medicare qualified individual group 1 (QI-1), or a qualified disabled and working individual shall be effective no earlier than the third month prior to the month of application if the individual meets technical and financial eligibility requirements as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025.

(6) An SSI-related recipient, in accordance with HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97, shall be eligible for Medicaid benefits effective the month prior to the first month of SSI payment if the individual:

(a) Is eligible to be enrolled with a managed care organization in accordance with 907 KAR 17:010; and

(b) Meets Medicaid eligibility requirements for that month.

(7) An SSI-related recipient, in accordance with HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97, shall be retroactively eligible for Medicaid benefits effective no earlier than the third month prior to the first month of SSI payment if the individual:

(a) Is excluded from managed care organization participation in accordance with 907 KAR 17:010; and

(b) Meets Medicaid eligibility requirements for these months.

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting within thirty (30)~~ten (10)~~ days a change in circumstances which may affect eligibility.

(2) Eligibility shall be redetermined:

(a) Every twelve (12) months; or

(b) If a report is received or information is obtained about a change in circumstances.

Section 3. Continuous Eligibility for Children. (1) An individual who is younger than nineteen (19) shall receive continuous eligibility, consistent with 42 C.F.R. 435.926.

(2) The continuous eligibility period for a child recipient shall be for a period of twelve (12) months.

(3) A child's eligibility during a continuous eligibility period shall only be terminated under the following circumstances:

(a) The child becomes nineteen (19) during the continuous eligibility period.

(b) The child, or representative, voluntarily requests that the eligibility be terminated;

(c) The child ceases to be a resident of the Commonwealth;

(d) The agency determines that the eligibility was granted due to:

1. Agency error; or

2. Fraud, abuse, or perjury attributed to the child or representative; or

(e) The death of the child.

**Section 4. Determination of Incapacity or Permanent and Total Disability.** (1) Except as provided in subsections (2) and (3) of this section, a determination that a parent with whom the needy child lives is incapacitated, or that the individual requesting Medicaid due to disability is both permanently and totally disabled, shall be made by the medical review team following review of both medical and social reports.

(2) A parent shall be considered incapacitated without a determination from the medical review team if:

(a) The parent declares physical inability to work;

(b) The worker observes some physical or mental limitation; and

(c) The parent:

1. Is receiving SSI benefits;

2. Is age sixty-five (65) years or over;

3. Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 U.S.C. 1382c, 416, or 423 by either the Social Security Administration or the medical review team;

4.a. Has previously been determined to be incapacitated or both permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested; and

b. Has not demonstrated any visible improvement in condition;

5. Is receiving Retirement, Survivors, and Disability Insurance benefits, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;

6. Is receiving Veterans Affairs benefits based on 100 percent disability, as verified by an award letter; or

7. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days.

If application was made prior to the admission, the physician shall indicate if incapacity existed as of the application date.

(3) An individual shall be considered permanently and totally disabled without a determination from the medical review team if the individual:

(a) Receives RSDI or railroad retirement benefits based on disability;

(b) Received SSI benefits based on disability during a portion of the twelve (12) months preceding the application month and discontinuance was due to income or resources and not to improvement in physical condition;

(c) Has been determined to meet the definition of blindness or both permanent and total disability as contained in 42 U.S.C. 416 or 1382 by the Social Security Administration; or

(d)1. Has previously been determined to be permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested; and

2. Has not demonstrated any visible improvement in condition.

(4)(a) A child who was receiving SSI benefits on August 22, 1996 and who, but for the change in definition of childhood disability established by 42 U.S.C. 1396a(a)(10) would continue to receive SSI benefits, shall continue to meet the Medicaid definition of disability.

(b) If a redetermination is necessary, and in accordance with 923 KAR 2:470, the definition of childhood disability effective on August 22, 1996 shall be used.

**Section 5.**~~Section 4.~~ Disqualification. An adult individual shall be disqualified from receiving Medicaid for a specified period of time if the department or a court determines the individual has

committed an intentional program violation in accordance with 907 KAR 1:675, Program integrity.

Section 6[5]. Applicability. The provisions and requirements of this administrative regulation shall not apply to an individual whose Medicaid eligibility is determined:

(1) Using the modified adjusted gross income as the income standard pursuant to 907 KAR 20:100; or

(2) Pursuant to 907 KAR 20:075.

~~[Section 6. Incorporation by Reference. (1) "HCFA Program Issuance Transmittal Notice Region IV", May 7, 1997, MCD-014-97, is incorporated by reference.~~

~~(2) This material may be:~~

~~(a) Inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or~~

~~(b) Viewed at <http://www.chfs.ky.gov/dms/incorporated.htm>.]~~

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 14, 2023

FILED WITH LRC: April 20, 2023 at 2:45 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on June 26, 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 June 19, 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 June 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](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS And Tiering Statement

Contact Person: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid program policies and requirements regarding initial and continuing eligibility for individuals who are not eligible via the modified adjusted gross income (MAGI) or as former foster care youth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program policies and requirements regarding initial and continuing eligibility for individuals who are not eligible via the modified adjusted gross income (MAGI) or as former foster care youth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing Medicaid program policies and requirements regarding initial and continuing eligibility for individuals who are not eligible via the modified adjusted gross income (MAGI) or as former foster care youth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid program policies and requirements regarding initial and continuing eligibility for individuals

who are not eligible via the modified adjusted gross income (MAGI) or as former foster care youth.

(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 implements a continuous eligibility requirement for all children. The continuous eligibility period will last for twelve (12) months and may only be terminated if the child becomes older than 19, voluntarily requests termination, ceases to be a Kentucky resident, dies, or the agency determines that eligibility was granted in error or due to fraud, abuse, or perjury. In addition, a form that is no longer used has been removed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement a new continuing eligibility requirement for children among the MAGI population.

(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 continuous eligibility requirement for children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by clearly adopting a continuous eligibility requirement for children.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 500,000 children in the Medicaid program will begin to receive continuous eligibility. In addition, the department and MCOs will be impacted.

(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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children will receive continuous eligibility.

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

(a) Initially: DMS does not anticipate additional costs in administering this administrative regulation in the first year.

(b) On a continuing basis: DMS does not anticipate additional costs administering this program in future years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the requirements established herein apply to all 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 for Medicaid Services will be affected by the amendment.

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

regulation. 42 C.F.R. 435.906 and 435.926 authorize the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of these amendments.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of these amendments.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate cost savings for regulated entities in the first year.

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

(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.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14) and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) requires the cabinet secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual

citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. 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.”

(3) Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state’s Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. 42 U.S.C. 1396a(a)(10)(A)(i)(IX) creates the new eligibility group comprised of former foster care individuals and bars the application of certain existing Medicaid eligibility requirements to this population.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, additional or stricter limits are not imposed.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional or stricter limits are not imposed.

**STATEMENT OF EMERGENCY  
907 KAR 20:045E**

This emergency administrative regulation is being promulgated to modify the Medicaid eligibility renewal standard for children. The department has the opportunity to implement a continuous eligibility standard for children pursuant to the mandate of the federal Consolidated Appropriations Act of 2023 which requires all state Medicaid programs to provide this coverage by January 1, 2024. At this time the following states have already implemented this coverage in advance of the federal mandate, and are providing 12 month continuous eligibility for Medicaid: Alabama, Alaska, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Washington, West Virginia and Wyoming. This emergency administrative regulation will provide sustained access to healthcare for children and provide continued support to the network of providers who treat them. This emergency regulation will also ease the anticipated administrative burden of the COVID-19 Public Health Emergency unwinding process. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding and ensure the most efficient use of funds. In addition, the Department for Medicaid Services (DMS) needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of children Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
ERIC C. FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(Emergency Amendment)**

**907 KAR 20:045E. Special income requirements for hospice and 1915(c) home and community based services.**

EFFECTIVE: April 20, 2023

RELATES TO: KRS 205.520, 42 C.F.R. Part 435, 38 U.S.C. 5503, 42 U.S.C. 1396a, n

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes special income requirements for 1915(c) home and community based waiver and hospice services, except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

Section 1. Special Provisions for Recipients Participating in a 1915(c) Home and Community Based Services Waiver Program. (1) Medicaid eligibility for a recipient receiving 1915(c) home and community based services shall be determined if necessary to establish eligibility for Medicaid benefits for a case with income in excess of the basic maintenance standard taking into consideration the special provisions established in:

(a) This section; and

(b) 907 KAR 20:035.

(2) Income protected for the basic maintenance of a 1915(c) home and community based services waiver program participant who is eligible as medically needy or under the special income level established in this section shall be the standard used for an individual in the Federal SSI Program in addition to the SSI general exclusion from income.

(3) A 1915(c) home and community based services waiver program participant who participates in a 1915(c) home and community based services waiver program for thirty (30) consecutive days, including the actual days of institutionalization within that period, and who has income which does not exceed the special income level, shall be determined to be eligible as categorically needy under the special income level.

(4) If a Supports for Community Living (SCL) Program participant has income in excess of the special income level, eligibility of the participant shall be determined on a monthly spend-down basis with the cost of SCL services projected.

(5) Institutional deeming rules shall apply in accordance with 907 KAR 20:035.

(6)(a) In the posteligibility determination of available income, the basic maintenance needs allowance shall include a mandatory withholding from income.

(b) Mandatory withholdings shall:

1. Include state and federal taxes; and

2. Not include child support, alimony, or a similar payment resulting from an action by the recipient.

(7) A veteran or the spouse of a veteran who is receiving services in a 1915(c) home and community based services waiver program and who is receiving a Veterans Affairs benefit shall have ninety (90) dollars excluded from the eligibility and posteligibility determination process.

(8) Veterans Affairs payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in a Medicaid eligibility and posteligibility determination for a veteran or the spouse of a veteran receiving services from a home and community based waiver program.

(9) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall not be excluded in the posteligibility determination.

Section 2. Special Provisions for Hospice Recipients. Medicaid eligibility for a participant in the Medicaid Hospice Program shall be determined in accordance with the provisions in this section.

(1) Income protected for basic maintenance shall be:

(a) The SSI standard and the SSI general exclusion from income for the hospice participant in the posteligibility determination for a noninstitutionalized individual eligible on the basis of the special income level;

(b) The medically needy standard established in 907 KAR 20:020, Section 1, plus the SSI general exclusion for a

noninstitutionalized medically needy participant, who shall spend-down on a quarterly basis;

(c) The medically needy standard for the appropriate family size plus the SSI general exclusion for the institutionalized medically needy;

(d) Forty (40) dollars per month for the hospice participant institutionalized in a long-term care facility;

(e) For a veteran or the spouse of a veteran who is receiving services from a hospice and who is receiving a Veterans Affairs benefit, ninety (90) dollars, which shall be excluded from the eligibility and posteligibility determination process; or

(f) The amount of Veterans Affairs payments for unmet medical expenses (UME) and aid and attendance (A&A), which shall be excluded in a Medicaid eligibility and posteligibility determination for a veteran or the spouse of a veteran receiving services from a hospice.

(2) If eligibility is determined for an institutionalized spenddown case, the attributed cost of care against which available income of the hospice participant shall be applied shall be the hospice routine home care per diem for the hospice providing care as established by 42 U.S.C. 1395f(i) plus the private pay rate for the nursing facility.

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual if the recipient is eligible based on the special income level.

(4) A hospice participant shall be eligible for a benefit based on this section if he or she has elected coverage under the Medicaid Hospice Program rather than the regular Medicaid Program.

(5) Institutional deeming rules shall apply in accordance with 907 KAR 20:035 with regard to the categorically needy including a participant eligible on the basis of the special income level.

(6) Community deeming procedures shall be used in accordance with 907 KAR 20:040 for a noninstitutionalized hospice recipient who is:

(a) A medically needy individual, who shall spend-down on a quarterly basis; and

(b) Not eligible under the special income level.

(7)(a) In the posteligibility determination of available income, the basic maintenance needs allowance shall include a mandatory withholding from income.

(b) Mandatory withholdings shall:

1. Include state and federal taxes; and

2. Not include child support, alimony, or a similar payment resulting from an action by the recipient.

(8) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall not be excluded in the posteligibility determination.

Section 3. Continuous Eligibility for Children. (1) An individual who is younger than nineteen (19) shall receive continuous eligibility, consistent with 42 C.F.R. 435.926.

(2) The continuous eligibility period for a child recipient shall be for a period of twelve (12) months.

(3) A child's eligibility during a continuous eligibility period shall only be terminated under the following circumstances:

(a) The child becomes nineteen (19) during the continuous eligibility period.

(b) The child, or representative, voluntarily requests that the eligibility be terminated;

(c) The child ceases to be a resident of the commonwealth;

(d) The agency determines that the eligibility was granted due to:

1. Agency error; or

2. Fraud, abuse, or perjury attributed to the child or representative; or

(e) The death of the child.

Section 4. Applicability. The provisions and requirements of this administrative regulation shall not apply to an individual whose Medicaid eligibility is determined:

(1) Using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or

(2) Pursuant to 907 KAR 20:075.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 14, 2023

FILED WITH LRC: April 20, 2023 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 26, 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 June 19, 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 June 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes special income requirements for individuals who are eligible via the 1915(c) waivers or hospice.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish special income requirements for individuals who are eligible via the 1915(c) waivers or hospice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing special income requirements for individuals who are eligible via the 1915(c) waivers or hospice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing special income requirements for individuals who are eligible via the 1915(c) waivers or hospice.

(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 implements a continuous eligibility requirement for all children. The continuous eligibility period will last for twelve (12) months and may only be terminated if the child becomes older than 19, voluntarily requests termination, ceases to be a Kentucky resident, dies, or the agency determines that eligibility was granted in error or due to fraud, abuse, or perjury.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement a new continuing eligibility requirement for children among the MAGI population.

(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 continuous eligibility requirement for children.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment assists in the effective administration of the statutes by clearly adopting a continuous eligibility requirement for children.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 500,000 children in the Medicaid program will begin to receive continuous eligibility. In addition, the department and MCOs will be impacted.

(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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children will receive continuous eligibility.

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

(a) Initially: DMS does not anticipate additional costs in administering this administrative regulation in the first year.

(b) On a continuing basis: DMS does not anticipate additional costs administering this program in future years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the requirements established herein apply to all 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 for Medicaid Services will be affected by the amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 435.906 and 435.935 authorize the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of these amendments.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years

as a result of these amendments.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate cost savings for regulated entities in the first year.

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

(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.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14) and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) requires the cabinet secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. 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."

(3) Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. 42 U.S.C. 1396a(a)(10)(A)(i)(IX) creates the new eligibility group comprised of former foster care individuals and bars the application of certain existing Medicaid eligibility requirements to this population.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or

requirements, than those required by the federal mandate? No, additional or stricter limits are not imposed.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional or stricter limits are not imposed.

**STATEMENT OF EMERGENCY**  
**907 KAR 20:075E**

This emergency administrative regulation is being promulgated to modify the Medicaid eligibility renewal standard for individuals formerly in foster care. The department has the opportunity to implement a continuous eligibility standard for individuals formerly in foster care pursuant to the mandate of the federal Consolidated Appropriations Act of 2023 which requires all state Medicaid programs to provide this coverage by January 1, 2024. At this time the following states have already implemented this coverage in advance of the federal mandate, and are providing 12 month continuous eligibility for Medicaid: Alabama, Alaska, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Washington, West Virginia and Wyoming. This emergency administrative regulation will provide sustained access to healthcare for individuals formerly in foster care and provide continued support to the network of providers who treat them. This emergency regulation will also ease the anticipated administrative burden of the COVID-19 Public Health Emergency unwinding process. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding and ensure the most efficient use of funds. In addition, the Department for Medicaid Services (DMS) needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients who were formerly in foster care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
ERIC C. FRIEDLANDER, Secretary

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

**907 KAR 20:075E. Eligibility provisions and requirements regarding former foster care individuals, and individuals who were in out-of-state equivalents to foster care.**

EFFECTIVE: April 20, 2023

RELATES TO: KRS 205.520, 42 C.F.R. 435.150

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid eligibility provisions and requirements for an individual between the age of nineteen (19) and twenty-six (26) years, who formerly was in foster care, or an out-of-state equivalent to foster care, and was receiving Medicaid benefits at the time that the individual aged out of foster care, or the out-of-state equivalent.

Section 1. Former Foster Care Eligibility Criteria. An individual between the age of nineteen (19) and twenty-six (26) years, who formerly was in foster care, or an out-of-state equivalent to foster care, and was receiving Medicaid benefits at the time the

individual's age exceeded the foster care, or out-of-state equivalent, age limit shall be eligible for Medicaid benefits if the individual meets the requirements of this administrative regulation.

Section 2. Income Standard. There shall be no income standard for individuals between the age of nineteen (19) and twenty-six (26) years and who formerly were in foster care, or an out-of-state equivalent to foster care, but aged out of foster care or the out-of-state equivalent.

Section 3. Resource Standard. There shall be no resource standard for individuals between the age of nineteen (19) and twenty-six (26) years and who formerly were in foster care, or an out-of-state equivalent to foster care, but aged out of foster care or the out-of-state equivalent.

Section 4. Attestation of Having Aged Out of Foster Care. (1) An individual between the age of nineteen (19) and twenty-six (26) years, who formerly was in foster care, or an out-of-state equivalent to foster care, and was receiving Medicaid benefits at the time the individual's age exceeded the foster care, or out-of-state equivalent to foster care, [age limit,] shall attest, during the application process, that the individual was receiving Medicaid benefits at the time that the individual reached the age which exceeded the foster care, or out-of-state equivalent to foster care, age limit.

(2) An individual who does not attest as established in subsection (1) of this section shall not be eligible for Medicaid benefits under this administrative regulation.

Section 5. Citizenship and Residency Requirements. (1) The citizenship requirements established in 42 C.F.R. 435.406 shall apply.

(2) To satisfy the Medicaid:

(a) Citizenship requirements, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;

2. A qualified alien who entered the United States before August 22, 1996, and is:

a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

b. Granted asylum pursuant to 8 U.S.C. 1158;

c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

e. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

g. An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

h. A battered alien pursuant to 8 U.S.C. 1641(c);

i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph or the unremarried surviving spouse of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

3. A qualified alien who entered the United States on or after August 22, 1996 and is:

a. Granted asylum pursuant to 8 U.S.C. 1158;

b. A refugee admitted to the United States pursuant to 8 U.S.C.



1157;

c. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

d. An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfils the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unmarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;

h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

(b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403.

Section 6. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and (3) of this section, an applicant for or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.

(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

Section 7. Institutional Status. (1) An individual shall not be eligible for Medicaid if the individual is a:

(a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of this section;

(b) Patient in a mental hospital or psychiatric facility unless the individual is:

1. Under age twenty-one (21) years of age; or

2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday; or

(c) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases.

(2) An inmate shall be eligible for Medicaid during the period of time the inmate is admitted to a hospital if the inmate:

(a) Has been admitted to a hospital;

(b) Has been an inpatient at the hospital for at least twenty-four (24) consecutive hours; and

(c) Meets the Medicaid eligibility criteria established in this administrative regulation.

Section 8. Application Process, Initial and Continuing Eligibility Determination. (1) An individual may apply for Medicaid benefits by:

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

(b) Applying over the telephone by calling:

1. 1-855- 459-6328; or

2. 1-855-326-4654 if deaf or hearing impaired;

(c) Faxing an application to 1-502-573-2007;

(d) Mailing a paper application to Office of Health Benefits Exchange, 12 Mill Creek, Frankfort, Kentucky 40601; or

(e) Going to the applicant's local Department for Community Based Services Office and applying in person.

(2) An individual shall attest in accordance with Section 4 of this administrative regulation when applying for Medicaid benefits.

(3)(a) An application shall be processed (approved, denied, or a request for additional information sent) by the department or other entity involved in processing the given application within forty-five (45) days of application submittal.

(b) If a trusted source indicates that an applicant is incarcerated, a request for additional information shall be generated by the department or other entity involved in processing the application requesting verification of the applicant's incarceration dates or status.

(c) If an applicant fails to provide information in response to a request for additional information within forty-five (45) days of the receipt of the request, the application shall be denied.

Section 9. Continuous Eligibility for Children. (1) An individual who is between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care, while receiving Medicaid coverage shall receive continuous eligibility, consistent with 42 C.F.R. 435.926.

(2) The continuous eligibility period for an individual who is between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care, while receiving Medicaid coverage recipient shall be for a period of twelve (12) months.

(3) The eligibility during a continuous eligibility period of an individual who is between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care, while receiving Medicaid coverage shall only be terminated under the following circumstances:

(a) The individual becomes older than twenty (26) during the continuous eligibility period.

(b) The individual voluntarily requests that the eligibility be terminated;

(c) The individual ceases to be a resident of the Commonwealth;

(d) The agency determines that the eligibility was granted due to:

1. Agency error; or

2. Fraud, abuse, or perjury attributed to the individual; or

(e) The death of the individual.

Section 10. Adverse Action, Notice, and Appeals. The adverse action, notice, and appeals provisions established in 907 KAR 20:060 shall apply to former foster care, or out-of-state equivalent, individuals between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care, while receiving Medicaid coverage.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 14, 2023

FILED WITH LRC: April 20, 2023 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 26, 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 June 19, 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 June 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions and requirements regarding Medicaid eligibility for a new eligibility group mandated by the Affordable Care Act. The new group is comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care and aged out of foster care while receiving Medicaid coverage at the time of aging out of foster care. To qualify for Medicaid coverage the individuals have to attest to having received Medicaid benefits at the time they aged out of foster care but there is no income standard or resource standard/test for this population as the Affordable Care Act prohibits such standards from being applied to this population. Additionally, the individuals have to meet residency and citizenship requirements that other Medicaid applicants/recipients have to meet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with an Affordable Care Act mandate to establish Medicaid eligibility for a new eligibility group comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care and aged out of foster care while receiving Medicaid benefits at the time of aging out of foster care.

(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 eligibility requirements for former foster youth.

(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 eligibility requirements for former foster youth.

(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 including individuals who were in out-of-state foster care as eligible foster care individuals. The amendment also implements a continuous eligibility requirement for former foster care youth. The continuous eligibility period will last for twelve (12) months and may only be terminated if the individual becomes older than 19, voluntarily requests termination, ceases to be a Kentucky resident, dies, or the agency determines that eligibility was granted in error or due to fraud, abuse, or perjury.

(b) The necessity of the amendment to this administrative regulation: This population has already been eligible for coverage within the Medicaid program. The federal government has directed that this eligibility group should be included within the state plan. This conforming change is being made as a result of that direction. In addition, a new continuing eligibility requirement is needed.

(c) How the amendment conforms to the content of the authorizing statutes: DMS has been instructed to utilize the state plan to cover individuals who were in out-of-state foster care. The authorizing statutes establish a framework for DMS to negotiate the Medicaid program with the federal government. The amendment also conforms to the content of the authorizing statutes by implementing a continuous eligibility requirement for children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies eligibility policy for a specific population of Medicaid recipients and clearly adopts a continuous eligibility requirement for children.

(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 a group of adult recipients in the Medicaid program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Regulated entities will be required to take no new actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The members will continue to have access to Medicaid services.

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

(a) Initially: DMS does not anticipate additional costs as a result of this amendment.

(b) On a continuing basis: DMS does not anticipate additional costs as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching state funds appropriated in the biennium budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 435.150

(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. Requires states to cover former foster care children. Former foster youth from other states are allowed to be covered under the Medicaid state plan or under Section 1115 waivers.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520 and 42 C.F.R. 435.150.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

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

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no additional costs to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

(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.

(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.

#### STATEMENT OF EMERGENCY 907 KAR 20:100E

This emergency administrative regulation is being promulgated to modify the Medicaid eligibility renewal standard for children. The department has the opportunity to implement a continuous eligibility standard for children pursuant to the mandate of the federal Consolidated Appropriations Act of 2023 which requires all state Medicaid programs to provide this coverage by January 1, 2024. At this time the following states have already implemented this coverage in advance of the federal mandate, and are providing 12 month continuous eligibility for Medicaid: Alabama, Alaska, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota,

Ohio, Oregon, Pennsylvania, South Carolina, Washington, West Virginia and Wyoming. This emergency administrative regulation will provide sustained access to healthcare for children and provide continued support to the network of providers who treat them. This emergency regulation will also ease the anticipated administrative burden of the COVID-19 Public Health Emergency unwinding process. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding and ensure the most efficient use of funds. In addition, the Department for Medicaid Services (DMS) needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of children Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

ERIC C. FRIEDLANDER, Secretary

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Emergency Amendment)

#### 907 KAR 20:100E. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

EFFECTIVE: April 20, 2023

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(e)(14)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the provisions and requirements for individuals whose Medicaid eligibility is determined using the modified adjusted gross income as the income standard. The affected individuals include children under the age of nineteen (19) years, pregnant women to 365 days postpartum, caretaker relatives, and adults under age sixty-five (65) who do not have a dependent child under the age of nineteen (19) years and are not otherwise eligible for Medicaid benefits.

#### Section 1. Applicability.

(1)(a) The provisions and requirements of this administrative regulation shall apply to individuals whose Medicaid eligibility is determined using the modified adjusted gross income as the income standard.

(b) An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be an individual who is:

1. A child under the age of nineteen (19) years, excluding a child in foster care;

2. A caretaker relative with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

3. A pregnant woman, with income up to 195 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), including the postpartum period to 365 days after delivery;

4. An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), who:

a. Does not have a dependent child under the age of nineteen (19) years; and

b. Is not otherwise eligible for Medicaid benefits; or

5. A targeted low income child with income up to 150 percent of the federal poverty level established annually by the United

States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2).

(2)(a) If an eligibility determination indicates that an individual's income exceeds 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall apply an additional cushion of five (5) percent of the federal poverty level toward the eligibility determination for the individual as described pursuant to 42 U.S.C. 1396a(e)(14)(I)(i).

(b) If after the five (5) percent adjustment, the individual's income is under the adjusted income threshold, the individual shall meet the modified adjusted gross income standard.

(c) A pregnant person's federal poverty level calculation pursuant to 42 U.S.C. 9902(2) shall be at least two (2) and shall include the pregnant person and the number of children expected to be delivered. Other members of the household shall be calculated and included consistent with KAR Title 907.

(3) The provisions and requirements of this administrative regulation shall not apply to an individual whose Medicaid eligibility is determined using an eligibility standard that is not the modified adjusted gross income.

Section 2. MAGI-based Methods. The department shall use the MAGI-based methods established in 42 C.F.R. 435.603 to determine whether an individual meets the Medicaid income eligibility requirements if the eligibility standard is the modified adjusted gross income.

Section 3. Resources Not Considered. An individual's resources shall not be considered for the purpose of determining Medicaid eligibility if the eligibility standard is the modified adjusted gross income.

#### Section 4. Citizenship and Residency Requirements.

(1) The citizenship requirements established in 42 C.F.R. 435.406 shall apply.

(2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid:

(a) Citizenship requirements, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;

2. A qualified noncitizen who entered the United States before August 22, 1996, and is:

a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

b. Granted asylum pursuant to 8 U.S.C. 1158;

c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

e. A noncitizen whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

g. A noncitizen who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

h. A battered noncitizen pursuant to 8 U.S.C. 1641(c);

i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph or the unremarried surviving spouse of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

3. A qualified noncitizen who entered the United States on or after August 22, 1996, and is:

a. Granted asylum pursuant to 8 U.S.C. 1158;

b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

c. A noncitizen whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

d. A noncitizen who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unremarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;

h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

(b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403.

(3) A qualified or nonqualified noncitizen shall be eligible for medical assistance pursuant to 42 C.F.R. 440.255 and as provided in this paragraph.

(a) The individual shall meet the income, resource, and categorical requirements of the Medicaid Program.

(b) Coverage for the individual shall be:

1. Limited to the medical care and services necessary for the treatment of an emergency medical condition or pregnancy of the individual;

2. Not related to an organ transplant procedure; and

3. For a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(c) The individual's coverage shall be recertified every twelve (12) months.

(4)(a) The satisfactory documentary evidence of citizenship or nationality requirement in subsection (2)(a)1 of this section shall not apply to an individual who:

1. Is receiving SSI benefits;

2. Previously received SSI benefits but is no longer receiving them;

3. Is entitled to or enrolled in any part of Medicare;

4. Previously received Medicare benefits but is no longer receiving them;

5. Is receiving:

a. Disability insurance benefits under 42 U.S.C. 423; or

b. Monthly benefits under 42 U.S.C. 402 based on the individual's disability pursuant to 42 U.S.C. 423(d);

6. Is in foster care and who is assisted under Title IV-B of the Social Security Act, which is codified as 42 U.S.C. 621 through 628b; or

7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act, which is codified as 42 U.S.C. 670 through 679c.

(b) The department's documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396b(x).

(5) The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or

recipient's behalf.

(6)(a) Except as established in paragraph (b) of this subsection, an individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met.

(b) The retroactive eligibility period shall begin no earlier than January 1, 2014 for an individual who gains Medicaid eligibility solely by qualifying:

1. As a former foster care individual pursuant to 907 KAR 20:075; or

2. As an adult with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), who:

a. Does not have a dependent child under the age of nineteen (19) years; and

b. Is not otherwise eligible for Medicaid benefits.

(7) The documentation of citizenship requirements established in this administrative regulation shall not apply to a noncitizen under nineteen (19) years of age who is lawfully present in the United States of America.

(8) Except as established in subsection (9) of this section, a noncitizen shall be considered to be lawfully present in the United States of America if the individual:

(a) Is a qualified noncitizen;

(b) Is a noncitizen in a valid immigrant status;

(c) Is a noncitizen who has been paroled into the United States of America in accordance with 8 U.S.C. 1182(d)(5) for less than one (1) year, except for an individual:

1. Paroled for:

a. Prosecution; or

b. Deferred inspection; or

2. Pending removal proceedings;

(d) Is a noncitizen who:

1. Has been granted:

a. Temporary resident status in accordance with 8 U.S.C. 1160 or 1225a;

b. Temporary protected status in accordance with 8 U.S.C. 1254a or is an individual with a pending application for temporary protected status who has been granted employment authorization;

c. Employment authorization under 8 C.F.R. 274a.12(c);

d. Deferred action status; or

e. An administrative stay of removal under 8 C.F.R. Part 241;

2. Is a family unity beneficiary in accordance with Section 301 of Pub. L. 101-649 as amended, and 8 C.F.R. Part 236;

3. Is under deferred enforced departure in accordance with a decision made by the President of the United States of America; or

4. Is a beneficiary of an approved visa petition who has a pending application for an adjustment of status;

(e) Is an individual with a pending application for asylum:

1.a. Under 8 U.S.C. 1158;

b. For withholding of removal under 8 U.S.C. 1231; or

c. Under the Convention of Torture; and

2. Who:

a. Has been granted employment authorization; or

b. Is under the age of fourteen (14) years and has had an application pending for at least 180 days;

(f) Is an individual who has been granted withholding of removal under the Convention Against Torture;

(g) Is a child who has a pending application for special immigrant juvenile status as described in 8 U.S.C. 1101(a)(27)(J); or

(h) Is a victim of severe trafficking in persons in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386, as amended in 22 U.S.C. 7105(b)).

(9) An individual with deferred action under the Department of Homeland Security's deferred action for the childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, shall not be considered to be lawfully present with respect to any of the categories listed in subsection (8) of this section.

#### Section 5. Provision of Social Security Numbers.

(1)(a) Except as provided in subsections (2) and (3) of this section, an applicant for or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(b) If a parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a Social Security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failing to meet technical eligibility requirements.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.

(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

#### Section 6. Institutional Status.

(1) An individual shall not be eligible for Medicaid if the individual is a:

(a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of this section;

(b) Patient in a state tuberculosis hospital unless he or she has reached age sixty-five (65);

(c) Patient in a mental hospital or psychiatric facility unless the individual is:

1. Under age twenty-one (21) years of age;

2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday; or

3. Sixty-five (65) years of age or over; or

(d) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).

(2) An inmate shall be eligible for Medicaid during the period of time the inmate is admitted to a hospital if the inmate:

(a) Has been admitted to a hospital;

(b) Has been an inpatient at the hospital for at least twenty-four (24) consecutive hours; and

(c) Meets the Medicaid eligibility criteria established in this administrative regulation.

Section 7. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have assigned to the Cabinet for Health and Family Services any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

#### Section 8. Third-party Liability as a Condition of Eligibility.

(1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;

2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or

3. May interfere with adoption considerations or proceedings.

(2) A failure of an individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman with income up to 195 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2) shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 9. Application Process, Initial and Continuing Eligibility Determination.

- (1) An individual may apply for Medicaid by:
  - (a) Using the Web site located at [www.kynect.ky.gov](http://www.kynect.ky.gov);
  - (b) Applying over the telephone by calling:
    1. 1-855-459-6328;
    2. 1-855-306-8959 to speak to the DCBS Family Support Call Center; or
    3. 1-855-326-4654 if deaf or hearing impaired;
  - (c) Faxing an application to 1-502-573-2007;
  - (d) Mailing a paper application to DCBS Family Support, P.O. Box 2104, Frankfort, Kentucky 40602; or
  - (e) Going to the applicant's local Department for Community Based Services Office and applying in person.
- (2)(a) An application shall be processed (approved, denied, or a request for additional information sent) within forty-five (45) days of application submittal.
- (b) Immediately after submittal if there is a variance of ten (10) percent or more regarding income information reported by the applicant versus information available from a trusted source or sources, a request for additional information shall be generated for the applicant requesting documentation to prove the applicant's income.
- (c) If a trusted source indicates that an applicant is incarcerated, a request for additional information shall be generated requesting verification of the applicant's incarceration dates.
- (d) If an applicant fails to provide information in response to a request for additional information within thirty (30) days of the receipt of the request, the application shall be denied.
- (3)(a) An annual renewal of eligibility shall occur without an individual having to take action to renew eligibility, unless:
  1. The individual's eligibility circumstances change resulting in the individual no longer being eligible for Medicaid; or
  2. A request for additional information is generated due to a change in income or incarceration status.
- (b)1. If an individual receives a request for additional information as part of the renewal process, the individual shall provide the information requested within forty-five (45) days of receiving the request.
2. If an individual fails to provide the information requested within forty-five (45) days of receiving the request, the individual's eligibility shall be terminated on the forty-fifth day from the request for additional information.
- (4) An individual shall be required to report to the department any changes in circumstances or information related to Medicaid eligibility.

Section 10. Continuous Eligibility for Children. (1) An individual who is younger than nineteen (19) shall receive continuous eligibility, consistent with 42 C.F.R. 435.926.

- (2) The continuous eligibility period for a child recipient shall be for a period of twelve (12) months.
- (3) A child's eligibility during a continuous eligibility period shall only be terminated under the following circumstances:
  - (a) The child becomes nineteen (19) during the continuous eligibility period.
  - (b) The child, or representative, voluntarily requests that the eligibility be terminated.
  - (c) The child ceases to be a resident of the Commonwealth;
  - (d) The agency determines that the eligibility was granted due to:
    1. Agency error; or
    2. Fraud, abuse, or perjury attributed to the child or representative; or
  - (e) The death of the child.

Section 11. Adverse Action, Notice, and Appeals. The adverse action, notice, and appeals provisions established in 907 KAR 20:060 shall apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

Section 12.~~[Section 44.]~~ Miscellaneous Special Circumstances.

- (1) A person during pregnancy, and as though pregnant through the end of the month containing the 365th day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(l)(1), shall meet the income requirements for this eligibility group in accordance with this administrative regulation.
- (2) If an eligible child is receiving covered inpatient services, except for services in a long term care facility or behavioral health services in an inpatient facility on a long-term basis, on a birthday which will make the child ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age.
- (3) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of the child's birth if the child has not reached his or her first birthday.
- (4)(a) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.
- (b) If a parent is not included in the case, a caretaker relative or relatives may be included to the same extent the caretaker relative would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.
- (5) For an individual eligible on the basis of utilizing his or her excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.
- (6) If a family member is pregnant, the unborn child shall be considered as a family member for income determination purposes.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 14, 2023

FILED WITH LRC: April 20, 2023 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 26, 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 June 19, 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 June 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](mailto:CHFSregs@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott and Krista Quarles

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the provisions and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income (or MAGI.)
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions

and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income. The Affordable Care Act mandates that the modified adjusted gross income be used (effective January 1, 2014) to determine Medicaid eligibility for certain populations rather than the prior Medicaid eligibility rules; thus, the administrative regulation is necessary to comply with the federal mandate.

(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 complying with a federal mandate to establish the modified adjusted gross income as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations of individuals.

(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 complying with a federal mandate to establish the modified adjusted gross income as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations of individuals.

(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 implements a continuous eligibility requirement for all children. The continuous eligibility period will last for twelve (12) months and may only be terminated if the child becomes older than 19, voluntarily requests termination, ceases to be a Kentucky resident, dies, or the agency determines that eligibility was granted in error or due to fraud, abuse, or perjury.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement a new continuing eligibility requirement for children among the MAGI population.

(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 continuous eligibility requirement for children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by clearly adopting a continuous eligibility requirement for children.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 500,000 children in the Medicaid program will begin to receive continuous eligibility. In addition, the department and MCOs will be impacted.

(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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children will receive continuous eligibility.

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

(a) Initially: DMS does not anticipate additional costs in administering this administrative regulation in the first year.

(b) On a continuing basis: DMS does not anticipate additional costs administering this program in future years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

regulation, if new, or by the change if it is an amendment: This administrative regulation does not impose or increase any fees.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the requirements established herein apply to all regulated entities.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. 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."

(3) Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations governed by the new requirements include children under nineteen (19) [excluding children in foster care]; pregnant women; caretaker relatives with income up to 133 percent of the federal poverty level; adults with no child under nineteen (19) with income up to 133 percent of the federal poverty level who are not otherwise eligible for Medicaid benefits; and targeted low-income children with income up to 150 percent of the federal poverty level. Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard. Additionally, states are prohibited from applying an asset or resource test for eligibility purposes for the aforementioned population. States are also required to create and adopt an income threshold (under the modified adjusted gross income) that ensures that individuals who were eligible for Medicaid benefits prior to January 1, 2014 (the date that the modified adjusted gross income standard is adopted) do not lose Medicaid coverage due to the modified adjusted gross income standard taking effect.

(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.

#### FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 435.603 authorizes 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? DMS estimates that the Medicaid expansion has brought in at least \$1.4 billion in federal funds into the state in 2021 (this number is exclusive of rate enhancement programs utilized for hospitals and emergency medical transport). In addition, DMS estimates that more than 16,700 jobs have been created within the commonwealth as a result of the Medicaid expansion. Furthermore, in 2021, approximately \$30 million in income tax revenue, \$29.4 million in sales tax increases, and \$12 million in local occupational and payroll taxes were generated when compared to not expanding the Medicaid program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS estimates that the Medicaid expansion has brought in at least \$1.4 billion in federal funds into the state in 2021 (this number is exclusive of rate enhancement programs utilized for hospitals and emergency medical transport). In addition, DMS estimates that more than 16,700 jobs have been created within the commonwealth as a result of the Medicaid expansion. Furthermore, in 2021, approximately \$30 million in income tax revenue, \$29.4 million in sales tax increases, and \$12 million in local occupational and payroll taxes were generated when compared to not expanding the Medicaid program.

(c) How much will it cost to administer this program for the first year? The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

(d) How much will it cost to administer this program for subsequent years? The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual 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? 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.

(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.

(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.

## STATEMENT OF EMERGENCY 922 KAR 1:360E

This emergency administrative regulation is necessary in order to immediately increase the per diem rates for specific levels of care provided for children with the highest needs in the custody of the state. The Department for Community Based Services (DCBS) has reviewed the annual audited cost report and time study and preliminary data from the 2021-2022 rate study and finds that a mid-cycle inflation adjustment is necessary to adequately reimburse child-placing and child-caring providers for the services and care they are providing for children and youth. The federal Family First Prevention Services Act (FFPSA) placed new requirements on many providers that would ensure that children receive appropriate treatment and only stay in residential or institutional placement settings for as long as required by their treatment plan. Once able, children transition to less restrictive placement settings, including to foster homes equipped to provide a high level of care. Additional financial supports are necessary to ensure there are providers who offer this care. Because these rate increases are justified by the annual audited cost report, federal Title IV-E funds will be utilized to provide these rate increases. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1., as adequately supporting providers who offer this specialized care for children is necessary for the health, safety, and welfare of children in the state's custody. If further support is not provided, there will be facility closures and no one to provide the care that these children need. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

CARRIE BANAHA, Deputy Secretary

## CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Emergency Amendment)

**922 KAR 1:360E. Private child care placement, levels of care, and payment.**

EFFECTIVE: May 4, 2023

RELATES TO: KRS 199.011, 199.640-199.680, 199.801, 600.020(25), [605.090(1)(b), (d), 610.110, 42 U.S.C. 622, 672, 675

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) and 605.090(1)(d) authorize the cabinet to establish by administrative regulation the rate setting methodology and the rate of payment for child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations establishing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice or the cabinet, in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon the conditions established by the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation



establishes: (a) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level and placement setting; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care and placement setting; and (f) procedures for determination of components of the model program cost analysis.

#### Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 199.011(3).
- (2) "Child-caring facility" or "facility" is defined by KRS 199.011(5).
- (3) "Child-placing agency" or "agency" is defined by KRS 199.011(6).
- (4) "Department" is defined by KRS 199.011(7) and 199.641(1)(b).
- (5) "Emergency shelter" is defined by KRS 600.020(25).
- (6) "Gatekeeper" means the department or agent responsible for:
  - (a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and
  - (b) Other administrative duties in the areas of:
    1. Assessment;
    2. Placement;
    3. Performance measurement; and
    4. Consultation regarding children and their needs.
  - (7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.
  - (8) "Initial level of care" means a level of care:
    - (a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and
    - (b) That is time-limited and effective for the first six (6) months of a child's placement.
  - (9) "Level of care" means the standard representing the treatment and service needs of a child placed by the cabinet in out-of-home care.
  - (10) "Level of care packet" means an assessment conducted by designated cabinet staff and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care and placement setting in accordance with Section 2(2) of this administrative regulation.
  - (11) "Medically complex" means a child who is determined to have a medical condition as defined by 922 KAR 1:495 and further described in 922 KAR 1:350, Section 4.
  - (12) "Model program cost analysis" is defined by KRS 199.641(1)(c).
  - (13) "Placement coordinator" means an individual whose responsibilities are established in KRS 199.801.
  - (14) "Reassigned level of care" means a level of care that is:
    - (a) Determined by the gatekeeper after a child's level of care expires; and
    - (b) Authorized for a specific period of time.
  - (15) "Time study" is defined by KRS 199.641(1)(d).
  - (16) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:
    - (a) Identifying the child's current level of functioning, treatment, service, and supervision needs; and
    - (b) Assigning the appropriate level of care.

#### Section 2. Referral Process for Level of Care System Placement.

- (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age or a child who is medically complex regardless of age at the time:
  - (a) The child is referred for placement with a child-caring facility or child-placing agency;
  - (b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age or is found to be medically complex; or
  - (c) A child's level of care expires and assignment of a new

level is necessary.

(2) A level of care packet shall include the following child-specific information:

- (a) Identifying data;
  - (b) Individual strengths and limitations;
  - (c) Daily living skills;
  - (d) Physical health needs including:
    1. Any significant medical history;
    2. Current diagnoses, assessments, and treatment; and
    3. Documentation indicating the child's medically complex status if the child is medically complex;
  - (e) Behavioral health needs including:
    1. Screening tools utilized based upon the child's age; and
    2. Current diagnoses, assessments, and treatment recommendations;
  - (f) Medications;
  - (g) History of substance abuse, high risk, or other significant behavior including:
    1. Sexual acting out; and
    2. Legal history, status, or other court involvement;
  - (h) Out-of-home care placement information including:
    1. Reason for entering out-of-home care;
    2. History of abuse, neglect, or dependency;
    3. Current custody status;
    4. Current and previous placements; and
    5. Permanency goal;
  - (i) Social supports;
  - (j) Educational functioning, grade level, and any special educational need; and
  - (k) Religious background and practices.
- (3)(a) If a child needs placement within a child-caring facility or a child-placing agency, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the placement coordinator.
- (b) The placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.
- (4) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement in accordance with KRS 199.801 and 922 KAR 1:370, a cabinet staff person shall:
- (a) Complete the ~~[DPP-114T, Transitional Child-Caring and Child-Placing Level of Care Schedule, through January 31, 2023, or the ]DPP-114, Child Caring and Child Placing Level of Care Schedule[, effective February 1, 2023,]~~ with the level of care payment rate for placement type:
    1. As assigned by the gatekeeper within the previous six (6) months; or
    2. If there is an emergency placement, within two (2) business days of the placement or receipt of the assigned level of care;
  - (b) Arrange transportation for the child to the placement; and
  - (c) Notify the placement coordinator of the selected placement.
- (5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:
- (a) Submit a level of care packet to the gatekeeper for a child who does not have a current level of care assignment; and
  - (b) Inform the placement coordinator of the location and date of placement.
- (6) The placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.
- #### Section 3. Gatekeeper Responsibilities. The gatekeeper shall:
- (1) Evaluate a child referred by the cabinet or currently placed in a child-caring facility or child-placing agency for the purpose of establishing an initial or reassigned level of care. The child shall be:
    - (a) Four (4) years of age or older; or
    - (b) Determined to be medically complex by designated cabinet staff;

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to an assessment of the child's treatment, supervision, and service needs consistent with one (1) of the three (3) levels of care; and

(b) Return the completed CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment, to the department and the child-caring facility or the child-placing agency;

(3) Assess a child placed in a child-caring facility in accordance with 42 U.S.C. 675a(c) within the first thirty (30) days of placement;

(4) Conduct a utilization review for a child:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b) 1. Every three (3) months thereafter if the child is in a child-caring facility; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(5) Reassign a child's level of care after the previous level has expired;

(6) Monitor each child-caring facility and child-placing agency;

(7) Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes; and

(8) For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, to the child-caring facility or child-placing agency and the cabinet after a level is conducted or reassigned.

Section 4. Levels of Care. A level of care shall be assigned in accordance with this section.

(1) A Level I child shall be a child who requires a routine home environment that:

(a) Provides for the basic needs of the child;

(b) Provides guidance and nurturing;

(c) Provides supervision to meet the needs of the child;

(d) Provides educational support;

(e) Provides access to routine medical care; and

(f) Ensures the emotional and physical well-being of the child.

(2) A Level II child shall be a child who:

(a) Requires a routine home environment that meets the requirements of subsection (1) of this section;

(b) Has identified treatment needs based on available behavioral health screening and assessment information, current treatment recommendations, or has been determined to be medically complex;

(c) Has a history of complex trauma related to maltreatment;

(d) Requires supervision in a structured supportive setting with:

1. Counseling available from professional staff;

2. Educational support; and

3. Services designed to improve physical and behavioral health and wellbeing;

(e) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(f) Requires a program flexible enough to allow increased:

1. Independence if the child is capable; or

2. Structure during temporary periods of regression.

(3) A Level III child shall be a child who:

(a) Has significant treatment needs as indicated by:

1. Available behavioral health screening and assessment information or current treatment recommendations that require specialized or frequent treatment services;

2. A determination by designated cabinet staff that the child has a high degree of medical complexity that requires specialized medical care;

3. The presence of both significant behavioral health needs requiring treatment and a determination of medical complexity by designated cabinet staff; or

4. A severe impairment or disability that requires a caregiver to attend to all care needs of the child; and

(b) Requires a highly structured supportive setting:

1. With frequent therapy or therapeutic services provided by a qualified mental health professional or other treatment professional allowed pursuant to 922 KAR 1:300 within a treatment program designed to improve social, emotional, and educational adaptive behavior;

2. That includes twenty-four (24) hour supervision; or

3. That provides safe and effective care for a severe, chronic medical condition, behavioral health issue, or other highly specialized needs.

Section 5. Payment Methodology and Rates.

(1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the "model program cost analysis" defined by KRS 199.641(1)(c).

(b) Each private child-caring facility and child-placing agency shall report to the cabinet annually, on the DPP-888, Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs and Facilities.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private child-caring facilities and child-placing agencies; and

b. Level of care of children served by private child-caring facilities and child-placing agencies that contract with the cabinet.

(b) 1. For children whose level is determined, the median level of care shall be represented by an index factor of one (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

a. Board;

b. Care; and

c. Treatment components; or

2. For an emergency shelter without a treatment license:

a. Board; and

b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;

2. Child safety after reunification with the child's family;

3. Adequate educational support;

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

5. Increased placement stability during the service period;

6. Increased achievement of permanency goals; and

7. Increased stability in less restrictive or permanent placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes established in paragraph (a) of this subsection; and
2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

- (a) Reduced length of stay in out-of-home placement;
- (b) Increased safety from child abuse or neglect;
- (c) Increased number of children moving into and remaining in permanent placement;
- (d) Increased number of children and their families cared for in close proximity to their home communities;
- (e) Increased number of children reunified with their families;
- (f) Increased accountability for success in after care; or
- (g) Decreased reentry into state custody.

#### Section 6. Residential Care.

(1) A child-caring facility that cares for children in the custody of the cabinet shall be licensed pursuant to 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:300, Section 8, Residential Treatment Program, if providing treatment-oriented services.

(3) Only a child assigned as Level III shall be placed in residential care.

(4) The daily rate for residential care to a child-caring facility shall be:

(a) \$193.50 per child for a child-caring facility determined by designated cabinet staff to not meet the requirements of a specified setting for placement in accordance with 42 U.S.C. 672(k)(2); and

(b) ~~\$336.00~~ ~~[\$298.50]~~ per child for a child-caring facility determined by designated cabinet staff to meet the requirements of a specified setting for placement in accordance with 42 U.S.C. 672(k)(2).

#### Section 7. Emergency Shelter Care.

(1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) ~~\$220.59~~ ~~[\$193.50]~~ per child per day for a child-caring facility with a treatment license; or

(b) ~~\$165.44~~ ~~[\$145.12]~~ per child per day for a child-caring facility without a treatment license.

(2) If a child with an assigned level of care enters an

emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency.

(1) The basic daily rate for foster care shall be ~~\$51.33~~ ~~[\$44.82]~~.

(2) ~~The [if assessed on or after July 1, 2022, upon the next utilization review, the] daily rate for foster care shall be \$51.33~~ ~~[\$44.82]~~ per child for:

(a) A child under the age of four (4) who has not been assigned a level; and

(b) A child over the age of four (4) with a level I assigned level of care.

(3) ~~The [if assessed prior to July 1, 2022, the daily rates for therapeutic or treatment foster care shall be as follows:~~

(a) ~~Levels I and II, if the child is stepped down from Level III or higher \$76.10 per child;~~

(b) ~~Level III – \$83.16 per child;~~

(c) ~~Level IV – \$101.23 per child; and~~

(d) ~~Level V – \$139.96 per child.~~

(4) ~~If assessed on or after July 1, 2022, upon the next utilization review, the] daily rates for therapeutic or treatment foster care shall be:~~

(a) ~~Level II - \$99.50~~ ~~[\$83.16]~~ per child; and

(b) ~~Level III - \$139.96 per child.~~

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, the amount established in Section 8(1) of this administrative regulation for the committed child of an adolescent parent who is committed to the cabinet.

#### Section 10. Independent Living Programs.

(1) An independent living program shall be licensed pursuant to 922 KAR 1:305 and shall meet the standards for independent living programs established in 922 KAR 1:310 and 922 KAR 1:340.

(2) The daily rate for an independent living program shall be:

(a) ~~\$99.50~~ ~~[\$83.16]~~ per child for Level I or Level II; and

(b) ~~\$139.96 per child for Level III.~~

(3) A Level III child in an independent living setting shall require increased structure, supervision, case management, and treatment services.

Section 11. Programs with Decoupled Rates. ~~[(4)]~~ A child-caring facility or child-placing agency providing highly specialized behavioral health services may be paid for board and treatment services separately through agreement with the:

~~(1) [(a)] Department for the cost of room, board, and watchful oversight; and~~

~~(2) [(b)] Department for Medicaid Services or its designee for behavioral health treatment services.~~

#### Section 12. Provider Requirements.

(1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

a. The evaluation and treatment of behavioral health needs; and

b. Identification and alleviation of related trauma symptoms, disability, or distress experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the trauma, disability, or distress;  
c. Provide access to improving the educational or vocational status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. To the gatekeeper, a Child and Adolescent Needs and Strengths assessment report completed within the past six (6) months or another supplemental tool approved by the gatekeeper; and

2. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP):

a. On a quarterly basis, for a private child care residential placement; or

b. On a semiannual basis for a foster care placement;

(d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or

2. The Joint Commission.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

#### Section 13. Utilization Review and Authorization of Payment.

(1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports established in Section 12(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as established in Section 12(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as established in Section 14 of this administrative regulation.

#### Section 14. Redetermination.

(1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the

gatekeeper:

(a) New information that supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, for a utilization review;

2. CRP-4, Children's Review Program Notice of Level of Care Redetermination;

3. CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, for a utilization review; or

4. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment, for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review due date or admission, and if the gatekeeper assigns a higher level with a CRP-4, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date if the complete utilization review materials were received on or before the utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review due date or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4, an appeal may be requested in accordance with Section 16 or 17 of this administrative regulation.

#### Section 15. Reassignment.

(1) If the level of care expires and the child is moved to a different child-caring facility or child-placing agency placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. The most recent Child and Adolescent Needs and Strengths assessment report or a comparable assessment of the child; and

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary.

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as established in Section 14 of this administrative regulation.

#### Section 16. Informal Dispute Resolution.

(1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within thirty (30) calendar days unless an extension is granted by the secretary or designee:

1. Due to extenuating circumstances that prolong the review; and

2. With notice provided to the contract agent.

(3) If the dispute relates to a decrease or denial of payment,

the contract agent may request an administrative hearing in accordance with Section (17) of this administrative regulation.

Section 17. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

Section 18. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "CRP-2, Children's Review Program Notice of Level of Care Payment Authorization", 01/22;
- (b) "CRP-4, Children's Review Program Notice of Level of Care Redetermination", 01/22;
- (c) "CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", 01/22;
- (d) "CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment", 01/22;
- (e) "CRP-7, Children's Review Program Application for Level of Care Payment (ALP)", 07/22;
- (f) ~~"DPP-114T, Transitional Child-Caring and Child-Placing Level of Care Schedule", 07/22;~~
- (g) ~~"DPP-114, Child Caring and Child Placing Level of Care Schedule", 05/23[02/23]; and~~
- (g)[(h)] "DPP-888, Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs and Facilities", 07/22.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dCBS/Pages/default.aspx>.

LESA DENNIS, Acting Commissioner

CARRIE BANAHAN, Deputy Secretary

APPROVED BY AGENCY: April 25, 2023

FILED WITH LRC: May 4, 2023 at 3:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 26, 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 June 19, 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 June 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](mailto:CHFSregs@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility, a payment rate for each level, gatekeeper responsibilities, provider requirements, procedures for

classification at the appropriate level of care, and procedures for determination of components of the model program costs analysis.

(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) and 605.090(1)(d) authorize the cabinet to establish by administrative regulation the rate setting methodology and the rate of payment for child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations establishing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice or the cabinet in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon the conditions established by the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605.

(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 levels of care and associated payments for a child's placement at a child-caring facility or child-placing agency consistent with the level and quality of care and service provided.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child in the custody of the cabinet with a child-caring facility or child-placing agency, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

(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 increases the per diem rates for specific levels of care provided for children with the highest needs in the custody of the state. The annual audited cost report and time study and preliminary data from the most recent rate study have been evaluated and the Department for Community Based Services (DCBS) has determined that a mid-cycle inflation adjustment is necessary to adequately reimburse child-placing and child-caring providers. Because documentation and analysis show that this rate increase is justified and needed, federal funding will be utilized in implementing this amendment. Documentation that the department received from the Children's Alliance requests that, "this rate increase be implemented as soon as possible as private child-caring and child-placing agencies are struggling to cover their rapidly rising costs given the swift and unprecedented inflation rates, respond to the workforce crisis that has ensued since the pandemic and meet the increased need for behavioral health services. Providers need financial relief as soon as possible...". Material incorporated by reference is also being amended to reflect this rate increase.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase the reimbursement rate for the care of children placed in child-caring and child-placing facilities. Facilities have struggled to maintain staff at safe staff-to-child ratios, which has caused facilities to not be able to accept the placement of children in the state's custody with high medical or behavioral health needs. DCBS needs to ensure that these facilities remain open and able to accept and care for children. Audits and studies have shown that the current rates are not adequate; therefore, this increase will be paid with federal funds. The Children's Alliance has stressed the urgent need to increase rates so that agencies can continue to provide needed services to the most vulnerable citizens. The rate increase is anticipated to assist with provider capacity, thereby better assuring placement options and quality care for children in state custody. The health and welfare of these children are jeopardized without the payment rate increase, in addition to threats to federal

child welfare funding due to an inadequate service array for children requiring out-of-home care.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 199.641(2) states, "...when the department chooses to contract with a child-caring facility or child-placing agency for services to a child in the custody of or committed to the department, the department shall make payments to that facility based on the rate setting methodology developed from the model program cost analysis." This amendment ensures that payments to facilities are consistent with cost analyses, audits, and studies, and that private facilities have adequate funds to provide safe staff-to-child ratios and can continue to accept the placement of children requiring higher levels of care.

(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 increasing some payment rates so that they are more consistent with actual provider costs, thereby better facilitating placement options and preserving the health and welfare of children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 2023, there were 5,057 unique children placed in a private facility or agency setting according to their needed level of care established in this administrative regulation. There were 49 child-caring agencies and 122 child-placing agencies licensed to operate in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The children affected by this administrative regulation will have no new action required. Federal law has increased the standards that must be met for some of the entities providing care pursuant to this administrative regulation; therefore, they will be receiving increased per diems for providing care and meeting these new standards. It is the intent of the department that these increases will also help maintain staff and private foster homes so that the placement of children with higher therapeutic or medical needs will be accepted.

(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 affected entities, only to the department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will receive a per diem rate increase through this amendment. This rate increase is designed to offset the cost of meeting higher standards and to address the staffing crisis experienced by many facilities. Children in the state's custody will benefit from having more placement options and providers that can provide the level of care they need.

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

(a) Initially: The per diem increases are within existing appropriations.

(b) On a continuing basis: The per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding for these programs include federal Title IV-E (of the Social Security Act) foster care maintenance, general funds, and agency and restricted funds derived from the Temporary Assistance for Needy Family (TANF) block grant and Medicaid.

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

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? This administrative regulation does include tiering as different per diem rates and standards are associated with specific levels of care provided to children in the state's custody.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672, 675

(2) State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672, 675

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The increase in per diem rates are necessary in order to meet the higher standards required by the Family First Prevention Services Act and to address the staffing crisis experienced by facilities in providing care to children with high needs.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or 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 Cabinet for Health and Family Services, specifically the Department for Community Based Services (DCBS), is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1), 42 U.S.C. 622, 672

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of audits and studies to ensure the per diem increases are sustainable within appropriations.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the

expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings are anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated.

(c) How much will it cost the regulated entities for the first year? There are no costs to regulated entities.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

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

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

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

EFFECTIVE: May 11, 2023

Prior Versions –

Emergency Amendment: 49 Ky.R. 1880

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", May[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: May 10, 2023

FILED WITH LRC: May 11, 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](mailto: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. The original version adds new language to the review criteria on page 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). In response to comments received during the public comment period, the cabinet amended condition (a)(ii) above to change the maximum number of beds that may be converted to 20% of the facility's acute care beds up to a maximum of 25 beds.

(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 amendment 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

##### (Emergency Amended After Comments)

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

EFFECTIVE: May 11, 2023

Prior Versions –

Emergency Amendment: 49 Ky.R. 1882

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 (20) percent of the facility's [twenty-five (25)]** acute care beds up to a maximum of twenty-five (25) 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: May 10, 2023

FILED WITH LRC: May 11, 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](mailto: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. In response to comments received during the public comment period, the cabinet amended the conditions to change the maximum number of beds that may be converted from 25 beds to 20% of the facility's acute care beds, up to a maximum of 25 beds.

(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.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Health Care Policy**  
**(Emergency As Amended at ARRS, May 9, 2023)**

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

**EFFECTIVE:** May 9, 2023

**Prior versions:**

**Emergency Amendment - 49 Ky.R. 2057**

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

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

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

**Section 1. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

**Section 2. General Requirements.**

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

1. Be provided:

a. To a recipient[:

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

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

b. By a provider who is:

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

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

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

2. Be covered in accordance with this administrative regulation;

3. Be medically necessary; [and]

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

5. Audiology service limits shall be as established on the Kentucky Medicaid Audiology Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

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

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

1. Not reimburse separately for the procedure; and

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

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

(3) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

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

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

1. Interpreted to be fraud or abuse; and

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

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

(d) A provider shall comply with KRS 205.622.

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

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

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

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

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

1. Maintain a current, unrevoked, and unsuspended license to

practice audiology in the state in which the audiologist is licensed;

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

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

4. Maintain a Certificate of Clinical Competence issued to the audiologist by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the audiologist by the American Speech-Language-Hearing Association.

(c) If an audiologist fails to comply with paragraph (a) or (b) of this subsection, as applicable based on if the audiologist is in-state or out-of-state, the:

1. Audiologist shall be ineligible to be a Kentucky Medicaid Program provider; and

2. Department shall not reimburse for any service or item provided by the audiologist effective with the date the audiologist fails or failed to comply.

(6)(a) An in-state specialist in hearing instruments shall:

1. Maintain a current, unrevoked, and unsuspended license issued by the Kentucky Licensing Board for Specialists in Hearing Instruments;

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

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

4. Maintain a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association.

(b) An out-of-state specialist in hearing instruments shall:

1. Maintain a current, unrevoked, and unsuspended license issued by the licensing board with jurisdiction over specialists in hearing instruments in the state in which the license is held;

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

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

4. Maintain a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association.

(c) If a specialist in hearing instruments fails to comply with paragraph (a) or (b) of this subsection, as applicable based on if the specialist in hearing instruments is in-state or out-of-state, the:

1. Specialist in hearing instruments shall be ineligible to be a Kentucky Medicaid Program provider; and

2. Department shall not reimburse for any service or item provided by the specialist in hearing instruments effective with the date the specialist in hearing instruments fails or failed to comply.

### Section 3. Audiology Services.

(1) Audiology service coverage shall be limited to one (1) complete hearing evaluation per calendar year.

(2) Unless a recipient's health care provider demonstrates, and the department agrees, that an additional hearing instrument evaluation is medically necessary, a hearing instrument evaluation shall:

(a) Include three (3) follow-up visits, which shall be:

1. Within the six (6) month period immediately following the fitting of a hearing instrument; and

2. Related to the proper fit and adjustment of the hearing

instrument; and

(b) Include one (1) additional follow-up visit, which shall be:

1. At least six (6) months following the fitting of the hearing instrument; and

2. Related to the proper fit and adjustment of the hearing instrument.

(3)(a) A referral by a physician to an audiologist shall be required for an audiology service.

(b) The department shall not cover an audiology service if a referral from a physician to the audiologist was not made.

(c) An office visit with a physician shall not be required prior to the referral to the audiologist for the audiology service.

Section 4. Hearing Instrument Coverage. (1) Hearing instrument benefit coverage shall:

~~(a) [(1)] If the benefit is a hearing instrument model, Be for a hearing instrument model that is:~~

~~1. [(a)] Recommended by an audiologist licensed pursuant to KRS 334A.030; and~~

~~2. [(b)] Available through a Medicaid-participating specialist in hearing instruments; and~~

~~(b) [(2)] Except as provided by Section 5(3) of this administrative regulation, not exceed \$1,200[\$800] per ear every thirty-six (36) months.~~

(2) Hearing instrument coverage may include the replacement or upgrading of a hearing instrument battery if the upgrade is cost-effective or extends the service life of the hearing instrument.

### Section 5. Replacement of a Hearing Instrument.

(1) The department shall reimburse for the replacement of a hearing instrument if:

(a) A loss of the hearing instrument necessitates replacement;

(b) Extensive damage has occurred necessitating replacement;

(c) Medical necessity demonstrates that new or improved technology would significantly increase hearing; or

~~(d) [(e)] A medical condition necessitates the replacement of the previously prescribed hearing instrument in order to accommodate a change in hearing loss.~~

(2) If replacement of a hearing instrument is necessary within twelve (12) months of the original fitting, the replacement hearing instrument shall be fitted upon the signed and dated recommendation from an audiologist.

(3) If replacement of a hearing instrument becomes necessary beyond twelve (12) months from the original fitting:

(a) The recipient shall be examined by a physician with a referral to an audiologist; and

(b) The recipient's hearing loss shall be re-evaluated by an audiologist.

Section 6. Noncovered services. The department shall not reimburse for:

(1) A routine screening of ~~a [an individual or] group of individuals for identification of a hearing problem;~~

(2) Hearing therapy except as covered through the six (6) month adjustment counseling following the fitting of a hearing instrument;

(3) Lip reading instructions except as covered through the six (6) month adjustment counseling following the fitting of a hearing instrument;

(4) A service for which the recipient has no obligation to pay and for which no other person has a legal obligation to provide or to make payment;

(5) A telephone call;

(6) A service associated with investigational research; or

(7) A replacement of a hearing instrument for the purpose of incorporating a recent improvement or innovation unless the replacement results in appreciable improvement in the recipient's hearing ability as determined by an audiologist.

### Section 7. Equipment.

(1) Equipment used in the performance of a test shall meet the current standards and specifications established by the American National Standards Institute.

(2)(a) A provider shall ensure that any audiometer used by the provider or provider's staff shall:

1. Be checked at least once per year to ensure proper functioning; and

2. Function properly.

(b) A provider shall:

1. Maintain proof of calibration and any repair, if any repair occurs; and

2. Make the proof of calibration and repair, if any repair occurs, available for departmental review upon the department's request.

Section 8. Service and equipment limits may be exceeded by prior authorization for children under twenty-one (21) if medically necessary.

Section 9. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 10.[Section 9.] Appeal Rights. An appeal of a negative action regarding a Medicaid recipient who is:

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

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

Section 11. Incorporation by Reference.

(1) "KY Medicaid Audiology Fee Schedule", April 2023, is incorporated by reference.

(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://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

Section 12. This administrative regulation has been found deficient by the Administrative Regulation Review Subcommittee on May 9, 2023.

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

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Health Care Policy  
(Emergency As Amended at ARRS, May 9, 2023)**

**907 KAR 1:126E. Dental services' coverage provisions and requirements.**

**EFFECTIVE:** May 9, 2023

**Prior versions:** New Emergency - 49 Ky.R. 2062

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)

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" 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) "Implant" means a medical device that is surgically implanted into the jaw to restore a person's ability to chew or appearance. An implant provides support for artificial teeth including a crown, a bridge, or dentures.

(10) "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.

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

(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.

(13) "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.

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

(15) "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.

(16) "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.

(17) "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.

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

(19) "Provider" is defined by KRS 205.8451(7).

(20) "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.

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

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

(23) "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;

(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. DMS Activities in Response to Federal Approval. (1) The department shall negotiate the dental program with the federal government consistent with 42 U.S.C. 1396a.

(2) The department shall seek official federal approval when implementing new covered services. New covered services may be received via approved state plan amendments with the federal government or via other reliable methods of receiving federal approval.

Section 4. 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 5. General and Certain Service Coverage Requirements.

(1) A covered service shall be:

(a) Medically necessary; and

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

(2) A covered service provided by another 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 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)(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) Preventative services provided by a public health hygienist shall be covered.

(6) The department shall cover the oral pathology procedures listed on the Kentucky Medicaid 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) Coverage shall be limited to the procedures or services:

(a) Identified and established on the Kentucky Medicaid Dental Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>; or

(b) Established in this administrative regulation.

(8) 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;

(b) Kentucky administrative regulations; or

(c) As established on the Kentucky Medicaid Dental Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

(9) The department shall not reimburse for services under this administrative regulation that are only cosmetic in nature.

#### Section 6. 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.

(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 7. Preventive Service Coverage Limitations.

(1)(a) Coverage of a prophylaxis shall be limited to 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. 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. 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 require the following:

1. Fabrication;

2. Insertion;

3. Follow-up visits;

4. Adjustments; and

5. Documentation in the recipient's medical record to:

a. Substantiate the use for maintenance of existing interdental space; and

b. 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 8. 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 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 9. Endodontic Service Coverage Limitations.

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

(2)(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 10. 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.

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

Section 11. Prosthodontic Service Coverage Limitations. (1) 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) 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) 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 12. 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 13. 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 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 14. Orthodontic Service Coverage Limitations.

(1) Coverage of an orthodontic service shall 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) An appliance for minor tooth guidance shall not be covered for the control of harmful habits.

(8) 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) 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) Coverage of comprehensive orthodontic treatment shall not include orthognathic surgery.
- (11) 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) 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) 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 15. 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.

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

Section 16. Implant Policy. (1) Implants shall meet the medical necessity criteria and be used to stabilize a retaining prosthetic device.

- (2) Implants shall be limited to no more than:
  - (a) For an individual who has lost all of their natural teeth, a total of ten (10) but with a limit of five (5) for each arch; and
  - (b) For an individual who retains some natural teeth, a limit of eight (8) for replacement of individual teeth of for a larger restorative purpose such as a bridge that spans three (3) or more teeth.

Section 17. 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;
- 7. A comprehensive orthodontic service; or
- 8. An implant.

(2) Limits may also be exceeded by prior authorization for children under the age of twenty-one (21) if medically necessary.

(3) 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.

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

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

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

(7) 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.

(8) 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.

(9) If prior authorization for comprehensive orthodontic services is given following a request submitted pursuant to subsection (8) 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.

(10) 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.

(11) 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.

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

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

(13) 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 18. 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 19. 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 20. 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 21. 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 22. 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) "KY Medicaid Dental Fee Schedule", April 2023.

(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>.

**Section 23. This administrative regulation has been found deficient by the Administrative Regulation Review Subcommittee on May 9, 2023.**

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

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Health Care Policy  
(Emergency As Amended at ARRS, May 9, 2023)**

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

**EFFECTIVE:** May 9, 2023

**Prior versions:**

**Emergency Amendment - 49 Ky.R. 2069**

RELATES TO: KRS 205.520, 205.622, 205.8451(7), (9), Chapter 320, Chapter 326, 326.030, 326.040, 369.101 to 369.120, 42 C.F.R. 400.203, 431.17, 438.2, 440.40, 440.60, 447 Subpart B, [42 U.S.C. 1396a-d,] 45 C.F.R. 147.126, Parts 160 and 164, 164.306, 164.316, 42 U.S.C. 1320d to 1320d-8, 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.30, 42 C.F.R. 441.56(c)(1)

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

Section 1. Definitions.

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

(2) "Department" means the Department for Medicaid Services[Services] or its designee.

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

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

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

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

(7) "Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient as a Medicaid-participating provider in accordance with:

1. 907 KAR 1:671; and

2. 907 KAR 1:672;

(b) The Medicaid Program is the payer for the service; and

(c) The recipient is not liable for payment to the provider for the service[other than any cost-sharing obligation owed by the recipient to the provider].

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

(9) "Ophthalmic dispenser" means an individual who is qualified to engage in the practice of ophthalmic dispensing in accordance with KRS 326.030 or 326.040.

(10) "Optometrist" means an individual who is licensed as an optometrist in accordance with KRS Chapter 320.

(11) "Provider" is defined by KRS 205.8451(7).

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

## Section 2. General Requirements and Conditions of Participation.

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

1. Provided:

a. To a recipient; and

b. By a provider who is:

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

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

(iii) Authorized by this administrative regulation to provide the given service or item;

2. Covered in accordance with this administrative regulation;

3. Medically necessary;

4. A service or item authorized within the scope of the provider's licensure; and

5. A service or item listed on the Kentucky Medicaid Vision Fee Schedule[Department for Medicaid Services Vision Program Fee Schedule].

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

(2)(a) To be recognized as an authorized provider of vision services, an optometrist shall:

1. Be licensed by the:

a. Kentucky Board of Optometric Examiners; or

b. Optometric examiner board in the state in which the optometrist practices if the optometrist practices in a state other than Kentucky;

2. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and

3. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.

(b)1. To be recognized as an authorized provider of vision services, an in-state optician shall:

a. Hold a current license in Kentucky as an ophthalmic dispenser;

b. Comply with the requirements established in KRS Chapter 326;

c. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and

d. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.

2. To be recognized as an authorized provider of vision services, an out-of-state optician shall:

a. Hold a current license in the state in which the optician practices as an ophthalmic dispenser;

b. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and

c. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.

(c) A physician shall be an authorized provider of vision services.

(3) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672;

(c) All applicable state and federal laws; and

(d) The confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164.

(4)(a) A provider shall:

1. Have the freedom to choose whether to provide services to a recipient; and

2. Notify the recipient referenced in paragraph (b) of this subsection of the provider's decision to accept or not accept the recipient on a Medicaid basis prior to providing any services to the recipient.

(b) A provider may provide a service to a recipient on a non-Medicaid basis:

1. If the recipient agrees to receive the service on a non-Medicaid basis; and

2. The service is not a Medicaid covered service[Whether or not the:

a. Provider is a Medicaid-participating provider; or

b. Service is a Medicaid-covered service].

## Section 3. Vision Service Coverage.

(1) Vision service coverage shall be limited to a service listed with a CPT code or item with an HCPCS code on the Kentucky Medicaid Vision Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>[Department for Medicaid Services Vision Program Fee Schedule].

(2) Vision service limits shall be as established on the Kentucky Medicaid Vision Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>[Department for Medicaid Services Vision Program Fee Schedule].

(3) Vision service limits may be exceeded by prior authorization for children under twenty-one (21) if medically necessary.

## Section 4. Coverage of Eyeglasses and Frames.

(1) To be eligible for eyeglasses covered by the department, a recipient shall:

(a) ~~Be under the age of twenty-one (21) years, including the month in which the recipient becomes twenty-one (21) years of age; and~~

(b) have a diagnosed visual condition that:

(a)[4.] Requires the use of eyeglasses;

(b)[2.] Is within one (1) of the following categories:

1.[a.] Amblyopia;

2.[b.] Post surgical eye condition;

3.[c.] Diminished or subnormal vision; or

4.[d.] Other diagnosis which indicates the need for eyeglasses; and

(c)[3.] Requires a prescription correction in the stronger lens no weaker than:

1.[a.] +0.50, 0.50 sphere +0.50, or 0.50 cylinder;

2.[b.] 0.50 diopter of vertical prism; or

3.[c.] A total of two (2) diopter of lateral prism.

(2) Provisions regarding any limit on the number of eyeglasses covered shall be as established in 907 KAR 1:631.

(3) For the department to cover:

(a) A frame, the frame shall be:

1. First quality;
2. Free of defects; ~~and~~
3. ~~Deluxe; and~~
4. Have a warranty of at least one (1) year; or

(b) A lens, the lens shall be:

1. First quality;
2. Free of defects;
3. Meet the United States Food and Drug Administration's impact resistance standards; ~~and~~

4. Polycarbonate and scratch coated; ~~and~~

5. If medically necessary, inclusive of prisms.

(4) The dispensing of eyeglasses shall include:

- (a) Single vision prescriptions;
- (b) Bi-focal vision prescriptions;
- (c) Multi-focal vision prescriptions;
- (d) Progressive lens prescriptions;
- (e) Services to frames; or

~~(f)(e)]~~ Delivery of the completed eyeglasses which shall include:

1. Instructions in the use and care of the eyeglasses; and
2. Any adjustment, minor or otherwise, for a period of one (1) year.

(5) A provider shall be responsible, at no additional cost to the department or the recipient, for:

- (a) An inaccurately filled prescription;
- (b) Defective material; or
- (c) An improperly fitted frame.

#### Section 5. Contact Lenses, Tint, and Plano Safety Glasses.

(1) The department shall ~~not~~ reimburse for contact lenses substituted for eyeglasses if a medical indication prevents the use of eyeglasses, unless:

- (a) ~~The corrected acuity in a recipient's stronger eye is twenty (20)/fifty (50) and shall be improved with the use of contact lenses;~~
- (b) ~~The visual prescription is of + 8.00 diopter or greater; or~~
- (c) ~~The recipient's diagnosis is 4.00 diopter anisometropia.]~~

(2) The department's reimbursement for contact lenses shall include daily contact lenses.

(3) The department shall not reimburse for tint unless the prescription specifically indicates a diagnosis of photophobia.

~~(4)(3)]~~ The department shall not reimburse for plano safety glasses unless the glasses are medically indicated for the recipient.

Section 6. Noncovered Services or Items. The department shall not reimburse for:

- (1) Tinting if not medically necessary;
- (2) Photochromics if not medically necessary;
- (3) Anti-reflective coatings if not medically necessary;
- (4) Other lens options which are not medically necessary;
- (5) Low vision services;
- (6) A press-on prism if not medically necessary; or

(7) A service with a CPT code or item with an HCPCS code that is not listed on the Kentucky Medicaid Vision Fee Schedule ~~Department for Medicaid Services Vision Program Fee Schedule~~.

Section 7. Required Provider Documentation. (1)(a) In accordance with 42 C.F.R. 431.17, a provider shall maintain medical records of a service provided to a recipient for the period of time currently required by the United States Health and Human Services Secretary unless the department requires a retention period, pursuant to 907 KAR 1:671, longer than the period required by the United States Health and Human Services Secretary.

(b) If, pursuant to 907 KAR 1:671, the department requires a medical record retention period longer than the period required by the United States Health and Human Services Secretary, the medical record retention period established in 907 KAR 1:671 shall be the minimum record retention period.

(c) A provider shall maintain medical records of a service

provided to a recipient in accordance with:

1. 45 C.F.R. 164.316; and
2. 45 C.F.R. 164.306.

(2) A provider shall maintain the following documentation in a recipient's medical record:

(a) Any covered service or covered item provided to the recipient;

(b) For each covered service or covered item provided to the recipient:

1. A signature by the individual who provided the service or item signed on the date the service or item was provided;
2. The date that the service or item was provided; and
3. Demonstration that the covered service or covered item was provided to the recipient;

(c) The diagnostic condition necessitating the service or item; and

(d) The medical necessity as substantiated by an appropriate medical order.

Section 8. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for the same service provided to the same recipient during the same time period via the physician services program.

Section 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with the claim or medical record.

#### Section 11. Use of Electronic Signatures.

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

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

- (a) Develop and implement a written security policy that shall:
  1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
  2. Identify each electronic signature for which an individual has access; and
  3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
- (b) Develop a consent form that shall:
  1. Be completed and executed by each individual using an electronic signature;
  2. Attest to the signature's authenticity; and
  3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

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

1. A copy of the provider's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 12. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 13. Appeal Rights. An appeal of a department decision regarding a Medicaid recipient who is:

- (1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or
- (2) Not enrolled with a managed care organization shall be in

accordance with 907 KAR 1:563.

Section 14. Incorporation by Reference.

(1) "Kentucky Medicaid Vision Fee Schedule" [~~"Department for Medicaid Services Vision Program Fee Schedule"~~], ~~April 2023~~[May 13, 2014], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>[~~http://www.chfs.ky.gov/dms/incorporated.htm~~].

**Section 15. This administrative regulation has been found deficient by the Administrative Regulation Review Subcommittee on May 9, 2023.**

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

DEPARTMENT OF LAW  
Kentucky Opioid Abatement Advisory Commission  
(As Amended at ARRS, May 9, 2023)

40 KAR 9:010. General application procedure.

RELATES TO: KRS 15.291, 15.293

STATUTORY AUTHORITY: KRS 15.291(6), 15.293

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.291(6) ~~requires~~~~and 15.293 require~~ the Kentucky Opioid Abatement Advisory Commission (the "commission") to promulgate administrative regulations to administer funds received by the commission. ~~[Therefore, —]~~ This administrative regulation establishes the application procedure for funding requests under KRS 15.291 and 15.293, the duties required of the commission, the duties required of those that receive commission funds, and other related issues.

Section 1. Definitions.

- (1) "Entity" ~~is defined by~~~~has the same meaning as its definition in~~ KRS 14A.1-070(7).
- (2) "Governmental agency" ~~is defined by~~~~has the same meaning as its definition in~~ KRS 65.940(5).
- (3) ~~"Member~~~~Member(s)" means a~~~~refers to any of the~~ commission ~~member as established in~~~~members contemplated by~~ KRS 15.291(2), whether voting or non-voting.

Section 2. Eligible Applicants. ~~Any~~~~Any~~ entity or governmental agency ~~shall be eligible for opioid abatement funding if the entity or governmental agency~~~~that~~

~~(1) Submits an application through the OAAAC Grant Portal at https://ag.ky.gov/Priorities/Tackling-the-Drug-Epidemic/Pages/Opioid-Abatement-Advisory-Commission.aspx;~~

~~(2) Complies~~~~conforms~~ with the requirements ~~established in this administrative regulation~~~~herein~~;

~~(3) that~~ Meets the criteria in KRS 15.291(5); and

~~(4) that~~ Is not debarred or suspended from contracting with the Commonwealth ~~shall be an eligible entity or governmental agency~~.

Section 3. Application.

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

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

Section 4. Review of Applications.

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

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

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

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

- (a) Compliance with applicable law;

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

(c) The geographic reach of the application;

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

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

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

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

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

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

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

(k) The extent to which the application activities align with accepted evidence-based practices; ~~or~~~~and/or~~

(l) The sufficiency of records to validate the requested amounts.

Section 5. Recipients' Duties.

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

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

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

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

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

Section 6. Noncompliance.

(1) Noncompliance shall include:

(a) Materially falsified information in any certifications filed pursuant to or required by KRS 15.291, KRS 15.293, or **40 KAR Chapter 9**~~related regulations~~;

(b) Failure to meet certification submission deadlines; and

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

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

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

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



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

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

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

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

(b) KYOACC Certification Form, December 2022.

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

CONTACT PERSON: Alison Chavies, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-3449, phone 502-696-5638, fax 502-564-2894, email [alison.chavies@ky.gov](mailto:alison.chavies@ky.gov).

DEPARTMENT OF LAW

Kentucky Opioid Abatement Advisory Commission  
(As Amended at ARRS, May 9, 2023)

40 KAR 9:020. Local government application procedure.

RELATES TO: KRS 15.291, 15.293

STATUTORY AUTHORITY: KRS 15.291(6), 15.293

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.291(6) requires[and 15.293 permit] the Kentucky Opioid Abatement Advisory Commission (the "commission") to promulgate administrative regulations to administer funds received by the commission and to oversee the use of funds received under KRS 15.293(4). KRS 15.293 requires each recipient of funds under KRS 15.293(4) to submit certifications that the use of opioid abatement[such] funds is consistent with the criteria in KRS 15.291(5), a description of the use of the[such] funds, and other information as the commission requests through the promulgation of administrative regulations. [Therefore,] This administrative regulation establishes the procedure for a county, consolidated local government, urban-county government, or city of the Commonwealth that receives funds under KRS 15.293(4) to certify use consistent with KRS 15.293.

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

Section 2. Duties of Covered Governmental Bodies.

(1) Consistent with KRS 15.293(4)(c)2., a[(4)(c)(2),] covered governmental body[bodies] shall submit notarized quarterly KYOACC Certification forms, incorporated by reference in 40 KAR 9:010.[certifications] to the commission due by[on the following dates of the calendar year]:

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

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

(3) Certifications shall be[are] required until the recipient exhausts all funds received pursuant to KRS 15.291 or 15.293 and

until the recipient has submitted a certification stating that all [such] funds have been exhausted.

Section 3. Noncompliance.

(1) Noncompliance shall include:

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

(b) Failure to meet certification submission deadlines; or

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

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

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

CONTACT PERSON: Alison Chavies, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-3449, phone 502-696-5638, fax 502-564-2894, email [alison.chavies@ky.gov](mailto:alison.chavies@ky.gov).

BOARDS AND COMMISSIONS

Board of Dentistry

(As Amended at ARRS, May 9, 2023)

201 KAR 8:533. Licensure of dentists.

RELATES TO: KRS 39A.350-39A.366, [214.615,] 218A.205, 304.40-075[304.040-075], 313.010(9), 313.030, 313.254

STATUTORY AUTHORITY: KRS [214.615(2),] 218A.205, 313.021(1)(a), (b), (c), 313.035(1), (3), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.035 and 218A.205 require the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dentists. This administrative regulation establishes requirements and procedures for licensure of dentists.

Section 1. General Licensure Requirements. An applicant desiring dental licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, verified by testing as necessary;

(2) Submit a completed, signed, and notarized Application for Dental Licensure with an attached applicant photo taken within the past six (6) months;

(3) Pay the fee required by 201 KAR 8:520;

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(5) Complete and pass the board's jurisprudence exam;

(6) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the American Heart Association Guidelines for CPR and ECC;

(7) Submit to a nationwide state and federal criminal background check by fingerprint through the Department of Kentucky State Police;

(8) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(9) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental school or college or dental department of a university;

(10) Provide proof that the applicant has successfully completed Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(11) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination.

(1) Each individual desiring initial licensure as a dentist by examination shall complete all of the requirements listed in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dentist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of the application. The board shall accept the following regional clinical examinations:

(a) The examination of the Council of Interstate Testing Agencies (CITA);

(b) The examination of the Central Regional Dental Testing Service (CRDTS);

(c) The examination of the Commission on Dental Competency Assessments (CDCA);

(d) The examination of the Southern Regional Testing Agency (SRTA); and

(e) The examination of the Western Regional Examining Board (WREB).

(3) An individual desiring initial licensure as a dentist by examination more than two (2) years after fulfilling all of the requirements of his or her CODA accredited dental education shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan approved by the board.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dentist by credentials shall:

(1) Complete all of the requirements listed in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dentistry when he or she was legally authorized to practice dentistry in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. Requirements for Student Limited Licensure.

(1) Each individual desiring a student limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (9) and (10);

(b) Provide a letter from the dean or program director of a postgraduate, residency, or fellowship program in the Commonwealth of Kentucky stating that the applicant has been accepted into the program and the expected date of completion;

(c) Submit a signed Statement Regarding Student Licensure Limitations; and

(d) Submit an official final transcript of the applicant's dental coursework with the degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a student and shall only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a student.

(4) A program enrolling an individual holding a student limited license shall notify the board in writing of the date the student graduates from or exits the program.

(5) Nothing in this section shall prohibit:

(a) A student from performing a dental operation under the supervision of a competent instructor within the dental school, college, or department of a university or private practice facility approved by the board. The board may authorize a student of any dental college, school, or department of a university to practice dentistry in any state or municipal institution or public school, or under the board of health, or in a public clinic or a charitable institution. A fee shall not be accepted by the student beyond the expenses provided by the stipend;

(b) A student limited license holder from working under the general supervision of a licensed dentist within the confines of the postgraduate training program; and

(c) A volunteer health practitioner from providing services under KRS 39A.350-39A.366.

Section 5. Requirements for Faculty Limited Licensure.

(1) Each individual desiring a faculty limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (9) and (10);

(b) Provide a letter from the dean or program director of the dental school showing a faculty appointment with one (1) of the Commonwealth's dental schools;

(c) Submit a signed Statement Regarding Faculty Licensure Limitations; and

(d) Submit an official final transcript of his or her dental coursework with the degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a faculty member and shall only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a faculty member.

(4) A program employing an individual holding a faculty limited license shall notify the board in writing of the date the licensee exits the program.

Section 6. Requirements for Licensure of Foreign Trained Dentists.

(1) Each individual desiring licensure as a dentist who is a graduate of a non-CODA accredited dental program shall successfully complete two (2) years of postgraduate training in a CODA accredited general dentistry program and shall:

(a) Provide proof of having passed the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service with a score of 650 on the paper-based test (PBT) or a score of 116 on the internet-based test (iBT), if English is not the applicant's native language;

(b) Submit a completed, signed, and notarized Application for Dental Licensure with an attached applicant photo taken within the past six (6) months;

(c) Pay the fee required by 201 KAR 8:520;

(d) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(e) Complete and pass the board's jurisprudence exam;

(f) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the American Heart Association Guidelines for CPR and ECC;

(g) Submit to a state and federal criminal background check by fingerprint through the Department of Kentucky State Police;

(h) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(i) Provide proof of having successfully completed two (2) years postgraduate training in a CODA accredited general dentistry program;

(j) Submit one (1) letter of recommendation from the program director of each training site;

(k) Provide proof of successful completion of Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations within the five (5) years preceding application for licensure;

(l) Provide proof of successfully completing within the five (5) years prior to application a clinical examination required by Section 2(2) of this administrative regulation; and

(m) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual desiring initial licensure as a dentist who is a graduate of a non-CODA accredited dental program and applies more than two (2) years after fulfilling all of the requirements of his or her postgraduate training in a CODA accredited general dentistry program shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

#### Section 7. Requirements for Charitable Limited Licensure.

(1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, verified by testing as necessary;

(b) Submit a completed, signed, and notarized Application for Charitable Dental Limited Licensure with an attached applicant photo taken within the past six (6) months;

(c) Pay the fee required by 201 KAR 8:520;

(d) Not be subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(e) Have a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services that have met the requirements of KRS 313.254 and 201 KAR 8:581;

(b) Only perform procedures allowed by KRS 313.254(4) and (5) which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured under KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual, and without payment or reimbursement by any governmental agency or insurer;

(e) Have a charitable limited license that shall be valid for no more than two (2) years and shall expire during the regular dental renewal cycle; and

(f) Comply with reciprocity requirements if applicable.

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participating in a charitable clinic shall have a license to practice dentistry in the state in which the dentist practices.

(3) A dentist licensed under this section shall not be allowed to prescribe any medications while practicing in the Commonwealth.

Section 8. Requirements for Specialty Licensure. Each individual desiring initial licensure as a specialist as defined by KRS 313.010(9) shall:

(1) Submit a completed, signed, and notarized Application for Specialty Licensure with an attached applicant photo taken within the past six (6) months;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold an active Kentucky license to practice general dentistry prior to being issued a specialty license; and

(4) Submit satisfactory evidence of completing a CODA accredited graduate or postgraduate specialty program after graduation from a dental school.

#### Section 9. Minimum Continuing Education Requirements.

(1) Each individual desiring renewal of an active dental license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dentistry and would be useful to the licensee's practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Competence to diagnose oral pathology;

(d) Awareness of currently accepted methods of infection control;

(e) Knowledge of basic medical and scientific subjects including biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(f) Knowledge of clinical and technological subjects;

(g) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(h) Competency in assisting in mass casualty or mass immunization situations;

(i) Clinical skills through the volunteer of clinical charitable dentistry that meets the requirements of KRS 313.254;

(j) Knowledge of office business operations and best practices; or

(k) Participation in dental association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken that meet the requirements of subsection (2)(i) - (k) of this section.

(5) A minimum of three (3) hours of continuing education shall/must be taken in the use of the Kentucky All Schedule Prescription Electronic Reporting System (KASPER), pain management, or addiction disorders.

(6) Dentists who hold a board-issued sedation permit shall also meet the continuing education requirements of 201 KAR 8:550, Section 8.

(7) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of or verification by the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(8) [(7)] It shall be the sole responsibility of the individual licensee to obtain documentation from the provider or sponsoring organization verifying participation as established in subsection (7) [(5)] of this section and to retain the documentation for a minimum of five (5) years.

(9) [(8)] At license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(10) [(9)] Each licensee shall be subject to audit of proof of continuing education compliance by the board.

#### Section 10. Requirements for Renewal of a Dental License.

(1) Each individual desiring renewal of an active dental license shall:

(a) Submit a signed, completed Application for Renewal of Dental Licensure;

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

(c) Maintain, with no more than a thirty (30) day lapse, CPR certification that meets or exceeds the American Heart Association Guidelines for CPR and ECC unless a hardship waiver is approved by the board; and

(d) Meet the continuing education requirements as provided for in Section 9 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the biennial license period, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation; and

3. If the licensee graduated in the second year of the biennial license period, the licensee shall not be required to complete the continuing education requirements outlined in Section 9 of this administrative regulation.

(2) If a licensee has not actively practiced dentistry in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board approved refresher course prior to resuming the active practice of dentistry.

#### Section 11. Retirement of a License.

(1) Each individual desiring retirement of a dental license shall submit a completed and signed Retirement of License Form.

(2) Upon receipt of this form, the board shall send written confirmation of retirement to the address provided by the licensee on the Retirement of License form.

(3) A licensee shall not retire a license that has a pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

#### Section 12. Reinstatement of a License.

(1) Each individual desiring reinstatement of a properly retired dental license shall:

(a) Submit a completed, signed, and notarized Application to Reinstatement a Dental License with an attached applicant photo taken within the past six (6) months;

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

(c) Show proof of having current certification in CPR that meets or exceeds the American Heart Association Guidelines for CPR and ECC;

(d) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(e) Submit to a nationwide state and federal criminal background check by fingerprint through the Department of Kentucky State Police; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual applies to reinstate a license within two (2) years of when the license was last active, the individual shall provide proof of having met the continuing education requirements as outlined in Section 9 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dentistry in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of the biennial license period, the licensee shall complete all of the continuing education requirements as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

(5) If a license is reinstated in the second year of the biennial license period, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

Section 13. Requirements for Verification of Licensure. Each individual desiring verification of a dental license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

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

Section 14. Requesting a Duplicate License. Each individual desiring a duplicate dental license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

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

Section 15. Issuance of Initial Licensure. If an applicant has completed all of the requirements for licensure within six (6) months of the date the application was received at the office of the board, the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

#### Section 16. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Charitable Dental Limited Licensure", May[February] 2023;

(b) "Application for Dental Licensure", May[February] 2023;

(c) "Application for Renewal of Dental Licensure", May[February] 2023;

(d) "Application for Specialty Licensure", February 2023;

(e) "Application to Reinstate a Dental License", May[February] 2023;

(f) "Duplicate License or Registration Request Form", December 2022[February 2023];

(g) "Retirement of License Form", February 2023;

(h) "Statement Regarding Faculty Licensure Limitations", May[February] 2023;

(i) "Statement Regarding Student Licensure Limitations", May[February] 2023;

(j) "Verification of Licensure or Registration Form", February 2023; and

(k) "2020 American Heart Association Guidelines for CPR and ECC", 2020.

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

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email [jeffrey.allen@ky.gov](mailto:jeffrey.allen@ky.gov).

### BOARDS AND COMMISSIONS

#### Board of Dentistry

(As Amended at ARRS, May 9, 2023)

#### 201 KAR 8:563. Licensure of dental hygienists.

RELATES TO: KRS ~~214.615~~, 304.40 - 075, 313.030, 313.040, 313.060, 313.080, 313.130, 313.254

STATUTORY AUTHORITY: KRS ~~214.615(2)~~, 313.021(1)(a), (b), (c), 313.040(1), (2), (7), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.040 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dental hygienists. This administrative regulation establishes requirements and procedures for the licensure of dental hygienists.

Section 1. General Licensure Requirements. An applicant desiring licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, verified by testing as necessary;

(2) Submit a completed, signed, and notarized Application for Dental Hygiene Licensure with an attached applicant photo taken within the past six (6) months;

(3) Pay the fee required by 201 KAR 8:520;

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(5) Complete and pass the board's jurisprudence exam;

(6) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the American Heart Association Guidelines for CPR and ECC, incorporated by reference in 201 KAR 8:~~533~~**532**;

(7) Submit to a nationwide state and federal criminal background check by fingerprint through the Department of Kentucky State Police;

(8) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dental hygiene held previously or currently in any state or jurisdiction;

(9) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental hygiene school or college or dental hygiene department of a university;

(10) Provide proof that the applicant has successfully completed the National Board Dental Hygiene Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(11) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

#### Section 2. Requirements for Licensure by Examination.

(1) Each individual desiring initial licensure as a dental hygienist by examination shall complete all of the requirements established in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dental hygienist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of his or her Application for Dental Hygiene Licensure. The board shall accept the following regional clinical examinations:

(a) The examination of the Council of Interstate Testing Agencies (CITA);

(b) The examination of the Central Regional Dental Testing Service (CRDTS);

(c) The examination of the Commission on Dental Competency Assessments (CDCA);

(d) The examination of the Southern Regional Testing Agency (SRTA); or

(e) The examination of the Western Regional Examining Board (WREB).

(3) An individual desiring initial licensure as a dental hygienist by examination more than two (2) years after fulfilling all of the requirements of his or her CODA accredited dental hygiene education shall:

(a) Hold a license to practice dental hygiene in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dental hygiene in good standing, complete a board-approved refresher course prior to receiving a license to practice dental hygiene in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan prescribed by the board based on the applicant's deficiencies.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dental hygienist by credentials shall:

(1) Complete all of the requirements established in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a

state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dental hygiene while he or she was legally authorized to practice dental hygiene in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

#### Section 4. Requirements for Charitable Limited Licensure.

(1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, verified by testing as necessary;

(b) Submit a completed, signed, and notarized Application for Charitable Dental Hygiene Limited Licensure with an attached applicant photo taken within the past six (6) ~~months~~**month**;

(c) Pay the fee required by 201 KAR 8:520;

(d) Not be subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(e) Have a license to practice dental hygiene in good standing in another state; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual licensed pursuant to this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services that have met requirements of KRS 313.254 and 201 KAR 8:581;

(b) Only perform procedures allowed by KRS 313.254, which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured pursuant to KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual and without payment or reimbursement by any governmental agency or insurer;

(e) Have a charitable limited license that shall be good for two (2) years and expire during the regular dental hygiene renewal cycle; and

(f) Comply with reciprocity requirements if applicable.

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participate in a charitable clinic shall have a license to practice dental hygiene in the state in which the dental hygienist practices.

#### Section 5. Minimum Continuing Education Requirements.

(1) Each individual desiring renewal of an active dental hygiene license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dental hygiene and would be useful to the licensee in his or her practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental hygiene treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Awareness of currently accepted methods of infection control;

(d) Knowledge of basic medical and scientific subjects including, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(e) Knowledge of clinical and technological subjects;

(f) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(g) Competency in assisting in mass casualty or mass immunization situations;

(h) Clinical skills through the volunteer of clinical charitable dental hygiene that meets the requirements of KRS 313.254;

(i) Knowledge of office business operations and best practices; or

(j) Participation in dental or dental hygiene association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken that meet the requirements of subsection (2)(h) - (j) of this section.

(5) For dental hygienists registered to practice under general supervision, a minimum of three (3) hours ***shall[must]*** be taken in medical emergencies as described in Section 12(1)(d) of this administrative regulation in order to renew their registration.

(6) For dental hygienists registered to practice as public health hygienists, a minimum of three (3) hours ***shall[must]*** be taken in medical emergencies as described in Section 15(1)(d) of this administrative regulation in order to renew their registration.

(7) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

- (a) The signature of the provider;
- (b) The name of the licensee in attendance;
- (c) The title of the course or meeting attended or completed;
- (d) The date of attendance or completion;
- (e) The number of hours earned; and
- (f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(8) It shall be the sole responsibility of the individual dental hygienist to obtain documentation from the provider or sponsoring organization verifying participation as established in subsection ***(7)(f)*** of this section and to retain the documentation for a minimum of five (5) years.

(9) At license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(10) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

#### Section 6. Requirements for Renewal of a Dental Hygiene License.

(1) Each individual desiring renewal of an active dental hygiene license shall:

(a) Submit a completed, signed Application for Renewal of Dental Hygiene Licensure;

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

(c) Maintain, with no more than a thirty (30) day lapse, CPR certification that meets or exceeds the American Heart Association Guidelines for CPR and ECC, incorporated by reference in 201 KAR 8:***533/530***, unless a hardship waiver is submitted to and subsequently approved by the board; and

(d) Meet the continuing education requirements as established in Section 5 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the biennial license period, the licensee shall complete one-half (1/2) of the hours as established in Section 5 of this administrative regulation; and

3. If the licensee graduated in the second year of the biennial license period, the licensee shall not be required to complete the continuing education requirements established in Section 5 of this administrative regulation.

(2) If a licensee has not actively practiced dental hygiene in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board-approved refresher course prior to resuming the active practice of dental hygiene.

#### Section 7. Retirement of a License.

(1) Each individual desiring retirement of a dental hygiene license shall submit a completed and signed Retirement of License Form, incorporated by reference in 201 KAR 8:***533/532***.

(2) Upon receipt of Retirement of License Form, the board shall send written confirmation of retirement to the last known address of the licensee.

(3) A licensee shall not retire a license that has pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

#### Section 8. Reinstatement of a License.

(1) Each individual desiring reinstatement of a properly retired dental hygiene license shall:

(a) Submit a completed, signed, and notarized Application to Reinstatement a Dental Hygiene License with an attached applicant photo taken within the past six (6) months;

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

(c) Show proof of having current certification in CPR that meets or exceeds the American Heart Association Guidelines for CPR and ECC, incorporated by reference in 201 KAR 8:***533/532***;

(d) Provide verification within three (3) months of the date the Application to Reinstatement a Dental Hygiene License is received at the office of the board of any license to practice dental hygiene held previously or currently in any state or jurisdiction;

(e) Submit to a nationwide state and federal criminal background check by fingerprint through the Department of Kentucky State Police; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual applies to reinstate a license within two (2) years of when the license was last active, the individual shall provide proof of having met the continuing education requirements as established in Section 5 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dental hygiene in the two (2) consecutive years immediately preceding the filing of the Application to Reinstatement a Dental Hygiene License, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of the biennial license period, the licensee shall complete all of the continuing education requirements as established in Section 5 of this administrative regulation prior to the renewal of his ***or her*** license.

(5) If a license is reinstated in the second year of the biennial license period, the licensee shall complete one-half (1/2) of the hours as established in Section 5 of this administrative regulation prior to the renewal of his ***or her*** license.

#### Section 9. Requirements for Verification of Licensure. Each individual desiring verification of a dental hygiene license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form, incorporated by reference in 201 KAR 8:***533/532***; and

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

#### Section 10. Requesting a Duplicate License. Each individual desiring a duplicate dental hygiene license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form, incorporated by reference in 201 KAR 8:***533/532***; and

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

#### Section 11. Requirements for Local Anesthesia Registration.

(1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action who desires to administer local anesthesia shall:

(a) Complete the Application for Dental Hygiene Special Registrations;

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

(c) Document successful completion of an educational program which meets or exceeds the requirements established in KRS 313.060(10).

(2) Individuals authorized to practice pursuant to this provision shall receive a license from the board indicating registration to administer local anesthesia.

(3) A licensed dental hygienist shall not administer local anesthesia if the licensee does not hold a local anesthesia registration issued by the board.

(4) A licensed dental hygienist holding a local anesthesia registration from the board who has not administered block anesthesia, infiltration anesthesia, or nitrous oxide analgesia for one (1) year shall complete a board-approved refresher course prior to resuming practice of that specific technique.

#### Section 12. Requirements for General Supervision Registration.

(1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action who desires to practice under general supervision shall:

(a) Complete the Application for Dental Hygiene Special Registrations;

(b) Meet the requirements of KRS 313.040(7)(a);

(c) Document through payroll records, employment records, or other proof that is independently verifiable, the dates and hours of employment by a dentist in the practice of dental hygiene that demonstrate the required two (2) years and 3,000 hours of experience; and

(d) During each biennial license period, successfully complete a live three (3) hour course approved by the board in the identification and prevention of potential medical emergencies that shall include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;

2. Recognition of common medical emergency situations, symptoms, and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments.

(2) An individual authorized to practice pursuant to these provisions shall receive a license from the board indicating registration to practice under general supervision.

(3) A dentist who employs a dental hygienist who has met the standards of this administrative regulation and who allows the dental hygienist to provide dental hygiene services pursuant to KRS 313.040(7) shall complete a written order prescribing the dental service or procedure to be done to a specific patient by the dental hygienist and shall retain the original order in the patient's dental record.

(4) The minimum requirements for the written order shall include:

(a) Medical history update;

(b) Radiographic records requested;

(c) Dental hygiene procedures requested;

(d) Name of the patient;

(e) Date of last oral examination;

(f) Date of the written order; and

(g) Signature of the dentist.

(5) The oral examination of the patient by the supervising dentist shall have been completed within the seven (7) months preceding treatment by the dental hygienist practicing under general supervision.

(6) The supervising dentist shall evaluate and provide to the board written validation of an employed dental hygienist's skills necessary to perform dental hygiene services established in KRS 313.040(7) as part of the Application for Dental Hygiene Special Registrations.

(7) The supervising dentist shall provide a written protocol addressing the medically compromised patients who may or may not be treated by the dental hygienist. The dental hygienist shall only treat patients who are in the ASA Patient Physical Status Classification of ASA I or ASA II as established in Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, as incorporated by reference in 201 KAR 8:550.

(8) A licensed dental hygienist shall not practice under general supervision if the licensee does not hold a general supervision registration issued by the board.

#### Section 13. Requirements for Intravenous Access Line Registration.

(1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action who desires to start intravenous (IV) access lines shall:

(a) Submit a signed and completed Application for Dental Hygiene Special Registrations;

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

(c) Submit documentation proving successful completion of a board-approved course in starting IV access lines.

(2) An individual authorized to practice pursuant to this provision shall receive a license from the board indicating registration to start IV access lines.

(3) A licensed dental hygienist shall not start an IV access line if the licensee does not:

(a) Hold a board-issued registration to start IV access lines; or

(b) Work under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board.

#### Section 14. Requirements for Laser Debridement Registration.

(1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action who desires to perform laser debridement shall:

(a) Submit a signed and completed Application for Dental Hygiene Special Registrations;

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

(c) Submit documentation proving successful completion of a board-approved course in performing laser debridement.

(2) An individual authorized to practice pursuant to this provision shall receive a license from the board indicating registration to perform laser debridement.

(3) A licensed dental hygienist shall not perform laser debridement if the licensee does not:

(a) Hold a board-issued registration to perform laser debridement; or

(b) Work under the direct supervision of a dentist.

#### Section 15. Requirements for Public Health Registration.

(1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action who desires to practice as a public health registered dental hygienist shall:

(a) Submit a completed Application for Dental Hygiene Special Registration;

(b) Meet the requirements established in KRS 313.040(8);

(c) Document through payroll records, employment records, or other proof that is independently verifiable, the dates and hours of employment by a dentist in the practice of dental hygiene that demonstrate the required two (2) years and 3,000 hours of experience; ~~and~~

(d) During each biennial license period, successfully complete a live three (3) hour course approved by the board in the identification and prevention of potential medical emergencies that shall include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;

2. Recognition of common medical emergency situations, symptoms, and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments; ~~and~~.

(e) During each biennial license period, complete at least three (3) hours of continuing education in public health or public dental health.

(2) An individual authorized to practice pursuant to subsection (1) of this section shall receive a certificate from the board indicating registration to practice as a public health registered dental hygienist.

(3) Pursuant to KRS 313.040(8)(c), a public health registered dental hygienist may practice in a government-created public health program at the following sites:

- (a) Local health departments;
- (b) Public or private educational institutions that provide Head Start, preschool, elementary and secondary instruction to school-aged children under the jurisdiction of the State Board of Education, and that have an affiliation agreement with the health department of jurisdiction;
- (c) Mobile and portable dental health programs under contract with a governing board of health; and
- (d) Public or private institutions under the jurisdiction of a federal, state, or local agency.

(4) A public health registered dental hygienist shall perform dental hygiene services only under the supervision of the governing board of health, as required by KRS 313.040(3)(b), as established in KRS 313.040(8), and as identified by the Department for Public Health Practice Reference.

- (a) These services shall be limited to preventative services.
- (b) The public health registered dental hygienist shall only treat a patient who is in the ASA Patient Physical Status Classification of ASA I or ASA II as established in the current edition of Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, as incorporated by reference in 201 KAR 8:550.
- (c) The informed consent shall be required prior to preventative services and shall include:

- 1. The name of the public health entity, including the name of the dentist, that assumes responsibility and control;
- 2. An inquiry as to the current dentist; and
- 3. A statement that services are provided by a dental hygienist without the direct supervision of a dentist.

(d) This administrative regulation shall not preclude a Kentucky-licensed dentist from directly participating in a public health program referenced in subsection ~~(3)~~~~(4)~~(a), (b), (c), or (d) of this section.

Section 16. Issuance of Initial Licensure. If an applicant has completed the requirements for licensure the board shall:

- (1) Issue a license in sequential numerical order; or
- (2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 17. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Application for Charitable Dental Hygiene Limited Licensure", May~~February~~ 2023;
  - (b) "Application for Dental Hygiene Licensure", May~~February~~ 2023;
  - (c) "Application for Dental Hygiene Special Registrations", February 2023;
  - (d) "Application for Renewal of Dental Hygiene Licensure", May~~February~~ 2023; and
  - (e) "Application to Reinstate a Dental Hygiene License", May~~February~~ 2023.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email [jeffrey.allen@ky.gov](mailto:jeffrey.allen@ky.gov).

## BOARDS AND COMMISSIONS

### Board of Nursing

(As Amended at ARRS, May 9, 2023)

**201 KAR 20:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs.**

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.111 requires nursing programs to be approved by the board. This administrative regulation establishes evaluative standards to assure that the programs of nursing provide the necessary instruction and services to prepare graduates for licensure eligibility as registered ~~[as registered]~~ nurses or as practical nurses.

Section 1. Program of Nursing Accredited by a National Nursing Accrediting Body.

(1)(a)1. A prelicensure registered nursing or licensed practical nursing program that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall be deemed to be in compliance with the standards of 201 KAR 20:260 through 201 KAR 20:~~201 KAR 20:~~360.

2. A national nursing accrediting body shall include:

- a. The Accreditation Commission for Education in Nursing (ACEN);
  - b. The Commission for Nursing Education Accreditation (CNEA);
  - c. The Commission on Collegiate Nursing Education (CCNE);
- or

d. Any other national nursing accrediting body recognized by the United States Department of Education.

3. The accredited program shall comply with Sections 3 through 10 of this administrative regulation.

(b) The board shall retain jurisdiction over accredited programs and may conduct site visits or other investigations into any allegation that may constitute a violation of 201 KAR 20:260 through 201 KAR 20:360. The board may also conduct site visits in accordance with Section 5 of this administrative regulation or when a national nursing accreditation board visits the program.

(2) A prelicensure program of nursing that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall submit all correspondence and reports to and from the accrediting body to the board within thirty (30) days of submission or receipt.

Section 2. Programs of Nursing Not Accredited by a National Nursing Accrediting Body. (1) A program of nursing that is not accredited by a national nursing accrediting body on the effective date of this administrative regulation shall:

- (a) Obtain candidacy status with a national nursing accrediting body within three (3) years; and
- (b) Obtain full accreditation within four (4) years of the effective date of this administrative regulation.

(2) A program of nursing that is not accredited by a national nursing accrediting body on the effective date of this administrative regulation shall submit a copy of all correspondence and reports to and from the national nursing accrediting body within thirty (30) days of submission or receipt.

(3) A program of nursing that does not obtain or maintain accreditation from a national nursing accrediting body may have its approval withdrawn by the board pursuant to Section 7 of this administrative regulation.

Section 3. Reports and Evaluation. (1) A program of nursing shall submit the Annual Report of the Program of Nursing to the board regarding its compliance with 201 KAR 20:260 through 201 KAR 20:360. It shall also submit the benchmarks set out in Section 5(2)(f) of this administrative regulation.



(2) To verify continued compliance with 201 KAR 20:260 through 201 KAR 20:360, the program of nursing shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other related documents as requested by the board.

(3) Pursuant to 201 KAR 20:260, Section 2(7)(a), the faculty shall engage in an evidence based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation report that is submitted to the board.

(4) Data collection for the evaluation report shall be on-going and shall reflect aggregate analysis and trending.

(5) The evaluation report shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program:

- (a) Organization and administration of the program of nursing;
- (b) Curriculum;
- (c) Resources, facilities, and services;
- (d) Teaching and learning methods including distance education;
- (e) Faculty evaluation;
- (f) Student achievement of program outcomes;
- (g) Graduation rates;
- (h) Licensure examination pass rates;
- (i) Employment rates of graduates; and
- (j) Clinical resources, including laboratory and simulation.

(6) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education program is substantially comparable to a campus based program.

(7) The evaluation report shall provide evidence that the outcomes of the evaluation process are used to improve the quality and strength of the program.

Section 4. Benchmarks. The board shall utilize the following benchmarks to evaluate a program of nursing. Except for the pass rate, the benchmarks shall be calculated annually from July 1 to June 30. The board shall calculate the pass rate for a program of nursing on an annual basis from January 1 to December 31 for all first time takers of the NCLEX.

(1) The pass rate for first time takers of the NCLEX who tested within twelve (12) months of the program completion date as reported on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates incorporated by reference in 201 KAR 20:070;

(2) The faculty turnover rate. A faculty member whose employment ends on or before June 30 of any year shall be counted in that year's calculation;

- (3) The program administrator turnover rate;
- (4) The graduation rate;
- (5) The faculty grievance rate; and
- (6) The student grievance rate.

Section 5. Site Visits. (1) The board may conduct site visits at any time.

(2) The following situations may be cause for a site visit to determine if the standards of 201 KAR 20:260 through 201 KAR 20:360 are being met:

- (a) Denial, withdrawal, or change of status by a national nursing accrediting agency;
- (b) Providing false or misleading information to students or the public concerning the program;
- (c) A written complaint received from faculty, students, or the general public relating to a violation of 201 KAR 20:260 through 201 KAR 20:360;
- (d) A change in physical facilities;
- (e) Information received by the board that may indicate a violation of 201 KAR 20:260 through 201 KAR 20:360;
- (f) A change in any of the benchmarks listed in Section 4 of this administrative regulation as follows:

- 1. A pass rate as calculated by Section 4 of this administrative

regulation that:

- a. Is less than an average of eighty (80) percent for three (3) consecutive years; or
- b. Varies above and below eighty (80) percent from year to year over the previous five (5) years;

2. A faculty turnover rate greater than thirty (30) percent for two (2) consecutive years;

3. A program administrator turnover rate of more than three (3) individuals in five (5) years;

4. A graduation rate of less than sixty (60) percent of the original admitted cohort of newly-enrolled students within the standard length of the program of nursing. ~~within the maximum time frame allowed for completion. The maximum time frame shall be determined by multiplying the standard program length for normally progressing students by one and five-tenths (1.5). Calculation of]~~ The graduation rate shall ~~[include]~~ be calculated by comparing the number of students who started in each graduating cohort within the reporting period to those who graduated on time from the cohort. ~~[are enrolled for the first time in the first nursing course of the nursing program curriculum. All students admitted within the original cohort shall be included in the calculation regardless of whether a student may be excluded from the calculation utilized by a national nursing accrediting body]~~ The graduation rate calculation may exclude students who have left the program of nursing due to documented extenuating circumstances, such as hospitalization, long-term illness, family obligations, relocation, financial barriers, or decisions to change majors. ~~[major] or transfer to another institution;~~

5. Twenty-five (25) percent or more of the total number of nursing faculty who file grievances or appeals that are substantiated; or

6. Substantiated student grievances and appeals of more than ten (10) percent of the student population enrolled in the nursing program each year; or

(g) Failure to submit reports as required by 201 KAR 20:260 through 201 KAR 20:360.

(3) A program of nursing that fails to meet one (1) or more benchmarks for a year shall submit a report that examines the factors that contributed to the failure to meet and shall provide a description of the corrective measures to be implemented.

(4)(a) The board shall annually compile information on how the programs of nursing met the benchmarks. This information shall be published on the board's Web site at [www.kbn.gov](http://www.kbn.gov) ~~at [www.kbn.gov](http://www.kbn.gov)~~.

(b) A program of nursing shall post a link to the information compiled pursuant to paragraph (a) of this subsection on the program of nursing's Web site. The link shall be easy to locate on the program's home page.

#### Section 6. Action Following Site Visit.

(1)(a) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(b) The program administrator shall be available during the discussion of the report at the board committee to provide clarification.

(c) If the site visit results in a finding of non-compliance with 201 KAR 20:260 through 201 KAR 20:360 by the program of nursing, a letter shall be sent to the program administrator regarding any requirements to be met.

(d) The board shall notify the program of nursing of the time frame within which it shall meet the requirements. The board shall verify that the requirements have been met.

(2)(a) If the program of nursing is unable to meet the requirements in the time set by the board, it may request additional time. The board, in its discretion, may grant or deny this request based on the rationale for the request.

(b) If the board denies the request for additional time, it shall begin the process established in Section 7 of this administrative regulation.

Section 7. Withdrawal of Approval. (1) If, in the opinion of the board, the standards established by 201 KAR 20:260 through 201 KAR 20:360 are not being met, the board shall send notice to the program administrator of the affected program of nursing of its intent to withdraw approval. The notice shall be sent return receipt requested.

(2) When making this determination, the board shall consider the following factors:

(a) The number and severity of the deficiencies;

(b) The length of time in which the deficiencies have existed; and

(c) Any exigent circumstances.

(3) Within thirty (30) days of receipt of the notice, the program administrator of the affected program may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, program approval shall be withdrawn and the program shall be closed. A closed program shall comply with subsection (5) of this section.

(4)(a) If a program of nursing requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The hearing shall be held before a hearing officer or before the full board.

(5)(a) A program of nursing whose approval has been withdrawn by the board shall be removed from the official approved status listing upon the effective date of the decision. Students currently enrolled in the last semester or quarter of the program may complete the program. If the student graduates, he or she may apply for licensure and make take the licensure examination. Any other student shall not be allowed to apply for licensure or take the licensure examination, unless the student graduates from another approved program of nursing.

(b) The program of nursing that has been closed shall assist a currently enrolled student to transfer to an approved program of nursing.

Section 8. Voluntary Closure of a Program. (1) A governing institution seeking to close a program of nursing shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) A governing institution may choose one (1) of the following procedures for closing a program of nursing as established in paragraph (a) or (b) of this subsection.

(a) The governing institution shall continue the program of nursing until the last class enrolled has graduated.

1. The program shall continue to meet the standards until all students enrolled in nursing courses have graduated or transferred.

2. The official closing of the program shall be the date on the degree, certificate, or diploma of the last graduate.

3. The governing institution shall notify the board in writing of the official closing date.

(b) The governing institution shall close the program following the transfer of students to other approved programs.

1. The program shall continue to meet the standards until all students have transferred.

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the governing institution.

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records. (a) The governing institution that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The governing institution that ceases to exist shall transfer the academic transcript of each student and graduate to a third party vendor approved by the Council for Postsecondary Education for safekeeping.

Section 9. Change in Ownership or Organization of the Governing institution. (1) The governing institution shall notify the board in writing of any intent to transfer administrative authority or

ownership. The new administrative authority or owner shall inform the board of its plans for immediate and future operation.

(2) The board shall conduct a site visit to ensure adherence by the program of nursing to 201 KAR 20:260 through 201 KAR 20:360.

(3) Following this site visit, approval of the program of nursing shall continue under the new ownership or administrative authority if the approval standards continue to be met.

Section 10. Incorporation by Reference. (1) "Annual Report of the Program of Nursing", ~~5/23/10/22~~[40/48], Kentucky Board of Nursing, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx>.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, [Jeffrey.Prather@ky.gov](mailto:Jeffrey.Prather@ky.gov) or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

## BOARDS AND COMMISSIONS

### Board of Nursing

(As Amended at ARRS, May 9, 2023)

#### 201 KAR 20:390. Nursing Incentive Scholarship Fund.

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 authorize the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026(1) requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. This administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program.

#### Section 1. Definitions.

(1) "Academic year" means:

(a) For a registered nursing or graduate nursing program, a twelve (12) month period beginning with a fall session; and

(b) For a practical nursing program, the completion of the required program.

(2) "Board" is defined by KRS 314.011(1).

(3) "Graduate nursing education" means the pursuit of a master's degree, post-master's certificate, or doctoral degree.

(4) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(10).

(5) "Program of nursing" means a prelicensure, BSN completion, graduate nursing program.

(6) "Successful academic progression" means, except during the last academic year preceding graduation:

(a) For a prelicensure or BSN completion nursing program, the completion of a minimum of twelve (12) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average, which would allow continuation in a program of nursing; or

(b) For a graduate nursing program, the completion of a minimum of nine (9) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average, which would allow continuation in the graduate program.

#### Section 2. Application.

(1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident; and

- (b) Have been accepted for admission to a program of nursing.
- (2) An applicant shall submit:
  - (a) A completed Nursing Incentive Scholarship Fund Application ~~[form for agency receipt]~~ on or before June 8;
  - (b) A copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year, if requesting preference for financial need;
  - (c) A copy of the program of nursing acceptance letter verifying initial enrollment;
  - (d) For newly enrolled nursing applicants, an official transcript from the last academic institution in which the applicant was enrolled for verification of GPA or copy of a GED; and
  - (e) For applicants enrolled in a program of nursing, a copy of an official transcript to verify continued enrollment.

Section 3. Criteria for Awards. The board shall consider the following criteria in evaluating an application and shall award points as follows:

- (1) Preference categories as established[specified] in KRS 314.025(2):
  - (a) Licensed practical nurses, fifteen (15)[twenty-(20)] points;
  - (b) Registered nurses pursuing a bachelor's degree or graduate nursing education, fifteen (15)[twenty-(20)] points; ~~and~~
  - (c) Prelicensure nursing students, ~~f will be awarded~~ ten (10) points; and
  - (d) Financially needy[Financially-needy] Kentucky residents, up to thirty-five (35) points. Financial need shall be determined by the estimated Federal Expected Family Contribution (EFC) as calculated by the annual FAFSA and points shall[will] be awarded based on need-based aid eligibility as follows:
    - 1. EFC of \$0 to \$5000, thirty-five (35) points;
    - 2. EFC of \$5001 to \$10,000, thirty (30) points; and
    - 3. EFC of \$10,001 to \$20,000, twenty-five (25) points; ~~and~~
  - (2) Potential for academic success, as follows: high school, vocational school, college, or university grade point average for whichever institution the applicant most recently attended:
    - (a) Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;
    - (b) Three (3) to three and four-tenths (3.4), twenty (20) points; and
    - (c) Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points; and
  - (3) Potential for academic success when GED is earned in place of a high school diploma:
    - (a) A GED score of 601 to 800, twenty-five (25) points;
    - (b) A GED score of 501 to 600, twenty (20) points; and
    - (c) A GED score of 401 to 500, fifteen (15) points.

#### Section 4. Amount of Award.

- (1) The board shall be notified by the board's fiscal officer as to the current fund balance prior to making an award.
- (2)
- (a) The board shall first make awards to those recipients who:
  - 1. Received an award in the previous year; and
  - 2. Remain eligible to receive an award pursuant to Section 6 of this administrative regulation in the current year.
- (b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the board shall make an award to other eligible applicants.

#### Section 5. Procedure for Disbursement of Awards.

- (1) Disbursement of funds shall be made directly to the recipient.
- (2) Disbursement shall be made annually.
- (3) Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:
  - (a) Has enrolled; and
  - (b) Is in good standing in the nursing program.

#### Section 6. Continuing Eligibility Criteria.

- (1) Except as established in subsection (3) of this section, a recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient:
  - (a) Maintains successful academic progression through the program; and
  - (b) Submits to the board a completed Nursing Incentive Scholarship Fund Application ~~[form for agency receipt]~~ on or before June 8.
- (2) The educational institution shall immediately notify the board of a change in a recipient's enrollment status.
- (3) An award recipient in a practical nursing program shall not be eligible for further awards from the Nursing Incentive Scholarship Fund while enrolled in that program.

#### Section 7. Disbursement Contract.

- (1) Prior to disbursement of initial funds, the recipient shall sign a Nursing Incentive Scholarship Fund Contract.
- (2) The recipient shall sign a Nursing Incentive Scholarship Fund Promissory Note for each year in which funds are disbursed.

#### Section 8. Repayment and Deferral.

- (1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:
  - (a) Nursing program in which he or she is enrolled within the time established[specified] by the program of nursing; or
  - (b) Required employment as established[specified] in the contract.
- (2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing.
- (a) The board may agree to accept repayment in installments in accordance with a schedule established by the board.
- (b) Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.
- (3) Repayment may be deferred in the case of disability, major illness, or accident that prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.
- (4) A student enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression.
  - (a) This deferment shall apply for one (1) academic year.
  - (b) If the student fails to achieve successful academic progression after that time, repayment shall be due.
  - (c) If the student achieves successful academic progression within the allotted time, he or she may apply for a continuation award pursuant to Section 6 of this administrative regulation.
- (5)
- (a) If a deferment is requested, the recipient shall submit the request to the board on a Nursing Incentive Scholarship Fund Request for Deferral form.
- (b) If the request for deferment is submitted pursuant to subsection (3) of this section, the Nursing Incentive Scholarship Fund Request for Deferral form shall be accompanied by a statement by a physician, advanced practice registered nurse, or physician's assistant.
- (6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.
- (7) If a court of competent jurisdiction determines that the recipient has defaulted and the funds are due and owing to the board, then the provisions of 201 KAR 20:370, Section 1(5), shall apply.
- (8) An individual who has defaulted on a scholarship shall not be eligible to receive another scholarship until the defaulted scholarship has been repaid.
- (9) The board may utilize the services of a third party for collection of sums owed pursuant to a Nursing Incentive Scholarship Fund Contract and Nursing Incentive Scholarship Fund Promissory Note, including reasonable attorney fees.
- (10) After the board refers a debt to a third party for collection, a recipient shall not be eligible for deferment or to otherwise cure

the recipient's breach, other than through payment of all sums owed to the board.

Section 9. Verification.

(1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) A recipient shall notify the board immediately of a change of name or address or enrollment status in school.

Section 10. Incorporation by Reference.

(1) The following ~~[forms]~~ are incorporated by reference:

(a) "Nursing Incentive Scholarship Fund Application", ~~05/23/12/22~~ 12/01;

(b) "Nursing Incentive Scholarship Fund Request for Deferral", 10/96;

(c) "Nursing Incentive Scholarship Fund Contract", 10/13; and

(d) "Nursing Incentive Scholarship Fund Promissory Note", 10/13.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx>.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, email [Jeffrey.Prather@ky.gov](mailto:Jeffrey.Prather@ky.gov) or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, May 9, 2023)**

**301 KAR 2:015. Feeding of wildlife.**

RELATES TO: KRS 150.015

STATUTORY AUTHORITY: 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015 requires the department to protect and conserve the wildlife of this Commonwealth. KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150. This administrative regulation establishes restrictions on the feeding of wildlife that will serve to protect wildlife from disease and toxic substances that ~~could~~ may cause harm to the wildlife population if left unregulated.

Section 1. Definitions.

(1) "Captivity" means confinement by fence or other structure, or restraint intended to prevent escape.

(2) "Curtilage of the home" means the area encompassing the grounds immediately surrounding any home or group of homes used in the daily activities of domestic life, and:

~~(a) Might or might~~ (a) may or may not be enclosed by a fence or other barrier; ~~and~~

~~(b) Includes areas occupied by captive cervids as established in 301 KAR 2:083 and wildlife held in captivity for rehabilitation purposes as established in 301 KAR 2:075 or held in captivity as established in 301 KAR 2:081 and 2:082.~~

(3) "Feeding":

~~(a) Means willingly, wantonly, or knowingly depositing, distributing, or scattering of shelled, shucked, or unshucked corn, millet, milo, safflower seed, sunflower seed, [salt, mineral, or other attractants,] thistle, wheat, or other grain; or any manufactured feed or food product to be consumed by wildlife; and~~

~~(b) Does not mean; but shall not include~~ the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting practices or

harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

Section 2. Recreational Feeding of Wildlife.

(1) Wildlife shall not be fed from March 1 through July 31, except as ~~established~~ provided in subsections (2) and (3) of this section.

(2) Wildlife may only be fed year-round:

(a) In public areas ~~[that is]~~ not open to legal hunting or trapping, unless otherwise prohibited by statute, administrative regulation, or municipal ordinance;

(b) Within the curtilage of the home; and

(c) In a zoo or other facility that lawfully keeps or exhibits wildlife for rehabilitation, rescue, or public viewing.

(3) Fish may be fed year-round.

Section 3. Chronic Wasting Disease. In a department-designated Chronic Wasting Disease Surveillance Zone or Management Zone county, ~~established~~ specified on the department's Web site at [fw.ky.gov](http://fw.ky.gov), persons shall not bait or feed using grain, salt, mineral, or other ingested attractants, except ~~that the following shall be exempted~~:

(1) Normal agricultural practices;

(2) Wildlife food plots or plantings;

(3) Bird feeders within the curtilage of the home; and

(4) Furbearer trapping, except that trappers shall not use grain, salt, or mineral.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov).

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, May 9, 2023)**

**301 KAR 4:110. Administration of drugs to wildlife.**

RELATES TO: KRS 150.015, 150.025, 150.061, 150.105, 150.275, 150.280

STATUTORY AUTHORITY: KRS [2008 Ky. Acts ch.133, sec.5; 150.025(1)(h), 150.061(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to regulate any method of taking wildlife and any other administrative regulation reasonably necessary to implement or carry out the purposes of KRS Chapter 150. [2008 Ky. Acts ch.133, sec.5 requires the department to promulgate administrative regulations that restrict a person from administering drugs to noncaptive wildlife.] This administrative regulation prohibits the administration of drugs to wildlife and creates the necessary exceptions.

Section 1. Definitions.

(1) "Captive wildlife":

(a) Means wildlife ~~[legally]~~ kept in confinement, ~~for any time period, by cage, enclosure, fence,~~ or other structure or restraint intended to prevent escape; and

(b) Does not mean fish.

(2) "Drug" means any chemical substance, other than food or mineral supplements, that affects the health, structure, or normal biological functions ~~[function]~~ of any wildlife.

(3) "Noncaptive wildlife":

(a) Means wildlife living unrestrained in the wild and not ~~[legally]~~ kept in confinement, ~~for any time period, by cage, enclosure, fence,~~ or other structure or restraint intended to prevent escape; and

(b) Does not mean fish.

Section 2. Commissioner Authorization for Administration of Drugs to Noncaptive Wildlife. [~~Except as established in Section 4 of this administrative regulation.~~]

(1) A[a] person shall not administer drugs to noncaptive wildlife without written authorization from the commissioner pursuant to this section[~~Section 3~~] of this administrative regulation.

[~~Section 3.~~] [Petitions.]

(2)[~~(4)~~] A party shall petition the commissioner in writing for authorization to administer drugs to noncaptive wildlife. Written petitions shall include:

(a) A biological or sociological justification for the need to administer a drug to noncaptive wildlife;

(b) A literature review of the known and potential effects of the drug on individual animals, the wildlife population, and potential consumers of wildlife; and

(c) A detailed plan and timeline for administration of the drugs, including anesthetic monitoring plans and withdrawal time data for species and potential human consumption risk.

(3)[~~(2)~~] The commissioner may issue a waiver for the petition requirement for authorization to administer drugs to noncaptive wildlife for specific situations involving:

(a) Public safety; or

(b) Wildlife disease outbreaks[.] or biological or chemical emergencies or events.

(4) This section shall not apply to state or federal wildlife agencies' personnel in the performance of their official duties.

Section 3.[~~Section 4.~~] Administration of Drugs to Captive Wildlife.[~~Exemptions.~~] This administrative regulation shall allow[allows] the administration of drugs for:[~~shall not apply to:~~]

(1) [~~The administration of drugs to~~]Legally possessed captive wildlife [including captive cervids]under the direction of a licensed Kentucky veterinarian in which a veterinarian-client-patient relationship is established pursuant to KRS 321.185; or

(2) The treatment of sick or injured captive wildlife by either:

(a) A licensed veterinarian treating;

1. Non-commercial captive cervids as identified in 301 KAR 2:083.f.i] or

2. Critically ill or injured wildlife pursuant to 301 KAR 2:075; or

(b) A holder of a valid wildlife rehabilitation permit in a wildlife rehabilitation facility under the direction of a licensed Kentucky veterinarian in which a veterinarian-client-patient relationship is established pursuant to KRS 321.185 and 301 KAR 2:075;[ or]

[~~(c)~~] [A holder of a valid scientific collection permit;]

(3) [~~The administration of drugs by~~]A holder of a valid commercial nuisance wildlife control operator[operators]permit [licensed]using dispatch methods[by the department as] established in 301 KAR 3:120; or

(4) Employees of federal or state government in the performance of their official duties related to public health, wildlife management, or wildlife removal.

Section 4.[~~Section 5.~~] Disposition of Wildlife. An officer of the department may take possession or dispose of any noncaptive wildlife if the officer has probable cause to believe the noncaptive wildlife have been administered drugs in violation of this administrative regulation.

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.

**EDUCATION AND LABOR CABINET**  
**Kentucky Workers' Compensation Funding Commission**  
**(As Amended at ARRS, May 9, 2023)**

**803 KAR 30:010. Special fund assessments.**

RELATES TO: KRS 49.220, 342.0011, 342.122, 342.1221, 342.1222, 342.1223, 342.1231, 342.340, 342.650, 30 U.S.C. 901-945, 33 U.S.C. 901-950

STATUTORY AUTHORITY: KRS 342.1223(3)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.1223(3)(f) authorizes the Kentucky Workers' Compensation Funding Commission (KWCFC) to promulgate administrative regulations. KRS 342.1223(2)(g) requires the KWCFC to conduct periodic audits of all entities subject to the special fund assessments imposed by KRS 342.122. This administrative regulation establishes the proper calculation of assessment, establishes the procedures and forms to be used to report and remit special fund assessments, identifies audit expenses, establishes procedures for collection of assessments and expenses, and defines penalty and interest procedures.

Section 1. Definitions.

(1) "Actual physical receipt by the KWCFC" means:

(a) Physical delivery to the Funding Commission office prior to January 1, 2020; or

(b) Electronic filing of the Quarterly Premiums Report, accompanied by:

1. Electronic fund transfer of an assessment due to the KWCFC account; or

2. Prior to January 1, 2020, physical delivery of payment to the office of the Funding Commission.

(2) "Assessment Payer" is defined by KRS 342.1231(10).

(3) "Board" means, unless otherwise specified, the Board of Directors of the Kentucky Workers' Compensation Funding Commission.

(4) "Consideration" means premium, premium charges or premium modifications set forth on the face of a workers' compensation insurance policy, all of which are subject to the Special Fund assessment calculation.

(5)[~~(4)~~] "Engaged in severance or processing of coal" is defined by KRS 342.0011(23)(b).[.]

(6)[~~(5)~~] "Insurance carrier" is defined by KRS 342.0011(22).

(7)[~~(6)~~] "Insurance company" means a company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Employers Mutual Insurance Authority.

(8)[~~(7)~~] "Insurance policy", for an insurance company or group self-insurer, is defined by KRS 342.0011(26).

(9)[~~(8)~~] "KWCFC" or "Funding Commission" means the Kentucky Workers' Compensation Funding Commission.

(10)[~~(9)~~] "Premium", for each employer carrying one's own risk pursuant to KRS 342.340(1), is defined by KRS 342.0011(28).

(11)[~~(10)~~] "Premium", for every group of self-insurers, is defined by KRS 342.0011(24).

(12)[~~(11)~~] "Premium", for insurance companies, is defined by KRS 342.0011(25)(c).

(13)[~~(12)~~] "Premiums received":

(a) For group self-insurers, including group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies, means all assessments levied on its members by a group or contributed to it by the members, including premiums charged off or deferred;and

(b) For insurance companies, is defined by KRS 342.0011(25)(a).

(14)[~~(13)~~] "Return premiums", for insurance companies, is defined by KRS 342.0011(25)(d).

(15)[~~(14)~~] "Self-insurance year", for a group self-insurer, is defined by KRS 342.0011(27).

(16)[~~(15)~~] "Severance or processing of coal" is defined by KRS 342.0011(23)(a).

(17)[~~(16)~~] "SIC code" is defined by KRS 342.0011(29) and is now known as the NAICS code.

(18)[~~(17)~~] "Special fund assessment" means the assessment established in KRS 342.122.

Section 2. Special Fund Assessment.

(1) Special fund assessment shall be imposed upon all premiums, including any premiums for coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. 901-945, for an insurance policy providing Kentucky workers' compensation coverage, except special fund assessments shall not be imposed

upon premiums for the following:

(a) Excess, reinsurance, or coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. 901-945, for group or individual self-insurers;

(b) Contracts between insurance carriers and reinsurers;

(c) Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901-950 coverage defined as USL&H Manual Premium +/- the premium applicable of all rates, factors, [rates/factors]/and fixed expenses; and

(d) Coverage solely for persons for whom a rule of liability for injury or death is provided by the laws of the United States.

(2) For an insurance policy with provisions for deductibles effective on or after January 1, 1995, the premium upon which a special fund assessment is imposed for insurance companies shall not include schedule rating modifications, debits, or credits.

(3) Insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the effective date of the policy.

(4)(a) Insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the policy, regardless of the date the premium is actually received or returned.

(b) Additional premiums received for policies with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(5)(a) Group self-insurers shall report and pay special fund assessments every calendar quarter on premiums received or return premiums at the rate in effect on the effective date of the group self-insurance year for which the premium was received or returned, regardless of the date the premium is actually levied, received, or returned.

(b) A premium shall include any member assessments or contributions used to purchase excess insurance, reinsurance, or Black Lung coverage.

(6) Special fund assessment shall be imposed upon additional premiums received by group self-insurers for self-insurance years effective prior to October 26, 1987 at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(7) Group self-insurers shall take credit for the return of special fund assessments at the rate in effect on the effective date of the group self-insurance year for which premiums are returned.

(8) Group self-insurers may elect to report their premiums and have their special fund assessments computed in the same manner as insurance companies, in accordance with KRS 342.122(4).

(a) Election by an existing group self-insurer to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission.

(b) Election by newly formed group self-insurers to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission within sixty (60) days following the effective date of the group's initial self-insurance year.

(c) Failure of a group self-insurer to elect in writing to report in the same manner as an insurance company in accordance with paragraphs (a) and (b) of this subsection shall constitute an election to report and pay special fund assessments as a group self-insurer in accordance with subsections (5), (6), and (7) of this section.

(d) The election made in accordance with paragraph (a), (b), or (c) of this subsection may not be rescinded for at least ten (10) years, in accordance with the provisions of KRS 342.122(4).

(e) Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the annual effective date of the individual member's policy year.

(f)1. Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as

insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the individual member's policy year, regardless of the date the premium is actually received or returned.

2. Additional premiums received for policy years with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(9)(a) Employers self-insuring Kentucky workers' compensation liability under the provisions of KRS 342.340 shall pay special fund assessments on the premium calculated by the Commissioner of the Department of Workers' Claims in accordance with KRS 342.0011(28).

(b) One-fourth (1/4) of the total annual calculated premium shall be reported and the special fund assessments shall be paid to the KWCFC each calendar quarter.

(10) The premium calculated by the Commissioner of the Department of Workers' Claims for individual self-insurers shall be assessed at the rates in effect on January 1 of the calendar year for which the premium is calculated.

(11)(a) Special fund assessments shall be paid quarterly, in accordance with KRS 342.122(2).

(b) Prior to January 1, 2020, if the assessment due date falls on a weekend (Saturday or Sunday), assessments due and payable, if not postmarked in accordance with KRS 342.122(2), shall be sent to the KWCFC in advance so as to be received by the KWCFC no later than close of business, on the first business day immediately following the weekend due date. After January 1, 2020, the assessment shall be due and payable electronically in accordance with KRS 342.122 (2)(b).

(12)(a) If an insurance carrier collects from an insured a special fund assessment at a rate in excess of that established by KRS 342.122 and this administrative regulation, or collects for any reason from an insured an amount in excess of that established by KRS 342.122 and this administrative regulation, the insurance carrier shall refund the excess to the insured in accordance with KRS 342.1231(9) and (10).

(b) If, after good faith efforts, the excess cannot be returned to the insured in accordance with KRS 342.1231(9) and (10), the excess shall be remitted to the KWCFC.

(c) An insurance carrier shall not retain special fund assessments in excess of those established by KRS 342.122 and this administrative regulation.

(13) The assessment payer shall be notified if proof of refund to insured has not been timely provided or escheated to the KWCFC per KRS 342.1231.

(14) When proof of refund to insured is received late or refund to insured is not escheated to the KWCFC timely[When documentation is received by the KWCFC providing refund to insured information]:

(a) Penalty and interest shall be calculated; and

(b) The assessment payer shall be notified of the additional amount due.

### Section 3. Special Fund Assessment Base.

(1) The Special Fund assessment shall be calculated in accordance with KRS 342.0011(25)(a) - (e).

(2) All consideration shall be included in the Special Fund assessment base as outlined on the face of the insurance policy or other evidence of coverage.

(3) The assessment may be collected by the insurance carrier from the insured. The carrier is responsible for proper assessment calculation and remittance.

(4) Each statement from an insurance carrier presented to an insured reflecting all premium elements and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments.

### Section 4. Deductible Program Adjustment.

(1) The Special Fund assessment calculation shall be conducted in accordance with the deductible program adjustment established by[ ] KRS 32.0011(25)(e).

(2) All consideration of the calculated cost of coverage shall be included in the Special Fund assessment base, on a gross basis.

(3) All consideration includes ~~but is not limited to~~ the following elements:

(a) Expense Constant;

(b) Terrorism;

(c) Catastrophe (other than Certified Acts of Terrorism);

(d) Audit Non-compliance Charge; **and**

(e) All other premium elements or other company-specific modifications as identified on the face of the policy

(4) The Special Fund assessment shall be determined independent of the regulations of any other agency or agencies, unless otherwise indicated.

(5) A visual guide on the calculation for assessment purposes is included in the Assessment Calculation Guide, or Form KWCFC-08. This form is not exhaustive but is intended to provide calculation guidance.

(a) This guidance mirrors the Kentucky Workers Compensation Premium Algorithm framework for premium charges and credits.

(b) Standard Premium is the premium before premium discount is applied, as identified by the National Council on Compensation Insurance, Inc. (NCCI) Basic Manual for Kentucky, effective date November 1, 2021.

(c) Premium Discount is any discount clearly identified on the face of the policy to reduce the premium. The premium discount ~~may~~ also be used to reduce the Special Fund assessment but shall not be modified for assessment calculation purposes.

Section 5.[Section 3.] Penalty and Interest; Late filing of Quarterly Premium Reports.

(1) The KWCFC Board ~~or its designee~~ may waive part or all of the penalty, but not the interest, in accordance with KRS 342.1221.

(a) ~~A~~[The] designee of the KWCFC Board may waive part or all of the penalty, if under \$5,000, in the absence of the KWCFC Board of Directors.

(b) Reasonable cause guidelines for the designee's consideration of waiver of audit penalty ~~may~~ include ~~but are not limited to~~:

1. Whether the audit is the first such audit for the payer and covered an extended period of time;

2. Whether the penalty is reasonable in comparison to assessment owed;

3. Whether the payer provided timely and accurate information when requested;

4. Whether the payer impeded the audit process or delayed access to records that resulted in an unnecessary delay for completion of the audit;

5. Whether there have been prior waivers within the previous five (5) year period;

6. Whether payer's grounds for waiver are identical or similar to prior waiver requests;

7. Whether payer knowingly engaged in erroneous reporting;

8. Whether the payer should have known its reporting was in error; or

9. Whether there is any other unique issue or circumstance that reasonably warrants a waiver.

(c) Reasonable cause for designee's waiver of penalties on late filing of Quarterly Premium Reports ~~may~~ include ~~but are not limited to the following~~:

1. Whether payer incurred an extraordinary event;

2. Whether KWCFC incurred an extraordinary event;

3. Whether good faith efforts were made to file in a timely fashion;

4. Whether there is a history of timely filing;

5. Whether the penalty is reasonable in comparison to assessment owed;

6. Whether there have been prior waivers within the previous five (5) year period; or

7. Whether there are any other reasonable causes to justify waiver.

(d)[(b)] If an assessment payer is not satisfied with the decision made by the designee, an appeal may be submitted within thirty

(30) days from the date of mailing of the decision to the Board of Directors of the KWCFC for final ruling.

(e)[(e)] If an assessment payer is not satisfied with the decision made by the KWCFC Board of Directors, an appeal may be submitted to the Office of Claims and Appeals/Board of Tax Appeals[Kentucky Claims Commission] within thirty (30) days from the date of mailing of the final ruling.

(2) The assessment payer shall receive notification of past due additional assessment, penalty and interest, and expenses. When payment is received by the KWCFC:

(a) Penalty and interest shall be calculated; and

(b) Notification shall be sent to the assessment payer of the additional amount due.

(3) At the time of the audit, the Funding Commission shall include a review of any penalties and interest submitted by the payer and refund amounts paid if there was an overpayment of assessment during any quarter of the audit review period.

Section 6.[Section 4.] Refunds.

(1) Insurance carriers may take credit for the return of special fund assessments on their quarterly premiums reports, if:

(a) The credit is taken by the insurance carrier within four (4) years of the date the insurance carrier returns the assessment to the employer; and

(b) The assessment is returned to the employer in addition to the returned premium.

(2)(a) Assessment payers may submit a claim in writing for a refund of special fund assessments not taken as a credit on the quarterly premiums report.

(b) The assessment payer shall submit with the claim all documents required to support the claim.

(3) All refunds, including those made in accordance with subsection (2) of this section, shall be subject to audit by the Funding Commission.

Section 7.[Section 5.] Audits; General reimbursement of expenses.

(1) In accordance with KRS 342.1223(2)(g), the Kentucky Workers' Compensation Funding Commission shall conduct audits independently or in cooperation with the Labor Cabinet or the Department of Revenue of all entities subject to the special fund assessments established by KRS 342.122.

(2) Until the initial audit has been completed, all records supporting reported premiums and special fund assessments, including refunds and credits, shall be maintained by the assessment payer per KRS 342.1231(8).

(3) All necessary and reasonable expenses incurred by the KWCFC in conducting an audit shall be reimbursed to the KWCFC by the assessment payer audited.

(4) Expenses to be reimbursed shall include:

(a) Travel Expenses:

1. Meals;

2. Lodging;

3. Transportation;

4. Parking; and

5. Incidentals; and

(b) Labor expenses:

1. Preparation for the audit;

2. Travel;

3. Finalizing of the audit; and

4. Preparation of written reports and correspondence.

(5) KWCFC employees shall be reimbursed for all out-of-pocket expenses they incurred while conducting audits.

(6) Except for air transportation, meals, and mileage, expenses shall be reimbursed at actual cost to employees.

(7) Air fare shall be reimbursed at a rate not to exceed the cost of coach class.

(8) Meals shall be reimbursed at actual cost not to exceed fifty-five (55) dollars per day.

(9) Mileage for the use of privately owned auto shall be reimbursed at the rate established in 200 KAR 2:006, Section 7(4)(a).

(10) KWCFC employees conducting KWCFC official business

unrelated to audits shall follow the same reimbursement guidelines as set forth in this section.

Section 8.~~[Section 6.]~~ Audits; Insurance Companies.

(1) Upon request, insurance companies shall provide the Funding Commission with data files containing complete policy level detail information for every policy containing workers' compensation coverage in Kentucky with transactions during the audit period, on Form KWCFC-05, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies.

(2) Insurance companies shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to the respective Page 14 totals on the Annual Reports to the Kentucky Department of Insurance, incorporated by reference in 806 KAR 52:010;

(c) A complete listing of:

1. Current filings with the Kentucky Department of Insurance;

2. Kentucky policies containing written premium written off as a bad debt;

3. Policies written by an association for which the insurance company is providing Kentucky workers' compensation coverage;

4. Sample policies requested by the Funding Commission;

5. Deductible policies written nationwide. This list shall contain at a minimum the policy number, insured's name, and policy effective date;

6. Deductible policies written with Kentucky coverage whose policy effective date is equal to or later than 5/6/93 but not later than 12/31/93. This list shall contain either Kentucky calculated premium, deductible credit, and net deductible premium, or a list of Kentucky claims reimbursed under the deductible plan along with the associated administrative costs; and

7. Deductible policies written with Kentucky coverage with policy effective dates on or after 1/1/94. This list shall contain Kentucky's standard premium, deductible credit, net deductible premium, any schedule rating credit, as well as all other identifying information allowing a quarterly recalculation and reconciliation; and

(d) All other information necessary to support reported premiums and special fund assessments.

(3) For insurance policies effective prior to October 26, 1987, the Funding Commission shall be furnished with:

(a) A schedule identifying the assessment rates applied to these policies;

(b) The dates upon which these rates were first entered into the policy or premium management system;

(c) The dates upon which these rates became active in the policy or premium management system; and

(d) A copy of the Kentucky Workers' Compensation Tax and Assessment Excess Collections information.

(4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:

(a) Detailed examination of records by policy;

(b) Use of audit sampling techniques;

(c) Verification and reconciliation to NAIC reports; and

(d) Other procedures necessary because of the unique nature of the entity being audited.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to NAIC upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 9.~~[Section 7.]~~ Audits; Group Self-insurers.

(1) Upon request, group self-insurers shall provide the Funding Commission with data files containing complete policy or member level detail information for all transactions during the audit period on Form KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer.

(2) Group self-insurers shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for each audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to reports filed with the Department of Workers' Claims;

(c) A listing of members to whom coverage was extended for which premium has been written off as a bad debt, along with an explanation of how these bad debts were handled in the reports to the Department of Workers' Claims;

(d) A complete list of sample policies or agreements requested by the Funding Commission; and

(e) All other documents necessary to support reported premiums and assessments.

(3) For insurance years effective prior to October 26, 1987, the Funding Commission shall be furnished:

(a) A schedule identifying the assessment rates applied to these self-insurance years;

(b) The dates upon which these rates were first entered into the policy or premium management system; and

(c) The dates upon which these rates became active in the policy or premium management system.

(4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:

(a) Detailed examination of records by policy or members' account;

(b) Detailed examination of members' agreements;

(c) Use of audit sampling techniques;

(d) Verification and reconciliation to Department of Workers' Claims' reports; and

(e) Other procedures necessary because of the unique nature of the entity being audited.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to the Department of Workers' Claims upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 10.~~[Section 8.]~~ Audits; Individual Self-insurers.

(1) Upon request, self-insurers shall provide the Funding Commission with the following:

(a) Loss experience reports;

(b) Payroll records;

(c) All back up documentation request for each audit period; and

(d) Other information necessary because of the unique nature of the entity being audited.

(2) The Funding Commission shall utilize one (1) or more of the following procedures in completion of audits:

(a) Detailed examination of all required records;

(b) Use of audit sampling techniques; and

(c) Other procedures necessary because of the unique nature of the entity being audited.

(3) Upon completion of an audit the Funding Commission shall not re-audit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the information previously reported to the Department of Workers' Claims upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 11.~~[Section 9.]~~ Audits; Invoice, Protest and Resolution.

(1) The Funding Commission shall send to the assessment payer a notice of any assessment assessed by the Funding Commission.

(2) A summarized invoice consisting of totals for ~~[""]~~labor~~[""]~~, ~~[""]~~travel~~[""]~~ and ~~[""]~~all other~~[""]~~ expenses shall be submitted to the assessment payer as soon as practicable after completion of the



audit. An itemized invoice shall be available upon request.

(3)(a) The assessment shall be final if not protested in writing to the Funding Commission within thirty (30) days from the date of notice.

(b) The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.

(c)1. Upon written request, the Funding Commission shall extend the time for filing the supporting statement if it is determined that the delay is necessary and unavoidable.

2. The refusal of an extension may be reviewed in the same manner as a protested assessment.

(4) After a timely protest has been filed, the assessment payer may request a conference with the Funding Commission staff.

(a) The request shall be granted in writing stating the date and time set for the conference.

(b) The assessment payer may appear in person or by representative.

(c) Further conferences may be held by mutual agreement.

(5) For those issues not resolved during the conferences described in subsection (4) of this section, the assessment payer may request a conference with the Funding Commission's Board of Directors.

(a) The request shall be granted in writing stating the date and time set for the conference.

(b) The assessment payer may appear in person or by representative.

(6) After considering the assessment payer's protest, including any matters presented at the final conference, the Funding Commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the assessment payer. The ruling shall state:

(a) That it is the final ruling of the Funding Commission and shall generally state the issues in controversy;

(b) The Funding Commission's position; and

(c) The procedure for appeal to the Kentucky Claims Commission in accordance with KRS 49.220 and 802 KAR 1:010.

(7)(a) The assessment payer may request in writing a final ruling any time after filing a timely protest and supporting statement.

(b) If a final ruling is requested, the Funding Commission shall issue the ruling within sixty (60) days or at the next Board of Directors meeting whichever is later, from the date the request is received by the Funding Commission.

(8) After a final ruling has been issued, the assessment payer may appeal to the Kentucky Claims Commission pursuant to the provisions of KRS 49.220.

#### Section 12.~~[Section 10.]~~ Reports.

(1) Insurance companies, group self-insurers, and individual self-insurers shall file an electronic~~[a]~~ Quarterly Premiums Report accompanied by the assessment due and payable for each calendar quarter.

(a) The quarterly premiums report and assessment due and payable shall be received by the KWCFC no later than thirty (30) days following the end of the calendar quarter.

(b) Receipt of the Quarterly Premiums Report and assessment due and payable shall be considered timely through electronic filing and payment; and prior to January 1, 2020 actual physical receipt by the KWCFC or by postmark of the U.S. Postal Service.

(2) Insurance companies shall file Form KWCFC-01, Quarterly Premiums Report.

(3) Employers carrying their own risk shall file Form KWCFC-02, Quarterly Premiums Report.

(4) Group self-insurers shall file Form KWCFC-03, Quarterly Premiums Report.

~~[(5) Employers engaged in severance or processing of coal shall file KWCFC-08, Severed Coal Quarterly Assessment Report.]~~

~~[(5)]~~~~(6)~~(a) Every insurance company, group self-insurer, and individual self-insurer providing workers' compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than June~~[April]~~ 30th following the end of the calendar year.

(b) These reports shall be submitted to the KWCFC electronically and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instructions incorporated by reference in Form KWCFC-05, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies; Form KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer; or Form KWCFC-07, Annual Audit and Collections Report, Individual Self Insurer, as applicable.

~~[(6)]~~~~[(7)]~~ An insurance company or group self-insurer that does not write, receive, or return any Kentucky workers' compensation insurance premium during the calendar year shall complete and return Form KWCFC-04 (Non-writer Statement) to the Kentucky Workers' Compensation Funding Commission, electronically or by mail, 42 Mill Creek Park, Frankfort, Kentucky 40601 no later than June~~[April]~~ 30th following the end of the calendar year.

#### Section 13.~~[Section 14.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "KWCFC-01, Quarterly Premiums Report", 02/2023~~[08/2018]~~;

(b) "KWCFC-02, Quarterly Premiums Report", 02/2023~~[08/2018]~~;

(c) "KWCFC-03, Quarterly Premiums Report", 02/2023~~[08/2018]~~;

(d) "KWCFC-04, Nonwriter Statement", 02/2023~~[08/2018]~~;

(e) "KWCFC-05, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies", 02/2023~~[08/2018]~~;

(f) "KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer", 02/2023~~[08/2018]~~;

(g) "KWCFC-07, Annual Audit and Collections Report, Individual Self-Insurer", 02/2023~~[08/2018]~~; and

(h) "KWCFC-08, Assessment Calculation Guide~~[Severed Coal Quarterly Assessment Report]~~", 02/2023~~[08/2018]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Kentucky Workers' Compensation Funding Commission Web site <http://www.kwfc.ky.gov/>.

This is to certify the Executive Director has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.

CONTACT PERSON: Marcus A. Roland, General Counsel, Kentucky Workers' Compensation Funding Commission, 421 Mill Creek Park, Frankfort, Kentucky 40601, phone (502) 782-1721, fax (502) 573-4923, email [marcus.roland@ky.gov](mailto:marcus.roland@ky.gov).

### **PUBLIC PROTECTION CABINET Department of Financial Institutions (As Amended at ARRS, May 9, 2023)**

#### **808 KAR 1:170. Licensing and registration.**

RELATES TO: KRS 12.357, Subchapter~~[Chapter]~~ 286.4, 286.8-010, 286.8-020, 286.8-030(1), 286.8-032, 286.8-034, 286.8-036, 286.8-060, 286.8-070, 286.8-080, 286.8-090(1), 286.8-140(2)~~(b)~~, 286.8-255, 286.8-260, 286.8-290, 286.9-010, 286.9-020, 286.9-030, 286.9-040, 286.9-050, 286.9-060, 286.9-071, 286.9-073, 286.9-080

STATUTORY AUTHORITY: KRS 286.4-420, 286.4-425, 286.4-430, 286.4-440, 286.4-450(1)(b), 286.4-480, 286.4-610(1), 286.8-032, 286.8-034, 286.8-100, 286.8-140(1), (4), 286.8-255, 286.8-285, 286.9-050, 286.9-060, 286.9-070, 286.9-090(1), 286.9-107

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4. KRS 286.4-430(1) authorizes the commissioner to establish~~[prescribe]~~ the form of the application for a license under KRS Chapter 286.4. KRS 286.8-

140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.9-090(1) authorizes the commissioner to promulgate[adopt] reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-050 and 286.9-060 authorize the commissioner to establish[prescribe] the form and materials required to apply for a license under KRS Chapter 286.9. This administrative regulation establishes licensing and registration requirements for consumer loan companies, check cashing and deferred deposit service businesses, mortgage loan companies, mortgage loan brokers, mortgage loan branches, and mortgage loan originators, and procedures for using the Nationwide Multistate [mortgage] Licensing System (NMLS) and Registry.

#### Section 1. Definitions.

(1) "Audited financial statement" means a financial statement prepared by a certified public accountant in accordance with generally accepted accounting principles.

(2) "Nationwide Multistate Licensing System and Registry" is defined by KRS 286.8-010(20).

(3) "Surety bond" means a bond provided[furnished] by a surety company authorized to conduct business in Kentucky.

Section 2. Consumer Loan Company Licensure. A person applying for licensure as a consumer loan company shall submit:

(1) A completed NMLS Company Form available online at <http://mortgage.nationwidelicencingsystem.org>;

(2) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicencingsystem.org>;

(3) A Form CL-4, State License Confirmation Form completed by each state or jurisdiction in which the person is licensed or registered if the person applying for licensure as a consumer loan company is licensed or registered in any other state or jurisdiction to operate a business making loans of \$15,000 or less at the time of application;

(4) The nonrefundable application investigation fee established in KRS 286.4-440(1); and

(5) The annual license fee established in KRS 286.4-440(2)[286.4-440(1)].

Section 3. Check Cashing and Deferred Deposit Service Business Licensure.

(1) Initial Application. A person applying for an initial check cashing license shall submit:

(a) A completed NMLS Company Form available online at <http://mortgage.nationwidelicencingsystem.org>;

(b) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicencingsystem.org> for each control person designated on the "direct owners and executive officers" section of the NMLS Company Form;

(c) The nonrefundable investigation fee established in KRS 286.9-060(1);

(d) Form COMB-1, State License Confirmation Form for Check Cashing License or Deferred Deposit Service Business License, incorporated by reference in 808 KAR 9:050, if the applicant has a license, registration, or claim of exemption related to the financial services industry in any other state;

(e) An audited financial statement, which shall include[includes] a balance sheet, income statement, statement of cash flows, and all relevant notes, dated as of the previous year end. If the applicant is a startup company, an initial statement of condition and a proforma income statement shall be submitted instead of the income statement and statement of cash flows;

(f) Evidence that the applicant has complied or will comply with all workers' compensation and unemployment compensation laws of Kentucky; and

(g) One (1) of the following, which shall be deposited with and made payable to the commissioner:

1. An irrevocable letter of credit in an amount required by KRS 286.9-040(1)(a);

2. An Electronic Surety Bond, available online at <http://mortgage.nationwidelicencingsystem.org>, in an amount required by KRS 286.9-040(1)(b). The name of the principal

insured on the bond shall match exactly the full legal name of the applicant; or

3. Form COMB-3, Escrow Agreement for Check Cashing License or Deferred Deposit Service Business License, incorporated by reference in 808 KAR 9:050, accompanied by:

a. Evidence that the applicant has established an account in a federally insured financial institution in Kentucky and has deposited money of the United States in an amount required by KRS 286.9-040(1)(c); or

b. A savings certificate of a federally insured financial institution in Kentucky established by the applicant that is not available for withdrawal except by direct order of the commissioner in an amount required by KRS 286.9-040(1)(d).

(2) Renewal Application. A licensee applying for renewal of a check cashing license or deferred deposit service business license pursuant to KRS 286.9-080(1) shall complete and submit the following on or before December 31 of each year:

(a) The required updates and attestation ensuring the accuracy of all information in the person's record maintained by the <http://mortgage.nationwidelicencingsystem.org>; and

(b) The nonrefundable license fee established in KRS 286.9-080(1).

(3) Reinstatement Application. A licensee applying for reinstatement of a check cashing license or deferred deposit service business license pursuant to KRS 286.9-080(2) shall complete and submit the following prior to January 31 of the year that the renewal application was due:

(a) The required updates and attestation ensuring the accuracy of all information in the person's record maintained by the <http://mortgage.nationwidelicencingsystem.org>;

(b) The nonrefundable license fee established in KRS 286.9-080(1); and

(c) The nonrefundable late fee and reinstatement fee established in KRS 286.9-080(2).

Section 4. Licensure as a Mortgage Loan Company or Mortgage Loan Broker.

(1) Initial Application. A person applying for licensure as a mortgage loan company or mortgage loan broker shall submit:

(a) A completed NMLS Company Form as available online at <http://mortgage.nationwidelicencingsystem.org>;

(b) A completed NMLS Individual Form as available online at <http://mortgage.nationwidelicencingsystem.org> for each control person designated on the "direct owners and executive officers" section of the NMLS Company Form;

(c) An audited financial statement, which includes a balance sheet, income statement, statement of cash flows, and all relevant notes, dated the previous year end to the date of submission of the NMLS Company Form. If the applicant is a startup company, an initial statement of condition and a proforma income statement shall be submitted instead of the income statement and statement of cash flows;

(d) An Electronic Surety Bond available online at <http://mortgage.nationwidelicencingsystem.org> in an amount not less than the amount required by KRS 286.8-060(1). The name of the principal insured on the bond shall match exactly the full legal name of the applicant[.];

(e) A certified copy of [the following]:

1. If a corporation, the Corporate Charter or Articles of Incorporation and Bylaws;

2. If a limited liability company, the Articles of Organization and Operating Agreement; or

3. If a partnership of any form, the Partnership Agreement;

(f) A Certificate of Authority or a Certificate of Good Standing issued by the Kentucky Secretary of State dated not more than sixty (60) days prior to the submission of the NMLS Company Form;

(g) If applicant will be operating in Kentucky under a name other than its legal name, a file-stamped copy of the Certificate of Assumed Business Name issued by the Kentucky Secretary of State;

(h) If required to do so by KRS 286.8-032(6), documentation that a managing principal designated by applicant has successfully

completed the educational training established/set forth in KRS ~~286.8-260(1)~~[286.8-032(6)];

(i) If the principal office will be located in a residence, a completed Form ML-6, Disclosure of Location at a Residence Form; and

(j) The fees established/set forth in KRS 286.8-034(1).

(2) Renewal Application.

(a) A person applying for renewal of a mortgage loan company or mortgage loan broker license prior to December 1 shall submit:

1. The required updates and attestation ensuring that all information in the person's record maintained by the ~~NMLS[nationwide mortgage licensing system]~~ operated by the State Regulatory Registry, LLC is correct as available online at <http://mortgage.nationwidelicensingsystem.org>; and

2. The fee established/set forth in KRS 286.8-034(3).

(b) A person applying for renewal of a mortgage loan company or mortgage loan broker license through reinstatement shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee required by KRS 286.8-034(4)(6).

(c) The fee established/set forth in KRS 286.8-034(3) shall be calculated based on data filed by the licensee on the Mortgage Call Reports (MCRs)~~[Report (MCR)]~~, which shall be submitted through the NMLS, for the twelve (12) month period ending September 30. The licensee shall submit the MCR no later than November 1st of each year. The department shall apply the ~~following~~ criteria established in subparagraphs 1. through 3. of this paragraph if the licensee has not submitted four (4) quarters of data.~~[.]~~

1. If a licensee has not held a license with the department for twelve (12) months, the fee shall be based on the volume of loans originated and closed in Kentucky during the time frame the licensee has held a license in Kentucky.~~[.]~~

2. If a licensee does not file the third quarter MCR, which contains data as of September 30, on or before November 1, the department shall:

a. Estimate the twelve (12) month loan volume based on previously filed MCR reports by annualizing the loan volume contained in the prior three (3) quarterly MCR report;

b. Recalculate the actual renewal fee owed once the third quarter MCR is filed; and

c. Send a subsequent fee bill to the licensee for any renewal fee owed based on the actual loan volume reported on the MCR data versus the amount estimated by the department using the annualized loan volume in established in clause a. of this subparagraph~~[2(a)]~~.

3. Pursuant to KRS 286.8-044, the ~~commissioner~~[department] may pursue an administrative action against any licensee that:

a. Fails to file a timely and accurate MCR; or

b. ~~Submits~~[The department may pursue administrative action against any licensee for] inaccurate filings of MCR reports resulting in insufficient renewal fee payments.

(3) Change of address, name, control, or agent for service.

(a) A licensee changing its address, name, or agent for service of process shall notify the commissioner at least:

1. ~~[At least]~~ Ten (10) days prior to the change of address or name; and

2. Five (5) days prior to the change of agent for service of process.

(b) A licensee that wants to engage in a transaction resulting in a change of control shall notify the commissioner at least thirty (30) days in advance with the information necessary for the commissioner to determine if/whether the requirements of KRS Chapter 286.8 will be satisfied upon the change of control. The commissioner shall notify the licensee if/whether the request is approved or denied within thirty (30) days of a completed submission of the notice of change of control.

(c) A licensee changing its address, name, control, or agent for service of process shall update this information in ~~NMLS~~[Nationwide Mortgage Licensing System (NMLS)] within the same time periods established/set forth in this section.

Section 5. Registration of a Mortgage Loan Company Branch.

(1) A mortgage loan company branch shall not be approved unless it is controlled, managed, and supervised by the applicant's principal office.

(2)

~~(a)~~ A person applying for registration of a branch shall submit the following:

1.~~[(a)]~~ A completed NMLS Branch Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

2.~~[(b)]~~ A copy of the lease or deed for the branch;

3.~~[(c)]~~ A completed Form ML-7, Branch Authorization Form; and

4.~~[(d)]~~ If the branch will be located in a residence, a Form ML-6, Disclosure of Location at a Residence Form~~[- and]~~

~~[(e)]~~[The fee set forth in KRS 286.8-034(1)(b)].

~~(b)~~ An additional fee for branch registration shall not be required by the department.

~~(3) [A person applying for renewal of a branch registration prior to December 1 shall submit all materials required by Section 4(2)(a) of this administrative regulation.]~~

~~(4)]~~ A person applying for renewal of a branch registration through reinstatement shall submit all materials required by Section ~~4(2)(a)1.~~[4(2)(a)] of this administrative regulation ~~[- and the reinstatement fee required by KRS 286.8-034(6)]~~[(4)].

Section 6. Registration of a Mortgage Loan Originator.

(1) Initial registration. A person applying for registration as a mortgage loan originator pursuant to KRS 286.8-255(2) shall submit:

(a) A completed NMLS Individual Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A request to submit a Federal Bureau of Investigation background records check and a credit report to the department;

(c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255; and

(d) The fee established/set forth in KRS 286.8-255(2)(b).

(2) Renewal registration.

(a) A person applying for renewal of a mortgage loan originator registration pursuant to KRS 286.8-255(4) shall submit:

1. The required updates and attestation ensuring that all information in the person's record maintained by the ~~NMLS~~[nationwide mortgage licensing system] operated by the State Regulatory Registry, LLC is correct as available online at <http://mortgage.nationwidelicensingsystem.org>;

2. A request to submit a Federal Bureau of Investigation background records check and a credit report to the department;

3. Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260; and

4. The fee established/set forth in KRS 286.8-255(4).

(b) A person applying for renewal of a mortgage loan originator registration through reinstatement shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee required by KRS 286.8-255(5)(c).

(3) The cost of any Federal Bureau of Investigation background records check or credit report required by this section shall be borne by the applicant.

Section 7. Mortgage Loan Originator Bond Requirements. In addition to the requirements established/set forth in this administrative regulation, an applicant applying for registration, renewal, or renewal through reinstatement as a mortgage loan originator shall provide proof that the mortgage loan originator holds or is covered by a bond. If the mortgage loan originator is procuring his or her own bond, the applicant shall submit an Electronic Surety Bond available online at <http://mortgage.nationwidelicensingsystem.org> in an amount determined by annual loan origination as follows:

(1) If the annual loan volume of the applicant is less than \$10,000,000, the surety bond shall be in an amount not less than \$15,000; or

(2) If the annual loan volume of the applicant is \$10,000,000 or more, the surety bond shall be in an amount not less than \$20,000.

Section 8. Factors Used to Determine Approval or Disapproval of an Application.

(1) A mortgage loan originator applicant seeking registration, renewal, or renewal through reinstatement under KRS 286.8-255 shall demonstrate the financial responsibility, character, and general fitness ~~[such as]~~ to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of KRS Subchapters 286.8 and 286.9[the subtitle].

(2) An applicant shall authorize the commissioner to obtain a credit report containing a credit score to aid in making this determination.

(3) The applicant shall have met the requirement of financial responsibility if he or she possessed a credit score of 600 or higher at the time of application. If the applicant possesses a credit score of less than 600, the commissioner ~~shall~~may review the applicant's credit report for the following information to make this determination:

(a) Any outstanding judgments, excluding judgments arising solely from medical expenses for the applicant or an immediate family member;

(b) ~~[Any]~~ Outstanding tax liens or other governmental liens, ~~if any~~;

(c) ~~[Any]~~ Foreclosures occurring within five (5) years of the date of application or renewal, ~~if any~~;

(d) ~~[Any]~~ Bankruptcies occurring within five (5) years of the date of application or renewal, ~~if any~~; and

(e) ~~[Any]~~ Delinquent accounts occurring within five (5) years of the date of application or renewal, ~~if any~~.

(4) The factors of character and general fitness shall be determined by the commissioner after review of all relevant information, including information shown on the applicant's credit report, the applicant's criminal history, and any administrative or civil actions taken against the applicant.

Section 9. Electronic Submission of Filings and Fees through the ~~NMLS[Nationwide Mortgage Licensing System]~~ Operated by the State Regulatory Registry, LLC.

(1) A person applying for licensure, registration, renewal, or renewal through reinstatement pursuant to Sections 2 ~~through~~ 3, 4, 5, 6, and 7 of this administrative regulation shall electronically submit the following with the State Regulatory Registry, LLC, at <http://www.stateregulatoryregistry.org/NMLS>, as part of the ~~NMLS[nationwide mortgage licensing system]~~:

(a) All forms, updates, attestations, and requests required by Sections 2 ~~through~~ 3, 4, 5, 6, and 7 of this administrative regulation, as applicable;

(b) Fingerprints and any other information or authorizations necessary to obtain the background records checks and credit reports ~~established~~referenced in Section 6 of this administrative regulation; and

(c) All fees ~~established~~referenced in this administrative regulation, ~~as applicable~~.

(2) All forms, documentation, fees, or information that are not available for electronic submission directly through the nationwide ~~Multistate[mortgage]~~ Licensing System ~~and Registry~~ operated by the State Regulatory Registry, LLC shall be submitted directly to the department.

(3) ~~[Any]~~ Fees assessed by the State Regulatory Registry, LLC, to process the electronic submissions ~~established~~referenced in subsection (1) of this section shall be borne by the applicant.

Section 10. Abandoned Applications. If an applicant fails to provide or respond to a request for additional information ~~from the department~~ within ninety (90) days ~~[of submission]~~[to the department], the application shall be ~~deemed incomplete and~~ abandoned. An applicant seeking licensing or registration after its application has been abandoned shall reapply and resubmit all required information.

Section 11. Inactive Status for Members of the Armed Forces.

(1) In addition to the provisions of KRS 12.357, a member of the Armed Forces who holds a license or registration in good standing under this administrative regulation may request that the commissioner place the license or registration in inactive status during the period of time that the member is mobilized or deployed, and for a period of six (6) months following termination of the mobilization or deployment.

(2) To request inactive status for a license or registration, a person shall complete Form ML-8, Request for Inactive Status Due to Military Service, and submit it along with proof of mobilization or deployment to the commissioner for approval.

(3) A person whose license or registration has been placed in inactive status shall not engage in the activity requiring the license or registration under KRS ~~Subchapter~~Chapter 286.8.

(4) The fee ~~established~~set forth in KRS 286.8-255(4) shall not accrue against a person whose license or registration is in inactive status.

(5) A person may reactivate an inactive license or registration by submitting a written request to the commissioner and attaching proof of compliance with KRS 286.8-255(10) and 286.8-260, if applicable. Upon receipt of a written request and confirmation of compliance with KRS 286.8-255(10) and 286.8-260, the commissioner shall issue an approval for reactivation.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form CL-4, "State License Confirmation Form", updated December[;] 2019;

(b) Form ML-6, "Disclosure of Location at a Residence Form", updated December[;] 2019;

(c) Form ML-7, "Branch Authorization Form", updated December[;] 2019; and

(d) Form ML-8, "Request for Inactive Status Due to Military Service", updated December[;] 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 500 Mero St 2SW19, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at <http://www.kfi.ky.gov>.

CONTACT PERSON: Gary Stephens, Asst. General Counsel, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601, 502-782-9046, fax 502-573-8787; Gary.Stephens@ky.gov.

## CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Inspector General

Division of Health Care

(As Amended at ARRS, May 9, 2023)

### 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, including licensure procedure for application, approval or denial, revocation, and appeals. KRS 194A.707(9) authorizes[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) **"Immediate family member" means a:**

**(a) Spouse;**

**(b) Child;**

**(c) Stepchild;**

**(d) Son-in-law;**

**(e) Daughter-in-law; or**

**(f) Grandchild.**

**(14)** "Hands-on assistance" is defined by KRS 194A.700(13).

**(14)** **[(15)]** "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 **to conduct** **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) "Quality management activity" means evaluating the quality of care by:**

**(a) Reviewing resident services, complaints made, and other issues that have occurred; and**

**(b) Determining if changes in services, staffing, or other procedures need to be made to ensure safe and competent services to residents.**

**(29)** **[(24)]** "Resident" is defined by KRS 194A.700(22).

**(30)** **[(29)]** **[(25)]** "Secured dementia care unit" is defined by KRS 194A.700(23).

**(31)** **[(30)]** **[(26)]** "Service plan" is defined by KRS 194A.700(24).

**(32)** **[(31)]** **[(27)]** "Significant financial interest" **means** **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.

**(33)** **[(32)]** **[(28)]** "Temporary condition" is defined by KRS 194A.700(26).

**(34)** **[(33)]** **[(29)]** "Unlicensed personnel" is defined by KRS 194A.700(27).

**(35)** **[(34)]** **"Volunteer":**

**(a) Means a person who has duties that are equivalent to the duties of an employee providing direct care services and the duties involve, or might** **may** **involve, one-on-one contact with a resident; and**

**(b) Does not mean** **— A volunteer does not include** **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 **shall** **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) ~~If [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, ~~including[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 ~~established in this paragraph.[:]~~

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)(~~i~~) 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 ~~Licensure[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 ~~Licensure[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 ~~Licensure[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 ~~notify~~:

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 ~~comply with/be subject to~~ the:

(a) Inspection requirements of 902 KAR 20:008, Section 2(12)(~~b~~) and (~~c~~);

(b) Procedures for correcting violations established by 902 KAR 20:008, Section 2(13); and

(c) Civil monetary penalties ~~as established[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) ~~and 194A.710(1)~~, 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 established[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. If[Whether] any building has residents that receive basic health and health-related services from the licensee; and
- d. If[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 for each resident 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 shall be:[are]

1. Available twenty-four (24) hours per day, seven (7) days per week; and[, who are]

2. 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 include/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) through[–] (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.[a.] Nursing tasks in accordance with 201 KAR 20:400:[by registered nurses] or

2.[b.] 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:

~~[(a)]~~ Information about the facility's grievance procedures;~~[(f)]~~ and

~~[(b)]~~ The name, telephone number, and e-mail contact information for the individuals who are responsible for handling resident grievances;~~[(f)]~~

~~[(c)]~~ The notice shall also have:

~~4.]~~ Contact information for the state long-term care ombudsman; and

~~[(d)]~~ 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 activity.

(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 activity appropriate to the size of the facility and relevant to the type of services provided.

~~[(b)]~~ 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 established in paragraphs (b) and (c) of 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) through[(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 at least 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 at least 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 at least 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 trained for emergencies and disaster 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) If applicable, 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 through[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, and/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 through[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 shall:

1. ~~Be/is~~ trained in the proper methods to perform the tasks; and

2. ~~Demonstrate~~~~[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 established~~[identified]~~ in KRS 194A.700(7)(a) through~~-(f)~~(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.[4.] 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)(a) through (k) 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 shall apply~~[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 under~~[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 established in clauses a. through c. of this subparagraph.~~[-]~~

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 shall ensure~~[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 established[identified] by subparagraphs 1. and 2.[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. Medications shall be administered 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) In accordance with the credentialing requirements of KRS 194A.705(2)(c), a nurse or other appropriate licensed health professional may delegate medication administration to an unlicensed staff person in an ALC-BH or ALC-DC as follows:

1. If administration of oral or topical medication is delegated, the unlicensed staff person shall have a:

a. Certified medication aide I credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN); or

b. Kentucky medication aide credential from the Kentucky Community and Technical College System (KCTCS); and

2. If administration of a preloaded insulin injection is delegated in addition to oral or topical medication, the unlicensed staff person shall have a certified medication aide II credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN).

(b) An ALC-BH or ALC-DC shall ensure that each nurse or licensed health professional who delegates the administration of oral or topical medication, or preloaded injectable insulin has:

1. [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

2.3. [(d)] Communicated with the unlicensed personnel about the individual needs of the resident.

(b) In accordance with KRS 194A.705(2)(d), unlicensed personnel who administer medications to residents of an apartment-style personal care home required by KRS 194A.704 to convert to a licensed assisted living community shall comply with the medication aide credentialing requirements established in paragraph (a) of this subsection no later than December 29, 2023.

(c) 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]; or~~

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 ~~that[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. ~~A[No]~~ prescription drug supply for one (1) resident ~~shall not[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 ~~or provided assistance with~~ self-administration ~~of medication~~ 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), and (7) ~~through~~, ~~(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) Except as established in KRS 194A.7061(4), a provisional or initial license holder~~[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) ~~through~~ (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 at least 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 comply with~~[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 ~~through~~—] 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 ~~through~~—] 194A.729, 216.532, or 216.789; or

2. This administrative regulation;

(b) The facility allows~~[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 established~~[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)~~(b)~~ 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/lcapplications.aspx>.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of the Inspector General**  
**Division of Health Care**  
**(As Amended at ARRS, May 9, 2023)**

**902 KAR 20:490. Rural emergency hospitals.**

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

STATUTORY AUTHORITY: KRS 216B.042~~(1)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042~~(1)~~ requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the minimum requirements for licensure as a rural emergency hospital.

Section 1. Definition~~[Definitions]~~. "Rural emergency hospital (REH)" is defined by 42 C.F.R. 485.50~~[as an entity that:~~

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

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

Section 2. Licensure.

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

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

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

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

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

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

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

Section 3. Application and Fees.

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

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

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

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

Section 4. Change of Status.

(1) An REH shall report a change of:

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

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

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

Section 5. Services and Basic Requirements.

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

(2) An REH shall:

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

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

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

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

b. Equipment, supplies, and medication;

c. Blood and blood products;

d. Personnel; and

e. Coordination with emergency response systems;

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

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

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

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

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

(a) Therapeutic radiologic services;

(b) Laboratory services;

(c) Outpatient rehabilitation;

(d) Surgical services;

(e) Maternal health services; or

(f) Behavioral health services.

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

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

Section 7. Patient Records.

(1) Ownership.

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

(b) The original medical record shall not be removed except by court order.

(c) Copies of medical records or portions thereof may be used and disclosed in accordance with the requirements established in this administrative regulation.

(2) Confidentiality and Security: Use and disclosure.

(a) The REH shall maintain the confidentiality and security of patient records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

(b) The REH may use and disclose patient records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8; ~~and~~ 45 C.F.R. Parts 160 and 164; ~~and, or~~ as established in this administrative regulation.

(c) An REH may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

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

1. Six (6) years; or

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

(3) The REH shall:

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

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

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

Section 8. Incorporation by Reference.

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/lcapplications.aspx>.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Aging and Independent Living  
Division of Quality Living  
(As Amended at ARRS, May 9, 2023)**

**910 KAR 1:180. Homecare program for the elderly.**

RELATES TO: KRS 13B.010-13B.170, 194A.700(1), (7), 205.010(6), 205.201, 205.203, 205.455-465, 209.030(2), (3), 42 U.S.C. Chapter 35

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(2)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. Chapter 35 authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050(1) authorizes the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the cabinet as the state agency to administer 42 U.S.C. Chapter 35 in Kentucky and promulgate administrative regulations for this purpose. This administrative regulation establishes the standards of operation for a homecare program for elderly persons in Kentucky.

Section 1. Definitions.

(1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Area plan" means the plan that:

(a) Is submitted by a district for the approval of the department; and

(b) Releases funds under contract for the delivery of services within the planning and service area.

(3) "Assessment" means the collection and evaluation of information about a person's situation and functioning to determine the applicant's or recipient's service level and development of a

plan of care utilizing a holistic, person-~~]~~centered approach by a qualified ~~case manager~~~~[independent care coordinator (ICC)]~~.

(4) "Case management" means a process, coordinated by a case manager, for linking a client to appropriate, comprehensive, and timely home or community based services as identified in the plan of care by:

(a) Planning;

(b) Referring;

(c) Monitoring;

(d) Advocating; and

(e) Following the timeline of the assessment agency to obtain:

1. Service level; and

2. Development of the plan of care.

(5) "Case management supervisor" means an individual:

~~(a) Meeting the requirements of Section 5(1)(a) [and (b)] of this administrative regulation; and~~

~~(b) Who has [shall have] four (4) years or more experience as a case manager.~~

(6) "Case manager" means the individual employee responsible for:

(a) Coordinating services and supports from all agencies involved in providing services required by the plan of care;

~~(b) Completing the initial assessment, plan of care, and annual reassessment;~~

~~(c) Ensuring all service providers have a working knowledge of the plan of care; and~~

~~(d) [(e)] Ensuring services are delivered as required.~~

~~(7) "Case record" means the collection of information, documents, demographics, and required information maintained in the Aging Services tracking data system.~~

~~(8) "Department" means the Department for Aging and Independent Living.~~

~~(9) [(8)] "District" is defined by KRS 205.455(4).~~

~~(10) [(9)] "Educational or experiential equivalent" means:~~

~~(a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and~~

~~(b) At least 400 documented hours of experience assisting aging or disabled individuals through:~~

~~1. Practicum placement;~~

~~2. Clinicals; or~~

~~3. Volunteerism.~~

~~(11) [(10)] "Extraordinary out-of-pocket [out of pocket] expenses" means medical expenses not covered by insurance including:~~

~~(a) Copays;~~

~~(b) Deductibles;~~

~~(c) Prescriptions;~~

~~(d) Premiums for medical insurance; or~~

~~(e) Other medical, dental, or vision cost incurred as a result of medically necessary treatments or procedures.~~

~~(11) [(12)] [(14)] "Homecare services" means services that:~~

~~(a) Are:~~

~~1. Provided to an eligible individual who is a "functionally impaired elderly person" as defined by KRS 205.455(7); and~~

~~2. Directed to the individual established [specified] in subparagraph 1 of this paragraph toward:~~

~~a. Prevention of unnecessary institutionalization; and~~

~~b. Maintenance in the least restrictive environment, excluding residential facilities; and~~

~~(b) Include:~~

~~1. "Chore services" as defined by KRS 205.455(1);~~

~~2. "Core services" as defined by KRS 205.455(2);~~

~~3. "Escort services" as defined by KRS 205.455(5);~~

~~4. "Home-delivered meals" as defined by KRS 205.455(8);~~

~~5. "Home-health aide services" as defined by KRS 205.455(9);~~

~~6. "Homemaker services" as defined by KRS 205.455(10);~~

~~7. "Home repair services" as defined by KRS 205.455(11);~~

~~8. "Personal care services" as defined by [established in] subsection (16) of this section; and~~

~~9. "Respite services" as defined by KRS 205.455(12);~~

~~[(12)] "Independent care coordinator" or "ICC" means the individual that completes the initial assessment, plan of care, and annual reassessment].~~



~~(12)~~~~(13)~~ "Informal supports~~[support system]~~" means any care provided to an individual that~~[which]~~ is not provided as part of a public or private formal service program.~~;~~;

~~(13)~~~~(14)~~ "Instrumental activities of daily living" is defined by KRS 194A.700(7).

~~(14)~~~~(15)~~ "Natural Supports" means a non-paid person or community resource who can provide, or has historically provided, assistance to the consumer or, due to the familial relationship, would be expected to provide assistance if~~[when]~~ capable.

~~(15)~~~~(16)~~ "Personal care services" means assistance with activities of daily living.

~~(16)~~~~(17)~~ "Person-centered~~[Person-centered]~~ planning" means a process:

(a) For selecting and organizing the services and supports that an older adult or person with a disability might~~[may]~~ need to live in the community and is directed by the person who receives the support; and;

(b) ~~[Most important, it is a process]~~ That is directed by the person who receives the support.

~~(17)~~~~(18)~~ "Reassessment" means reevaluation of the situation and functioning of a client.

~~(18)~~~~(19)~~~~(18)~~ "Service level" means the minimum contact required through face-to-face visits and telephone calls by the case manager or social service assistant.

~~(19)~~~~(20)~~~~(19)~~ "Social service assistant" means an individual who:

- (a) Has at least a high school diploma or equivalent;
- (b) Works under the direction of the case manager supervisor;
- (c) Assists the case manager with record keeping, filing, data entry, and phone calls;
- (d) Helps determine what type of assistance their clients need;
- (e) Assists the client in getting services to carry out the plan of care;
- (f) Coordinates services provided to the client;
- (g) Assists clients in applying for other services or benefits for which they may qualify; and
- (h) Monitors clients to ensure services are provided appropriately.

Section 2. Service Provider Responsibilities. A service provider contracting with a district to provide homecare services supported in whole or in part from funds received from the cabinet shall:

- (1) Assure the provision of homecare services throughout the geographic area covered under its plan or proposal;
- (2) Review the provision of homecare services to assure safety and consistency;
- (3) Treat the client in a respectful and dignified manner and involve the client and caregiver in the delivery of homecare services;
- (4) Allow~~[Permit]~~ staff of the cabinet and the district to monitor and evaluate homecare services provided;
- (5) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the department;
- (6) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;
- (7) Develop and maintain written personnel policies and a wage scale for each job classification; and
- (8) Designate a supervisor to assure that staff providing homecare services are provided supervision.

Section 3. Homecare Plan. For program approval, a district shall submit to the cabinet a proposal within its area plan to include at least the following:

- (1) An assurance of access for the department to records of the district pertaining to its contract for delivery of homecare services; and
- (2) A plan for the delivery of homecare services in the area to be served by the district containing:
  - (a) Identification of services currently provided in the district; and
  - (b) The following assurances:

1. A justification of a decision not to fund a homecare service, including an assurance of adequate availability from another funding source;

2. A policy and procedure for assuring a client's:

a. Eligibility in accordance with Section 4 of this administrative regulation; and

b. Implementation of case management;

3. A policy and procedure for a client's referral for service to other appropriate programs and services as established~~[specified]~~ in paragraph (a) of this subsection;

4. A policy and procedure for volunteer programs to be utilized;

5. Identification of a service provider for each specific service;

6. A policy and procedure for the periodic monitoring of a client for the appropriateness of homecare services and to assure safety and consistency by:;

a. In home visits; and

b. Review of records on site and electronically;

7. A number of proposed clients for homecare services to be provided directly or by contract;

8. A unit cost per service to be used as a basis for determining an applicable percentage for the fee schedule as established in Section 9(2) [8(2)] of this administrative regulation;

9. A policy and procedure for the acceptance of a voluntary contribution and assurance the contribution shall be used to maintain or increase the level of service;

10. A policy and procedure for the reporting of abuse, neglect, and exploitation consistent with KRS 209.030(2) and (3);

11. A policy and procedure for the manner in which delivery of homecare services shall be provided to an eligible individual;

12. A policy and procedure for monitoring a subcontract for delivery of direct homecare services;~~and]~~

13. A policy and procedure assuring that assessments~~[an assessment]~~ and client information, as established~~[specified]~~ in Section 5(4) [5(3)] of this administrative regulation, shall include the following information submitted electronically to the department in the formats prescribed by the Aging Services Tracking System:

a. Demographic information, including family income;

b. Physical health;

c. Activities of daily living and instrumental activities of daily living;

d. Physical environment;

e. Mental and emotional status;

f. Assistive devices, sensory impairment, and communication abilities;

g. Formal and informal resources; and

h. Summary and judgment.~~;~~

14. A policy and procedure assuring that training shall be~~is~~ provided or requested for issues found during sub-provider monitoring;

15. A policy and procedure for placing clients on hold including but not limited to:

a. Reasons the individual is a client;

b. How contact will be made while client is on hold;

c. Any exceptions to the hold policy; and

d. Length of time a client may be on hold; and

16. A policy and procedure for termination or reduction of services.

Section 4. Eligibility.

(1) A prospective client for homecare services shall:

(a) Verify~~[Demonstrate]~~ that the prospective client is a person sixty (60) years of age or older;

(b) Not be eligible for the same or similar services through Medicaid unless the individual is:

1. Considered inappropriate for person directed services due to:

a. An inability to manage the individual's~~[his]~~ own services; and

b. A lack of availability of a person to act as the individual's~~[his]~~ representative; or

2. Unable to access the Home and Community Based Waiver through a traditional provider; and

(c) Meet one (1) of the following criteria:

1. Be functionally impaired in the performance of:
    - a. Two (2) activities of daily living;
    - b. Three (3) instrumental activities of daily living; or
    - c. A combination of one (1) activity of daily living and two (2) instrumental activities of daily living;
  2. Have a stable medical condition requiring skilled health services; or
  3. Be:
    - a. Currently residing in:
      - (i) A skilled nursing facility;
      - (ii) An intermediate care facility; or
      - (iii) A personal care facility; and
    - b. Able to be maintained at home if appropriate living arrangements and support systems are established.
- (2) Eligibility shall be determined by a case manager who shall be[that is] qualified in accordance with Section 5(2) of this administrative regulation.[an ICC:]
- ~~[(a)] [Qualified in accordance with Section 5(1) and (2) of this administrative regulation; and]~~
- ~~[(b)] [In accordance with Section 5(3) of this administrative regulation.]~~
- (3) If a client meets eligibility requirements of subsection (1) of this section for homecare services, the client or caregiver shall be informed that the client shall be eligible for services ~~[as long as he or she meets eligibility requirements].~~
- (4) The case manager~~[An ICC]~~ shall determine a prospective client's eligibility for:
- (a)
    1. ~~[Adult day health services;]~~
    2. ~~[Alzheimer's respite care services;]~~
    3. ~~[In-home services; or]~~
    4. ~~[Respite for the unpaid primary caregiver; and]~~
  - (b) Service level of case management as determined on the DAIL-HC-01, Scoring Service Level.
- (5)
- (a) The homecare program shall not supplant or replace services provided by the client's natural support system.
- (b) Except as established in paragraph (c) of this subsection, if needs are being met by the natural support system, the client shall be deemed ineligible.
- (c) An applicant who needs respite services shall not be deemed ineligible as a result of this subsection.
- (6) An applicant who is~~[Applicants who are]~~ eligible for services and for whom funding is not available shall be placed on a waiting list for services.

#### Section 5. Case Management Requirements.

- (1) A district shall employ a case manager to assess the eligibility and needs for each client and provide case management.
- (2) A case manager ~~[and an ICC]~~ shall:
- (a) Meet one (1) of the following qualifications:
    1. Possess a minimum of a bachelor's degree in at least one (1) of the following:
      - a. Social work;
      - b. Gerontology;
      - c. Psychology;
      - d. Sociology; or
      - e. A field related to geriatrics;
    2. Possess a bachelor's degree in nursing with a current Kentucky nursing license;
    3. Possess:
      - a. A bachelor's degree in a field not related to geriatrics with two (2) years of experience working with the elderly; or
      - b. A master's degree in a human services field, which shall[will] substitute for the required experience;
    4. Possess[Having] an associate's degree in a health or family services field and two (2) years of experience working with the elderly, which shall[may] substitute for a bachelor's degree;
    5. Be a Kentucky-registered~~[Kentucky registered]~~ nurse with a current Kentucky license and two (2) years of experience working with the elderly; or
    6. Be a licensed practical nurse with a current Kentucky license and three (3) years of experience working with the

- elderly.~~[Possess a Bachelor's degree in a health or human services profession from an accredited college or university with:]~~
- ~~[a.] [One (1) year experience in health or human services; or]~~
- ~~[b.] [The educational or experiential equivalent in the field of aging or physical disabilities;]~~
- ~~[2.] [Be a currently licensed RN as defined in KRS 314.011(5) who has at least two (2) years of experience as a professional nurse in the field of aging or physical disabilities;]~~
- ~~[3.] [Be a currently licensed LPN as defined in KRS 314.011(9) who has:]~~
- ~~[a.] [At least three (3) years of experience in the field of aging or physical disabilities; and]~~
- ~~[b.] [An RN to consult and collaborate with regarding changes to the Plan of Care; or]~~
- ~~[4.] [Have a Master's degree from an accredited college or university which serves as a substitute for the experience required by subparagraphs 1. through 3. of this paragraph;]~~
- ~~[(b)] [Be a department certified case manager beginning July 1, 2015; and]~~
- ~~[(b)] [(c)] Be supervised by a case management supervisor.~~
- ~~[(3)] [(2)] Each client shall be assigned a case manager.[:]~~
- ~~[(a)] [Case manager; or]~~
- ~~[(b)] [Social service assistant.]~~
- ~~[(4)] [(3)]~~
- ~~[(a)] The case manager shall assess the eligibility and needs of individuals:~~
- ~~[(a)] Initially; and[A client shall be assessed initially and reassessed]~~
- ~~[(b)] At[at] least annually thereafter[by an ICC].~~
- ~~[(b)] [After each assessment or reassessment, the ICC shall determine eligibility and service level of each assessed individual.]~~
- ~~[(c)] If the client is ineligible, the case manager shall close the case, document the reason in the case record, provide a list of potential resources, and notify the client or caregiver by mail[be closed with the reason documented in the case record and notification shall be mailed to the client or caregiver].~~
- (5) Case management services shall not be provided to individuals on a waiting list for homecare.
- ~~[(6)] [(4)] The case manager shall:~~
- ~~[(a)] Be responsible for coordinating, arranging, and documenting those services provided by:~~
1. Any funding source;~~[or]~~
  2. A volunteer;or
  3. Formal or informal supports;[:]
- ~~[(b)]~~
1. Make a reasonable effort to secure and utilize informal supports for each client; and
  2. Document the reasonable effort in the client's case record;
  - (c) Monitor each client by conducting a home visit according to the assessed service level and through a telephone contact between home visits. Clients shall be contacted at a minimum as follows:
    1. Level 1, a home visit shall be conducted every other month;
    2. Level 2, a home visit shall be conducted every four (4) months; and
    3. Level 3, a home visit shall be conducted every six (6) months;~~[and]~~
  - (d) Document in the case record each contact made with a client, as established[specified] in paragraph (c) of this subsection, or on behalf of the client.
  - (e) Practice cultural humility with awareness and respect for diversity and inclusion; and
  - (f) Provide a copy of the Rights and Responsibilities form to the client, in his or her preferred language; and
    1. Explain the rights and responsibilities to the client; and
    2. Document receipt of form in the client record.
- ~~[(5)]~~
- ~~[(a)] [A district shall employ an ICC to assess the eligibility and needs for each client.]~~
- ~~[(b)] [Clients assessed at a Level 1 or a Level 2 shall be assigned a case manager.]~~

[(c)] Clients assessed at a Level 3 shall have a case manager or a social service assistant assigned to assist with meeting their needs.}]

[(6)] A client shall receive homecare services in accordance with an individualized Plan of Care developed through person centered planning. The plan shall:}]

[(a)] Relate to an assessed problem;}]

[(b)] Identify a goal to be achieved;}]

[(c)] Identify a scope, duration and unit of service required;}]

[(d)] Identify a source of service;}]

[(e)] Include a plan for reassessment; and}]

[(f)] Be signed by the client or client's representative and case manager, with a copy provided to the client.}]

(7) A social service assistant may be assigned to Level 3 clients to assist with meeting the assessed needs. Case management services shall not be provided to individuals on a waiting list.}]

#### Section 6. Service Planning.

(1) The client shall participate in the assessment and development of a person-centered plan of care with the case manager, natural supports, and other formal or informal service providers **as available**.

(2) Upon the receipt of a referral the case manager shall:

(a) Contact the client or client's representative and schedule the initial assessment;

(b) Perform the assessment through:

1. Interviews with the client, existing care givers, and natural supports;

2. Direct observation of the client's abilities and deficits; and

3. Discovery of the client's cultural preferences, practices, and beliefs;

(c) Determine the client's eligibility;

(d) Document all activities and determinations in the case record;

(e) Meet with the person-centered planning team and identify:

1. The assessed needs of the client;

2. The services that will address the identified needs; and

3. Goals that support the client's needs and preferences; and

(f) Compose the plan of care.

(3) The plan of care shall:

(a) Relate to an assessed problem;

(b) Identify a goal to be achieved;

(c) Identify a scope, duration, and unit of service required;

(d) Identify a source of service;

(e) Include a plan for reassessment; and

(f) Be signed by the client or client's representative and case manager, with a copy provided to the client.

(4) The client shall be reassessed at least annually, and more frequently **if/when** there is a documented change in status that indicates a need for adjustment to the service level or plan of care.

Section 7. Quality Service. If a client is determined eligible for homecare services, the case manager shall:

(1) Read, or have read and explained to the client, the purpose of the DAIL-HC- 02, Quality Service Agreement;

(2) Document the client's acknowledgement of receipt in the case record;

(3) Maintain the original document in the client's case record;

(4) Provide a copy of the completed agreement to the client. **The copy[which]** shall contain the name, address, and telephone number of:

(a) The current case manager[or social service assistant];

(b) A designated representative of the district; and

(c) A representative of the department;

(5) Inform the client of his or her right to file a complaint regarding services and provide assistance as requested;

(6)[(3)] Ensure that a copy of a DAIL – HC- 03, Report of Complaint or Concern containing written complaints and detailed reports of telephoned or verbal complaints, concerns or homecare service suggestions is maintained in the client's **case record**[permanent file] and documented in a centralized log;[and]

(7) Keep the identity of a complainant confidential; and

(8) Document investigation and efforts at resolution or service improvement that shall be available for monitoring by the district and department staff.

Section 8.[Section 7.] Appeals.[Request for a Hearing.] A client may request an informal dispute resolution or an appeal[a hearing].}]

(1) An informal dispute resolution shall be limited to the denial, reduction, or termination of services.[As provided by KRS 13B.010-170; and]

(2) An informal dispute resolution shall not be accepted **if/when** services are unavailable due to[Within thirty (30) days of any decision by the]:

(a) The program not having funding to provide the services; or[Cabinet;]

(b) The individual **[does not meeting/meet]** the eligibility requirements pursuant to Section 4 of this administrative regulation[District; or]

[(c)] [Service-provider].

(3) A request for an informal dispute resolution shall:

(a) Be submitted to the department's homecare program coordinator within thirty (30) days following the notification of an adverse decision; and

(b) Contain the **[following information]**:

1. Name, address, and telephone number of the client;

2. Decision being disputed;

3. Justification for the dispute;

4. Documentation supporting the dispute; and

5. Signature of person requesting the dispute resolution.

(4) The dispute resolution shall be heard by three (3) employees of the departments Division of Quality Living. One **(1) of whom[of which]** shall be the division director or **the division director's**[his/her] designee.

(5) The complainant shall be provided an opportunity to appear before the dispute resolution team to present facts or concerns about the denial, reduction, or termination of services.

(6) The dispute resolution team shall inform the complainant, in writing, of the decision resulting from the dispute resolution within ten (10) business days of the review.

(7) A complainant may request an appeal for an administrative hearing conducted in accordance with KRS Chapter 13B:

(a) Within thirty (30) calendar days of the notice regarding the results of the dispute resolution; **[or]**

(b) Within thirty (30) calendar days of the notice regarding the adverse action by the cabinet; **or;]**

(c) By submitting a written request for appeal to the Office of the Ombudsman and Administrative Review, Quality Advancement Branch, 275 E. Main St, 2 E-O, Frankfort, Kentucky 40621.

#### Section 9.[Section 8.] Fees and Contributions.

(1) The case manager[ICC] shall be responsible for determining fee paying status, using the criteria established in this subsection.

(a) A fee shall not be assessed for the provision of assessment, case management services, or home-delivered meals.

(b) The case manager[ICC] shall:

1. Consider extraordinary out-of-pocket expenses to determine a client's ability to pay; and

2. Document in a case record a waiver or reduction of fee due to the extraordinary out-of-pocket expenses.

(c) A fee shall not be assessed to an eligible individual who meets the definition of "needy aged" as **defined**[governed] by KRS 205.010(6).

(d)

1. SSI income or a food stamp allotment shall not be deemed available to other family members.

2. The applicant receiving SSI benefits or a food stamp allotment shall be considered a family of one (1) for the purpose of fee determination.

(2) An eligible person shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate based upon income and size of family using 130 percent the official

poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services. Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract. The copayment amount shall be based on the household's percentage of poverty, as follows:

Percentage of Poverty	1 Person	2 Person	3 Person or More
0 – 129%	0%	0%	0%
130% - 149%	20%	0%	0%
150% - 169%	40%	20%	0%
170%-189%	60%	40%	20%
190%-209%	80%	60%	40%
210%-229%	100%	80%	60%
230%-249%	100%	100%	80%
250% and above	100%	100%	100%

(3)(a) A contribution from an individual or family with a zero percent copay shall be encouraged.

(b) Suggested contribution or donation rates may be established ~~[- however]~~, without pressure shall not be placed upon the client to donate or contribute.

(c) Homecare services shall not be withheld from an otherwise eligible individual based upon the individual's failure to voluntarily contribute to support services.

(4) The district shall review and approve or deny, based on the contracted agency's district policies, the procedure implemented by a service provider for the collecting, accounting, spending, and auditing of fees and donations.

Section 10.~~[Section 9.]~~ Allocation Formula. The homecare program funding formula shall consist of a \$40,000 base for each district, with the remaining amount of funds distributed in proportion to the district's elderly (sixty (60) plus) population in the state.

Section 11.~~[Section 10.]~~ Termination or Reduction of Homecare Services.

(1)

(a) A case manager or client may terminate or reduce homecare services.

(b) Homecare services shall be terminated if:

1. The program can no longer safely meet the client's needs;
2. The client does not pay the copay for services as established in Section 9[8](2) of this administrative regulation;
3. The client refuses to follow the plan of care; or

4. a. The client or family member has exhibited abusive, intimidating, or threatening behavior; and

b. The client or representative is unable or unwilling to comply with the corrective action plan.

(2) Homecare services may be reduced if:

- (a) The client's condition or support system improves;
- (b) Program funding has been reduced; or

(c) The client refuses to follow the plan of care for a particular service.

(3) If homecare services are terminated or reduced, the case manager shall:

- (a) Inform the client of the right to file a complaint;
- (b) Notify the client or caregiver of the action taken; and
- (c) Assist the client and family in making referrals to another agency if applicable.

(4) If homecare services are terminated or reduced due to reasons unrelated to the client's needs or condition, the designated district representative in conjunction with the case manager shall determine reduction or termination on a case-by-case basis based on the requirements established in this administrative regulation.

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

(1) The following material is incorporated by reference:

- (a) "DAIL-HC 01, Scoring Service Level", 4/2014;
- (b) "DAIL –HC- 02, Quality Service Agreement", 4/2014; ~~[- and]~~
- (c) "DAIL –HC- 03, Report of Complaint or Concern", 4/2014;

and

(d) "Rights and Responsibilities", 1/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dail/Pages/default.aspx>.

CONTACT PERSON: Krista Quarles, Policy 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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS  
Board of Nursing  
(Amended After Comments)

**201 KAR 20:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.**

RELATES TO: KRS 314.021, 314.035, 314.089, 314.091, 314.103, 314.137, 314.991

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians ~~and includes establishing provisions for discipline and further regulating as necessary~~. This administrative regulation establishes the scope of practice and disciplinary procedures for dialysis technicians.

Section 1. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse, an advanced practice registered nurse, a physician, or a physician's assistant:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

(b) Preparation of catheter ports and access, including connection and disconnection, and site care of percutaneously or surgically inserted central venous catheters, if the dialysis technician has six (6) months experience that includes training and skills validation regarding central venous catheters;

~~(c)(b)~~ Initiating, delivering, or discontinuing dialysis care;

~~(d)(e)~~ Administration of the following medications only:

1. Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units;

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician; and

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse;

~~(e)(d)~~ Assistance to the registered nurse in data collection;

~~(f)(e)~~ Obtaining a blood specimen via a dialysis line or a peripheral access site;

~~(g)(f)~~ Responding to complications that arise in conjunction with dialysis care; and

~~(h)(g)~~ Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is ~~determined~~ by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

(b) The preparation of catheter ports, access, including connection and disconnection, and site care of connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters, except as authorized provided in Section 1(1)(b) of this administrative regulation; and

(c) The administration of blood and blood products.

Section 2. Discipline of a Dialysis Technician. (1) The board ~~shall have the authority to~~ discipline a dialysis technician (DT) or a dialysis technician applicant (DTA) for:

(a) Failure to safely and competently perform the duties of a DT or DTA as established in this administrative regulation;

(b) Practicing beyond the scope of practice as established in this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Use, or impairment as a consequence of use, of alcohol or drugs while on duty as a dialysis technician, dialysis technician trainee, or dialysis technician applicant;

(g) Possession or use of a Schedule I controlled substance;

(h) Personal misuse or misappropriation for use of others of any drug placed in the custody of the DT or DTA for administration;

(i) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(j) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(k) Practicing without filing an Application for Dialysis Technician Credential, ~~as incorporated by reference in 201 KAR 20:476,~~ or without holding a dialysis technician credential;

(l) Abuse of a patient;

(m) Theft of facility or patient property;

(n) Having disciplinary action on a professional or business license;

(o) Violating any lawful order or directive previously entered by the board;

(p) Violating any applicable requirement of KRS Chapter 314 or 201 KAR Chapter 20;

(q) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; or

(r) Having violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

(2) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure established in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

~~(f) Denying the Application for Dialysis Technician Credential, as incorporated by reference in 201 KAR 20:476.~~

(3) The board shall follow the procedures established in and have the authority established in KRS 314.091, 201 KAR 20:161, and 201 KAR 20:162 for management and resolution of complaints filed against a dialysis technician.

(4) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to \$10,000.

Section 3. Miscellaneous Requirements. (1) ~~[A]Any~~ person credentialed by the board as a dialysis technician shall maintain a current mailing address and email address with the board and immediately notify the board in writing of a change of mailing address or email address.

(2)(a) Holding a credential shall constitute consent by the dialysis technician to service of notices or orders of the board. Notices and orders shall be sent to the mailing address on file with the board.

(b) Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service

of the notice or order.

(3) Any[A] dialysis technician credentialed by the board shall, within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction.

(4) Any[A] dialysis technician credentialed by the board shall, within ninety (90) days of entry of a sanction specified in this subsection, notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction:

(a) Is surrendered or terminated under threat of disciplinary action;

(b) Is refused, limited, suspended, or revoked; or

(c) If renewal is denied.

(5) If the board has reasonable cause to believe that any DT or DTA is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it shall require the person to submit to a substance use disorder evaluation or a mental or physical examination by a board approved practitioner.

(a) Holding a credential shall constitute:

1. Consent by the dialysis technician to a substance use disorder evaluation, mental examination, or physical examination if directed in writing by the board. The direction to submit to an evaluation or examination shall contain the basis for the board's concern that the technician is unable to practice safely and effectively; and

2. Waiver of objections to the admissibility of the examining practitioner's testimony or examination reports on the grounds of privileged communication.

(b) The dialysis technician shall bear the cost of substance use disorder evaluation, mental examination, or physical examination ordered by the board.

(c) Upon failure of the dialysis technician to submit to a substance use disorder evaluation, mental examination, or physical examination ordered by the board, unless due to circumstances beyond the person's control, the board shall[may] initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(d) If a substance use disorder evaluation, mental examination, or physical examination pursuant to this subsection results in a finding that indicates that the dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, the dialysis technician shall be subject to disciplinary procedures as established in this administrative regulation.

(6) Due process procedures, including appeal, pertaining to this administrative regulation shall be conducted in accordance with KRS Chapter 13B.

AUDRIA DENKER, President

APPROVED BY AGENCY: April 20, 2023

FILED WITH LRC: April 27, 2023 at 11:40 a.m.

CONTACT PERSON: Jeffrey R. Prather, General Counsel,  
Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,  
Louisville, Kentucky 40222, (502) 338-2851,  
jeffrey.prather@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope of practice and disciplinary procedures for Dialysis Technicians (DTs).

(b) The necessity of this administrative regulation: This regulation is necessary pursuant to KRS 314.137.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of KRS 314.137 by regulating scope of practice, discipline, and miscellaneous requirements applicable to DTs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of KRS 314.021 and KRS

314.137, by regulating scope of practice, discipline, and miscellaneous requirements applicable to DTs.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides that DTs may prepare and access of central venous catheters, if they have six months training and experience regarding central venous catheters;

(b) The necessity of the amendment to this administrative regulation: To clarify the DT scope of practice.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation conforms to the content of the authorizing statutes, KRS 314.131(1) and KRS 314.137.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will assist in the effective administration of KRS 314.021 and KRS 314.137, by amending scope of practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 700 dialysis technicians with a current and active Kentucky DT credential and seven DT training programs that are located and licensed in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The DT training programs will need to validate six-months training for DTs engaged in preparing and accessing central venous catheters.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The DTs with the appropriate experience and training will have an expanded scope of practice to facilitate dialysis treatment care.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

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

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

#### FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131 and KRS 314.137.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? No additional revenue.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

**Section 1. Incorporation by Reference.**

(1) The "Department of Juvenile Justice Policy and Procedures Manual: Health and Safety Services", ~~May 12~~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 05/12/23[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/lrcfilings.aspx>.

VICKI REED, COMMISSIONER

APPROVED BY AGENCY: May 12, 2023

FILED WITH LRC: May 12, 2023 at 3:45 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](mailto:Justice.RegContact@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

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

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

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

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

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

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

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

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

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

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

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost is unknown, but devices including tasers and pepper spray, shields, riot control suits and helmets, camera equipped vehicle partitions, and other items will be acquired to assist

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

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

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

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

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

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

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

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

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

#### FISCAL NOTE

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

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

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? An exact cost is unknown, but devices like pepper spray will be reacquired as they are used or expire. Training costs will continue to be incurred for new staff authorized to use



pepper spray or tasers. The tasers, cars with camera equipped security partitions, and other equipment will need to be replaced on an intermittent basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Section 1. Incorporation by Reference.

(1) The "Department of Juvenile Justice Policy and Procedures

Manual: Detention Services", ~~May 12~~~~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 <del>05/12/23</del> <del>04/13/23</del> [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/lrcfilings.aspx>.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 12, 2023

FILED WITH LRC: May 12, 2023 at 3:45 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](mailto:Justice.RegContact@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Initially: An exact cost is unknown, but devices including

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

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

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

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

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

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

FISCAL NOTE

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Protection and Permanency**  
**(Amended After Comments)**

**922 KAR 1:100. Public agency adoptions.**

RELATES TO: KRS 194A.060(1), 199.011(4), (10), 199.430(3), 199.520, 199.525, 199.570, 199.572, 199.575, 202B.010(12), 600.020(30), (52), (63), 605.090, 615.030, 620.050, 620.360, 625.045, 625.108, [Chapter 625,]45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary [Secretary] of the Cabinet for Health and Family Services to establish policies and operate programs to protect, develop, and maintain the health, dignity, integrity, and sufficiency [welfare] of the citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.472 requires the cabinet to establish criteria for the public agency adoption of children in the custody of the cabinet. This administrative regulation establishes the procedures for public agency adoptions.

**Section 1. Definitions.**

(1) "Approved adoptive parent" means a family approved in accordance with:

(a) 922 KAR 1:310;

(b) 922 KAR 1:350; or

(c) Section 6 of this administrative regulation.

(2) "Cabinet" is defined by KRS 199.011(3).

(3) "Child-focused recruitment model" or "C.F.R.M" means a program for the recruitment of an adoptive family in accordance with Section 2 of this administrative regulation by cabinet staff for a child in the custody of the cabinet whose adoptive placement has not been identified.

(4)[(3)] "Fictive kin" is defined by KRS 199.011(9).

(5)[(4)] "Foster family home" is defined by KRS 199.011(10) and 600.020(30).

(6)[(5)] "Home study" means an evaluation conducted in accordance with the requirements of the state where the home is located, to determine the preparation and suitability of a prospective adoptive parent, including the home environment, to receive a child for the purpose of adoption.

(7) "Inquiring adoptive parent" means an individual who has submitted an inquiry through the K.A.P.E. Web site to potentially be considered as a specific child's adoptive parent.

(8) "Kentucky Adoption Profile Exchange" or "K.A.P.E." means a program administered by the cabinet to promote adoption awareness and child-specific recruitment for children legally free for adoption without an identified adoptive home.

(9)[(6)] "Open adoption" means an agreement between an adoptive parent and an adopted child's biological or legal parent regarding communication or contact with the child.

(10)[(7)] "Pre-adoptive placement" means a home, approved by the cabinet, where a child legally free for adoption is placed prior to adoption finalization.

(11)[(8)] "Pre-placement conference" means a meeting conducted by cabinet staff with a prospective adoptive parent that fulfills requirements specified in Section 4 of this administrative regulation.

(12)[(9)] "Prospective adoptive parent" means an individual who has submitted an inquiry through the K.A.P.E. Web site and has been deemed by the cabinet to be a potential adoptive match for a child after review of the inquiry or other diligent search method ~~applied with a Kentucky or an out-of-state public or licensed private child welfare agency to be approved as an adoptive parent~~.

(13)[(40)] "Qualified mental health professional" or "QMHP" is defined by KRS 600.020(52).

(14)[(44)] "Qualified professional in the area of intellectual disabilities" is defined by KRS 202B.010(12).

(15)[(42)] "Social service worker":

(a) Is defined by KRS 600.020(63); or

(b) Means a social or human service worker with an out-of-state public or licensed private child welfare agency who meets the requirements of that state to conduct a home study.

Section 2. Eligibility and Referral to the Child-Focused Recruitment Model. A child may be referred to C.F.R.M if the child:

(1) Is determined eligible, as special needs, in accordance with 42 U.S.C. [see.]673;

(2) Has a goal of planned permanent living arrangement or long-term foster care;

(3) Is on extended commitment and has had parental rights terminated; or

(4) Has adoption as the child's case plan goal and does not have an adoptive resource identified.

**Section 3. Preparation of the Child for Adoptive Placement.**

(1) A child prepared for adoptive placement by cabinet staff shall receive information regarding the following, with consideration given to the child's maturity and developmental stage:

(a) Relationship to the biological or legal parent;

(b) Entitlement to a parent;

(c) If applicable, relationship with the foster family home and the rights of a foster child established in KRS 620.363;

(d) Reason the foster placement may not become the adoptive placement;

(e) Role of the social service worker, other pertinent cabinet staff, and the child in the placement planning process;

(f) Meaning of adoption;

(g) Process of recruitment of a parent and how the child may

be involved;

- (h) Impending placement;
  - (i) Visitation process;
  - (j) Placement decision; and
  - (k) Cabinet staff responsible for the placement decision.
- (2) Cabinet staff shall:

(a) Request the biological or legal parent to either consent or refuse to consent to the inspection of the adoption records by the adult adopted person when the child reaches twenty-one (21) years of age; and

(b) File with the circuit or family court in the county where the adoption was finalized the consent or refusal to consent to the inspection of the adoption records by the adult adopted person.

(3) If a child's permanency goal includes adoption and reunification with a sibling separated during foster care, the cabinet shall plan for the transition and coordinate increased visitation between siblings.

(4) A service region administrator or designee may make a determination that [If cabinet staff agree by consensus during a planning conference,] a sibling shall [may] be separated from another sibling in adoption upon consideration of:

(a) If age appropriate, each sibling's understanding of the facts of the relationship, feelings, wishes, and ideas regarding options for placement;

(b) The perception of the relationship of each child with the sibling; [and]

(c) The attachment to the current caregiver;

(d) Each child's permanency needs; and

(e) The recommendation of a:

1. QMHP; or

2. If applicable, a qualified professional in the area of intellectual disabilities.

(5) A planning committee shall convene annually for siblings who remain separated in out-of-home care to:

(a) Determine if reunification is possible; and

(b) Develop a plan for maintaining sibling connections.

(6) A QMHP, qualified professional in the area of intellectual disabilities, relative, social service worker, other pertinent cabinet staff, nonadoptive foster parent, or another individual approved by cabinet staff may assist with preparing the child for adoption.

(7) If the child's goal is changed to adoption, a child in the custody of the cabinet may be placed with an approved adoptive parent prior to the termination of parental rights to the child.

(8) If a prospective adoptive parent has not been identified for a child after the child's permanency goal has been changed to adoption in accordance with 922 KAR 1:140, the cabinet:

(a) Shall convene an adoption review committee to meet and discuss child-specific recruitment and the potential strengths and barriers of placement with an identified prospective adoptive parent;

(b) May invite an individual specified in subsection (6) of this section to a meeting in which the child's permanency plan is discussed; and

(c) Shall assess for a [refer the child to the] C.F.R.M. referral at the time of goal change in accordance with Section 2 of this administrative regulation.

(9) If a prospective adoptive parent has not been identified for a child at the time of termination of parental rights or thereafter, the cabinet shall refer the child to K.A.P.E. at that time; and

(d) Shall refer the child to the Adoption Services Branch in accordance with Section 7(4) of this administrative regulation].

#### Section 4. Selection of an Adoptive Family.

(1) Priority consideration for an adoptive placement shall be given to:

- (a) A relative or fictive kin; or
- (b) The current foster family home.

(2) The process of recruiting a prospective adoptive parent shall begin if:

(a) Parental rights of the child are terminated;

(b) A relative or fictive kin has not made a commitment to adopt the child;

(c) The child's foster family home has not made a commitment

to adopt through a statement of intent;

(d) Both biological or legal parents of the child are deceased and the cabinet has been granted custody through the court; or

(e) The child's pre-adoptive placement is disrupted.

(3) ~~Cabinet~~ [Prior to placement, cabinet] staff shall consider an inquiring [the prospective] adoptive parent's acceptance of the child's behavior and characteristics.

(4)(a) The cabinet shall take the following into consideration regarding the number of children to be placed in an adoptive home:

1. The inquiring [prospective] adoptive parent's parental capacity and resources to meet the needs of all children in the home; and

2. The impact of all children involved, including the potential adoptive child.

(b) An inquiring [A prospective] adoptive parent may request review of a denial based upon the number of children in the home in accordance with 922 KAR 1:350, Section 8(2).

(5) The cabinet shall review:

(a) Review and obtain the inquiring [prospective] adoptive parent's signature on the DPP-171A, Verbal Exchange of Information Acknowledgement Form [Notice of Confidentiality Requirements Acknowledgement Cover Sheet; and

(b) Inform the prospective adoptive parent of:

1. Visitation and supervision requirements in accordance with KRS 605.090(1)(b); and

2. Detailed information about the child's history and services provided to the child, excluding any identifying information of the biological parent, including:

a. Health, background, and placement history;

b. Behavior, including behaviors in accordance with KRS 605.090(1); and

c. Personal characteristics].

#### Section 5. Preparation of the Prospective Adoptive Parent.

(1) Cabinet staff shall conduct a preplacement conference for a child available for adoption with the [child's]:

(a) Foster parent, if applicable;

(b) Prospective adoptive parent;

(c) If applicable, a QMHP or qualified professional in the area of intellectual disabilities; and

(d) Representative [A representative] from the cabinet or child-placing agency where the child is placed.

(2) During the pre-placement conference, cabinet staff shall:

(a) Review and obtain the prospective adoptive parent's signature on the DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet;

(b) Inform the prospective adoptive parent of:

1. Visitation and supervision requirements in accordance with KRS 605.090(1)(b); and

2. Detailed information about the child's history and services provided to the child, excluding any identifying information of the biological parent, including:

a. Health, background, and placement history;

b. Behavior, including behaviors in accordance with KRS 605.090(1); and

c. Personal characteristics;

(c) [Discuss the information provided in accordance with Section 4(5)(b) of this administrative regulation with the prospective adoptive parent;

(b) Assist the prospective adoptive parent in reaching a decision regarding acceptance of placement;

(d) [(e)] Determine the method of presenting the prospective adoptive parent to the child; and

(e) [(d)] Discuss with the prospective adoptive parent acceptance of the child's plan for visitation and placement.

(3) If there is a planned foster parent adoption, the preplacement conference may occur at the same time the adoptive placement agreement is signed in accordance with KRS 199.555.

#### Section 6. Adoptive Placement. (1) The cabinet shall ensure the child transitions to the prospective adoptive placement by:

(a) Arranging contact between the child and prospective adoptive parent appropriate to the child's age, developmental

needs, and understanding of the permanency plan;

(b) Incorporating recommendations of the child's QMHP or qualified professional in the area of intellectual disabilities;

(c) Encouraging current caregivers, siblings, the prospective adoptive family, and others identified to have a meaningful relationship with the child, as appropriate; and

(d) Ensuring all needed services are in place~~[Planned visitation between a child older than one (1) month and a prospective adoptive parent shall occur at least two (2) times prior to placement].~~

(2) After parental rights to the child are terminated, final placement with a prospective adoptive parent shall occur as quickly as possible upon concurrence of:

(a) Cabinet staff;

(b) The prospective adoptive parent;

(c) The recommendation of a QMHP or qualified professional in the area of intellectual disabilities, if applicable; and

(d) The child, to the extent the child's age and maturity permit the child's participation.

(3) Adoption assistance shall be provided in accordance with 922 KAR 1:050 or 922 KAR 1:060.

#### Section 7. Out-of-State Adoptive Placement.

~~(1) [If a prospective adoptive parent has not been identified after the child has been referred to the C.F.R.M., cabinet staff shall:~~

~~(a) Consider an out-of-state placement; and~~

~~(b) Refer the child to the Adoption Services Branch for referral on the adoption Web site if termination of parental rights has been granted.~~

(2) Placement of a Kentucky child with an out-of-state prospective adoptive parent may occur if:

(a) The prospective adoptive parent is seeking a child through:

1. An out-of-state public child welfare agency; or

2. A licensed private child welfare agency; and

(b) A home study has been completed or updated within one (1) year by the out-of-state public child welfare agency or licensed private child welfare agency, in accordance with the requirements of the out-of-state agency.

(2)(3) If a prospective adoptive parent who resides out-of-state cannot pay the expense to attend a pre-placement conference or visit the child, the cabinet may pay travel expenses for the prospective adoptive parent, to the extent funds are available.

(3)(4) If the Kentucky and out-of-state deputy compact administrators agree to the child's visit in accordance with KRS 615.030, a child may visit and be placed with a prospective adoptive parent who resides in another state, in accordance with KRS 615.030.

(4)(5) Upon approval of the commissioner or designee, cabinet staff or another adult whom the child knows shall accompany a Kentucky child available for adoption on an out-of-state visit or placement with a prospective out-of-state adoptive parent.

Section 8. Open Adoption. The cabinet shall not prohibit an open adoption.

#### Section 9. Postplacement Service.

(1) The goal of a postplacement service shall be to:

(a) Ensure the success of the placement; and

(b) Prevent disruption of the placement.

(2) The cabinet shall coordinate support services for a child and a prospective adoptive parent prior to the legal adoption and through finalization of the adoption.

(3) Until the adoption judgment has been granted by a court of competent jurisdiction, the cabinet shall conduct an annual permanency review of a child placed with a prospective adoptive parent.

(4) Post-Adoption Placement Stabilization Services (PAPSS) shall be offered in accordance with 922 KAR 1:530.

Section 10. Closure of An Approved Adoptive Home. Unless an extension is approved by the service region administrator or

designee ~~[commissioner]~~, closure of an approved adoptive home shall occur in accordance with:

(1) 922 KAR 1:310; or

(2) 922 KAR 1:350.

Section 11. Service Appeals. A service appeal may be requested in accordance with 922 KAR 1:320.

#### Section 12. Confidentiality of Records.

(1) A child's records shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, as established in ~~[described by]~~ KRS 194A.060(1), 199.430(3), 199.520, 199.525, 199.570, 199.572, 199.575, 620.050, 625.045, 625.108, and 922 KAR 1:510.

(2) If the child is not adopted, the prospective adoptive parent shall return all documentation pertaining to the child to the cabinet within ten (10) working days of the decision not to adopt.

#### Section 13. Request for Information from Adoption Records.

(1) Identifying information from the cabinet's record may be released only upon written order by the court upon application to the circuit court that granted the adoption by an adoptee, twenty-one (21) years of age or older.

(2) If the birth parent has not previously filed consent for release of identifying information with the circuit court, the judge may:

(a) Issue a court order requiring the cabinet to conduct a search for each birth parent as identified on the original birth certificate; and

(b) Determine the parent's desire concerning the release of identifying information from the record.

(3) Upon receipt of written request by the adult adoptee or the adoptive family, nonidentifying health and background information may be released by the cabinet from a closed adoption record.

(4) If a request is received from an adoptee, eighteen (18) years of age or older, for contact with an adult preadoptive birth sibling separated during finalization of a closed adoption, cabinet staff shall:

(a) Review the adoption record; and

(b) Release identifying information if a mutual request for contact is contained within the record.

(5) If a request is received from a birth relative seeking an adoptee, either adult or minor, information may be given that adoption did occur and reassurance of the well-being of the adoptee at last contact may be confirmed, but cabinet staff shall not contact an adoptee or adoptive family at the request of the birth family.

(6) If an adult adoptee seeks contact with the birth family, cabinet staff shall inform the adult adoptee of a birth relative's interest.

#### Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet", 01/23;

(b) "DPP-171A, Verbal Exchange of Information Acknowledgement Form", 01/23~~[9/18, is incorporated by reference]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dCBS/Pages/default.aspx>.

LESA DENNIS, Acting Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 8, 2023

FILED WITH LRC: May 11, 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: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for public agency adoptions.

(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to establish policies and operate programs to protect, develop, and maintain the health, dignity, integrity, and sufficiency of the citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.472 requires the cabinet to establish criteria for the public agency adoption of children in the custody of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to implement programs mandated by federal law and to qualify for the receipt of federal funds, establishes the procedures for public agency adoptions, and implements the provision of KRS Chapter 625 relating to confidentiality.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

The administrative regulation conforms to KRS 194A.050(1) and 199.472 by establishing the procedure for public agency adoptions.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes and clarifies provisions for public agency adoptions and the procedural steps for a referral of a child to the Kentucky Adoption Profile Exchange (KAPE), which contains photos and information on children who are available for adoption in Kentucky. The amendment includes actions that must be taken by a social service worker to promote adoption awareness and child-specific recruitment for children legally free for adoption without an identified adoptive home. This administrative regulation is being amended to clarify transitional requirements for inquiring and prospective adoptive parents. The DPP-171A is a new form being incorporated and utilized for the verbal exchange of information with inquiring adoptive parents. The previously incorporated material, the DPP-171, is being amended for consistency with the new form and to clarify that it is used with prospective adoptive parents. The administrative regulation is being further amended in response to written comments received to clarify how an inquiry is submitted.

(b) The necessity of the amendment to this administrative regulation: This amendment clarifies processes and requirements for inquiring adoptive parents and prospective adoptive parents, better establishing processes in the public adoption process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194.050(1) requires the secretary of the Cabinet for Health and Family Services to establish policies and operate programs to protect, develop, and maintain the welfare of the citizens of the Commonwealth. KRS 199.472 requires the cabinet to establish criteria for the public agency adoption of children in the custody of the cabinet. This administrative regulation establishes the processes for public agency adoptions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains, but better clarifies basic procedures for public agency adoptions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of September 2022, there were 1,555 children that were legally free for adoption. Nine hundred and thirty-six (936) of those children were planned to be adopted by their foster parents. However, 619 of those children were legally free for adoption and did not have an identified adoptive family. This administrative regulation establishes public adoption processes and how children are referred to KAPE, which contains photos and information on children who are available for adoption in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The cabinet is required to establish the procedures for public agency adoptions contained in KRS 194A.050(1) and KRS 199.472. This administrative regulation establishes the implementation of program models for children to be adopted through a public agency and preparation of the child for the adoptive placement. The KAPE, administered by CHFS, is utilized to promote adoption awareness and child-specific recruitment for children legally free for adoption without an identified adoptive home. A child may be referred to KAPE if a prospective foster parent has not been identified at the time of termination of parental rights, or thereafter.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will continue to facilitate permanency and adoption for Kentucky children.

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

(a) Initially: These programs have already been implemented and established. This amendment better clarifies processes. There is no cost to implement this.

(b) On a continuing basis: There are no ongoing costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds and Title IV-E funds are used in the administration of this program.

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

(8) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629 629i, 670-679b, 1996, 1996b.

(2) State compliance standards. KRS 194A.050(1), 199.472.

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629 629i, 670-679b, 1996, 1996b.

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

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

## FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services administers public adoptions.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629 629i, 670-679b, 1996, 1996b, KRS 194A.050(1), 199.472.

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

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

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

(c) How much will it cost to administer this program for the first year? In SFY 2022, Kentucky spent approximately \$217 million on expenditures related to caring for children in the cabinet's custody. Approximately \$136 million was spent on adoption supports. As the department increases child welfare prevention expenditures and expands focus on supporting families upstream, these former expenses decrease. There are no costs associated with this specific amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this specific amendment.

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 does not include cost savings for regulated entities.

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

(c) How much will it cost the regulated entities for the first year? There are no costs associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation is not anticipated to have a major economic impact to regulated entities.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Protection and Permanency**  
**(Amended After Comments)**

**922 KAR 1:330. Child protective services.**

RELATES TO: KRS 159.140, 194A.005(1), [194A.050(1), 202A.011, 211.684, 214.036, 431.600(1), (8), 503.110(1), 508.125(1), 529.010(5), (16)][(13)], 532.045, 600.010, 600.020, 605.090(3), 605.130, [605.150(1), 610.010(2)(d), (9), 620.010-620.050, 620.070, 620.072, [620.180(1), 620.350, 620.990, 42 U.S.C. 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620. KRS 620.029(2)(a) requires the cabinet, in consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services. 42 U.S.C. 5106a(b) establishes eligibility requirements for a state to receive a grant for a child abuse and neglect prevention and treatment program. This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or assessment of abuse, neglect, or dependency.

Section 1. Definitions.

(1) "Alternative response" means a preventive, proactive approach through which the cabinet engages with a family and connects a family to community-based services as an alternative to conducting an investigation.

(2) "Assessment" means the collection and analysis of information to determine the strengths and needs of a family in order to provide appropriate services [inform decision-making about or service provision to a child or a family, including:

(a) An observable threat or threatening condition to the child's safety;

(b) A factor present that increases the likelihood of child abuse, neglect, or dependency; and

(c) Child or family strengths and protective capacities].

(3)[(2)] "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(4)[(3)] "Caretaker" means a parent, guardian, fictive kin, person in a position of authority or special trust as defined in KRS 532.045(1), or other person exercising custodial control or supervision of a child.

(5)[(4)] "Child fatality" is defined by KRS 211.684(1)(a).

(6)[(5)] "Child protective services" means preventive and corrective services directed toward:

(a) Safeguarding the rights and welfare of an abused, neglected, trafficked, or dependent child;

(b) Assuring for each child a safe and nurturing home;

(c) Improving the abilities of parents to carry out parental responsibilities;

(d) Strengthening family life; and

(e) Assisting a parent or other person responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of the child.

(7)[(6)] "Dependent child" is defined by KRS 600.020(20).

(8)[(7)] "Female genital mutilation" is defined by KRS

508.125(1).

~~(9)~~~~(8)~~ "Human trafficking" is defined by KRS 529.010~~(7)~~~~(5)~~.

~~(10)~~~~(9)~~ "Initial determination" means an evaluation ~~made~~~~[of risk factors]~~ to determine ~~the presence of~~~~[immediate]~~ safety ~~threats~~ and risk ~~factors~~~~[of harm]~~ resulting in a decision whether to proceed with an:

- (a) Investigation; or
- (b) Assessment.

~~(11)~~~~(40)~~ "Investigation" means a process of ~~gathering facts and collecting information to evaluate risks and~~ ~~[evaluating risk factors to]~~ determine ~~a finding pursuant to Section 10 of this administrative regulation~~~~[if a child:~~

- ~~(a) Has been abused or neglected;~~
- ~~(b) Is dependent; or~~
- ~~(c) Is a victim of human trafficking].~~

~~(12)~~~~(44)~~ "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

~~(13)~~~~(42)~~ "No finding" means that the information contained in a report that met criteria to open an investigation has been found to be false or erroneous and no longer meets acceptance criteria.

~~(14)~~~~(43)~~ "Preponderance of evidence" means that evidence is sufficient to conclude that it is more likely than not that an alleged perpetrator committed an act of child abuse or neglect as defined by KRS 600.020(1).

~~(15)~~~~(44)~~ "Prior involvement" means any assessment or investigation, of which the cabinet has record, with a child or family in the area of protection and permanency prior to the child's fatality or near fatality investigation.

~~(16)~~~~(45)~~ "Services needed" means a low risk finding with no perpetrator that indicates a family needs to be linked to community services.

~~(17)~~~~(46)~~ "Sexual abuse" is defined by KRS 600.020(61).

~~(18)~~~~(47)~~ "Sexual exploitation" is defined by KRS 600.020(62).

~~(19)~~~~(48)~~ "Substantiated" means:

- (a) An admission of abuse or neglect by the person responsible;
- (b) A judicial finding of child abuse or neglect; or
- (c) A preponderance of evidence exists that abuse or neglect was committed by the caretaker.

~~(20)~~~~(49)~~ "Unable to locate" means that:

- (a) Identifying information about the family is insufficient for locating them; or
- (b) The family has moved and their new location is not known.

~~(21)~~~~(20)~~ "Unsubstantiated" means there is insufficient evidence, indicators, or justification present for substantiation of abuse or neglect.

~~(22)~~~~(24)~~ "Victim of human trafficking" is defined by KRS ~~529.010(16)~~~~[529.040(43)]~~.

Section 2. A Report of Child Abuse, Neglect, Human Trafficking, Female Genital Mutilation, or Dependency.

(1) In accordance with 42 U.S.C. 5106a(b)(2)(B)(i), the cabinet shall accept reports of alleged child abuse, neglect, human trafficking, female genital mutilation, or dependency made pursuant to KRS 620.030.

(a) A twenty-four (24) hour on-call response system and the child abuse hotline, for the receipt of emergency reports after normal office hours, shall be made available to those in a community who may have information regarding:

- 1. Child abuse, neglect, or dependency; or
- 2. Human trafficking of a child.

(b) Cabinet staff or designee shall attempt to elicit from the person reporting suspected child abuse, neglect, dependency, female genital mutilation, or human trafficking as much information about the child's circumstances as possible, including:

- 1. Specific information as to the nature and extent of:
  - a. Abuse, neglect, or dependency;
  - b. Female genital mutilation; or
  - c. Human trafficking;
- 2. The cause of the abuse, neglect, or dependency;
- 3. The location of the child and family;
- 4. Knowledge or suspicion of a previous incident;
- 5. Identifying information regarding a witness to the alleged

incident that resulted in the child's condition;

6. An action taken by the reporting person, if applicable;

7. Present danger or threat of danger to the child or cabinet staff; and

8. Information in accordance with KRS 620.030(2) through (4).

(c) The reporting person's identity shall remain confidential, unless ordered to be divulged by a court of competent jurisdiction.

(d) The cabinet shall investigate or accept as an assessment an anonymous report that provides sufficient information regarding an incident involving a child:

- 1. Who is alleged to be dependent; or
- 2. And alleged:

a. Abuse or neglect perpetrated by a caretaker;

b. Female genital mutilation, whether the person alleged to have caused it is a caretaker or not; or

c. Human trafficking of the child.

(e) Immunity from liability shall be in accordance with 42 U.S.C. 5106a(b)(2)(B)(vii) and KRS 620.050(1) and (2).

(2) The cabinet shall not undertake an investigation or assessment for a report of abuse or neglect allegedly perpetrated by a non-caretaker, with the exception of a report of human trafficking or female genital mutilation or a joint investigation with law enforcement pursuant to KRS 620.040(3), but shall refer the matter in compliance with KRS 620.030(1).

(3) Pursuant to KRS 620.040(1)(b) and (2)(b), if a report does not meet an acceptance criterion for an investigation or assessment, the cabinet shall:

(a) Not accept the report for investigation or assessment;

(b) Refer the caller to a community resource that may meet family needs if available; and

(c) Keep a record of the report in accordance with 42 U.S.C. 5106a(b)(2)(B)(xii).

(4) Acceptance criteria for an investigation or assessment. The cabinet shall:

(a) Investigate or conduct an assessment upon the receipt of a report of physical abuse if the report alleges:

1. An injury that is, or has been, observed on a child that was allegedly inflicted non-accidentally by a caretaker;

2. Physical abuse if no current observable injury is seen;

3. A child being hit in a critical area of the body, such as the head, neck, genitals, abdomen, or back;

4. Physical injury to a child, as defined by KRS 600.020(49), that is the result of an altercation between the child and the caretaker. The cabinet shall explore the following:

a. Age of the child;

b. Precipitating factors;

c. Degree of appropriateness of force used by the caretaker; and

d. Need for further services to assist in eliminating violent behavior in the home;

5. A situation in which a child is likely to be physically abused; or

6. Physical injury to a child involved in an incident of domestic violence;

(b) Investigate or conduct an assessment upon receipt of a report that alleges neglect of a child perpetrated by a caretaker that may result in harm to the health and safety of a child in the following areas:

1. Hygiene neglect if:

a. A child has physical symptoms that require treatment due to poor care; or

b. The child's physical health and safety are negatively affected due to an act or omission by the caretaker;

2. Supervision neglect if the individual reporting has reason to believe that the physical health and safety of the child is negatively affected by lack of necessary and appropriate supervision;

3. Food neglect if a child shows symptoms of:

a. Malnutrition;

b. Dehydration; or

c. Not having been provided adequate food for a period of time that interferes with the health needs of the child, based on height or weight norms for the child's age;

4. Clothing neglect if a child suffers from:



- a. Illness;
- b. Exposure; or
- c. Frostbite due to inadequate clothing provided to the child or the clothing provided is insufficient to protect the child from the elements;
- 5. Environmental neglect, if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;
- 6. Educational neglect if the:
  - a. School system has exhausted its resources to correct the problem and complied with its duties pursuant to KRS 159.140; and
  - b. Caretaker's neglect prevents the child from attending school or receiving appropriate education;
- 7. Medical neglect, in accordance with 42 U.S.C. 5106a(b)(2)(C), if a child has not received a medical assessment or is not receiving treatment for an injury, illness, or disability that if left untreated may:
  - a. Be life-threatening;
  - b. Result in permanent impairment;
  - c. Interfere with normal functioning and worsen; or
  - d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease, unless the child is granted an exception to immunization pursuant to KRS 214.036;
- 8. Neglect due to a caretaker's use of drugs or alcohol that results in:
  - a. A child born exposed to drugs or alcohol, as documented by a health care provider pursuant to:
    - (i) 42 U.S.C. 5106a(b)(2)(B)(ii); and
    - (ii) KRS 620.030(2);
  - b. A child's facilitated access to and use of drugs or alcohol that may result in a life-threatening situation for the child; or
- 9. Exploitation neglect if the caretaker has:
  - a. ~~Used~~ [Caretaker has used] a child or child's financial resources for personal gain; or
  - b. ~~Enticed~~ [Caretaker has enticed] a child to become involved in criminal activities; ~~or~~
  - c. ~~Child is a victim of human trafficking;~~
  - (c) Investigate or conduct an assessment upon the receipt of a report of sexual abuse if the report[:
    - 1. Alleges sexual abuse of a child committed or allowed to be committed by a caretaker. An investigation may be conducted without a specific allegation if a child:
      - 1. Has a sexually transmitted disease; or
      - 2. Exhibits [Alleges a situation in which the factors provided in the report indicate that:
        - a. An act of sexual abuse, sexual exploitation, or prostitution involving a child may have occurred; or
        - b. The child exhibits] physical or behavioral indicators of sexual abuse;
    - (d) Investigate or conduct an assessment upon the receipt of a report that alleges emotional injury or risk of emotional injury to a child by a caretaker pursuant to KRS 600.020(26), for which the cabinet may contract directly if necessary to meet this requirement in a timely manner; [and]
    - (e) Investigate upon the receipt of a report that alleges human trafficking of a child pursuant to KRS 620.029, whether the alleged perpetrator is a caretaker or not. This shall include:
      - 1. Child sex trafficking when the report includes a sex act involving a child performed in exchange for something of value or the offer or intent to exchange a sex act involving a child for something of value; or
      - 2. Child labor trafficking when the report includes:
        - a. Forced labor or services provided by a child, as defined in KRS 529.010(5); or
        - b. A child being subjected to involuntary servitude, debt, or slavery; and
      - (f) Investigate or conduct an assessment upon the receipt of a report that alleges dependency if the report alleges that a child is dependent pursuant to KRS 600.020(20).
    - (5) The following criteria shall be used in identifying a report of abuse, neglect, human trafficking, or dependency not requiring a child protective services investigation or assessment:

- (a) The victim of the report of abuse, neglect, human trafficking, or dependency is age eighteen (18) or older at the time of the report;
- (b) There is insufficient information to locate the child or to explore leads to locate;
- (c) The problem described does not meet the statutory definitions of abuse, neglect, human trafficking, or dependency;
- (d) The reporter notifies the cabinet that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;
- (e) The report concerns custody changes, custody related issues, or lifestyle issues, without allegations of abuse, neglect, human trafficking, or dependency;
- (f) Pursuant to KRS 503.110(1), corporal punishment appropriate to the age of the child, without an injury, mark, bruise, or substantial [risk of] harm; or
- (g) An allegation of spouse abuse to a married youth under the age eighteen (18).
- (6) An abandoned newborn infant pursuant to KRS 620.350 shall be determined to be dependent unless indicators of child physical abuse or child neglect are present.

### Section 3. Initial Investigation or Assessment.

- (1) Based upon an accepted report of child abuse, neglect, human trafficking, or dependency, the cabinet shall, in accordance with KRS 620.040(1)(b) or (2)(b), and 42 U.S.C. 5106a(b)(2)(B)(iv), make an initial determination as to the presence of safety threats and risk factors [immediate safety and risk of harm] to a child.
- (2) The cabinet shall have face-to-face contact with the child or, in the case of a child fatality, initiate the investigation within four (4) hours after acceptance of the report if a report of child abuse, neglect, human trafficking, or dependency:
  - (a) Includes a child who is:
    - 1. The alleged victim of a fatality or near fatality; or
    - 2. A surviving child in the care of the alleged perpetrator of a child fatality or near fatality; or
  - (b) 1. Involves a child who is:
    - a. Under four (4) years of age; or
    - b. Unable to verbally or nonverbally communicate the child's needs as provided by the reporting source; and
  - 2. Indicates an immediate safety threat [a high risk of harm] to the child due to:
    - a. Physical abuse in accordance with Section 2(4)(a) of this administrative regulation;
    - b. Supervision neglect in accordance with Section 2(4)(b)2. of this administrative regulation; or
    - c. Sexual abuse in accordance with Section 2(4)(c) of this administrative regulation, and the alleged:
      - (i) Perpetrator has access to the child; or
      - (ii) Perpetrator's access to the child is unknown by the reporting source.
- (3) The cabinet shall have face-to-face contact with the child within twenty-four (24) hours after acceptance of the report, if a report of child abuse, neglect, human trafficking, or dependency:
  - (a) 1. Indicates the presence of safety threats and risk factors [a high risk of harm] to the child; or
  - 2. Alleges the child is the victim of human trafficking or female genital mutilation; and
  - (b) Criteria of subsection (2) of this section are not met.
- (4) If the report of child abuse, neglect, human trafficking, or dependency indicates a moderate level of risk [risk of harm] to a child, the cabinet shall have face-to-face contact with the child within forty-eight (48) hours after acceptance of the report.
- (5) If the report of child abuse, neglect, human trafficking, or dependency indicates a low level of risk [of harm] to a child, the cabinet shall have face-to-face contact with the child within seventy-two (72) hours after acceptance of the report.
- (6) If the report of child abuse, neglect, or dependency is eligible for alternative response, the cabinet shall have face-to-face contact with the child within five (5) working days.
- (7) [(6)] Cabinet staff shall be permitted to interview an alleged victim of child abuse or neglect without obtaining the consent of the caretaker in accordance with KRS 620.072.

~~(8)~~~~(7)~~ Cabinet staff ~~may~~~~shall~~ incorporate an unannounced home visit in accordance with ~~[provisions in]~~KRS 620.072.

~~(9)~~~~(8)~~ Cabinet staff shall:

(a) Advise the individual under investigation of the complaints or allegations in accordance with 42 U.S.C. 5106a(b)(2)(B)(xviii); and

(b) Notify the parent or legal guardian of the child alleged to be abused, neglected, or dependent pursuant to KRS 620.050(5).

~~(10)~~~~(9)~~ A written assessment shall:

(a) Be completed by the cabinet on every report that meets acceptance criteria~~[investigation]~~; and

(b) Document efforts if the cabinet is unable to locate the family.

~~(11)~~~~(10)~~ The cabinet shall provide or make a referral to any community-based service:

(a) Available to a child, caretaker, or a child's family:

1. In accordance with 42 U.S.C. 5106a(b)(2)(B)(v),(vi),(ix),(xi), or (xxi); or

2. Pursuant to KRS 620.029 or 620.040(1)(b) or (2)(b); and

(b) Necessary to:

1. Reduce risk to a child; and

2. Provide family support.

~~(12)~~~~(11)~~ The cabinet shall make a referral for early intervention services pursuant to 42 U.S.C. 5106a(b)(2)(B)(xxi) for a child under the age of three (3) who is involved in a substantiated case of abuse or neglect.

~~(13)~~~~(12)~~(a) The cabinet may develop a plan for services at any point during an investigation or assessment to protect the health and safety of a child.

(b) The plan shall be:

1. Developed in conjunction with a family and the family's identified support system;

2. Agreed upon by the participants;

3. Signed by all parties identified to participate in the plan, unless a party is unwilling or unable to sign; and

4. Provided to all participants.

~~(14)~~~~(13)~~ If an investigation or assessment is conducted as a result of a child being referred pursuant to Section 2(4)(b)8. of this administrative regulation, the cabinet shall develop a plan in accordance with 42 U.S.C. 5106a(b)(2)(B)(iii).

~~(15)~~~~(14)~~ Collateral contact shall be made pursuant to KRS 620.030, 620.040, and 620.050.

~~(16)~~~~(15)~~(a) A medical or psychological examination may be required if a report of female genital mutilation; human trafficking; or child abuse, neglect, or dependency alleges that a child has suffered physical or sexual harm or emotional injury.

(b) A medical examination shall be conducted in accordance with KRS 620.050(14).

~~(17)~~~~(16)~~ Cabinet staff shall coordinate an investigation with a children's advocacy center governed by 922 KAR 1:580, in accordance with KRS 620.040(6) and (7).

~~(18)~~~~(17)~~ Pursuant to KRS 620.030(6), an agency, institution, or facility serving the child or family shall provide cooperation, assistance, and information necessary for the cabinet to conduct an investigation or assessment.

~~(19)~~~~(18)~~ Photographs may be taken of a child or a child's environment during a protective services investigation or assessment in accordance with KRS 620.050(14).

~~(20)~~~~(19)~~ An interview with a child shall be conducted pursuant to KRS 620.040(6).

~~(21)~~~~(20)~~(a) A child sexual abuse, female genital mutilation, or human trafficking investigation shall be conducted jointly with law enforcement and other multidisciplinary team members pursuant to KRS 431.600(1) and (8), 620.040(3), and 42 U.S.C. 5106a(b)(2)(B)(xi).

(b) The cabinet's primary responsibility shall be the protection of the child.

~~(22)~~~~(21)~~ If there is reason to believe a child is in imminent danger, or if a parent or caretaker of a child refuses the cabinet entry to a child's home or refuses to allow a child to be interviewed, the cabinet may request assistance:

(a) From law enforcement; or

(b) Through a request for a court order pursuant to KRS

620.040(5)(a).

~~(23)~~~~(22)~~(a) If the court issues a search warrant for execution by law enforcement, cabinet staff may accompany law enforcement officers.

(b) Except as provided in KRS 605.090(3), the cabinet shall not remove a committed child from the child's home without a court order.

~~(24)~~~~(23)~~ At the request of law enforcement, the cabinet shall, pursuant to KRS 620.040(3):

(a) Provide assistance in interviewing an alleged child abuse victim in a non-caretaker~~[non-caretaker]~~ report; and

(b) Not be the lead investigator in a non-caretaker~~[non-caretaker]~~ investigation.

Section 4. Alleged Perpetrators of Abuse or Neglect Age Twelve (12) to Eighteen (18).

(1) A report of child abuse or neglect involving alleged perpetrators in a caretaking~~[care-taking]~~ role age twelve (12) to eighteen (18) shall be subject to investigation or assessment.

(2) If substantiated, a child age twelve (12) to eighteen (18) shall be identified as the alleged perpetrator.

Section 5. Child Fatality or Near Fatality Investigations.

(1) The cabinet shall investigate a report of child fatality or near fatality alleged to be the result of abuse or neglect in accordance with KRS 620.040.

(2) If there is a surviving child in the care of the alleged perpetrator, the cabinet shall determine the safety of the surviving child through immediate assessment in accordance with this administrative regulation.

(3) If a child fatality or near fatality allegedly due to abuse or neglect occurs, cabinet staff shall immediately notify the service region administrator or designee.

(4) If a fatality or near fatality occurs to a child in the custody of the cabinet in an out-of-home placement, the cabinet shall make an immediate effort to notify:

(a) The biological or legal parents; and

(b) The Office of the Director of the Division of Protection and Permanency.

(5) If parental rights have been terminated, and there are special circumstances including ongoing contact with the child, the cabinet shall notify a child's biological or legal parents of the child's fatality or near fatality.

(6) The cabinet shall notify the Department of Public Advocacy, Protection and Advocacy Division, in the Justice and Public Safety Cabinet if:

(a)1. A child identified as a protection and advocacy client dies as a result of alleged abuse or neglect; and

2. The alleged perpetrator is a person exercising custodial control or supervision; or

(b) A child fatality has occurred as a result of:

1. Placement in ~~[a]~~seclusion ~~[room]~~pursuant to 922 KAR 1:300~~[1:399]~~; or

2. Physical management applied pursuant to 922 KAR 1:300.

(7) The cabinet shall notify the following persons, in writing, of a fatality of a child in the custody of the cabinet:

(a) Judge of the committing court; and

(b) Guardian ad litem for the deceased child.

(8) The cabinet may make public disclosure of a fatality or near fatality in accordance with:

(a) KRS 620.050(5) and (12); and

(b) 42 U.S.C. 5106a(b)(2)(B)(x).

(9) If the alleged perpetrator was not a caretaker, notification of the child fatality or near fatality shall be in accordance with KRS 620.030(1).

(10) The cabinet shall:

(a) Be in compliance with KRS 620.050(12) in cases where the cabinet has had prior involvement; and

(b) Provide annual reporting in accordance with 42 U.S.C. 5106a(d)(4)(5)(6)(11).

(11) If a child fatality or near fatality occurs in a licensed facility, the cabinet shall notify the licensing authority in accordance with 42 U.S.C. 5106a(b)(2)(B)(ix).

Section 6. Reports of Child Abuse, Neglect, Human Trafficking, or Dependency in Cabinet-approved Homes or Licensed Facilities.

(1) Pursuant to KRS 620.030(6), the cabinet shall have the authority to obtain necessary information to complete an investigation in a report of child abuse, neglect, human trafficking, or dependency in a:

(a) Child-caring facility licensed in accordance with 922 KAR 1:300 or its subcontractor;

(b) Child-placing agency licensed in accordance with 922 KAR 1:310 or its subcontractor;

(c) Child-care center licensed in accordance with 922 KAR 2:090;

(d) Family child-care home certified in accordance with 922 KAR 2:100;

(e) Child care provider registered in accordance with 922 KAR 2:180; or

(f) Foster, adoptive, or respite care provider home approved pursuant to 922 KAR 1:350.

(2) If a report of alleged child abuse, neglect, human trafficking, or dependency in a home approved pursuant to 922 KAR 1:310 or 922 KAR 1:350 is accepted, the designated cabinet staff shall:

(a) Immediately contact the service region administrator or designee; and

(b) Assign staff to conduct the investigation.

(3) If a report of alleged child abuse or neglect in a licensed child-care center, a certified family child-care home, or a registered child care provider is accepted, cabinet staff shall:

(a) Notify the cabinet's Division of Child Care to share information and request assistance in locating alternate care if needed; and

(b) Conduct an investigation.

(4) If a report of alleged child abuse or neglect in a licensed child-caring facility, child-placing agency placement, certified family child-care home, or licensed child-care center is accepted, cabinet staff shall:

(a) Notify the Office of the Inspector General, Division of Regulated Child Care; and

(b) Conduct an investigation.

1. If possible, an investigation shall be coordinated and conducted jointly with the Division of Regulated Child Care. However, if not possible, the cabinet shall proceed with an investigation.

2.a. An entrance interview with the facility administrator or designee shall be conducted; and

b. The nature of the report shall be outlined without disclosing the name of the reporting source.

3. If the cabinet substantiates the report of child abuse or neglect and the alleged perpetrator is an employee of the facility, the cabinet shall notify the provider or program director within ten (10)[thirty (30)] working days of determining the substantiated finding[~~, unless a necessary extension is granted by the designated cabinet staff in a supervisory role.~~].

(5) The cabinet shall share written findings of an investigation with the Division of Child Care for a:

(a) Licensed child-care center;

(b) Certified family child-care home; or

(c) Registered child care provider.

(6) The cabinet shall share written findings of an investigation with the Office of the Inspector General for a:

(a) Licensed child-care center;

(b) Certified family child-care home;

(c) Registered child care provider;

(d) Licensed child-caring facility; or

(e) Licensed child-placing agency.

(7) As soon as practical after a determination has been made that a child is in imminent danger or that a child needs to be removed, verbal or written notification shall be provided to the Division of Child Care or to the Office of the Inspector General.

Section 7. Interviewing a Child in a School Setting.

(1) Pursuant to KRS 620.030(6) and 620.072(4), the cabinet may, upon receipt of a report of child abuse or neglect, initiate an

investigation or assessment at a school, which may include the review and copying of relevant school records pertaining to the child.

(2) If initiating an investigation or assessment at a school, the cabinet shall:

(a) Inform appropriate school personnel of the need to interview a child regarding the report; and

(b) Give necessary information concerning the allegation and investigation only to school personnel with a legitimate interest in the case.

Section 8. Investigation of an Employee of the School System. If a report of child abuse or neglect involving school personnel is accepted, the following shall apply:

(1) An investigation shall be conducted;

(2) If the allegation is made about a school employee in a caretaker role of a child, the cabinet shall, if possible, conduct an interview away from the school grounds, with each of the following persons:

(a) The child;

(b) The parent or legal guardian;

(c) The alleged perpetrator; and

(d) Other collateral source, if any, in accordance with Section 3(15)[(14)] of this administrative regulation;

(3) The findings shall be shared with the custodial parent or guardian and the alleged perpetrator;

(4) The cabinet shall notify the appropriate supervisor of the alleged perpetrator, in writing, of the following:

(a) That an investigation has been conducted;

(b) The results of the investigation; and

(c) That the alleged perpetrator has the right to appeal pursuant to 922 KAR 1:480; and

(5) A person desiring other information shall employ the open records procedure, as described in 922 KAR 1:510.

Section 9. Written Notice of Findings of Investigation. The cabinet shall provide notification to specified government officials in accordance with KRS 620.040(1) or (2) and 42 U.S.C. 5106a(b)(2)(B)(ix).

Section 10. Substantiation Criteria and Submission of Findings.

(1) The cabinet shall use the definitions of "abused or neglected child" in KRS 600.020(1) in determining if an allegation is substantiated.

(2) A finding of an investigation or assessment shall be based upon the:

(a) Information and evidence collected by the cabinet during the report's investigation or assessment; and

(b) Condition that is present, rather than an action taken to remediate an issue or concern pertaining to a child's health, safety, or welfare.

(3) Cabinet staff may find and substantiate abuse or neglect, or make a services needed finding, at any point during an investigation or assessment or prior to case closure and aftercare planning in accordance with Section 12 of this administrative regulation, if preponderance of the evidence exists.

(4)(a) At the completion of an investigation or assessment involving a caretaker, the cabinet shall make a finding of:

1. Unsubstantiated child abuse or neglect;

2. Substantiated child abuse or neglect;

3. Child fatality or near fatality related to abuse or neglect;

4. Unable to locate the child;

5. Services needed for the child or child's family, which may include a dependent child;

6. No finding; or

7. Closed, which may include completed service provision or completed alternative response assessment.

(b) At the completion of an investigation involving human trafficking or female genital mutilation of a child by a non-caretaker, the cabinet shall make a finding of:

1. Confirmed;

2. Not confirmed; or

3. Unable to locate the child.

(5) A cabinet finding shall not be a judicial finding.  
(6) The cabinet staff's supervisor or designee shall review and approve the final finding of the investigation or assessment.

(7) Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall send a notice of finding and notice of the perpetrator's right to appeal in accordance with 922 KAR 1:480, Section 2, to the alleged or substantiated perpetrator by certified mail to the last known address of the perpetrator.

(8) Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall:

(a) Send a notice of finding to the child's parent or guardian by certified mail; or

(b) Give a notice of finding to the parent or guardian, in person, with the parent or guardian and a witness signature to document receipt of the notice.

(9) The cabinet's notice of a substantiated finding of child abuse or neglect shall include:

(a) The factual basis for the finding of child abuse or neglect;

(b) The results of the investigation;

(c) Information about the perpetrator's right to appeal the substantiated finding in accordance with 922 KAR 1:480; and

(d) A statement informing the perpetrator that the perpetrator's name shall be added to the central registry in accordance with 922 KAR 1:470.

#### Section 11. Appeals.

(1) The perpetrator of a substantiated finding of child abuse or neglect may request a hearing in accordance with 922 KAR 1:480.

(2) A person may have additional hearing rights as specified in 922 KAR 1:320.

#### Section 12. Closure.

(1)(a) A decision to close a child protective services case shall be based on evidence that the factors resulting in the child abuse, neglect, human trafficking, or dependency have been resolved to the extent that the family is able to:

1. Protect the child; and

2. Meet the needs of the child.

(b) Prior to a case's closure in accordance with paragraph (a) of this subsection, designated cabinet staff in a supervisory role shall review and agree to the decision to close the child protective services case.

(2) If the cabinet does not have the authority to obtain court-ordered cooperation from a family, the cabinet shall close the child protective services investigation or assessment.

(3) Unless court-ordered cooperation from the family cannot be obtained in accordance in subsection (2) of this section, a child protective services case shall not be closed if withdrawal of services places a child at risk of abuse, neglect, or dependency.

(4) A family shall be:

(a) Notified in writing of the decision to close the protective services case; and

(b) Advised of the right to a fair hearing in compliance with 922 KAR 1:320, Section 2.

(5) Aftercare planning shall link a family to community resources for the purpose of continuing preventive measures if the cabinet discontinues services in accordance with this section.

(6) An aftercare plan shall be developed upon the completion of an investigation or assessment, if an issue or concern identified by the cabinet falls below the level that triggers a protection services case being opened.

(7)(a) When it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop the aftercare plan.

(b) The focus of the aftercare plan shall be to prevent a recurrence of abuse, neglect, or dependency to the child in the home.

(8) The cabinet may open a child protective services case in accordance with 922 KAR 1:140, 1:400, or 1:430.

(9) The cabinet may request the assistance of a court of competent jurisdiction to protect the child in accordance with KRS 620.070.

LESA DENNIS, Acting Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 4, 2023

FILED WITH LRC: May 11, 2023 at 8 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: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or assessment of abuse, neglect, human trafficking, or dependency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish child protective services procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation assists with the effective administration of the statutes by establishing cabinet procedures for a child protection investigation or assessment of abuse, neglect, human trafficking, or dependency, consistent with KRS 620.180(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620, which relate to child abuse, neglect, human trafficking, dependency, and female genital mutilation. KRS 620.029(2)(a) requires the cabinet, in consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services.

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

(a) How the amendment will change this existing administrative regulation: This amendment elevates and improves the Department for Community Based Services (DCBS) response to human trafficking and moves reports of human trafficking from being considered as exploitation neglect to a separate, specific offense. The proposed administrative regulation clarifies that, for purposes of this administrative regulation, human trafficking includes child sex trafficking or child labor trafficking. This amendment also defines alternative response, a preventive and proactive approach through which the cabinet engages with a family and connects a family to community-based services as an alternative to conducting a child protective services investigation. DCBS intends to begin implementing alternative response over the next year.

(b) The administrative regulation is being further amended in response to written comments received to include references to sections and statutes for clarification, lessen the timeframe given for the cabinet to communicate with providers, and address completed alternative response assessments.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to reflect the department's response to human trafficking reports related to child sex trafficking and child labor trafficking. Reports of alleged human trafficking of children continue to increase every year, with 344 reports received in the 2022 reporting period. Of these reports, 332 involved child sex trafficking and 12 involved child labor trafficking. The department has worked to improve report screening, investigative findings, and trainings related to human trafficking. Increased identification of human trafficking and assessment of victims' and families' needs support the development of a robust service array to meet the needs of these survivors.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes through its enhancement and clarity of cabinet procedures pertaining to the investigation and assessment of child abuse, neglect, human trafficking, and dependency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is necessary for consistency with related Kentucky Revised Statutes related to child protective services reports of human trafficking.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In State Fiscal Year 2022, the cabinet received 121,673 child protective services reports with nearly 98,518 meeting the screening acceptance criteria. Of those, 7,601 resulted in a substantiated finding of child abuse, neglect, or dependency. Also 1,884 reports resulted in a finding of services needed. DCBS received 344 reports of alleged human trafficking - child sex trafficking or child labor trafficking - in the 2022 reporting period. These reports involved 399 alleged child victims.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Child protective services will investigate or conduct an assessment upon the receipt of a report that alleges the human trafficking of a child pursuant to KRS 620.029, whether the alleged perpetrator is a caretaker or not. This amendment also provides minimal flexibility necessary for the department to implement alternative response for reports not requiring investigation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will not incur a new or additional cost. Costs to the department will be absorbed within current appropriations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who suspect that a child is a victim of human trafficking are able to make a report to the cabinet, and the cabinet is authorized to proceed in the case regardless of whether the person believed to have caused the human trafficking is the child's caretaker. The amendment will result in increased identification of human trafficking and assessment of victims' and families' needs to better support trafficking survivors.

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

(a) Initially: Costs to the department will be absorbed within current appropriations, but no new costs are anticipated.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's provision of child protective services is funded by the federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner

statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 5106a(b).

(2) State compliance standards. KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1).

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a(b).

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes stricter requirements than those required by the federal mandate regarding human trafficking, but consistent with state law.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirements relating to human trafficking reports are needed for compliance with state law.

#### FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 5106a(b), KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1).

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body, this program is administered with federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

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 does not include cost savings for

regulated entities.

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

(c) How much will it cost the regulated entities for the first year? There are no additional costs associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no additional costs associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation is not anticipated to have a major economic impact to regulated entities.

## PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**EDUCATION AND LABOR CABINET**  
**Education Professional Standards Board**  
**(Amendment)**

**16 KAR 9:080. University-based alternative certification program.**

RELATES TO: KRS 156.111, 160.345(2)(h), 160.380(5)(c), 161.027, 161.028(1)(k), (s), (t), 161.030(10), 161.048, 34 C.F.R. 300.156 (c)(2)

STATUTORY AUTHORITY: KRS 161.027(1), 161.048(1)(d), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(d) and (7) require the Education Professional Standards Board (EPSB) to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification. This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

**Section 1. Definitions.**

(1) "Alternative certification administrator program" means a college or university post baccalaureate or post masters administrator preparation program for an individual enrolled concurrently with employment in a local school district as an assistant principal, principal, assistant superintendent, ~~school~~[guidance] counselor, director of special education, director of pupil personnel, supervisor of instruction, or superintendent.

(2) "Alternative certification teacher program" means a college or university post baccalaureate teacher preparation program for an individual enrolled concurrently with employment as a teacher.

**Section 2. Admission Requirements.**

(1) An applicant for an alternative certification teacher program shall meet the admission standards for an initial certification program established in 16 KAR 5:020.

(2) An applicant for an alternative certification administrator program shall meet the admission standards for the corresponding administrator certification program established in 16 KAR Chapter 3.

~~[(3) An applicant for any alternative certification teacher or administrator program shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 2 or 3 except completion of the corresponding educator preparation program and the required assessments.]~~

**Section 3. University Requirements for Alternative Certification Teacher Program.**

(1) An accredited college or university seeking to offer an alternative certification teacher program shall apply to the EPSB[Education Professional Standards Board] for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation ~~provider~~[institution] seeking alternative certification teacher program approval shall design the alternative certification teacher program to provide a candidate with the coursework and mentoring necessary to permit a candidate to maintain employment in an eligible position and to successfully complete any applicable assessments, including internship programs, within a period of three (3) years for those enrolled in an alternative certification teacher program for teachers of exceptional children or interdisciplinary early childhood education, or a period of five (5)

years for all other alternative certification teacher programs.

(3) Upon approval, the alternative certification teacher program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification teacher program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. ~~A~~[Prior to the candidate's enrollment in the Kentucky Teacher Internship Program pursuant to KRS 161.030 and 16 KAR 7:040, a] minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. A minimum of five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;

3. The name, contact person, and role for the collaborating educator preparation ~~provider~~[institution] mentor; and

4. The name and role of all school district mentor teachers;

(e) Establish a process to maintain regular communication with the employing school so that the educator preparation provider[institution] and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the EPSB[Education Professional Standards Board] in writing if a candidate's employment in a covered position or enrollment in the alternative certification teacher program permanently ceases.

(4) Student teaching shall not be required for program completion.

**Section 4. Temporary Provisional Certificate for Teaching.**

(1) The temporary provisional certificate for teaching shall be issued and renewed in accordance with KRS 161.048(7).

(2) The temporary provisional certificate for teaching shall be issued in accordance with a grade level and specialization as recommended by the educator preparation provider and valid for employment consistent with the area of certification being sought through the preparation program.[:

(a)

1. Until December 31, 2014, issued in accordance with a grade level and specialization as recommended by the educator preparation institution on Form TC-TP; or

2. Beginning January 1, 2015, issued in accordance with a grade level and specialization as recommended by the educator preparation institution on Form CA-TP; and

(b) Valid for employment consistent with the area of certification being sought through the preparation program.]

(3) The temporary provisional certificate for teaching shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in KRS 161.1211 and 16 KAR Chapter 8[16 KAR 8:020].

Section 5. Issuance of a Temporary Provisional Certificate for Teaching.

(1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the educator preparation provider[institution] written and dated documentation of eligibility for the alternative certification teacher program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the EPSB[Education Professional Standards Board] an official college transcript from each college or university attended.

(4) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).

~~(5)~~[(4)] The employing school district shall submit [with Form TC-TP or Form CA-TP] a completed and signed copy of the mentoring collaboration agreement with the alternative certification teacher program as required by Section 3(3)(d) of this administrative regulation.

(6) The educator preparation provider shall submit a recommendation for the grade level and specialization of the temporary provisional certificate.

~~[(5) Beginning January 1, 2015, a candidate who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.]~~

Section 6. Requirements for Renewal of the Temporary Provisional Certificate for Teaching.

(1) A candidate shall be eligible for renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area or areas indicated on the initial certificate; and

(b) Recommendation from the educator preparation provider based on continued enrollment, completion of annual observation hours and progress towards the completion of the alternative teacher preparation program.

(2) If a candidate is required to complete an internship in accordance with KRS 161.030, they shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional and shall complete the internship during the final temporary provisional certificate.

(3) A candidate for exceptional children or interdisciplinary early childhood certification may only renew the temporary provisional certificate two (2) times.

(4) All other alternative certification teacher candidates may renew the temporary provisional certificate four (4) times.[A candidate shall be eligible for the first renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and

(c)  
1. Until December 31, 2014, completion of Form TC-TP; or  
2. Beginning January 1, 2015, completion of Form CA-TP.

(2) A candidate shall be eligible for the final renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;

(b) A minimum of six (6) new semester hours or its equivalent from the approved preparation program;

(c) The required assessments as established in 16 KAR 6:010;

and

(d)  
1. Until December 31, 2014, completion of Form TC-TP; or  
2. Beginning January 1, 2015, completion of Form CA-TP.]

Section 7. Alternative Certification Teacher Program Completion Requirements.

(1) An applicant for teacher certification shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 2 and the assessment requirements established in 16 KAR 6:010.

(2) Upon completion of all program requirements of the university based alternative teacher program, the candidate may apply to the EPSB for the professional certificate.

(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue a professional certificate.[If the candidate has successfully passed the required assessments as outlined in 16 KAR 6:010, and completed the required coursework, the institution shall provide written notice to the employing school district that a candidate is eligible to participate in the Kentucky Teacher Internship Program in each subject area covered by the temporary provisional certificate and in accordance with 16 KAR 7:010.

(2) When the candidate is prepared to enroll in the Kentucky Teacher Internship Program, the recommending institution shall complete and sign page five (5) of the TC-TP or page four (4) of the CA-TP form and deliver it to the employing school district for submission to the Education Professional Standards Board.

(3) Upon completion of all program requirements of the alternative certification teacher program, including successful completion of the Kentucky Teacher Internship Program established in KRS 161.030 and 16 KAR 7:010, the candidate may make application to the Education Professional Standards Board for the professional certificate on the form TC-1 or CA-1, which are incorporated by reference in 16 KAR 2:010.

(4) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate.

(5) A candidate who failed to successfully complete the assessments, the internship, or the required coursework during the initial issuance and two (2) renewals of the temporary certificate, in accordance with KRS 161.048(7), and who has been transitioned into an institution's traditional educator preparation program, shall be eligible for a Teacher Internship Statement of Eligibility Confirmation of Employment as a Teacher upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(6) If a candidate fails to complete all alternative certification program requirements during the initial issuance and two (2) renewals of the temporary provisional certificate, in accordance with KRS 161.048(7), the employing school district may, pursuant to 16 KAR 2:010, 2:120, and 2:180, submit an application for emergency or conditional certification on behalf of the former employee to allow the individual to continue employment.]

Section 8. University Requirements for an Alternative Certification Administrator Program.

(1) An accredited college or university seeking to offer an alternative certification administrator program shall apply to the EPSB[Education Professional Standards Board] for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation provider[institution] seeking alternative certification administrator program approval shall design the alternative certification administrator program to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including any internship or training programs, within a period of two (2) years for those enrolled in an alternative certification administrator program.

(3) Upon approval, the alternative certification administrator



program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification administrator program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing in the appropriate administrative role, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. Five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate to assist the candidate in meeting the candidate's administrative responsibilities;

3. The name, contact person, and role for the collaborating educator preparation provider[institution] mentor; and

4. The name and role of all school district mentors;

(e) Establish a process to maintain regular communication with the employing school so that the educator preparation provider[institution] and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the EPsB[Education Professional Standards Board] in writing if a candidate's employment in a covered position or enrollment in the alternative certification administrator program permanently ceases.

#### Section 9. Temporary Provisional Administrative Certificate.

(1) The temporary provisional administrative certificate shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional administrative certificate may be renewed a maximum of one (1) time.

(3) The temporary provisional administrative certificate shall be valid for employment in a position consistent with the area of certification being sought through the preparation program.

#### Section 10. Issuance of a Temporary Provisional Administrative Certificate.

(1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the educator preparation provider[institution] written and dated documentation of eligibility for the university based alternative certification administrator program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the EPsB[Education Professional Standards Board] an official college transcript from each college or university attended.

(4) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).

(5)[(4)] The employing school district shall submit [with Form TC-TP or Form CA-TP] a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 8(3)(d) of this administrative regulation.

(6) The educator preparation provider shall submit a recommendation for the specialization of the temporary provisional

certificate.

~~[(5) Beginning January 1, 2015, a candidate who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.]~~

Section 11. Requirements for renewal of the temporary provisional certificate for an administrator.

(1) A candidate shall be eligible for no more than one (1) renewal of the temporary provisional certificate.

(2) A candidate shall be eligible for renewal of the temporary provisional certificate upon application to the EPsB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the position indicated on the initial certificate; and

(b) Recommendation from the educator preparation provider based on continued enrollment, completion of annual observation hours and progress towards the completion of the alternative administrator program.

(3) If a candidate is seeking principal certification and is required to complete an internship in accordance with KRS 161.030, they shall complete the required assessments as established in 16 KAR 3:090 prior to renewal of the temporary provisional and shall complete the internship during the final temporary provisional certificate.

~~[(2) A candidate shall be eligible for renewal of the temporary provisional certificate upon successful completion of the following requirements:~~

~~(a) Evidence of employment in a Kentucky school district or nonpublic school in the position indicated on the temporary provisional certificate;~~

~~(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and~~

~~(c)~~

~~1. Until December 31, 2014, completion of Form TC-TP; or~~

~~2. Beginning January 1, 2015, completion of Form CA-TP.]~~

#### Section 12. Alternative Certification Administrator Program Completion Requirements.

(1)

~~[(a) If the alternative certification administrator candidate for principal certification has successfully passed the required assessments, as outlined in 16 KAR 6:030, and completed the required coursework, the institution shall provide written notice to the district that the candidate is eligible to participate in the Kentucky Principal Internship Program in accordance with 16 KAR 7:020.~~

~~(b) When a principal candidate is ready to enroll in the Kentucky Principal Internship Program, the recommending institution shall complete page five (5) of the TC-TP form or Form CA-TP and deliver the form to the employing school district for submission to the Education Professional Standards Board.~~

~~(2)~~

~~(a) An alternative certification administrator candidate who failed to complete the assessments, the internship, or the required coursework during the initial issuance and one (1) renewal of the temporary provisional certificate and who has been transitioned into an institution's traditional preparation program, shall be eligible for an administrative certificate in the area of study upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.~~

~~(b) If the candidate was initially enrolled in the alternative certification program for principal, the candidate shall be eligible for a Principal Internship Statement of Eligibility Confirmation of Employment as a Principal/Assistant Principal in an Accredited Kentucky School upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.~~

(3)]

(a) During the period of enrollment in the alternative certification administrator program, a candidate seeking superintendent certification and serving in a local school district as a superintendent or assistant superintendent shall successfully complete both the coursework in the institution's alternative certification administrator program as well as the Superintendents Training Program and assessments required in KRS 156.111.

(b) The college or university faculty shall maintain contact with the employing school district and the Kentucky Department of Education regarding the completion of coursework to ensure that a superintendent candidate has completed the required coursework to prepare for the assessments and participation in the Superintendents Training Program.

(2) An applicant for administrator certification shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 3.

(3) Upon completion of all program requirements of the alternative administrator program the candidate may apply to the EPSB for the professional certificate.

(4) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue a professional certificate.

~~[(4) Upon completion of the alternative certification administrator program, the assessments, and the internship or Superintendents Training Program as applicable, the university shall provide a recommendation for the professional certificate on the candidate's TC-1 or CA-1 form, which are incorporated by reference in 16 KAR 2:010.~~

~~(5) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate.~~

#### Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Temporary Provisional Certification", Form TC-TP, May 2007;

(b) "Application for Temporary Provisional Certification", Form CA-TP, June 2014;

(c) "Teacher Internship Statement of Eligibility Confirmation of Employment as a Teacher", November 2004; and

(d) "Principal Internship Statement of Eligibility Confirmation of Employment as a Principal/Assistant Principal in an Accredited Kentucky School", May 2005.

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: April 10, 2023

FILED WITH LRC: April 26, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 24, 2023, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5<sup>th</sup> Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-

9321; email regcomments@education.ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for the teacher and administrator university-based alternative certification options.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.028(1)(p) creates the alternative administrator preparation program. KRS 161.048(7) creates the Option 6 alternative route to certification and KRS 161.048(1)(e) requires the Education Professional Standards Board to promulgate administrative regulations establishing standards and procedures for the alternative certification options.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the requirements for the teacher and administrator university-based alternative certification options.

(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 extends the renewals for the temporary provisional certificate under the Option 6 alternative route to teacher certification from two (2) renewals to four (4) renewals unless the candidate is pursuing certification to teach exceptional children or interdisciplinary early childhood education. The amendment also updates the regulation to remove the reference to an outdated application and allow the educator preparation provider to recommend the candidate for renewal based on continued enrollment, completion of annual observation hours and progress towards the completion of the program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with recent amendments to KRS 161.048(7) created by Senate Bill 49 from the 2023 Legislative Session. It extends the renewal of the one-year temporary provisional certificate from two (2) renewals to four (4) renewals unless the candidate is pursuing certification to teach exceptional children or interdisciplinary early childhood education.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by extending the renewal period for the Option 6 alternative route to certification but complies with federal limitations for teachers of exceptional children under the Individuals with Disabilities Education Act. 34 C.F.R. § 300.156 (c)(2)(i)(C), provides that those teaching under alternative certifications can only assume functions as a special education teacher for a maximum of three years.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will set the requirements for the renewal of the Option 6 alternative route to teacher certification and will remove the reference to an outdated application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, 31 Institutions of Higher Education with an approved educator preparation program, and those pursuing the Option 6 alternative route to certification.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals wishing to utilize the extended renewal of the temporary provisional certificate will have to maintain employment with a district and progress towards completion of the Option 6 program. Districts will have to provide the EPSB with verification of continued employment, and the educator preparation provider will have to base any recommendation for renewal of the temporary provisional certificate on continued enrollment, completion of annual observation hours and progress towards the completion of the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no fee established by the Education Professional Standards Board in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those pursuing Option 6 certification will have an extended period to complete the alternative route. Districts can also employ individuals under this route on a temporary provisional certificate for two additional years unless the teacher is pursuing certification for teaching exceptional children or interdisciplinary early childhood education.

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

(a) Initially: There are no costs expected to implement this amendment.

(b) On a continuing basis: There are no expected continuing costs with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund and certification fees collected pursuant to 16 KAR 4:040.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this time, it is not expected that an increase in fees or funding will be necessary for the Education Professional Standards Board to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public-school districts, and public institutions of higher education with approved educator preparation programs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030. 34 C.F.R. § 300.156 (c)(2)(i)(C).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this administrative regulation are not expected to generate any revenue during the first year for the Education Professional Standards Board. Applicants for certification are required to pay the certification fees established in 16 KAR 4:040, but there is no fee for the one-year temporary provisional certificate. This will not generate revenue for participating school districts but may generate revenue in the form of tuition for

participating institutions of higher education.

(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? When an applicant completes the Option 6 alternative route to certification and is ready to apply for the full professional certificate, they will be required to pay the certification fee established in 16 KAR 4:040. Those fees are used to offset the costs of renewing the certificate. In subsequent years, this will not generate revenue for participating school districts but may generate revenue in the form of tuition for participating institutions of higher education.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs expected with this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: At this time, it is unknown how many will pursue the extended renewal through the Option 6 alternative route. Once an applicant completes the route and is ready to apply for full certification, they are required to pay the certification fee established in 16 KAR 4:040. The certification fees collected for these applications will offset the costs of renewal.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None anticipated.

(c) How much will it cost the regulated entities for the first year? There are no costs created by this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs created by this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 34 C.F.R. § 300.156 (c)(2) establishes standards for a teacher participating in an alternate route to special education certification program to meet personnel qualifications under the Individuals with Disabilities Education Act.

(2) State compliance standards. The standards for Option 6 contained in this administrative regulation comply with the requirement in 34 C.F.R. § 300.156 (c)(2) because candidates using the alternative pathway to obtain special education certification will receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, assume functions as a teacher only for a specified period not to exceed

three years, and demonstrate satisfactory progress toward full certification.

(3) Minimum or uniform standards contained in the federal mandate. 34 C.F.R. § 300.156 (c)(2) requires teachers participating in an alternate route to special education certification program to receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, assume functions as a teacher only for a specified period not to exceed three years, and demonstrate satisfactory progress toward full certification as prescribed by the State.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation will not impose stricter requirements, or additional or different responsibilities or requirements. All candidates in the Option 6 alternative route to certification will receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, and demonstrate satisfactory progress toward full certification. The regulation will limit temporary provisional certification for special education instructors to three years as required by the federal regulation.

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

**EDUCATION AND LABOR CABINET  
Education Professional Standards Board  
(Amendment)**

**16 KAR 9:100. Alternative Route to Certification Institute.**

RELATES TO: KRS 161.028, 161.030, 161.048, 34 C.F.R. § 300.156 (c)(2)

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048(1)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(e) requires the Education Professional Standards Board (EPSB) to promulgate administrative regulations establishing standards and procedures for the Alternative Route to Certification Institute and the approval criteria for these programs. This administrative regulation establishes the required elements of the alternative route to certification and the application review process.

**Section 1. Institute Providers.**

(1) A provider not currently accredited by the EPSB in accordance with 16 KAR 5:010, may demonstrate a partnership with an institution of higher education accredited by the EPSB and a school district or cooperative recognized by the Kentucky Department of Education.

(2) A provider shall submit an application to the EPSB in accordance with the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

**Section 2. Application Review.**

(1) An application to provide an alternative route to certification institute shall be submitted to EPSB staff.

(2) EPSB staff shall complete an initial review to ensure that the application addresses the requirements of KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(a) If EPSB staff determines that the application addresses the requirements of this subsection, the application shall be forwarded to an external review team.

(b) If EPSB staff determines that the application does not address all the requirements of this subsection, staff shall notify the provider of the deficiencies.

(3) An external review team of trained reviewers appointed by EPSB pursuant to subsection (4) of this section, staff shall review the application in accordance with KRS 161.048(8) and the

Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(4) The external review team shall be comprised of:

(a) One (1) representative from an EPSB accredited postsecondary institution;

(b) One (1) representative from a Kentucky education cooperative; and

(c) One (1) representative from a Kentucky public school district.

(5) The external review team shall review the application to provide an alternative route to certification institute and determine the quality of the application based on compliance with subsection (2) of this section. The review team shall recommend acceptance or denial of the application to the EPSB and shall include a supporting rationale for the recommendation.

(6) The EPSB shall review the external review team's recommendation, shall approve or deny each application, and shall transmit the decision and rationale for the decision to the provider.

(7) The provider may revise and resubmit a plan that has been denied.

(8) Any approval granted by the EPSB shall specify the period of approval of the institute, which shall not exceed two (2) years for initial approval. A provider may apply for an extension of approval as established in Section 3 of this administrative regulation.

**Section 3. Continuance of Program Approval.**

(1) An institute provider may apply for continuance of an approved alternative route to certification institute for an additional period of time not to exceed seven (7) years. The request for continuance shall specify any changes in program components that have occurred since the institute received prior EPSB approval and that are planned for implementation in subsequent training periods.

(2) The request for continuance shall provide specific examples of demonstrating program quality as established in this section and the application required by this administrative regulation. The request for continuance shall include statistical information related to teacher retention for all prior candidates who have completed the institute. Standards for program approval established under this administrative regulation shall be maintained under any program extension.

**Section 4. Revocation for Cause.**

(1) If an area of concern or an allegation of misconduct arises after an institute has been approved, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter to the external review team for further investigation.

(3)

(a) Notice of the EPSB's decision to refer the matter and the complaint shall be sent to the provider.

(b) Within thirty (30) days of receipt of the complaint, the provider shall respond to the allegations in writing and provide information pertaining to the allegations in the complaint to the EPSB.

(4)

(a) The external review team shall review any evidence supporting the allegations and any information submitted by the provider.

(b) The external review team may conduct on-site evaluations to evaluate the quality of the program.

(c) Upon completion of the review, the external review team shall issue a report recommending to the EPSB continued approval of the institute or revocation of institute approval if the institute no longer meets the standards and requirements for approval established in this administrative regulation.

(5) The provider shall receive a copy of the external review team's report and may file a response to the recommendation.

(6)

(a) The recommendation from the external review team and the provider's response shall be presented to the EPSB.

(b) The EPSB shall consider the findings and

recommendations of the external review team and make a final determination regarding the approval of the institute.

Section 5. Reconsideration.

(1) If a provider seeks reconsideration of an EPSB decision, the provider shall submit a request within thirty (30) days of receipt of the EPSB official notification. A provider shall submit the request on the grounds that:

- (a) A prescribed standard was disregarded;
- (b) A procedure was not followed; or
- (c) Evidence of compliance in place at the time of the review and favorable to the provider was not considered.

(2) A panel of no fewer than three (3) members shall be appointed by the EPSB chair from members of the EPSB who do not have a conflict of interest regarding the provider or institute. The ad hoc committee shall recommend action on the request to the full EPSB.

Section 6. Data Reports.

- (1) The EPSB shall maintain data reports related to:
  - (a) Approval status of all EPSB approved Option 7 programs;
  - (b) Contact information for the person responsible for the institute;
  - (c) Year of last program review;
  - (d) Tables relating the institute total enrollment disaggregated by ethnicity and gender for the last three (3) years;
  - (e) Tables relating the institute faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;
  - (f) Table of the number of program completers for the last three (3) years;
  - (g) Table relating pass rates on the required assessments;
  - (h) Table relating program completer satisfaction with the preparation program; and
  - (i) Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.
- (2) A provider shall report to the EPSB staff at the end of each school year continuous improvement efforts relating to the institute.

Section 7. Temporary Provisional Certificate.

- (1) An eligible candidate who meets the requirements of KRS 161.048(8)(a)1. through 4. and 16 KAR 2:010, Section 3(1), shall be issued a one (1) year provisional teaching certificate.
- (2) The candidate shall apply to the EPSB and provide:
  - (a) Official transcripts of all college work undertaken by the candidate establishing proof of a bachelor's degree or graduate degree and grade point average;
  - (b) Proof of a passing score on the admission assessments as established in 16 KAR 5:020, unless the applicant holds a terminal degree;
  - (c) Proof of a passing score on the academic content assessment, as established in 16 KAR 6:010, in the area in which certification is being sought;
  - (d) Verification by the institute provider of completion of half of the requisite institute hours; and
  - (e) Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area of the certification.
- ~~(3) [The temporary provisional certificate may be renewed for a maximum of two (2) additional years.]~~
- ~~(4) [A candidate shall be eligible for first renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:~~

(a) Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area or areas indicated on the initial certificate; and

(b) Recommendation from the institute provider based on continued enrollment, completion of mentoring and progress towards the completion of the program.

(5) If a candidate is required to complete an internship in accordance with KRS 161.030, they shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional and shall complete the internship during the final temporary provisional certificate.

(6) A candidate for exceptional children or interdisciplinary early childhood certification may only renew the temporary provisional certificate two (2) times.

(7) All other candidates may renew the temporary provisional certificate four (4) times.

Section 8. Professional Certificate.

- (1) Upon completion of all program requirements established in this administrative regulation, the applicant may apply for the professional certificate.
- (2) Prior to issuance of the professional certificate, the candidate shall obtain a passing score on the pedagogy assessment, as established in 16 KAR 6:010, for the certificate being sought.
- (3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue the candidate a professional certificate.

Section 9. Incorporation by Reference.

- (1) "Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7)", 2022, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: April 10, 2023

FILED WITH LRC: April 26, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 24, 2023, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the standards and procedures of the Option 7 institute route to certification.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards and

procedures for the Option 7 institute route to certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.048(8) creates the Option 7 alternative route to certification and KRS 161.048(1)(e) requires the Education Professional Standards Board to promulgate administrative regulations establishing standards and procedures for the alternative certification options.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for providing an Option 7 alternative route to certification program as well as the requirements for candidates of the route to obtain certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment extends the renewals for the temporary provisional certificate under the Option 7 alternative route to teacher certification from two (2) renewals to four (4) renewals unless the candidate is pursuing certification to teach exceptional children or interdisciplinary early childhood education.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with recent amendments to KRS 161.048(8) created by Senate Bill 49 from the 2023 Legislative Session. It extends the renewal of the one-year temporary provisional certificate from two (2) renewals to four (4) renewals unless the candidate is pursuing certification to teach exceptional children or interdisciplinary early childhood education.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by extending the renewal period for the Option 7 alternative route to certification but complies with federal limitations for teachers of exceptional children under the Individuals with Disabilities Education Act. 34 C.F.R. § 300.156 (c)(2)(i)(C), provides that those teaching under alternative certifications can only assume functions as a special education teacher for a maximum of three years.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will set the requirements for the renewal of the Option 7 alternative route to teacher certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, 31 Institutions of Higher Education with and approved educator preparation program, and applicants for certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals wishing to utilize the extended renewal of the temporary provisional certificate will have to maintain employment with a district and progress towards completion of the Option 7 program. Districts will have to provide the EPSB with verification of continued employment, and the Option 7 provider will have to base any recommendation for renewal of the temporary provisional certificate on continued enrollment, completion of mentoring and progress towards the completion of the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no fee established by the Education Professional Standards Board in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those pursuing Option 7 certification will have an extended period to complete the alternative route. Districts can also employ individuals under this route on a temporary provisional certificate for two additional years unless the teacher is pursuing certification for teaching exceptional

children or interdisciplinary early childhood education.

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

(a) Initially: There are no costs expected to implement this amendment.

(b) On a continuing basis: There are no expected continuing costs with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund and certification fees collected pursuant to 16 KAR 4:040.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this time, it is not expected that an increase in fees or funding will be necessary for the Education Professional Standards Board to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public-school districts, and public institutions of higher education with approved educator preparation programs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.030, KRS 161.048, 34 C.F.R. § 300.156 (c)(2)(i)(C).

(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 will not generate any revenue for the Education Professional Standards Board in the first year. This will not generate revenue for participating school districts but may generate revenue in the form of tuition for participating institutions of higher education.

(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? Each applicant for certification through this route will have to pay the certification fee established in 16 KAR 4:040. In the past, this route has not garnered much interest so it is unknown how many applications will be received through it. Certification fees are a part of the Education Professional Standards Board's restricted funds, that in accordance with KRS 161.028 (1)(m) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder. In subsequent years, this will not generate revenue for participating school districts but may generate revenue in the form of tuition for participating institutions of higher education.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs expected with this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: At this time, it is unknown how many future

educators will pursue extended renewal through this route. Once an applicant completes the route and is ready to apply for full certification, they are required to pay the certification fee established in 16 KAR 4:040. The certification fees collected for these applications will offset the costs of renewal.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None anticipated.

(c) How much will it cost the regulated entities for the first year? There are no costs created by this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs created by this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 34 C.F.R. § 300.156 (c)(2) establishes standards for a teacher participating in an alternate route to special education certification program to meet personnel qualifications under the Individuals with Disabilities Education Act.

(2) State compliance standards. The standards for Option 7 contained in this administrative regulation comply with the requirement in 34 C.F.R. § 300.156 (c)(2) because candidates using the alternative pathway to obtain special education certification will receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, assume functions as a teacher only for a specified period not to exceed three years, and demonstrate satisfactory progress toward full certification.

(3) Minimum or uniform standards contained in the federal mandate. 34 C.F.R. § 300.156 (c)(2) requires teachers participating in an alternate route to special education certification program to receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, assume functions as a teacher only for a specified period not to exceed three years, and demonstrate satisfactory progress toward full certification as prescribed by the State.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation will not impose stricter requirements, or additional or different responsibilities or requirements. All candidates in the Option 7 alternative route to certification will receive high-quality professional development, participate in a program of intensive supervision that consists of structured guidance and regular ongoing support, and demonstrate satisfactory progress toward full certification. The regulation will limit temporary provisional certification for special education instructors to three years as required by the federal regulation.

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

#### FINANCE AND ADMINISTRATION CABINET Kentucky Public Pensions Authority (Amendment)

##### 105 KAR 1:220. Periodic[Annual] disability review.

RELATES TO: KRS 16.577, 16.583, 16.645, 61.592, 61.600, 61.610, 61.615, 61.630, 61.637, 61.559, 61.597, 61.665, 78.545, 78.5510, 78.5512, 78.5514, 78.5516, 78.5522, 78.5524, 78.5526, 78.5528, 78.5540

STATUTORY AUTHORITY: KRS 61.505(1)(g)[61.645(9)(e)]  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate all administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. [KRS 61.645(9)(e) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852.] KRS 61.610, [and] 61.615, 78.5526, and 78.5528 provide for the employment and medical [staff] review of a recipient of a disability retirement allowance to determine if the recipient's disability retirement allowance should be continued or discontinued. This administrative regulation establishes the process for employment and medical [staff] reviews.

##### Section 1. Definitions.

(1) "Approved employment" means work in any capacity found by the agency to not require the same, similar, or greater duties, residual functional capacity, or physical exertion as the position from which the recipient was found disabled.

(2) "Effective retirement date" means the date upon which a member's disability, early, or normal retirement benefits began, whichever occurs first.

(3) "Employer" means a person, agency, company, organization, or other entity that directs or leads a recipient's work, whether or not for pay.

(4) "Trial basis" means a period of time not to exceed nine (9) months during which a recipient works in a non-approved employment position to allow him or her time to determine if he or she is able to maintain employment; employment during this time period will not affect the recipient's disability retirement.

##### Section 2. Use of Third-party Vendors.

(1) The agency may contract with third-party vendors to act on its behalf throughout the disability retirement application and review process. The agency may also contract with third-party vendors to act on its behalf throughout the periodic review, reinstatement review, and employment review processes.

(2) The agency may utilize independent, licensed physicians provided by third-party vendors to serve as medical examiners pursuant to KRS 61.665 and 78.545. Third-party vendors may provide additional persons to fulfill non-physician roles throughout the disability retirement application, periodic review, reinstatement review, and employment review processes.

(3) Third-party vendors may act on behalf of the agency and the systems with all the rights and responsibilities therein.

##### Section 3. Periodic Review.

(1) A recipient of a disability retirement allowance shall have a periodic review of his or her disability status pursuant to KRS 61.610 and 78.5526.

(2)(a) When provided by the agency and in accordance with KRS 61.610 and 78.5526, recipients shall complete:

1. Form 8101, Employment and Medical Staff Review Certification;

2. Form 8525, Informed Consent and Authorization: Disability Retirement Applications and Reviews, All Plans; and

3. Form 8130, Disability Retiree Employment Reporting, for each of the following that is applicable:

a. The recipient is currently gainfully employed; or

b. The recipient has gainful employment not previously

reported since his or her disability retirement benefits began or since his or her last employment review.

[(4) The review form prescribed by the board to be completed and filed by the recipient at the retirement office in accordance with KRS 61.610 is the "Form 8101, Employment and Medical Staff Review Certification".]

(b)1. Recipients shall file with the agency or its third-party vendor the completed forms indicated in paragraph (a) of this subsection, and all relevant medical and employment information, by the end of day 180 calendar days from the day the Form 8101, Employment and Medical Staff Review Certification, is mailed to the recipient's address on file at the retirement office.

2. [(a) The time periods prescribed in KRS 61.610 and 61.615 shall begin on the day the "Form 8101, Employment and Medical Staff Review Certification" or the notification of the recommendation of the medical examiners is mailed and shall end at close of business on the last day of the prescribed time period.

(b) If the last day of the 180 day time period is a Saturday, Sunday, or state or federal holiday, then the submission [application] shall be valid if filed with the agency or its third-party vendor [at the retirement systems] by the end of day on [close of] the next business day following the weekend or holiday.

(3) If the recipient fails to complete the requirements of subsection (2) of this section, his or her disability retirement benefits shall be discontinued on the first day of the month following the expiration of the 180 day time period.

(4) If the recipient completes the requirements of subsection (2) of this section, the agency or its third-party vendor shall:

(a) Review and evaluate the medical information and documentation submitted in accordance with Section 4 of this administrative regulation; and

(b) Review and evaluate the employment information and documentation submitted in accordance with Section 6 of this administrative regulation.

(5) A recipient who has reached his or her normal retirement age shall not be subject to a periodic review.

(6) A recipient's disability retirement status that is continued by the Teachers' Retirement System may exempt the retiree from the agency's periodic review.

#### Section 4. Periodic Medical Review.

(1)(a) The medical examiner will evaluate the submitted medical information and documentation to determine whether the recipient continues to be disabled from the condition(s) for which he or she was initially granted disability retirement. The agency shall notify the recipient of the medical examiner's findings.

(b) If the medical examiner finds the documentation fails to provide evidence that the recipient continues to be disabled from the condition(s) for which he or she was initially granted disability retirement and recommends discontinuance of the disability retirement allowance, the notification shall include:

1. Form 8101, Employment and Medical Staff Review Certification; and

2. Form 8191, Authorization for Independent Medical or Psychological Examination and Release of Medical Information, if the medical examiner recommended an independent medical or psychological examination in accordance with KRS 61.665(2)(i) and 78.545 or KRS 61.665(3)(c) and 78.545.

(2)(a) If the medical examiner recommended discontinuance of the disability retirement allowance, the recipient shall have sixty (60) calendar days from the date the notification in subsection (1) of this section is mailed to file with the agency or its third-party vendor one of the following:

1. The completed Form 8101, Employment and Medical Staff Review Certification, and additional supporting medical information;

2. The completed Form 8191, Authorization for Independent Medical or Psychological Examination and Release of Medical Information, if applicable; or

3. Request a formal hearing to appeal the findings in accordance with Section 8 of this administrative regulation.

(b) If, at the end of the prescribed time period, the agency or

its third-party vendor does not have on file one of the options detailed in subparagraph (a), (b), or (c) of this paragraph, the recipient's disability retirement allowance shall be discontinued on the first day of the month following the expiration of the prescribed time period.

(3)(a) If the recipient completes the requirements of subsection (2)(a)1. of this section, the medical examiner shall review and evaluate the additional supporting medical information.

(b) If the recipient completes the requirements of subsection (2)(a)2. of this section the agency shall administer the independent medical or psychological examination in accordance with Section 5 of this administrative regulation. The medical examiner shall review and evaluate the findings from the independent medical or psychological examination.

(c) Once the medical examiner completes his or her evaluation of the documentation provided from the completion of paragraph (a) or (b) of this subsection, the agency shall notify the recipient of the medical examiner's findings.

1. If the medical examiner finds the documentation fails to provide evidence that the recipient continues to be disabled from the condition(s) for which he or she was initially granted disability retirement and recommends discontinuance, the recipient shall have sixty (60) calendar days from the date the notification is mailed to request a formal hearing to appeal the findings in accordance with Section 8 of this administrative.

2. If the recipient fails to file an appeal within the prescribed time period, his or her retirement allowance shall be discontinued on the first day of the month following the expiration of the prescribed time period.

[(2) The recipient shall file a written notice with the retirement systems immediately upon beginning employment in any capacity. The recipient shall identify the employer and include a written statement from the employer of a detailed list of the duties of the new position.]

#### Section 5. [Section 2.] Independent Medical or Psychological Examinations.

(1) If the recipient files the Form 8191, Authorization for Independent Medical or Psychological Examination and Release of Medical Information, with the agency or its third-party vendor in accordance with Section 2(2)(a)2. of this administrative regulation, then the agency shall notify the recipient in writing of the date, time, and location of the appointment. Records from the examination shall be used to complete the medical review in accordance with Section 4(3) of this administrative regulation.

(2)(a) The agency shall reimburse the recipient for expenses associated with the medical or psychological examination in the same manner as prescribed in 105 KAR 1:210, Section 8.

[(1) If the retirement systems requires a recipient to submit to a medical or psychological examination under KRS 61.615(3)(h), the retirement systems shall reimburse the recipient for mileage from the recipient's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the recipient's home address on file at the retirement systems. The recipient shall be reimbursed for the most direct and usually traveled routes.

(2) Mileage shall be based on the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas". The recipient shall complete and submit a Form 8846, Independent Examination Travel Voucher indicating the mileage the recipient traveled from the recipient's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the recipient's home address on file at the retirement systems. The recipient shall use the most direct and usually traveled routes.

(3) The mileage certified by the recipient shall not be greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" for the most direct and usually traveled route from recipient's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the recipient's home address on file at the retirement systems. If the mileage certified by the recipient is greater than the mileage



indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" the retirement systems shall pay the recipient the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas".

(4) Reimbursement for use of a privately owned vehicle shall be made at the IRS established standard mileage rate which changes periodically; and shall not exceed the cost of commercial coach fare.

(5) Actual costs for parking shall be reimbursed upon submission of receipts. The recipient shall submit the originals of the parking receipts along with a written request for reimbursement.

(6) Actual bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct and usually traveled route. The recipient shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.]

(b)(7) The recipient shall file at the retirement office a completed Form 8846, Travel Voucher for Independent Examination [Travel Voucher], within fifteen (15) calendar days of the date of the examination or evaluation in order to receive reimbursement for mileage, actual parking costs, and any actual bridge or highway toll charges as prescribed in 105 KAR 1:210, Section 8, [travel expenses.]

(3) Pursuant to KRS 61.615(3)(h) and 78.5528(3)(h), if the recipient fails or refuses to complete the scheduled medical or psychological examination, the system shall send a notice of discontinuance. The recipient shall have sixty (60) calendar days from the date of the notice to request a formal hearing to appeal the findings in accordance with Section 8 of this administrative regulation. If the recipient fails to file an appeal within the prescribed time period, his or her retirement allowance shall be discontinued on the first day of the month following the expiration of the prescribed time period.

(4) If the recipient fails to appear at the medical or psychological examination, or cancel the appointment within the timeframes required in the notice of appointment, the recipient shall be responsible for payment of any charges associated with the medical or psychological examination.

#### Section 6.[Section 3.] Employment Review.

(1) The agency[retirement systems] may request financial information from other local, state, or federal agencies to determine if a recipient is gainfully employed.[receiving income or employed in a new position.]

(2) Recipients may at any time file with the agency or its third-party vendor a completed Form 8130, Disability Retiree Employment Reporting, to be reviewed for potential gainful employment. The agency or its third-party vendor shall complete an employment review in accordance with subsection (5) of this section. The anticipated start date of employment indicated on the Form 8130 shall be used to determine time period requirements indicated in subsection (5) of this section. If the start date of employment was unknown on the Form 8130 and at any time becomes known, or if there is a change to the date previously indicated, the recipient shall notify the agency in writing.

(3)(a) Pursuant to KRS 61.615(1) and 78.5528(1), recipients of a disability retirement allowance shall notify the agency of any gainful employment. When gainful employment is reported to the agency outside of the periodic review, or if gainful employment is discovered by any other means, the agency shall provide the recipient with a Form 8130, Disability Retiree Employment Reporting. The recipient shall file the completed Form 8130 with the agency or its third-party vendor within sixty (60) calendar days of beginning any gainful employment. The agency or its third-party vendor shall use the completed Form 8130 to perform an employment review in accordance with subsection (5) of this section.

(b)1. If the recipient does not file with the agency or its third-party vendor the Form 8130 or written notification that the employment has ceased within nine (9) months of the first date of

employment, the agency shall have the authority to discontinue the disability retirement allowance.

2. If the agency determines the disability retirement allowance shall be discontinued, the agency shall send notification to the recipient, and he or she shall have sixty (60) calendar days from the date the notice is mailed to request a formal hearing to appeal the findings in accordance with Section 8 of this administrative regulation.

3. If the recipient fails to file an appeal within the prescribed time period, his or her retirement allowance shall be discontinued on the first day of the month following the expiration of the prescribed time period.

(4)(a) During the periodic review, recipients shall complete Form 8101, Employment and Medical Staff Review Certification, indicating if he or she is gainfully employed or has any previously unreported gainful employment. When indicated, the recipient shall file with the agency or its third-party vendor a completed Form 8130, Disability Retiree Employment Reporting, for each of the following:

1. His or her current gainful employment; and

2. Any gainful employment not previously reported since his or her disability retirement benefits began, or since his or her last periodic review.

(b) The agency or its third-party vendor shall complete an employment review for all employment not previously approved in accordance with subsection (5) of this section.

(c) During the periodic medical review as prescribed in Section 4 of this administrative regulation, the agency or its third-party vendor shall consider the employment details when determining whether the recipient continues to be disabled from the condition(s) for which he or she was initially granted disability retirement, regardless of whether or not the employment was approved employment.

(5) When gainful employment is reported during or outside of the periodic review, or discovered by any other means, the agency or its third-party vendor shall complete an employment review in accordance with KRS 61.610, 61.615, 78.5526, and 78.5528. The reviewer will evaluate the Form 8130, Disability Retiree Employment Reporting, or any other employment information or documentation available to determine whether the position has similar duties or requires the same or greater physical exertion or functional capacity as the position from which the recipient was found disabled. The agency shall notify the recipient of the findings.

(a) If findings indicate that a recipient's employment is not approved employment, then pursuant to KRS 61.615(1) and 78.5528(1), the recipient may begin or continue the employment on a trial basis and the recipient's monthly retirement allowance shall continue during the trial basis. The recipient's monthly retirement allowance shall cease effective the month following the end of the trial basis unless within sixty (60) calendar days of the date the notice is mailed, one (1) of the following occurs:

1. The recipient requests a formal hearing to appeal the recommendation in accordance with Section 8 of this administrative regulation;

2. The recipient files with the agency or its third-party vendor additional supporting employment information. The agency or agency's third-party vendor shall review and evaluate the additional employment information, and shall notify the recipient of the findings. If the findings indicate the employment is not approved employment, the recipient will have sixty (60) calendar days from the date the notification is mailed to request a formal hearing to appeal the findings in accordance with Section 8 of this administrative regulation; or

3. The recipient files a written notice with the agency or its third-party vendor in one (1) of the following ways:

a. If the recipient has not yet begun the employment, a written notification with the agency that he or she has elected not to start the employment; or

b. If the recipient begins or continues the employment on a trial basis, prior to the conclusion of the trial basis a written notification that he or she has ceased the employment.

(b) If the recipient fails to file an appeal within the prescribed

time period, his or her retirement allowance shall be discontinued on the first day of the month following the end of the trial basis, or upon the expiration of the sixty (60) day time period, whichever occurs later.

(6) Retired members who are reemployed with a participating employer, shall also be subject to the requirements of KRS 61.637, 78.5540, and 105 KAR 1:390.

#### Section 7. Reinstatement Review.

(1)(a) A recipient whose disability retirement allowance has been discontinued for any reason other than death is eligible to apply for reinstatement and be reevaluated by the agency or the agency's third-party vendor until his or her normal retirement age. The recipient shall submit new objective medical evidence that was not previously considered with his or her application for reinstatement.

(b) A recipient whose disability retirement allowance was discontinued based upon the employment review findings as prescribed in Section 6 of this administrative regulation shall also provide:

1. Employer documentation detailing changes not previously considered that have occurred in his or her position if he or she is still employed in the same position; or

2. Written notification that he or she has ceased the employment that includes the date employment ceased.

(2) Pursuant to KRS 61.615(6)(d) and 78.5528(6)(d), a recipient is only eligible for reinstatement for the same bodily injuries, mental illnesses, diseases, or conditions for which he or she was originally approved for disability benefits. A recipient cannot be reinstated for bodily injuries, mental illnesses, diseases, or conditions for which he or she was not approved for disability, or that occurred or became known after his or her last day of paid employment prior to the original retirement date.

(3) A recipient shall apply for reinstatement by filing all of the following:

(a) A completed Form 8102, Employment and Medical Staff Review Certification Reinstatement;

(b) A completed Form 8525, Informed Consent and Authorization: Disability Retirement Applications and Reviews;

(c) New objective medical evidence not previously considered;

(d) If filing for reinstatement in accordance with subsection (1)(b) of this section, not previously considered employer documentation detailing changes in the position, or written notification that the employment has ceased that includes the last date of employment; and

(e) If there is any new or previously unreported employment, a completed Form 8130, Disability Retiree Employment Reporting.

(4) Reinstatement reviews shall be conducted in accordance with KRS 61.615(6)(d) and 78.5528(6)(d), considering only those conditions for which the recipient was granted disability.

(5) If the agency or the agency's third-party vendor does not recommend reinstatement of a recipient's disability retirement benefits, the recipient may request a formal hearing to appeal the findings in accordance with Section 8 of this administrative regulation.

#### Section 8. Right to Appeal.

(1) Any recipient whose disability benefits have been reduced, discontinued, or denied reinstatement may file an appeal of the findings at the retirement office with a written request for a formal hearing within sixty (60) calendar days of the date the notification of discontinuance was mailed. The hearing shall be conducted in accordance with KRS Chapter 13B.

(2) The written request for a formal hearing shall include a short and plain statement of the reason the determination is being contested.

(3)(a) The hearing officer presiding over an administrative hearing may allow the appellant to introduce, among other evidence, the determination of other state and federal agencies, such as the Kentucky Department of Workers' Claims and the Social Security Administration, approving the applicant for benefits only when accompanied by underlying objective medical evidence

or vocational evidence.

(b) The hearing officer presiding over an administrative hearing shall consider only objective medical evidence and vocational records contained within or that accompany a determination by another state or federal agency.

(c) The hearing officer presiding over an administrative hearing shall not consider or be bound by factual or legal findings of other state or federal agencies.

(d) Written statements from medical providers within the administrative record shall not themselves be objective medical evidence, but may be relied upon if accompanied by, and reviewed in concert with, other supporting objective medical evidence.

(4) During the pendency of an appeal, the recipient shall continue to receive his or her disability retirement benefit.

(5) At the conclusion of the appeal, recipients shall be notified of the final order of the Administrative Appeals Committee (AAC) in accordance with KRS 61.615(3)(g) and 78.5528(3)(g).

(a)1. If the AAC orders that the disability retirement allowance shall be discontinued, then it shall be discontinued on the first day of the month following the date of the notification except as provided in subparagraph 2. of this paragraph.

2. If the recipient's disability retirement allowance is discontinued due to the AAC determination that employment was not approved employment, the effective date of discontinuance shall be the first day of the month following the end of the nine (9) month trial basis or the first day of the month following the date of the notification of the AAC order, whichever occurs later.

(b)1. If the recipient fails to notify the agency of gainful employment in accordance with Section 6(3) or (4) of this administrative regulation, then AAC shall have the authority to decide the period for which the agency shall recover any disability retirement allowance payments, health insurance premiums, or both. The earliest date of the period shall not be earlier than the first day of the month following the end of the nine (9) month trial basis.

2. If the agency recovers the disability retirement allowance payments, health insurance premiums paid, or both, it shall be from the recipient or the estate of the recipient only.

#### Section 9. Benefits Available After Discontinuance of a Disability Retirement Allowance.

(1) A member with a participation date on or after January 1, 2014 in one (1) or more of the Systems whose disability retirement allowance is discontinued pursuant to KRS 61.615 and 78.5528:

(a) Shall begin receiving retirement benefits for which he or she qualifies, if eligible.

(b) Shall not be eligible for early retirement benefits.

(2) A member with a participation date prior to January 1, 2014 in one (1) or more of the Systems whose disability retirement allowance is discontinued pursuant to KRS 61.615 and 78.5528:

(a) Shall begin receiving normal retirement benefits, if eligible.

(b) If not eligible for normal retirement benefits, shall be given the option to begin receiving early retirement benefits, if eligible.

(3) A member who received a disability retirement allowance shall have established an effective retirement date and, accordingly, shall not be eligible to request a refund of any remaining accumulated account balance if the member's disability retirement allowance is discontinued pursuant to KRS 61.615 and 78.5528.

[Section 4. The retirement systems may not require a medical review if the recipient's disability status is reviewed by the Kentucky Teachers' Retirement System.]

#### Section 10. Recipient's Death During the Periodic Review Process.

(1) If the recipient dies during the periodic review process, the member's beneficiary may be entitled to receive disability retirement benefits pursuant to KRS 61.630, 78.545(6) and 105 KAR 1:240.

(2) If a recipient dies after the date of discontinuance as enumerated in Section 3, 4, 5, or 6 of this administrative regulation, the disability retirement allowance shall remain discontinued and

there will be no ongoing disability benefit paid to a beneficiary. This shall not affect any other benefits to which the beneficiary may be entitled.

(3) The beneficiary shall not be permitted to apply for reinstatement on behalf of the decedent.

Section 11.[Section 5.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 8101, "Employment and Medical Staff Review Certification", February 2023[May 2008];

(b) Form 8102, "Employment and Medical Staff Review Certification Reinstatement", February 2023;

(c) Form 8130, "Disability Retiree Employment Reporting", February 2023;

(d) Form 8191, "Authorization for Independent Medical or Psychological Examination and Release of Medical Information", April 2023;

(e) Form 8525, "Informed Consent and Authorization: Disability Retirement Applications and Reviews, All Plans", February 2023; and

(f) Form 8846, "[Kentucky Retirement Systems]Travel Voucher for Independent Examination", May 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the agency Web site at ky-ret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: April 27, 2023

FILED WITH LRC: May 2, 2023 at 10:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comments on this administrative regulation shall be held on Thursday, July 27, 2023, at 10:00 a.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment 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 July 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. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for employment and medical reviews.

(b) The necessity of this administrative regulation: KRS 61.610, 61.615, 78.5526, and 78.5528 provide for the employment and medical staff review of a recipient of a disability retirement allowance to determine if the recipient's disability retirement allowance should be continued or discontinued. This administrative regulation

establishes the process for employment and medical reviews.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute because it is necessary to carry out the provisions of KRS 61.610, 61.615, 78.5526, and 78.5528 and establishes the process for employment and medical reviews.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation established the procedures and forms necessary to carry out the provisions of KRS 61.610, 61.615, 78.5526, and 78.5528 for the administration of employment and medical reviews.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the exiting administrative regulation to reflect changes in forms used by the Kentucky Public Pensions Authority, and to establishes previously omitted processes and procedures for the employment and medical staff reviews. This administrative regulation also clarifies the existing regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the regulation includes the current forms, processes and procedures that are consistent with authorizing statutes. This administrative regulation also clarifies the existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute because it is necessary to carry out the provisions of KRS 61.610, 61.615, 78.5526, and 78.5528.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes because it establishes the forms, processes and procedures required to carry out the provisions of KRS 61.610, 61.615, 78.5526, and 78.5528 and assists the Kentucky Public Pensions Authority with carrying out those provisions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System, and the members, beneficiaries, and alternate payees of the Kentucky Retirement Systems and the County Employees Retirement System. Number of individuals affected by this administrative regulation is approximately one thousand fifty-eight (1058). Number of businesses, organizations, or state and local governments affected is three (3), the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation establishes the procedures and forms necessary to carry out the provisions of KRS 61.610, 61.615, 78.5526, and 78.5528, and assists the Kentucky Public Pensions Authority, Kentucky Retirement Systems, and County Employees Retirement System in ensuring conformity with these statutes.

(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 not cost any additional funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation establishes the procedures and forms necessary to carry out the provisions of KRS 61.610, 61.615, 78.5526, and 78.5528, and assists the Kentucky Public Pensions Authority, Kentucky Retirement Systems, and County Employees Retirement System in ensuring conformity with the statutes.

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

(a) Initially: The costs associated with the implementation of this

administrative regulation should be negligible.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky 18 Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All members are subject to the same processes and procedures.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 61.505(1)(g)

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

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

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

(c) How much will it cost to administer this program for the first year? The cost to Kentucky Public Pensions Authority should be negligible.

(d) How much will it cost to administer this program for subsequent years? The cost to Kentucky Public Pensions Authority should be negligible.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The cost to Kentucky Public Pensions Authority should be negligible because the administration of the employment and medical staff reviews as detailed in this regulation is not changing from existing practice.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will not add a cost to the regulated entities.

(5) Explain whether this administrative regulation will have a

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

#### BOARDS AND COMMISSIONS State Board of Accountancy (Amendment)

##### 201 KAR 1:050. License application.

RELATES TO: KRS 325.261, 325.280, 325.330

STATUTORY AUTHORITY: KRS 325.240(2), 325.330(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the Kentucky State Board of Accountancy to promulgate administrative regulations for the administration of KRS Chapter 325. KRS 325.330(1)(c) requires the board to promulgate administrative regulations establishing an application process. This administrative regulation establishes the requirements for obtaining a license as a certified public accountant.

##### Section 1.

(1) A person who has met the qualifications contained in KRS 325.261 shall submit the Application for License.

(2) With his or her application, the person shall include:

(a) A check or money order, which is nonrefundable, made payable to the Kentucky State Board of Accountancy for \$100;

(b) The certificate of experience as described in 201 KAR 1:063;

(c) A list of colleges and universities with graduation dates, degrees awarded, and the official transcript described in 201 KAR 1:190, unless it is already in possession of the board;

(d) An official transcript as described in 201 KAR 1:190 from an accredited college or university as described in 201 KAR 1:190 which verifies the candidate has satisfied the 150-hour requirement of KRS 325.261;

(e) Proof of successful completion of the Uniform CPA Exam. If the applicant successfully completed the examination in Kentucky, documentation shall not be required. If the examination was successfully completed in another jurisdiction, the applicant shall have an Authorization for Interstate Exchange of Information submitted to the board on his or her behalf; and

(f) If the applicant is not a citizen of the United States:

1. Documentation from the United States Citizenship and Immigration Services, or its successor, to verify the person is legally residing in the United States; or

2. Documentation from the employer that verifies the person is an employee of a public accounting firm, company, or institution of postsecondary education located outside the United States, which also has an office or campus located in the United States.

##### Section 2. License by Reciprocity.

(1) An applicant for a license by reciprocity shall submit or cause to have submitted:

(a) An Application for Reciprocal License;

(b) Payment of the fee and other documents required by Section 1(2) of this administrative regulation, except for an official transcript; and

(c) An Authorization for Interstate Exchange of Information form completed by the licensing jurisdiction where the applicant holds a valid and active license to practice.

(2) If the applicant cannot provide the certificate of experience as required in Section 1 of this administrative regulation and:

(a) Is applying under the provisions of KRS 325.280(1)(c)1, the applicant shall have the licensing jurisdiction where he or she holds a valid and active license send certified copies of experience requirement documents from his or her license file; or

(b) Is applying under the provisions of KRS 325.280(1)(c)2, he or she shall submit or cause to have submitted one (1) of the

following documents which clearly reflects that the applicant has practiced public accounting as a full-time profession for four (4) of the last ten (10) years:

1. Proof of public accounting errors and omissions insurance;
2. A letter from an attorney, client, or certified public accountant that has knowledge of the applicant's practice;
3. Copies of firm license applications; or
4. Copies of personal tax returns.

#### Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Application for License", August 2015;
- (b) "Application for Reciprocal License", August 2015; and
- (c) "Authorization for Interstate Exchange of Information", 2023[August 2015].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. and 4:30 p.m.

DAVID R. PRICE, Board President

APPROVED BY AGENCY: May 8, 2023

FILED WITH LRC: May 12, 2023 at 12:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2023 at 3:00 p.m., EST at the office of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day (11:59 p.m.) July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Joseph P. Donohue, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281, email joep.donohue@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the requirements for obtaining a license as a certified public accountant ("CPA").

(b) The necessity of this administrative regulation: To insure that CPA candidates are aware of important information related to the application process for CPA licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.240(2) authorizes the Kentucky State Board of Accountancy to promulgate administrative regulations for the administration of KRS Chapter 325. KRS 325.330(1)(c) requires the board to promulgate administrative regulations establishing an application process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation notifies the public, CPA candidates, and potential CPA candidates of the requirements and process for obtaining a CPA license.

(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 revises an official board form to correctly reference new specific sections of the Uniform CPE Examination being implemented by the American Institute of Certified Public Accountants ("AICPA") in January 2024.

(b) The necessity of the amendment to this administrative regulation: The amendment is required to update an official board form to accurately reflect changes being made to the Uniform CPA Examination in January 2024.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authority provided to the board by 325.240(2) and KRS 325.330(1)(c) to promulgate administrative regulations establishing a CPA licensure application process.

(d) How the amendment will assist in the effective administration of the statutes: The update provided by the amendment ensures that official board forms will continue to accurately reference the existing sections of the uniform CPA exam.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects applicants seeking licensure as a Kentucky CPA. The number of applicants for CPA licensure has averaged approximately 243 people per year over the last four years.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be required. The amendment just updates the board's form's description of the Uniform CPA Examination to maintain its accuracy in light of revisions being made to the exam by the AICPA.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will avoid any potential confusion to CPA licensing applicants regarding the Uniform CPA Examination.

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

(a) Initially: No increase in current expenses.

(b) On a continuing basis: No increase in expenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be needed.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no additional fee imposed by this proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applied since the standards set forth in this regulation govern all Kentucky CPA candidates.

#### FISCAL NOTE

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Accountancy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.240(2) and KRS 325.330(1)(c).

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

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

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

(c) How much will it cost to administer this program for the first year? No increase in current costs is expected.

(d) How much will it cost to administer this program for subsequent years? No increase in expenses for future years is anticipated.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: No financial impact is expected to occur as a result of the proposed amendments to this regulation.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings are anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated.

(c) How much will it cost the regulated entities for the first year? No additional costs are anticipated.

(d) How much will it cost the regulated entities for subsequent years? No additional costs are anticipated.

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

Cost Savings (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: No financial impact is expected to occur as a result of the proposed amendments to this regulation.

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

## BOARDS AND COMMISSIONS

### Board of Architects (Amendment)

#### 201 KAR 19:225. Examinations required; general provisions.

RELATES TO: KRS 323.050, 323.215

STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his or her application has been filed. This administrative regulation specifies the examination required by the board, and establishes general provisions relating to the administration of the examination.

#### Section 1. Examination Definition; Administration.

(1) Each applicant for licensure shall successfully complete the Architect Registration Examination (ARE), which is developed and graded by the National Council of Architectural Registration Boards (NCARB).

(2) The board shall designate each testing service consultant who shall administer the examination in accordance with the agreement between the consultant and NCARB.

(3) The examination sites and schedules shall be as designated by the testing service and agreed to by NCARB.

#### Section 2. Conditions of Examination.

(1) Grading of the examination shall be in accordance with the national grading procedure administered by NCARB.

(2) The board shall adopt the scoring procedures recommended by NCARB.

(3) Information pertaining to the subject matter of the examination shall not be given to an applicant in advance, except as specifically authorized by the board.

(4) The board may approve transfer credits for each part of the examination passed prior to the 1983 ARE. Information as to transfer credits shall be provided, if appropriate, to an applicant who requests an Application for Architect Registration Examination, as incorporated by reference in 201 KAR 19:220.

Section 3. (1) An applicant who has passed all divisions of the ARE by January 1, 2006, regardless of the time taken, has passed the examination.

(2) Retention of Credit~~[Five (5) Year Rolling Clock]~~: For all initial candidates for licensure, a passing grade for any division of the ARE taken on or after July 1, 2008, shall remain valid pursuant to National Council of Architectural Registration Board's Score Validity Policy in effect at the time of application. Divisions of the examination passed on or after July 1, 2008, that were considered expired prior to the adoption of the National Council of Architectural Registration Board's Score Validity Policy shall be reinstated pursuant to National Council of Architectural Registration Board's Score Validity Policy in effect at the time of application.~~(shall be valid for an initial period of five (5) years, plus any extension granted under NCARB's rolling clock extension policy, after which time the division shall expire unless the candidate has completed the ARE.~~

(3) Applicants for licensure that completed the ARE:

(a) Prior to January 1, 2006, will not have any divisions governed by the five (5) year rolling clock;

(b) Prior to July 1, 2014, will have only divisions passed after January 1, 2006, governed by the five (5) year rolling clock; and

(c) On July 1, 2014 or later, will have all divisions governed by the five (5) year rolling clock.

(4) An applicant who has not passed any division of the ARE by January 1, 2006 shall be governed by the five (5) year requirement, which shall commence on the date when the first passed division is administered.]

Section 4. Applicant Notice. Each applicant who has applied and is eligible to take the examination shall be notified of the examination sites and the procedures to make the appointments with the testing service centers to take the examination divisions of his or her choosing. Special instructions and limitations shall be issued to each applicant.

#### Section 5. Transfer of Scores.

(1) The board, upon proper Application for Architect Registration Examination, as incorporated by reference in 201 KAR 19:220, may accept passing scores achieved on divisions of the ARE administered and attested to by another NCARB member board under the terms of Section 3 of this administrative regulation.

(2) The board, upon written request, may forward the grades achieved by an applicant in the various divisions of the examination given under the board's jurisdiction to any other duly constituted architectural registration board and to NCARB for use in evaluating the applicant's eligibility for NCARB certification. The applicant shall state his or her reason for requesting transfer. The transfer shall terminate the applicant's application pending before the board.

#### Section 6. Conditions of Examination.

(1) Upon allegation of misbehavior on the part of an applicant in connection with taking the examination, the board shall investigate the allegation and take appropriate action including suspending or revoking test taking privileges and the cancellation of test scores.

(2) Misbehavior shall include:

(a) Falsifying information on the examination application;

- (b) Cheating on the examination;
- (c) A violation of examination guidelines; or
- (d) A violation of a confidentiality agreement with respect to the examination.

STEPHANIE MCCRERY, Board President  
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: May 3, 2023

FILED WITH LRC: May 10, 2023 at 3:30 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this Amendment shall be held on July 26, 2023, at 10:30 a.m. Eastern Time at the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed Amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed Amendment. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing, or written comments on the proposed Amendment to the contact person below.

**CONTACT PERSON:** Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, email Cordelia.Harbut@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the examination required by the board, and establishes general provisions relating to the administration of the examination.

(b) The necessity of this administrative regulation: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his or her application has been filed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his or her application has been filed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the examination required by the board, and establishes general provisions relating to the administration of the examination.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the examination timeframes required by the board.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to bring the administrative regulation up-to-date with the current examination practices.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is necessary in order to bring the administrative regulation up-to-date with the current examination practices. KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment brings the administrative regulation up-to-date with the current examination practices, in conformity with

KRS 323.210(1)(b), (2), which requires the board to promulgate administrative regulations governing the contents and conduct of examinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board estimates individuals seeking application for examination for licensure is approximately fifteen (15) annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entity will be required to meet examination requirements to achieve licensure. The entity will not be required to meet any new or additional examination requirements in the amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be based on the Architect Registration Examination (ARE), which is developed and graded by the National Council of Architectural Registration Boards (NCARB). There will be no additional cost to the entity to obtain the examination requirements in the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Under the new score validity policy, passing ARE divisional scores will remain valid throughout the delivery of the exam version under which they were taken and will establish credit toward the immediately following version of the next exam.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

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

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

(9) TIERING: Is tiering applied? No; this amendment impacts all similarly situated practitioners equally.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(1)(b), (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? None.

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

(c) How much will it cost to administer this program for the first year? No cost.

(d) How much will it cost to administer this program for subsequent years? No cost.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanation: Not applicable.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. This administrative regulation will not directly affect expenditures of the regulated entities.

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

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not produce any cost savings of the regulated entities at any time.

(c) How much will it cost the regulated entities for the first year? The entity will pay the examination cost for the Architect Registration Examination (ARE), which is developed and graded by the National Council of Architectural Registration Boards (NCARB). There is no additional cost with the amended regulation.

(d) How much will it cost the regulated entities for subsequent years? If the entity fails any of the parts of the examination, the entity will pay to retake any failed parts of the Architect Registration Examination (ARE). There is no additional cost with the amended 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: Examination cost cannot be determined due to the variables associated with taking the examination in-person versus virtually and the number of times the entity is required retake failed parts of the examination.

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

## BOARDS AND COMMISSIONS

### Board of Nursing (Amendment)

#### 201 KAR 20:240. Fees for applications and [for] services.

RELATES TO: KRS 61.874(3), 314.027(2), 314.041(11), (13)(c), 314.042(3), (6), (14)(b)(4), 314.051(2), (13)(c), 314.071(1), (2), 314.073(7), 314.075(1), 314.101(4), 314.142(1)(b), 314.161, 314.171(4)

STATUTORY AUTHORITY: KRS 314.041(11), (13)(c), 314.042(3), (6), (14)(b)(4), 314.051(2), (13)(c), 314.071(1), (2), 314.073(7), 314.131(1), 314.142(1)(b), 314.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 314. KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314. KRS 314.041(11), (13)(c), 314.042(3), (6), (14)(b)(4), 314.051(2), (13)(c), 314.071(1), (2), and 314.073(7) require the board to establish fees for licensure, examination, renewal, reinstatement, and continuing education. This administrative regulation establishes those fees.

Section 1. Fees for Licensure Applications. (1) The board shall collect a fee for:

- (a) An application for licensure; and
- (b) Licensure renewal or reinstatement.
- (2) The fee for an application shall be:
  - (a) Licensure by endorsement as a registered nurse - \$165;
  - (b) Licensure by endorsement as a licensed practical nurse - \$165;
  - (c) Licensure by examination as a registered nurse - \$125;
  - (d) Licensure by examination as a licensed practical nurse - \$125;
  - (e) Renewal of license - fifty-five (55) dollars;
  - (f) Retired status - twenty-five (25) dollars;
  - (g) Reinstatement of license - \$135;
  - (h) Paper copy of an application - forty (40) dollars;
  - (i) Full verification of licensure, credential or registration history - fifty (50) dollars;
  - (j) Licensure as an advanced practice registered nurse - \$165;
  - (k) Renewal of licensure as an advanced practice registered nurse - fifty-five (55) dollars;
  - (l) Reinstatement of licensure as an advanced practice registered nurse - \$135;
  - (m) Name change - twenty-five (25) dollars;
  - (n) Application to establish a registered nurse or licensed practical nurse prelicensure program of nursing pursuant to 201 KAR 20:280 - \$2,000;
  - (o) Information submitted to establish an advanced practice registered nurse program pursuant to 201 KAR 20:062 - \$2,000; or
  - (p) Information submitted to establish an additional track pursuant to 201 KAR 20:062 - \$500.
- (3) An application or information submitted under this section shall not be evaluated by the board unless the current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application for approval of a provider of continuing education or for a renewal or reinstatement of the approval shall be:

- (1) Initial provider approval - \$400;
- (2) Reinstatement of provider approval - \$400;
- (3) Renewal of approval - \$100; or
- (4) Individual review of continuing education offerings - ten (10) dollars.

#### Section 3. Fees for Services.

- (1) The fee for a service shall be:
  - (a) Validation of the current status of a temporary work permit, provisional license, license, or credential:
    - 1. If requested in writing in individual nurse format - fifty (50) dollars; or
    - 2. If requested in writing in list format - fifty (50) dollars for the first name and twenty (20) dollars for each additional name;
  - (b) Copy of an examination result or transcript - twenty-five (25) dollars;
  - (c) Nursing certificate - thirty (30) dollars; [or]
  - (d) Release of NCLEX results to another state board of nursing - seventy-five (75) dollars; [;
  - (e) Review a request from an advanced practice nurse to be exempt from the Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances - fifty (50) dollars.
- (2) An applicant for licensure who takes or retakes the licensure examination shall pay:
  - (a) The current examination fee required by the national council of state boards of nursing; and
  - (b) Application for licensure fee pursuant to Section 1 of this administrative regulation.
- (3) A graduate of a foreign school of nursing shall be responsible for:
  - (a) Costs incurred to submit credentials translated into English;
  - (b) Immigration documents; and
  - (c) Other documents needed to verify that the graduate has met Kentucky licensure requirements.



(4) A program of nursing that requires a site visit pursuant to 201 KAR 20:360, Section 5, shall pay the cost of the site visit to the board.

Section 4. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within one (1) year from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office;

(3) For an application for reinstatement of license, within one (1) year from the date the application form is filed with the board office; or

(4) For all other applications, except for renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 5. An applicant who meets all requirements for approval, licensure, or credential shall be issued the appropriate approval, license, or credential without additional fee.

Section 6. Fees for Sexual Assault Nurse Examiners.

(1) The application fee shall be \$120.

(2) The credential renewal fee shall be fifty (50) dollars.

(3) The credential reinstatement fee shall be \$120.

Section 7. A payment for an application fee that is in an incorrect amount shall be returned and the application shall not be posted until the correct fee is received.

Section 8. Bad Transaction Fee. Any transaction, including paper or electronic, submitted to the board for payment of a fee which is returned for nonpayment shall be assessed a bad transaction fee of thirty-five (35) dollars.

AUDRIA DENKER, President

APPROVED BY AGENCY: May 4, 2023

FILED WITH LRC: May 9, 2023 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2023, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, email [Jeffrey.Prather@ky.gov](mailto:Jeffrey.Prather@ky.gov); or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets fees.

(b) The necessity of this administrative regulation: This regulation is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting fees.

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

(a) How the amendment will change this existing administrative regulation: It establishes a fee to process a request from an advanced practice nurse (APRN) to be exempt from the Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS).

(b) The necessity of the amendment to this administrative regulation: Amendment is needed to conform with KRS 314.042(14).

(c) How the amendment conforms to the content of the authorizing statutes: By setting the required fee amount.

(d) How the amendment will assist in the effective administration of the statutes: By providing a fee to cover agency staff time.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRNs who have been prescribing controlled substances for more than 4 years, approximately 4000.

(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: APRNs will need to submit a request via APRN update portal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost \$50 to request a CAPA-CS exemption request.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the APRN is in good standing and meets statutory requirements, the APRN will be exempt from the statutory and regulatory requirements of being a party to a CAPA-CS.

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

(a) Initially: There is no additional cost.

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

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It establishes a fee.

(9) TIERING: Is tiering applied? The changes will apply equally, there is no tiering.

#### FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131 and 314.042.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? From the Board, none; however, an APRN may have had to pay a fee to be party to a CAPA-CS agreement as a term of the agreement with the physician.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost saving.

(c) How much will it cost the regulated entities for the first year? No additional cost.

(d) How much will it cost the regulated entities for subsequent years? No additional cost.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

## BOARDS AND COMMISSIONS

### Board of Physical Therapy (Amendment)

#### 201 KAR 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 12.355, 327.010(1), (2), 327.070

STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

#### Section 1. Definitions.

(1) "Contact hour" means a credit earned based on sixty (60) minutes of participation in a physical therapy-related activity.

(2) "Continued competency" means a planned learning experience relating to the scope of "physical therapy" practice as defined by KRS 327.010(1) if the subject is intervention, examination, research, documentation, education, or management of a health care delivery system.

(3) "Jurisprudence examination" means an open book tutorial provided by the board on KRS Chapter 327 and 201 KAR Chapter 22.

#### Section 2.

(1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as established in subparagraphs 1. through 3. of this paragraph.

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium.

2. At least eighteen (18) hours shall be earned from Category 1 as established in subsection (2) of this section.

3. Hours may be earned from Category 2. If hours are earned from Category 2, hours shall be as established in subsection (3) of this section. Hours earned from Category 2 over ten (10) hours shall not be awarded.

(b) For a physical therapist assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as established in subparagraphs 1. through 3. of this paragraph.

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium.

2. At least ten (10) hours shall be earned from Category 1 as established in subsection (2) of this section.

3. Hours may be earned from Category 2. If hours are earned from Category 2, hours shall be as established in subsection (3) of this section. Hours earned from Category 2 over eight (8) hours shall not be awarded.

(c) A participant shall not be awarded contact hours for a course that is repeated more than once in the same biennium.

(2) Category 1 continued competency shall be:

(a) Completion of courses, seminars, workshops, symposia, or home study courses consisting of at least three (3) contact hours that have been approved by the board, the board's designee, the Federation of State Boards of Physical (FSBPT), another physical therapy licensing agency, or the American Physical Therapy Association (APTA) or its components; ~~or another physical therapy licensing agency;~~

(b) Completion of courses, seminars, workshops, symposia, or home study courses ~~consisting of less than three (3) contact hours~~ that have been produced and developed by the American Physical Therapy Association (APTA) or its components ~~state chapters and sections;~~ and consist of less than three (3) contact hours;

(c) Completion or auditing of an accredited postsecondary educational institution credit course meeting continued competency as defined by Section 1(2) of this administrative regulation.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(d) Presentation of a continued competency course, workshop, seminar, or symposium that has been approved by the board or its designee. A maximum of three (3) contact hours for preparation may be awarded for each contact hour awarded to participants. ~~Contact hours shall be awarded equal to contact hours awarded to a participant~~ with a maximum of two (2) events of the same course per biennium;

(e) Authorship of a research article, manuscript, or scientific paper, published in the biennium and related to physical therapy. Fifteen (15) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(f) A presented scientific poster or scientific platform presentation related to physical therapy. Ten (10) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(g) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder. A maximum of twenty (20) contact hours per biennium shall be awarded;

(h) American Board of Physical Therapy Specialties (ABPTS) certification. Twenty-eight (28) contact hours shall be awarded per biennium;

(i) ABPTS recertification or other certifications and recertifications within the scope of physical therapy practice. A maximum of twenty-eight (28) contact hours per biennium shall be awarded;

(j) Completion of a clinical residency program or clinical fellowship program. Not more than five (5) contact hours shall be awarded for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(k) Engaging in the practice of "physical therapy" as defined by

KRS 327.010(1) at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(l) Engaging in the instruction in a CAPTE-accredited physical therapy or physical therapist assistant program at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(m) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(n) Election or appointment to a position with the APTA Kentucky, APTA, or FSBPT as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; or

(o) Member of a committee or task force for one (1) of the organizations in paragraph (m) or (n) of this subsection. One (1) contact hour shall be awarded per biennium.

(p) Completion of the APTA's PTA Advanced Proficiency Pathways Program (APP). A maximum of ten (10) contact hours shall be awarded in the biennium during which the certification or recertification of the APP is granted; or

(q) Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium.

(3) Category 2 continued competency shall be:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel, or symposium other than approved in Section 2(2) or other unapproved applicable courses. One (1) contact hour for each hour of credit shall be awarded up to a maximum of three (3) hours per course. ~~One (1) contact hour shall be awarded for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;~~

(c) Clinical instructor for a CAPTE-approved educational program or an APTA credentialed residency or fellowship program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy in-service or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

~~[(e) Completion of other unapproved applicable courses. One (1) contact hour for each hour of credit shall be awarded up to a maximum of three (3) hours per course;]~~

~~[(e)][(f)] Participation in community service related to health care. One (1) contact hour for each hour of participation shall be awarded up to a maximum of two (2) hours per biennium;~~

~~[(f)][(g)] Participation as a mentor or mentee in a mentorship program developed by APTA KY. A maximum of two (2) [one (1)] contact hour shall be awarded per year and a maximum of four (4) [two (2)] contact hours per biennium;~~

~~[(g)][(h)] Completion of other healthcare related courses (cardiopulmonary resuscitation initial certification or re-certification, Bloodborne pathogens courses). [cardiopulmonary resuscitation initial certification or re-certification.] A maximum of two (2) contact hours shall be awarded per biennium; or~~

~~[(i) Completion of a HIV/AIDS course. A maximum of two (2) contact hours shall be awarded per biennium.]~~

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of at least two (2) ~~three (3)~~ years from the end of the biennium.

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities to the board.

(c) A licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities shall be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee shall be granted a temporary hardship extension for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Exemption or Extension for Completion of

Continued Competency Form~~[-]~~ by April 30 of the odd-numbered year in the renewal cycle for which the extension is sought. This plan must include a description on how the required credits will be met ~~[including a plan describing how the required credits will be met, by April 30 of the odd-numbered year in the renewal cycle for which the extension is sought]; and~~

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:

~~[a.] Age;~~

~~[b.] Disability;~~

~~[c.] Medical condition;~~

~~[d.] Financial condition; or~~

~~[e.] Other clearly mitigating circumstance.~~

(b) A licensee shall be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form~~[-]~~ by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought. This plan must include a description on how the required credits will be met ~~[including a plan describing how the required credits will be met, by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;]~~

2. Pays a fee of \$250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

4. Files proof of compliance with the continued competency requirements by the following July 1.

(c) A licensee on active military duty shall be granted an exemption from continued competency requirements as established in KRS 12.355.

### Section 3. Incorporation by Reference.

(1) "Exemption or Extension for Completion of Continued Competency Form", June 2012, is incorporated by reference.

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

STEPHEN CURLEY, Executive Director

APPROVED BY AGENCY: March 23, 2023

FILED WITH LRC: May 10, 2023 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2023, at 3:00 p.m. (ET) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 July 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: Stephen Curley, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, (502) 429-7140 and fax (502) 429-7142, email Stephen.Curley@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Curley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation assists in assuring safe and effective practices for the safety and welfare of the public by implementing continued competency.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040(10).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for continued competency requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for renewal requirements for credential holders.

(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: By creating additional opportunity for credential holders to earn continued competency credit.

(b) The necessity of the amendment to this administrative regulation: The necessity is to clarify the course approval process for continued competency requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of continued competency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 6200

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will be afforded additional opportunity to earn continued competency credit of Contact 1 and Contact 2 contact hours.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will enjoy greater opportunity to earn continuing competency credit.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund, and costs will not change from current spending.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

#### FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 327.040(10).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None

(c) How much will it cost the regulated entities for the first year? None

(d) How much will it cost the regulated entities for subsequent years? None

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (Amendment)

##### 202 KAR 7:510. Air ambulance services.

RELATES TO: KRS 311A.030, 311A.190, 14 C.F.R. Parts 91, 135

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services system and the practice of emergency medical services, except those functions regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services.~~[air ambulance services the EMS system and the licensing of air ambulance services]~~. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of air ambulance providers. This administrative regulation establishes minimum licensing requirements for air ambulance providers.

##### Section 1. Provider Licensing Requirements.

(1) A person or entity shall not provide, advertise, or profess to engage in the provision of air ambulance service originating in Kentucky without having first obtained a license from the board pursuant to this administrative regulation.

(2) A provider shall comply with local ordinances, state and federal statutes and administrative regulations.

(3) A provider shall display its license in a prominent public area at the service base station and all satellite locations. The following information shall be included on the license:

- (a) Operating name of the provider;
- (b) Physical location of the base station;
- (c) The number and physical location of satellite stations, if any, operated by the licensee;
- (d) The license classification;
- (e) The level of service provided;
- (f) The number of rotor and fixed-wing aircraft operated by the provider; and

(g) The specific geographic area to be served by the licensee.

(4) Providers shall provide the KBEMS Office with an accurate map and a written description of its geographic service area within the commonwealth, which shall identify with specificity the complete boundary of the area served by the provider when applying for initial licensure or if the service area has changed since the last map was provided to the KBEMS Office.

(5) A licensed provider may respond to emergency calls outside of its geographic service area only if the provider is providing:

(a) Mutual aid under an existing agreement with another licensed provider whose geographic service area includes the area in which the emergency call is made;

(b) Disaster assistance; or

(c) Nonemergency transfers from damaged or closed health facilities.

#### Section 2. Licensing, Inspection and Change of Ownership.

(1) To obtain a license, an air ambulance provider shall file an "Kentucky Application for Ambulance Service Licensing", Form EMS-1 (6/96), with the KBEMS Office.

(2) An applicant for a license or a licensee shall, as a condition precedent to licensing or relicensing, be in compliance with all applicable sections of this administrative regulation as determined through means including a physical inspection process, subject to subsection (4)(b)2 of this section.

(3) A license shall expire on December 31 following the original date of issue and shall subsequently expire annually on December 31 of each year.

(4) A license may be renewed upon:

(a) Payment of the prescribed fee; and

(b) Action by the board, based upon recommendation of staff following the physical inspection of the provider.

(5) A license to operate shall be issued only for the person or entity, service area, and premises, including the number of aircraft, named in the application, and shall not be transferable.

(6) A new application shall be filed if a change of ownership of an air ambulance service occurs. A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of the assets, capital stock, or voting rights of a corporation or provider operating an air ambulance is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person or entity from another.

(7) If a new application for a license is filed due to change of ownership, the new license shall be issued for the remainder of the current licensure period.

(8) There shall be full disclosure to the board of the changes in ownership, such as name and address, of:

(a) Each person having direct or indirect ownership interest of ten (10) percent or more in the service;

(b) Officers and directors of the corporation, if a service is organized as a corporation; or

(c) Partners, if a provider is organized as a partnership.

(9) Representatives of the board shall have access to the service during hours that the service operates.

(10) A regulatory violation identified during an inspection shall be transmitted in writing by the board and given to the provider.

(11) The provider shall submit a written plan for the elimination or correction of a regulatory violation to the KBEMS Office within ten (10) working days after receipt of the statement of violation and shall include the specific date by which the violation may be corrected.

(12) Within ten (10) working days following a review of the plan, the KBEMS Office shall notify the provider in writing whether or not the plan is accepted as providing for the elimination or

correction of the violation.

(13) The KBEMS Office may conduct a follow-up visit to verify compliance with the plan.

(14) If a portion or all of the plan is insufficient:

(a) The KBEMS Office shall specify the reasons why the plan cannot be accepted; and

(b) The provider shall modify or amend the plan and resubmit it to the KBEMS Office within ten (10) days after receipt of notice that the plan is insufficient.

(15) Unannounced inspections may be conducted at the discretion of the board or its representative.

(16) Any licensed provider may be recommended for discipline based upon:

(a) Failure to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;

(b) Failure to eliminate or correct regulatory violations;

(c) Falsifying an application for licensing;

(d) Changing a license issued by the board;

(e) Attempting to obtain or obtaining a license by:

1. Fraud;

2. Forgery;

3. Deception;

4. Misrepresentation; or

5. Subterfuge;

(f) Providing false or misleading advertising;

(g) Falsifying, or causing to be falsified a:

1. Patient record;

2. Service run report; or

3. Other reports provided to the KBEMS Office;

(h) Providing an unauthorized level of service;

(i) Demonstrating a history of staff violations that have resulted in disciplinary action;

(j) Failing to provide the board or its representative with information upon request, or obstructing an investigation regarding alleged or confirmed violations of statutes or administrative regulations;

(k) Issuing a check for a license on an invalid account or an account with insufficient funds to pay fees to KBEMS; or

(l) Submitting fraudulent or misleading claims for reimbursement to:

1. An individual;

2. A private insurance company;

3. A governmental agency; or

(m) Any violation of KRS Chapter 311A or 202 KAR Chapter 7.

#### Section 3. Utilization of Aircraft by Licensed Providers.

(1) At the time of initial inspection, each provider shall inform the KBEMS Office of the make, model, year, serial number, and FAA identification number for each aircraft it uses.

(2) Except as provided by this administrative regulation, an aircraft shall not be placed into operation until after the board has been notified and has verified through a physical inspection that the aircraft meets the requirements of this administrative regulation.

(3) Each provider shall notify the KBEMS Office via U.S. mail, email, or fax, no later than the next board business day, of the permanent removal of any licensed aircraft from service by the license holder.

(4) A licensed provider may use a replacement aircraft on a temporary basis if an approved aircraft is out of service, if:

(a) The KBEMS Office receives notice within twenty-four (24) hours or on the next business day by fax or email of the need for the provider to place an aircraft into service on a temporary basis; and

(b) Within five (5) business days, the provider provides the board written notice identifying:

1. The make, model, year, serial number, and FAA identification number for the aircraft being removed from service and for the aircraft being placed into temporary service; and

2. The temporary replacement aircraft meets the requirements of this administrative regulation.

(5) A temporary replacement aircraft shall not be used for more than sixty (60) days, unless the KBEMS Office has verified through

a physical inspection that it meets the requirements of this administrative regulation.

(6) The KBEMS Office shall be notified by email or fax within twenty-four (24) hours or on the next business day when a temporary aircraft is removed from service and the original licensed aircraft is returned to service.

(7) A provider that fails to meet the reporting requirements for use of a temporary aircraft may be required to immediately cease use of the replacement aircraft until the reporting requirements are met.

(8) A provider that fails to remove a temporary aircraft from service upon written order may be fined an amount not to exceed \$1,000 per day for each day or partial day the aircraft is in service and the reporting requirements are not met.

(9) This administrative regulation shall not prevent a provider from utilizing other means of transporting patients in:

- (a) Disasters;
- (b) Mass casualty incidents; or
- (c) Extraordinary scene conditions that may impair the safety of the patient or personnel operating at the scene.

#### Section 4. Provider Management Requirements.

(1) All providers shall:

(a) Maintain an organizational chart that establishes lines of authority, including the designation of:

1. An administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and

2. A designee who shall serve in the absence of the administrator;

(b) Maintain records and reports at the ambulance service base station or at a location where the records can be made readily available to KBEMS staff including an original, microfilm, electronic equivalent, or copy of all run reports whether reported on:

1. The EMS-8A and EMS-8B "Kentucky Emergency Medical Ambulance Run Report" (9/98), with all nonshaded portions of the run report completed as appropriate for each patient and each run; or

2. A paper or electronic run form developed by the provider that contains all of the data components of the nonshaded areas of the EMS-8A and EMS-8B (9/98);

(c) Maintain a copy of all completed run report forms, maintained to ensure confidentiality and safekeeping, for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age. Copies of run reports shall be accessible so as to be immediately available to the board, KBEMS Office or representatives upon request;

(d) Maintain personnel files for each employee or volunteer who staffs an aircraft. Personnel files shall be maintained for a minimum of five (5) years following separation from employment. As a minimum, personnel files shall contain:

1. Current certification or licensure with corresponding numbers and expiration dates for the position that the individual fulfills on the aircraft;

2. Proof that the provider has conducted a pre-employment criminal background check; and

3. Health records, maintained in accordance with state and federal laws and administrative regulations, in a separate secure file, that include:

- a. A post-offer of employment health assessment;
- b. Annual tuberculin skin testing or other method of evaluation;
- c. Hepatitis-B vaccinations and seroconversion testing unless exempted by the employees' physician, or an employee signed waiver; and
- d. A record of all work-related illnesses or injuries;

(e) Maintain a plan and records for the provision of continuing education for staff and volunteers including a written plan for the method of assessment of staff continuing education needs and a coordinated plan to meet those needs including:

1. Training or continuing education rosters that include the printed name, signature, and certification or license number of

those in attendance;

2. A curriculum vitae for the instructor; and

3. A brief outline of the presentation including the educational objective for the offering and the method of presentation used for the presentation;

(f) Maintain an infection control plan in accordance with KyOSHA guidelines;

(g) Maintain a written plan for training or educating personnel for responding to hazardous materials, criminal, and potential terrorist incidents, including plans for the protection and decontamination of patients, aircraft, equipment, and staff;

(h) Maintain a written plan for the quality assessment of patient care and provider quality improvement including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care. This plan shall address as a minimum:

- 1. Aircraft maintenance as it impacts the clinical aspects of patient care delivery, employee health and safety;
- 2. Compliance with protocols and operating procedures;
- 3. Transport response and transport limitations;
- 4. Assessment of dispatch procedures;
- 5. Aircraft operations and safety;
- 6. Equipment preventive maintenance programs; and
- 7. A process for the resolution of customer complaints;

(i) Maintain a written plan for training personnel and responding to mass casualty incidents and disasters, which shall include an internal incident command structure and how it will integrate into a community response plan;

(j) Maintain an orientation program for all personnel related to:

- 1. Aircraft, scene, ground and base safety;
- 2. Communication equipment at the base station and on each aircraft;

3. The location and use of fire extinguishers;

4. Transport response and transport limitation standards;

5. Map reading and geographic orientation;

6. Mutual aid agreements;

7. Cleaning of equipment including aircraft;

8. Stretcher operations and use;

9. Completion of run reports; and

10. Other standard operating procedures that have been established by the provider;

(k) Maintain proof of professional liability malpractice insurance; and

(l) Maintain proof of aircraft liability insurance.

(m) Provide a copy of the current FAA Air Carrier Certificate; and

(n) Maintain a written policy regarding patient criteria for interfacility transfers including a written statement of medical necessity signed by a physician for each patient transferred.

(2) Each provider shall, in the county in which their base station or a substation is located;

(a) Document evidence of participation in county emergency management disaster exercises, if conducted;

(b) Coordinate with the county emergency management director plans for the possible utilization of a provider's personnel for use in the emergency operations center in a disaster; and

(c) Maintain a copy of the county and state emergency management agency's emergency operations plan at the ambulance base station.

#### Section 5. Operating Requirements.

(1) All air ambulance providers shall provide service twenty-four (24) hours a day, seven (7) days a week, subject to safety issues and weather conditions established in Part 135 of the FAR. These provisions may be met through a call system or through mutual aid agreements.

(2) A provider shall have a written plan, developed in consultation with the air ambulance provider's medical director that requires:

(a) Utilization of the air medical intake flow chart;

(b) Dispatch of requests for emergency service within two (2) minutes of the call taker's determination of the correct address or location of the emergency incident site and completion of a weather check;

(c) Disclosure of the accurate availability of provider's aircraft, including the estimated time of arrival to the requesting agency. If the provider's closest aircraft is not available, and so requested by the requesting agency, the provider shall attempt to contact the closest known aircraft to the scene; and

(d) The air ambulance provider to share current aircraft position data, through computer interface with other air ambulance providers, if the air ambulance provider utilizes a satellite tracking position mechanism.

(3) A provider may enter into mutual aid agreements with other Kentucky licensed air ambulance services operating within the same geographic area.

(4) A provider may accept a request to provide service outside of its service area except it shall require documentation from the requesting facility or provider that a good faith effort was made to utilize a provider licensed for the area.

(5) A preventive maintenance program shall be maintained that complies with Part 135 FAR or Part 92 FAR.

(6) Minimally, documentation of annual inspections or annual preventative maintenance records in addition to any records of maintenance performed shall be maintained by the provider to support evidence of periodic inspections or calibrations required for maintenance and operation of medical equipment utilized on the aircraft.

(7) Each aircraft and its equipment shall be checked after each use to ensure that it is in a clean and sanitary condition, unless precluded by emergency conditions. Minimally, documentation shall be maintained by the provider to support the evidence of a daily medical equipment checklist.

(8) A communications system shall be developed, coordinated, and maintained by each ambulance provider. The communication system shall meet the following requirements:

(a) Radio equipment used in emergency medical services aircraft shall be appropriately licensed through the FCC. Copies of the current FCC licenses shall be on file in the provider's office;

(b) Aircraft shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting dispatch centers and hospitals;

(c) Aircraft shall have air-to-air, ground-to-air, and air-to-ground communication capabilities and shall be capable of communicating with ground personnel to properly coordinate the landing and primary medical responders on the ground who may be caring for the patient;

(d) Aircraft shall have a minimum of two (2) portable communication devices capable of operating on the provider frequency that shall be provided for personnel when away from the aircraft; and

(e) All aircraft when approaching and departing a landing zone in uncontrolled airspace shall announce their intentions to other aircraft via 123.025 MHz.

(9) Air ambulance providers shall comply with FAR specifications for flight following and position plotting by a provider based or maintained communication center. The communication center shall be equipped with communications equipment and staffed by a properly trained ACS to receive and coordinate all calls as provided for by FAR. If providing fixed-wing service, this requirement may be met by filing an FAA flight plan.

(10) An ACS shall have documented training appropriate to the transport of the provider that shall as a minimum address the following areas:

(a) FAA and FCC regulations pertinent to air ambulance operations;

(b) Air medical radio communications;

(c) Medical terminology;

(d) Flight coordination and utilization;

(e) Navigation and weather interpretation;

(f) Flight following; and

(g) Emergency procedures.

(11) An air ambulance provider shall provide proof that it:

(a) Complies with FAR pertaining to maintenance inspections, flight, and duty time;

(b) Complies with FAA and FAR required maintenance activities; and

(c) Holds FAR required air ambulance operations specifications.

#### Section 6. Aircraft Requirements.

(1) Fixed and rotor-wing air ambulance aircraft shall:

(a) Have an entry that allows patient loading and unloading without tilting the patient greater than thirty (30) degrees from the horizontal axis;

(b) Be climate controlled and maintain a temperature of not less than sixty-five (65) degrees nor more than eighty-five (85) degrees Fahrenheit in the patient compartment during patient transport or demonstrate a procedure for maintaining patient temperature sufficient to prevent hypothermia and hyperthermia;

(c) All pharmaceuticals shall be kept within the recommended temperature range as established by the manufacturer or as otherwise established by FDA standards;

(d) Utilize an alternate aircraft or alternate mode of transportation, if the environment within the aircraft is such that it would be detrimental to the staff's physical welfare or the patient's condition, until those conditions are alleviated;

(e) Be configured in such a way that air medical personnel shall have access to the patient in order to begin and maintain both basic and advanced life support;

(f) Have interior lighting adequate to ensure complete observation of the patient;

(g) Have a procedure in place to limit light in the cockpit area during night operation;

(h) Have an electric inverter, with two (2) outlets, to convert direct current (DC) to alternating current (AC) for operation of specialized equipment, such as an isolette or intra-aortic balloon pump;

(i) Have equipment, stretchers, and seating:

1. Arranged so as not to block rapid egress by air ambulance personnel or patients; and

2. Affixed or secured in FAA approved racks, compartments, or strap restraints which meet FAR "G" loading requirements;

(j) Have a patient stretcher or litter which:

1. Has the capability to raise the head of the patient; and

2. Has appropriate devices to secure the patient to the stretcher.

(k) Provide proof of an FAR Part 135 certificate with an FAR required air ambulance specification; and

(l) Not transport more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the aircraft during flight.

(2) Fixed-wing aircraft shall be pressurized if patient flights are to exceed 6000 feet mean sea level.

#### Section 7. Air Ambulance Medical Personnel.

(1) A rotor-wing air ambulance service operating an ALS aircraft shall assure that it is minimally staffed by:

(a) A pilot as required by this administrative regulation; and

(b) Two (2) attendants that meet one (1) of the following staffing configurations:

1. A Kentucky licensed paramedic and RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 314;

2. A RN and RN both of which are authorized to practice in the state of Kentucky pursuant to KRS Chapter 314; or

3. A physician authorized to practice in the state of Kentucky pursuant to KRS Chapter 311 and RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 314.

(2) Each attendant required by subsection (1)(a) of this section shall additionally maintain documentation of current certification or the equivalent thereof as approved by the board of the following:

(a) ACLS;

(b) BLS;

(c) PALS;

(d) 1. PHTLS;

2. ITLS; or

3. TNATC; and

(e) NRP.

(3) BLS fixed-wing patient transports shall be minimally staffed by:

(a) A pilot as required by this administrative regulation; and  
(b) Two (2) attendants whom shall be minimally certified as EMT's by the board.

(4) ALS fixed-wing patient transports shall be minimally staffed by:

- (a) A pilot as required by this administrative regulation; and
- (b) Two (2) attendants of which:

1. The first patient attendant shall be:

a. A flight nurse; or

b. A RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 314, qualified by specific patient population, experience, and current competencies in emergency and critical care; and

2. The second patient attendant shall be:

a. A RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 314, qualified by specific patient population, experience, and current competency in emergency and critical care;

b. A licensed paramedic;

c. A certified or registered respiratory therapist qualified by specific patient population, experience, and current competency in mission-specific patient care; or

d. A physician authorized to practice in the state of Kentucky pursuant to KRS Chapter 311 and qualified by relevant training, experience, and current competency in mission-specific patient care;

(5) A staffing variance on an ALS fixed-wing patient mission necessitated by staffing or patient care requirements shall not be permitted unless prior approval is granted by the medical director or designee.

(6) ALS specialty care transport patient transports by rotor or fixed wing air ambulance shall be minimally staffed by:

(a) A pilot meeting the requirements of this administrative regulation; and

(b) Two (2) attendants with relevant training, experience and current competency in transport-specific patient care as authorized by the medical director or designee of which:

1. The first patient attendant shall be:

a. A RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 314;

b. A nurse practitioner; or

c. A physician authorized to practice in the state of Kentucky pursuant to KRS Chapter 311; and

2. The second patient attendant shall be:

a. A RN authorized to practice in the state of Kentucky pursuant to KRS Chapter 314;

b. A Kentucky licensed paramedic;

c. A certified or registered respiratory therapist;

d. A nurse practitioner; or

e. A physician authorized to practice in the state of Kentucky pursuant to KRS Chapter 311.

(7) All regular and specialty care air ambulance patient attendants shall attend and document flight orientation training Flight orientation training shall include:

(a) Altitude physiology;

(b) Aircraft-specific operations and in-flight safety;

(c) Emergency egress and survival training;

(d) Crew resource management; and

(e) Communication equipment utilization and emergency procedures.

(8) All regular air ambulance patient attendants shall complete and document additional flight orientation training to include:

(a) Scene safety;

(b) Use of extrication equipment;

(c) Scene triage;

(d) Kentucky EMS statutes and administrative regulations;

(e) Advanced airway management;

(f) Anatomy, physiology and assessment of adult, pediatric and neonatal patients as outlined within the program's scope of care;

(g) Cardiac emergencies and advanced critical care;

(h) Burns;

(i) Environmental emergencies;

(j) High risk OB;

(k) Multitrauma emergencies;

(l) Toxicology;

(m) Hazardous materials awareness level training;

(n) Hemodynamic monitoring;

(o) Mechanical ventilation and respiratory physiology; and

(p) Pharmacology;

(9) All regular air ambulance patient attendants shall complete and document annual continuing education which shall include a review of:

(a) Infection control;

(b) Kentucky EMS administrative regulations regarding ground and air transport;

(c) Crew resource management;

(d) Stressors of flight if not included in crew resource management;

(e) Survival training; and

(f) Skill maintenance program or competency program for invasive, high risk, or low volume procedures as outlined in the program's scope of care.

(10) An attendant shall remain with the patient, in the patient compartment, at all times during transport.

~~(11) [All aircraft, providing ALS care, that are licensed and based in Kentucky shall have a Kentucky licensed paramedic on board all aircraft that respond to scene flights. A variance from the paramedic requirement for all other flights that is necessitated by patient care requirements, shall be permitted only if the medical director or designee approves the action.] All aircraft responding to flights originating in Kentucky shall be licensed by the board.~~

(12) Aircraft that are licensed in Kentucky~~[but based in contiguous states]~~ may use the staffing requirements of the state in which they are located if they are licensed in that state and the staffing requirements for that state, at a minimum for scene flights shall be:

(a) Paramedic and RN;

(b) RN and RN; or

(c) Physician and RN.

(13) This administrative regulation shall not prevent a provider from utilizing staff other than that required by this administrative regulation in:

(a) Disasters;

(b) Mass casualty incidents; or

(c) Extraordinary scene conditions that may impair the safety of the patient or personnel operating at the scene.

(14) (a) Staffing configurations as outlined in this administrative regulation may supplement or replace the patient care attendants on a ground ambulance licensed in Kentucky for the purpose of facilitating the care and the transport of a patient if:

1. The aircraft was unable to complete a patient flight due to deteriorating weather conditions or other unplanned events; or

2. For the purpose of providing a continuum of care from the scene to the aircraft or from the aircraft to the patient destination.

(b) Air ambulance personnel shall assure the availability of necessary equipment to care for the patient during transport.

Section 8. Provider Requirements for Air Ambulance Pilots.  
The air ambulance provider shall assure that prior to performing emergency medical service transports the PIC complies with all requirements as set forth in 14 FAR Part 135.4. All documentation of having met this requirement shall be provided upon request.

Section 9. Basic Life Support Equipment and Supplies.

(1) All rotor air ambulance providers shall carry and maintain, in full operational order, the following minimum BLS equipment and supplies:

(a) Suction equipment, which shall include:

1. Two (2) sources of suction apparatus, one (1) of which shall be fixed, and one (1) of which shall be portable;

2. Rigid catheters;

3. Flexible catheters in adult, pediatric and infant sizes;

4. Bulb syringe or meconium aspiration device for infant and neonate suction;

(b) Oxygen and airway supplies and equipment, including:

1. An installed oxygen system with a capacity of at least 2,000



liters of oxygen for each aircraft;

2. Portable oxygen system supplying at least 300 liters;

3. A backup source of oxygen, which may be the required portable tank if it is carried in the patient care area during flight in the event the main system fails. The backup source shall be delivered via a nongravity dependent delivery device;

4. Pressure gauge and flow rate regulator for fixed and portable units with a range of zero to fifteen (15) liters per minute;

5. Oxygen supply tubing;

6. Transparent nonrebreather oxygen masks for adults and pediatrics;

7. Nasal cannulas for adults and pediatrics;

8. Disposable adult, pediatric, and infant bag-valve-mask ventilation units with oxygen reservoir, oxygen tubing and masks;

9. Nasopharyngeal and oropharyngeal airway kits in sizes for adult and children with water soluble lubricant; and

10. Bite stick;

(c) Trauma equipment and supplies including:

1. Two (2) sterile universal dressings at least 10 in. x 30 in., compactly folded and packaged;

2. Four (4) by four (4) gauze pads;

3. Soft roller self-adhering bandages, various sizes;

4. Four (4) rolls of adhesive tape, minimum of two (2) sizes;

5. Two (2) sterile burn sheets;

6. Two (2) eye protector pads and shields or an approved substitute;

7. Two (2) occlusive dressings;

8. Shears for bandages;

9. Splints, including:

a. Lower extremity mechanical traction splint in adult and pediatric sizes; and

b. Splints for arm, full leg and foot using semi-rigid immobilization devices; and

10. Immobilization devices, including:

a. Lower adult and pediatric long spine boards or other full body immobilization device with straps and cervical immobilization accessories;

b. Five (5) rigid, still cervical collars in four (4) different sizes including pediatric sizes; and

c. Towel rolls or other bulk dressings to be used for cervical immobilization for infants;

(d) Patient assessment and management equipment and supplies, including:

1. Adult, obese adult, pediatric, and infant sphygmomanometer cuffs with stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement;

2. One (1) penlight;

3. An AED with a minimum of two (2) complete sets of pads for all non-ALS air ambulances;

4. A device for monitoring pulse oximetry; and

5. Thermometer;

(e) Personal protective equipment, which shall be available to each staff member responding on the aircraft, including:

1. One (1) clean scrub gown or substitute, such as disposable coveralls;

2. Simple disposable face mask;

3. Clear protective goggles or safety glasses;

4. Disposable gloves;

5. One (1) particulate filter mask rated at N95 or better without an exhaust port for patient use;

6. One (1) particulate filter mask rated at N95 or better with or without an exhaust port for protection of crew members; and

7. A means of cleansing the hands, such as disposable towelettes or other solutions;

(f) Patient comfort items including:

1. Two (2) clean blankets and sheets; and

2. An emesis container or similar substitute; and

(g) Miscellaneous supplies, including:

1. Hand held flashlight capable of providing adequate lighting to assess a scene or a patient away from the aircraft;

2. One (1) sterile obstetrical kit;

3. Instant glucose; and One (1) multipurpose fire extinguisher which meets FAA requirements for each specific aircraft and

configuration.

(2) All aircraft shall have a stretcher or litter with:

(a) Head-raising capabilities;

(b) An FAA approved aircraft-specific mechanism for securing the stretcher or litter in the aircraft during transit; and

(c) An FAA approved aircraft-specific patient to stretcher securing mechanism.

(3) Cleaning materials shall be available, including:

(a) Hospital type disinfectants;

(b) Glass or multisurface cleaner;

(c) Trash bags for disposal of nonbiohazard waste materials;

(d) Biohazard bags for the disposal of biohazard waste; and

(e) Environment, terrain, and mission-specific rescue and survival supplies; and

(4) Current expiration dates shall be required for any item that carries an expiration date.

#### Section 10. Advanced Life Support Equipment and Supplies.

(1) All ALS providers shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board.

(2) In addition to the BLS equipment required in Section 9 of this administrative regulation, an ALS provider shall carry on each aircraft and maintain in fully-operational order, supplies and equipment required by the providers protocols, including as a minimum:

(a) Endotracheal intubation equipment consisting of:

1. Laryngoscope handle;

2. Various laryngoscope blades in adult, pediatric, and infant sizes;

3. Extra batteries and bulbs for handles or blades;

4. A minimum of seven (7) different sizes of endotracheal tubes for oral and nasal placement in adult, pediatric, and infant sizes;

5. Equipment necessary to perform emergency cricothyrotomy;

6. Alternative airway device to include at least one (1) of the following:

a. LMA;

b. Combitube;

c. King Airway; or

d. Additional alternative airway device as approved by the service medical director;

7. End tidal carbon dioxide detection devices, including:

a. A Capnography device that provides continuous waveform and digital readout of end tidal CO<sub>2</sub>; and

b. A disposable colorimetric device;

8. Stylettes in adult and pediatric sizes;

9. Magill forceps in adult and pediatric sizes;

10. One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes; and

11. Water soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

(b) A portable monitor defibrillator that:

1. Is capable of displaying a visual display of cardiac electrical activity;

2. Is capable of providing a hard copy of cardiac electrical activity measure;

3. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;

4. Is capable of providing external cardiac pacing;

5. Has adult and pediatric external paddle electrodes or pads, capable of utilization for immediate monitoring of heart activity and delivery of counter shock in both the adult and pediatric patient;

6. Is capable of being operated from internal rechargeable batteries;

7. Has synchronized counter-shock capability for cardioversion; and

8. Has a patient monitoring cable with:

a. Electrode paste or gel or equivalent;

b. Electrode pads or equivalent for use with the patient monitoring cable; and

c. One (1) additional roll of paper for hard copy printout;

(c) Pulse oximeter;

- (d) Mechanical ventilation device;
  - (e) Sterile, disposable needles, in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the providers' patient treatment protocols;
  - (f) Disposable syringes in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the providers' patient treatment protocols;
  - (g) Restriction band appropriate for use with venipuncture procedure;
  - (h) Dextrostix or equivalent for the measure of blood glucose levels;
  - (i) Disposable, individually-packaged antiseptic wipes;
  - (j) Intravenous fluids as required by the provider's protocol, with macrodrip and microdrip fluid sets, extension sets and accessory items including over-the-needle catheter devices in sizes fourteen (14) to twenty-four (24) gauge;
  - (k) Intraosseous needles; and
  - (l) Pediatric drug dosage tape or equivalent that provides easy reference for pediatric and infant treatment and drug dosages.
- (3) An ALS provider shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.
- (4) Controlled drugs shall be stored in a locked storage box in a locked compartment on the aircraft. A provider that stores and utilizes controlled substances shall show proof of having submitted the provider's protocols to the Cabinet for Health Services' Drug Control Branch.
- (5) A provider may maintain other supplies or equipment that are required to carry out its protocols as approved by the board.
- (6) Current expiration dates shall be required for any item that carries an expiration date.
- (7) Drugs and fluids maintained on the aircraft shall be stored based on manufacturer's recommendations.

Section 11. Specialty Care Equipment. A provider may maintain other equipment specified by the medical director if needed for the transport of neonates or other special needs patients.

Section 12. Medical Directors.

- (1) All providers of air ambulance services shall have a medical director.
- (2) Medical directors shall meet the requirements as set forth in 202 KAR 7:801.

Section 13. Request for Waiver.

- (1) A provider licensed or contemplating licensure under this administrative regulation may make a written request to the board for certain provisions of this administrative regulation to be waived.
- (2) A request shall justify that a proposed waiver, if approved, shall not jeopardize the quality of patient care or public safety.
- (3) The board may approve a request based on at least one (1) of the following:
  - (a) Circumstances where public health and safety is a factor;
  - (b) Extenuating or mitigating circumstances that warrant consideration to assure the delivery of adequate emergency medical services;
  - (c) Substitution of equipment authorized by this administrative regulation; or
  - (d) Testing of new procedures, techniques, or equipment in a pilot study authorized by the board.
- (4) The board shall establish time limits and conditions on all waivers.

Section 14. Exemptions from Regulations.

- (1) The following situations shall be exempt from the provisions of this administrative regulation:
  - (a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);
  - (b) An aircraft serving as an ambulance during a disaster or major catastrophe; or
  - (c) An aircraft operated by the United States government on property owned by the United States government.

(2) In addition, the following out-of-state providers shall be exempt from the provisions of this administrative regulation:

- (a) An aircraft licensed by another state that is transporting a patient from out of state to a Kentucky medical facility or other location in Kentucky;
- (b) An aircraft licensed by another state that is transporting a patient from out of state through Kentucky to another location out of state; and
- (c) An aircraft licensed in an adjoining state that responds to a mutual aid request from a Kentucky licensed provider for emergency assistance if the out-of-state service is the closest service appropriately capable of responding to the request or if Kentucky licensed providers:
  - 1. Are unavailable;
  - 2. Have already responded; or
  - 3. Are physically unable to reach the incident.

Section 15. Public Notice of Negative Action. The board office shall cause to be published, in the KBEMS News or similar publication of the board, or otherwise disseminate, the name of an ambulance provider that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

Section 16. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) Form EMS-8A, "Kentucky Emergency Medical Services Ambulance Run Report", 9/98;
  - (b) Form EMS-8B, "Kentucky Emergency Medical Services Ambulance Run Report", 9/98;
  - (c) Form EMS-1, "Kentucky Application for Ambulance Service Licensing", 6/96; and
  - (d) "Air Medical Intake Flow Chart", 10/2008.
- (2) This material may be inspected, copied, or obtained, 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[300 N. Main Street, Versailles, Kentucky 40383], Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN R. HOLDER, Chair

APPROVED BY AGENCY: April 14, 2023

FILED WITH LRC: May 15, 2023 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2023, at 1:00 p.m. Eastern Time, at the Kentucky Board of Emergency Medical Services, 500 Mero Street, 5th Floor 5SE32, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 June 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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](mailto:administrativeregulations@wgmfirm.com).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John K. Wood

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services system and the practice of emergency medical services, except those functions regulated by the Board of Medical Licensure or the Cabinet for

Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of air ambulance providers. This administrative regulation establishes minimum licensing requirements for air ambulance providers.

(b) The necessity of this administrative regulation: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services system and the practice of emergency medical services, except those functions regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of air ambulance providers. This administrative regulation is necessary to establish minimum licensing requirements for air ambulance providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020 and KRS 311A.030 by establishing minimum licensing requirements for air ambulance providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services system and the practice of emergency medical services, except those functions regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of air ambulance providers. This administrative regulation assists in the effective administration of the foregoing statutes by establishing minimum licensing requirements for air ambulance providers.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the requirement that all aircraft licensed and based in Kentucky and providing ALS care have a paramedic on-board the aircraft. Instead, all aircraft licensed in Kentucky will be required to have on-board, at a minimum, either (1) a paramedic and a registered nurse, (2) two registered nurses, or (3) a physician and a registered nurse.

(b) The necessity of the amendment to this administrative regulation: There remains a shortage of paramedics throughout the Commonwealth. This amendment is necessary to allow air ambulances to operate without having a paramedic on-board.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020 and KRS 311A.030 by establishing minimum licensing requirements for air ambulance providers.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services system and the practice of emergency medical services, except those functions regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of air ambulance providers. This amendment will assist in the effective administration of the foregoing statutes by establishing minimum licensing requirements for air ambulance providers.

(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 the Kentucky Board of Emergency Medical Services, air ambulances services, and air ambulance services personnel.

(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: To comply with this amendment, air

ambulance services will have to have, at a minimum, either (1) a paramedic and a registered nurse, (2) two registered nurses, or (3) a physician and a registered nurse on-board each of their aircraft when conducting scene flights.

(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): This amendment will benefit air ambulance services and their personnel by allowing air ambulances to operate without having a paramedic on-board.

(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.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding source is necessary 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 will be necessary.

(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 applied to this administrative regulation because this amendment applies equally to all air ambulance services.

#### 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 the Kentucky Board of Emergency Medical Services, air ambulance services, and air ambulance services personnel.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services system and the practice of emergency medical services, except those functions regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of air ambulance providers. This administrative regulation establishes minimum licensing requirements for air ambulance providers.

(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? Administration of this administrative regulation will not require any costs.

(d) How much will it cost to administer this program for subsequent years? Administration of this administrative regulation

will not require any costs.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not require any additional expenditures.

Other Explanation:

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

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

(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.

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amendment)**

**501 KAR 16:310. Pre-execution medical actions.**

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 314.011, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes medical actions to be performed after receipt of the execution order and prior to the execution.

Section 1. Pre-execution Medical Actions after Receipt of Execution Order.

(1) For the fourteen (14) days prior to an execution, or for the remaining days if an execution order is received less than fourteen (14) days prior to an execution:

(a) All medical documentation shall be made in special notes in the condemned person's medical record.

(b) The department shall arrange for nurse visits for the condemned person during each shift daily. The contacts and observations from these nurse visits shall be recorded in the special notes of the medical record referenced in paragraph (a) of this subsection. The nurse notes shall state the presence or absence of signs of physical or emotional distress observed.

(c) A licensed psychologist shall:

1. Personally observe and evaluate the condemned person five (5) days per week on Monday through Friday;

2. Document his or her observations and evaluations in the condemned person's medical record immediately after personal contact with the condemned person;

3. Review the department medical records for the condemned person for:

a. A diagnosis of an intellectual disability as:

(i) Indicated by the criteria in the Diagnostic and Statistical Manual (DSM); or

(ii) Defined by the American Association on Intellectual and Developmental Disabilities (AAIDD); or

b. An IQ test score of seventy-five (75) or lower after adjustment for the applicable standard error of measurement; and

4. If any record is located that meets the criteria in subparagraph 3 of this paragraph, the psychologist shall notify the warden.

(d) The designated medical professional shall review and sign the nursing documentation referenced in paragraph (b) of this subsection daily.

(e) A psychiatrist shall review the nursing documentation referenced in paragraph (b) of this subsection and any other mental health or medical documentation weekly.

(2) For the seven (7) days prior to an execution, or for the remaining days if an execution order is received less than seven (7) days prior to an execution:

(a) A doctor or advanced practice registered nurse shall:

1. Complete a physical examination; and

2. Place the documentation of the physical in the condemned person's medical record upon completion of the documentation.

(b) A psychiatric interview and evaluation to assess for signs of insanity shall be:

1. Completed by a licensed psychiatrist or a licensed advanced practice registered nurse (APRN) certified in a psychiatric mental health population focus;

2. Placed in the condemned person's medical record; and

3. Sent to the warden.

(3) The designated medical professional shall:

(a) Personally observe and evaluate the condemned person's medical condition at least twice on nonconsecutive days; and

(b) Document his or her observations and evaluations in the special notes of the condemned person's medical record immediately after personal contact with the condemned person.

(4) All Kentucky State Penitentiary medical and mental health staff shall be instructed to immediately notify the warden and the designated professionals of any change in the condemned person's medical or psychiatric condition.

Section 2. Pregnancy Testing for Female Condemned Persons.

(1) If the condemned person is female, a pregnancy test shall be administered.

(2) A pregnancy test shall be administered at least seven (7) days prior to the scheduled date of execution, unless the execution order is received less than seven (7) days prior to the scheduled date of execution.

(3) If the execution order is received less than seven (7) days prior to the scheduled date of execution, a pregnancy test shall be administered as soon as practicable.

(4) If a pregnancy test is positive, then the department shall:

(a) Give notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate that the condemned person is pregnant; and

(b) Suspend the execution pursuant to KRS 431.240(2).

Section 3. Insanity Issues.

(1) If the warden receives information from medical or mental health staff that the condemned person exhibits signs or symptoms indicating that he may be insane as defined in KRS 431.213(2), the warden shall inform the designated medical professional.

(2) If the designated medical professional receives information from the warden or department medical or mental health staff, he

shall determine:

- (a) The source of the information; and
- (b) If the information is not from the department psychiatrist, whether it is sufficient to indicate that an additional psychiatric evaluation needs to be performed on the condemned person.
- (3) The designated medical professional shall order a psychiatric evaluation if he determines one is needed.
- (4) If a department psychiatric evaluation determines that the condemned person may be insane as defined in KRS 431.213(2), the department shall:
  - (a) Give notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate that the condemned person appears to be insane; and
  - (b) Suspend the execution pursuant to KRS 431.240(2) to allow procedures consistent with KRS 431.2135.

Section 4. Serious Intellectual Disability. If the warden is notified by the psychologist described in Section 1(1)(c) of this administrative regulation concerning ~~[a diagnosis of]~~ an intellectual disability or an IQ test score of seventy-five (75) or less for the condemned person after adjustment for the applicable standard error of measurement, the:

- (1) Warden shall notify the Commissioner; ~~and~~
- (2) Commissioner shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person of the record located ~~[- The notice shall state that a court order is required for the execution to be suspended.]; and~~
- (3) Commissioner shall suspend the execution pursuant to KRS 532.140 to allow procedures consistent with KRS 532.135.

Section 5. Execution Substances. The warden shall:

- (1) Notify medical staff and the ambulance service of the substances that may be used for the execution so that planning can be done in case of suspension of the execution after the drugs have been administered; and
- (2) Direct medical staff to review the medications of the condemned person for a potential adverse reaction to the substances.

KERRY HARVEY, Secretary

APPROVED BY AGENCY: May 10, 2023

FILED WITH LRC: May 12, 2023 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 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 July 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 regulation establishes medical actions to be performed after receipt of the execution order and prior to the execution of a condemned inmate.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the Department of

Corrections execution protocol compliance with constitutional and statutory requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the Department of Corrections execution protocol to be compliant with statutory and constitutional requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will require a suspension of an execution in the event the Department of Corrections discovers a diagnosis or specific signs of an intellectual disability during the pre-execution medical actions.

(b) The necessity of the amendment to this administrative regulation: The amendment to the administrative regulation is necessary because of constitutional requirements related to the execution of condemned inmates developed by recent Supreme Court of the United States and Supreme Court of Kentucky case law.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the regulation conforms with the authorizing statutes because KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions, and the Department of Corrections is a division of the Justice and Public Safety Cabinet.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the Justice and Public Safety Cabinet, Department of Corrections effectively administer the death penalty as established by KRS 431.220 and ensures that it is administered in a way that complies with constitutional requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect condemned inmates, their attorneys, judges with sentences of death in their circuits, and employees of the Governor's Office, the Attorney General's Office, the Department of Public Advocacy, and the Department of Corrections involved with criminal sentences of death.

(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 Department of Corrections will be responsible for ensuring pre-execution medical actions are completed and the Warden of the Kentucky State Penitentiary is notified in the event a record of a diagnosis or specific signs of a serious intellectual disability is discovered during the pre-execution medical actions. The Commissioner of the Department of Corrections will be responsible for suspending the execution upon notification of the discovery of a diagnosis or specific signs of an intellectual disability. The condemned person or the condemned person's counsel as well as the Governor's Office, the Attorney General's Office, and judges will be responsible for taking the appropriate steps to litigate whether such an intellectual disability exists.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulation does not include any requirements of the entities affected that would exact a cost beyond the time required to be compliant.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Each of the parties named in question (3) will benefit by ensuring that no seriously intellectually disabled individual will be executed.

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

(a) Initially: The Department's medical services are under contract at a rate of \$17.36 per inmate per day. Most costs involved with execution result from statutes.

(b) On a continuing basis: Medical costs typically rise between 5% and 7% annually, but this is not a result of the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Appropriations of General Funds to the Department of Corrections

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation amendment will not require an increase in fees or funding for implementation. An increase in funding may be necessary for annual increases in medical costs and staffing costs, but no new costs are expected to result from the implementation of the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not appropriate in this instance because the regulation and its impact will not disproportionately impact any particular class regulated entity.

#### 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? Members of the judicial branch including courts and judges with sentences of death in their circuits, as well as members of the executive branch including employees of the Governor's Office, the Attorney General's Office, the Department of Public Advocacy, and the Department of Corrections involved with criminal sentences of death 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 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions, and the Department of Corrections is a division of the Justice and Public Safety Cabinet. The death penalty is established by KRS 431.220.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department's medical cost per inmate per day is currently \$17.36. This administrative regulation should not cause any additional medical costs.

(d) How much will it cost to administer this program for subsequent years? Cost will depend on the contracted rate for medical services, which typically increases by 5% to 7% annually. The Department does not expect to incur any additional costs other than the current medical contract costs already incurred.

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 expected.

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

(c) How much will it cost the regulated entities for the first year? The current medical contract rate of \$17.36 per inmate per day are anticipated.

(d) How much will it cost the regulated entities for subsequent years? Medical costs typically rise between 5% and 7% annually, but this is not a result of the amendment to this administrative regulation.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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

##### 505 KAR 1:010. Definitions.

RELATES TO: KRS 15A.065, 15A.067, 15A.305, 200.080-200.120, Chapters 600-645, 500 KAR 13:020[15A.300]

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.305, 158.281, 200.115, 197.045, 605.035, 605.150, 635.095, 635.100(7), 640.120, 645.250[15A.300]

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.[15A.300 requires the Department of Juvenile Justice to promulgate administrative regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant program.] This administrative regulation defines terms used in[sets forth definitions that apply to] 505 KAR Chapter 1.

##### Section 1. Definitions.

(1) "Absent without leave" or "AWOL" means a juvenile who is absent without permission from an alternative to detention placement or a DJJ probated or committed public offender or a youthful offender who is absent without permission while on conditions of probation, conditions awaiting placement, or who violates the terms or conditions of supervised placement.

(2) "ADO" means Administrative Duty Officer.

(3) "Administrative transfer request" or "ATR" means a request for consideration of change in placement for any juvenile in out-of-home placement.

(4) "Aftercare" means a continuum of planned supervision, schedules, activities, and services coordinated for or provided to a

juvenile who has been released from a group home or private child care provider and who is being integrated into a local community setting.

(5) "Aggressive behavior" means behavior or acting out that could lead to the infliction of harm or injury to self, others, or property.

(6) "Alternative to Secure Detention Program" or "ATD" means any resource that provides a less restrictive environment than secure detention, such as emergency shelter care, a court resource home, a day reporting center, or home detention.

(7) "Anniversary date" means the date sentenced, by which eligibility for meritorious good time shall be reviewed.

(8) "Career and technical education" means education or training in skilled trades, applied sciences, modern technologies, and career preparation offered or approved by the department.

(9) "Caregiver" means a guardian or other person exercising custodial control or supervision of a juvenile.

(10) "Case management" means a collaborative process to coordinate services and supervision for the family unit. Components of case management include assessment, case planning, resource linkage, monitoring, documentation, advocacy, promoting family strengths, and engaging the family.

(11) "Case plan" means a written document that builds a plan for supervision and services that targets the risk and need factors identified in the juvenile's Criminogenic Needs Questionnaire and Risk and Criminogenic Needs Assessment and involves the juvenile, family, service providers, and natural supports. The plan shall include the goals to be pursued, the specific roles of the participants in carrying out the plan, and the specific timetable for completion of the plan.

(12) "Cavity search" means a manual or instrument inspection of a person's anal, vaginal or other body cavity by trained medical personnel.

(13) "Chain of custody" means documented accountability for the custody of evidence from the moment it reaches the staff's custody until the moment it is presented in court, transferred, or destroyed.

(14) "Chemical agent" means non-lethal gases including Chlorobenzalmalononitrile (CS) gas and Oleoresin Capsicum (OC) gas, spray, and pepper ball delivery methods; and hexachloroethane (HC) smoke and similar chemicals used to control individuals or crowds. This does not include chloroacetophenone or hydrogen cyanide (CN) (chemical mace), which is not authorized for use within DJJ or for training.

(15) "Child Find" means a component of the Individuals with Disabilities Education Improvement Act 2004 that requires states and local education agencies to identify, locate, and evaluate all children with disabilities residing in the state, regardless of the severity of their disability, who are in need of special education and related services as described by 34 C.F.R. §300.111.

(16) "Chronic program disruption" means a pattern of behavior that threatens the safety and security of the facility, self, or others where less restrictive responses have failed to modify the behavior.

(17) "Classification" means a process to determine the risks, needs, and requirements of a juvenile.

(18) "Classification placement" means the out-of-home placement of a committed juvenile as determined by the department's Classification Branch Placement Services.

(19) "Cognitive behavioral therapy" means using treatment techniques emphasizing the role of thoughts, feelings, and behaviors in a person's functioning and well-being, helping a juvenile recognize their problematic thoughts, feelings, and behaviors and learn alternative ways to cope and prevent relapse.

(20) "Commissioner" means the commissioner of the department[ of Juvenile Justice].

(21) "Commissioner's warrant" means a document issued by the department directing that a juvenile be taken into custody.

(22) "Commitment" means an order by a court ordering a juvenile to the care, custody, and treatment of an agency or private or state institution maintained for such purpose.

(23)[(2)] "Community Juvenile Justice Partnership Grant Program" means the grant program utilizing state general funds for a local community to support the development of a prevention

program.

(24)[(3)] "Comprehensive plan" means the plan developed and adopted by the council, and approved by the commissioner, that directs the development and funding of programs and initiatives of the council for a designated period of time.

(25) "Conductive energy device" means a device that functions by applying electrical impulses to the receiver, causing involuntary muscle contractions and temporary immobilization.

(26) "Consequence" means suspension of privileges or behavioral penalty issued due to a negative behavior that is being displayed or an infraction of the facility's rules.

(27) "Contraband" is defined by KRS 520.010(1) and includes tobacco, lighters, matches, pins, needles, sewing equipment, aerosol cans, toxic cosmetics (such as nail polish remover), modeling glue, cleaning fluids, paints, razors, tools, ropes, chains, extremely toxic house plants, broken articles, vaping articles or supplies, inappropriate photos or depictions (such as nudity, sexual content, or gang signs or symbols), drug paraphernalia as defined by KRS 218A.500, and any other item used to subvert security measures, assist in an escape event, or items identified in writing by the facility or program to the juvenile.

(28)[(4)] "Council" means the local juvenile delinquency prevention council whose members are appointed by the Commissioner of the Department of Juvenile Justice.

(29) "Criminogenic Needs Questionnaire" or "Needs-Q" means a tool that identifies dynamic or changeable risk factors, called criminogenic needs, that contribute to the juvenile's likelihood of reoffending which are to be utilized in case planning allowing for the targeting of treatment interventions for the juvenile and family in order to reduce recidivism.

(30) "Critical incident" means a sudden, unexpected occurrence that puts a person's safety at risk. This incident falls outside of the range of a day-to-day operations. If it goes unaddressed, a critical incident may lead to injury or death.

(31) "Dangerous contraband" is defined by KRS 520.010(3) and means contraband that is capable of endangering the safety or security of a facility or persons therein, including saws, files, and similar metal cutting instruments, any controlled substance, any quantity of an alcoholic beverage, any quantity of marijuana, THC delta-8, or THC delta-9, dangerous instruments, and deadly weapons as defined by KRS 500.080. The definition shall not include the parts of the human body portion of the definition of dangerous instrument.

(32) "Dangerous instrument" is defined by KRS 500.080(3).

(33) "Day release" means both escorted and unescorted leave into the community of less than twenty-four (24) hours duration from placement.

(34) "Day treatment" means a community-based treatment program for a juvenile whose behavior precludes participation in a regular school.

(35) "Deadly weapon" is defined by KRS 500.080(4).

(36)[(5)] "Department" or "DJJ" means the Department of Juvenile Justice.

(37) "DCBS" means Department of Community Based Services.

(38) "Detention facility" is defined by KRS 520.010(4).

(39) "Detention Alternative Coordinator" or "DAC" means a person employed by the Department of Juvenile Justice that is responsible for the development of alternatives to secure detention programs, screening of juveniles to determine who is appropriate for non-secure detention, and oversight of the juveniles placed in these programs.

(40) "Detention risk assessment instrument" means the scoring instrument used by the Department of Juvenile Justice to determine whether a juvenile should be placed in secure, non-secure, or home detention care.

(41) "Discrimination" means an abridgement of rights based upon a person's race, color, religion, national origin, sex, age, disability, sexual orientation, gender identity, genetic information, or veteran status.

(42) "Discharge planning conference" means a meeting of the treatment team to finalize the aftercare plan and facilitate the transition of the juvenile to a lower level placement.

(43) "Discipline" means a process to assist the juvenile in learning socially acceptable behaviors through the use of natural and logical consequences.

(44) "Disciplinary review" means a non-judicial administrative procedure to determine if grounds exist to support discipline for a major rule violation.

(45) "Disciplinary Review Committee" means staff designated to conduct a disciplinary review.

(46) "Drug screen" means a preliminary screening of a urine specimen for the presence of selected categories of drugs.

(47) "Drug test" means processing a urine specimen for confirmation of the presence of drugs.

(48) "Educational good time" means a sentence credit for a youthful offender for an educational accomplishment pursuant to KRS 197.045(1)(a)(2) and (3) and approved pursuant to 505 KAR 1:260.

(49) "Electronic monitoring" means a supervision tool that provides electronic information about the juvenile's presence at, or absence from, his or her residence or other location.

(50) "Emergency ATR" or "E-ATR" means an electronic request for transfer that is executed through supervisory channels, without committee review, and subsequently supported with written documentation.

(51) "Emergency furlough" means a furlough that may be granted as a result of a crisis or urgent situation.

(52) "Escape" is defined by KRS 520.010(5).

(53) "Escorted day leave" means the authorized absence of a juvenile from the detention facility into the community for a period of less than 24-hours under direct escort and supervision of the detention center staff.

(54) "Facility" means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals as established in 28 C.F.R. § 115.5.

(55) "Facility restriction" means restricting a juvenile to the confines of the facility or program grounds.

(56) "Family Accountability, Intervention, and Response Team" or "FAIR Team" means the team described in KRS 605.035(1).

(57) "Family engagement" means working with the juvenile's family or caregiver as a partner with the Department of Juvenile Justice in the juvenile's treatment throughout the continuum of care.

(58) "Fixed restraint" means the restraining of an individual to a bed or any stationary object and is commonly referred to as "four/five-point restraint".

(59) "Furlough" means an approved, unescorted leave of absence granted to a juvenile extending beyond a twenty-four (24) hour period from placement.

(60) "FRA" means Facilities Regional Administrator.

(61) "Grievance" means a written statement in which a complaint or dissatisfaction is documented and filed in the department grievance process.

(62) "Grievance officer" means a facility staff person trained by the department Ombudsman and assigned to process juvenile grievances.

(63) "Group home" or "GH" means a residential program emphasizing family-style living in a homelike environment that generally houses eight (8) to ten (10) juveniles.

(64) "Home detention" means ordered supervision of a juvenile in his or her own home with or without electronic monitoring.

(65) "Home evaluation" means an evaluation and subsequent report of findings to determine if supervision in a proposed residence is in the best interest of the juvenile and the community.

(66) "Home state" means the state where the juvenile's legal guardian or custodial agency is located.

(67) "Human trafficking" is defined by KRS 529.010(7).

(68) "Immediate family" means:

(a) Spouse;

(b) Children or stepchildren;

(c) Parents or stepparents;

(d) Grandparents;

(e) Siblings or stepsiblings and their spouses; and

(f) Aunts and uncles and their spouses.

(69) "Incident" means an unusual event or occurrence including:

(a) Use of isolation;

(b) AWOL or escape;

(c) Assault by juvenile on juvenile;

(d) Assault by juvenile on staff;

(e) Major property destruction;

(f) Possession of contraband;

(g) Death of a resident;

(h) Major injury;

(i) Suicide attempt;

(j) Use of restraint;

(k) Taking of hostages;

(l) Medication error;

(m) Rioting or attempting to incite a riot;

(n) Self-harming behavior; or

(o) Other similarly serious occurrence that a DJJ supervisor determines is an incident.

(70) "Individual client record" or "ICR" means the electronic case file, sometimes referred to as "juvenile offender records index" or "JORI", and hard case file of an individual juvenile by which information and documentation is maintained.

(71) "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.

(72) "Individual Learning Plan" or "ILP" means a document usually developed online for a student in middle and high school that focuses on career exploration, assessment of skills and interests, reflection on work related experiences, and the creation of an education plan that includes personal goals and exploration of college and post-secondary opportunities.

(73) "Individual Learning Plan Addendum" or "ILPA" means an educational action plan recorded in Infinite Campus that addresses the changed educational needs of a student based upon entry into or exit from an alternative education program.

(74) "Individual Program Plan" or "IPP" means a plan for a juvenile who struggles to participate in the normal routine of the facility, including a juvenile who is assaultive, has chronic program disruption, or who presents a danger to themselves.

(75) "Individual Treatment Plan" or "ITP" means a written document that takes into consideration the severity of the current offense, the risk and need factors identified in the juvenile's needs assessment, and any additional assessments, and identifies the treatment goals to be pursued, specifies the roles of the participants in carrying out the plan, and specifies a timetable for completion of the plan.

(76) "Intensive room supervision" means constant staff supervision of a juvenile placed in a room with the door open for a period of time.

(77) "Internal Investigations Branch" or "IIB" means the office within the Justice and Public Safety Cabinet that investigates complaints of abuse or a special incident.

(78) "Isolation" means the removal of a juvenile from the general population and placement in a room with the door closed due to a threat to the safety or security of the facility, staff, or juvenile.

(79) "Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 600.020 operated by and under the supervision of any political subdivision.

(80) "JSW" means Juvenile Service Worker.

(81) "Juvenile" means:

(a) Any person probated, committed, or under the supervision of the Department of Juvenile Justice who is subject to the jurisdiction of the juvenile court;

(b) Any youthful offender in the custody of the Department of Juvenile Justice prior to final sentencing; and

(c) Any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail as established in 28 C.F.R. § 115.5.

(82) "Juvenile holding facility" means a physically secure setting which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation



between juvenile and adult facility spatial areas and which is staffed by sufficient certified staff to provide twenty-four (24) hour per day supervision.

(83) [(6)] "Juvenile Justice Advisory Board" means the board created by KRS 15A.065.

(84) "Juvenile sexual offender" is defined by KRS 635.505(2) and includes a juvenile adjudicated for an offense involving sex or of a sexual nature as determined by the sending state or who may be required to register as a sex offender in the sending or receiving state.

(85) "Lateral transfer" means the transfer of a juvenile from one placement to another within the same placement level.

(86) "Least restrictive alternative" is defined in KRS 600.020(38).

(87) "Legal guardian" means a parent or other person who is legally responsible for the care and management of the juvenile.

(88) "Leisure time" means structured free time in which juveniles are given the opportunity to engage in constructive activities such as drawing, writing, reading, or listening to music.

(89) "Level 4 facility" means a maximum security youth development center as set forth in KRS 15A.0652.

(90) "Level of Placement Continuum" means the movement of a juvenile within placement levels.

(91) "Level system" means a three (3) tiered system to provide a structured system for measuring progression toward treatment goals.

(92) [(7)] "Local community" means the area represented by the council.

(93) "Maximum secure facility" means a juvenile residential facility that is physically secure.

(94) "Mechanical restraint" means a device, including handcuffs, anklet, and waist chains, used by department staff to restrict the free movement of a juvenile.

(95) "Meritorious good time" means a sentence credit that may be awarded to a youthful offender pursuant to KRS 197.045(1)(b)(2) for good behavior, performing duties of outstanding importance, or exceptional service in connection with facility operations and programs and pursuant to KRS 197.045(1)(b)(3) in emergencies.

(96) "Natural supports" means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships; friendships reflecting the diversity of the neighborhood and the community; association with fellow students or employees in regular classrooms and work places; and associations developed through participation in clubs, organizations, and other civic activities.

(97) "Needs assessment" means identifying dynamic or changeable risk factors, called criminogenic needs, that contribute to the juvenile's likelihood of reoffending which are to be utilized in case planning allowing for the targeting of treatment interventions for the juvenile and family or caregiver in order to reduce recidivism.

(98) "Office of Career and Technical Education" or "OCTE" means an office within the Kentucky Department of Education that addresses career and technical education as a component of the high school curriculum.

(99) "One-to-one supervision" means an individual staff member is assigned to directly supervise no more than one (1) juvenile with the staff staying within very close proximity to ensure constant supervision and immediate intervention if needed for safety reasons.

(100) "Open entry-open exit" means allowing a juvenile to enter school and exit school as the student enters and exits DJJ custody rather than during normal school semester or quarter schedules.

(101) "Orientation Treatment Plan" or "OTP" means a written document outlining short term objectives and expectations and any problems that require immediate attention and will be in effect until an Individual Treatment Plan is written.

(102) "Out-of-home placement" is defined by KRS 600.020(45).

(103) "Pat-down search" means a running of the hands over

the clothed body of a juvenile by an employee to determine if the individual possesses contraband.

(104) "Physical restraint" means a set of techniques used to physically manage an out of control juvenile.

(105) "Physically secure facility" is defined by KRS 600.020(50).

(106) [(8)] "Plan year" means the period beginning July 1 of the fiscal year for which the commissioner approves a council's comprehensive plan, and ending on June 30 of the fiscal year.

(107) "Public offender" means a juvenile who is accused of an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense.

(108) "Program days" means scheduled days for a student's attendance at a day treatment program.

(109) "Reasonable suspicion" means a less stringent standard than probable cause requiring the authority acting to be able to point to specific and articulable facts that, taken together with rational inferences from those facts, reasonably warrant a belief that an individual is in possession of contraband.

(110) [(9)] "Regional director" means the Department of Juvenile Justice Regional Director for the area in which the council is based.

(111) "Risk assessment" or "Risk and criminogenic needs Assessment" or "RCNA" means a standardized method of data collection that estimates the likelihood that continued delinquent behaviors will occur without intervention and guides intervention planning.

(112) "Room confinement" means a juvenile at a Level 4 facility is placed in a room in a general population unit with the door closed for a period of time not to exceed four (4) hours for the purposes of assisting the juvenile with regaining control of their behavior while avoiding a placement in isolation.

(113) "Room restriction" means temporary removal of a juvenile from the general population to a specified location for behavior management with the door open.

(114) "Runaway" means any child under the juvenile jurisdictional age limit established by their home state who has run away from their residence without consent of the parent, legal guardian, person, or custodial agency entitled to their legal custody.

(115) "Section 504 plan" or "504 plan" means a written statement developed for a student with a disability that includes the provision of regular or special education and related aids and services designed to meet individual educational needs in accordance with the federal regulations issued under 34 C.F.R. sec. 104.33.

(116) "Secure facility" means a facility which is approved for the holding of juveniles and is one which is either staff-secured or locked and which prohibits a juvenile in custody from leaving.

(117) "Secure juvenile detention facility" is defined by KRS 15A.200(4).

(118) "Security staff" means employees primarily responsible for the supervision and control of juveniles in housing units, recreational areas, dining areas, and other program areas of the facility as established in 28 C.F.R. 115.5.

(119) "Security threat group" or "STG" means a formal or informal ongoing group of juveniles varying in organization and composition that have:

(a) Common characteristics, interests, and goals distinguishing them from other juveniles;

(b) A common name or common identifying signs, colors, or symbols;

(c) Individually or collectively engage in or have engaged in a pattern of continued criminal activity or departmental rule violations; and

(d) The potential to act in concert to interrupt the safe, secure, and orderly operations of an institution or any other department facility or pose a threat or potential threat to public safety.

(120) "Sex Offender Registry" means a registration system for adults or youthful offenders who have committed a sex crime and

have been tried and sentenced as adults.

(121) "Sexual abuse" means the behavior described in 28 C.F.R. 115.6.

(122) "Sexual offender" is defined by KRS 17.500(9).

(123) "Shift log" means a written record that documents routine information, emergency situations, and unusual incidents.

(124) "Special incident" is defined by 500 KAR 13:020.

(125) "Special Management Plan" means a specific therapeutic intervention for an identified juvenile to work through difficult treatment issues and develop personal behavior management skills without disrupting the treatment culture of the overall program.

(126) "Specialized programming" means DJJ-operated or, if reasonably available, private child care programs that provide specialized treatment services to identified populations served by the department, which may include sexual offender treatment programs or programs for a juvenile with an identified mental health need such as a juvenile with a severe emotional disability.

(127) "Staff secure" is defined by KRS 600.020(64).

(128) "Staff-secure shelter" means 24-hour custodial care for a juvenile in a non department staff secure setting.

(129) "Status offender" means a juvenile who is accused of committing acts, which if committed by an adult, would not be a crime.

(a) Status offenses shall include:

1. Beyond the control of school or beyond the control of parents;

2. Habitual runaway;

3. Habitual truant; and

4. Alcohol offenses as provided in KRS 244.085.

(b) Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew.

(130) "Step-down" means transition of a juvenile from a higher placement level to a lower placement level.

(131) "Step-up" means transition of a juvenile from a lower placement level to a higher placement level.

(132) "Strip search" means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

(133) "Time out" means the temporary removal of a juvenile from general programming in order for the juvenile to be given a chance to regain control of their behavior.

(134) "Track" means out-of-home timeframes dependent upon type of offense per KRS 15A.0652.

(135) "Treatment team" means department staff and professionals who work collaboratively to assist and aid the juvenile in achieving goals.

(136) "Unescorted day leave" means the authorized absence from the detention center into the community for a period of less than 24-hours without escort or supervision, or under escort and supervision of anyone other than the detention center staff, and may be referred to as furlough by the court system.

(137) "Unfounded" means the charges are false or the employee was not involved in the incident.

(138) "Unit restriction" means restricting a juvenile to a specific program area.

(139) "Vocational education" means soft-skills courses, including resume building, interviewing, and working relations, which contribute to the development of a successful employee.

(140) "Work detail" means daily work and chore assignments related to housekeeping, maintenance of the facility or its grounds, or personal hygiene needs.

(141) "Work experience program" means an organized work training program offered as a component of the educational or career and technical programming with an emphasis on instruction and evaluation rather than task accomplishment.

(142) "Work release" means approved day leave for a juvenile to participate in employment.

(143) "YDC" means youth development center.

(144) "Youth" means a person who is under the custody, control, or supervision of the Department of Juvenile Justice, as a result of a court order or interstate supervision.

(145) "Youth Activity Fund Account" means the financial account holding money owned by the current juvenile population through individual juvenile funds earned through allowance and work experience and money held for the benefit of the juvenile population obtained through work projects, sales of articles produced by juveniles, and private donations.

(146) "Youth Activity Funds" means a sub-ledger of the youth activity fund account that is comprised of donations, profit from work projects, and vending machine commissions and shall solely be used for benefit of the juveniles including group social and recreational pursuits of the juveniles.

(147) "Youth Counselor" means the department staff who is responsible for coordinating treatment within a day treatment, group home, youth development center, or detention facility.

(148) "Youthful offender" is defined by KRS 600.020(72).

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 12 Noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy 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 administrative regulation defines terms used in 505 KAR Chapter 1.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations and provides terms used in the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides definitions to department staff and juveniles concerning procedures that govern operations of facilities with juveniles in the custody 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 adds numerous definitions used in the chapter to an administrative regulation rather than having them incorporated by reference in policies.

(b) The necessity of the amendment to this administrative regulation: The definitions need to be in an administrative regulation since additional administrative regulations using the terms are being promulgated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160,

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 and definitions are needed for the chapter.

(d) How the amendment will assist in the effective administration of the statutes: Definitions are needed for the chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 863 DJJ employees, 1335 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 and juveniles will have to be aware of the definitions involved in the administrative regulations in the chapter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 not anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish 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, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

(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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first

year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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

#### **505 KAR 1:100. [Department of Juvenile Justice Policies and Procedures: admissions]Admissions.**

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.069, 15A.160, [15A.240,] 15A.305[(5)], [200.115,] 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.069, 15A.160, [15A.240,] 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 establishes admission, classification, and notice requirements for juveniles in the custody of the department in juvenile detention centers, youth development centers, and group homes~~[incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program].~~

Section 1. Admission to a Juvenile Detention Center. (1) The agency or individual presenting a juvenile at a secure detention facility shall provide documentation authorizing detention or the juvenile shall not be accepted for admission.

(2) A juvenile with a serious physical injury or medical condition requiring skilled nursing care or who reports or appears to be under the influence of a drug or alcohol shall be denied admission until seen by a medical professional and determined to be medically stable.

(3) A juvenile may be housed to best accommodate their medical needs, if possible.

(4) Juveniles shall be housed so as to reduce known risk factors, including proximity and interaction with co-defendants and others with whom they have emergency protective or other no-contact orders, security threat group assessments, suicide risk, and assaultive and disruptive behavior, and meet identified developmental and individual needs.

(5) DJJ may operate both high-security detention facilities and low-security detention facilities.

(a) The high-security detention centers shall house juveniles fourteen (14) years of age or older that are accused of having committed a Class C felony or above or an unusually violent Class D felony.

(b) The low-security detention centers shall house juveniles thirteen (13) years of age or younger that are accused of having committed a Class C felony or above and all juveniles that are accused of having committed a Class D felony or below.

(6) DJJ may determine and designate the detention center in which a juvenile will be detained based on multiple factors such as safety, security, staffing needs, and the fluctuating number of juveniles and capacities at different locations.

(7) DJJ may transfer a juvenile initially placed at a low-security detention center to a high-security detention center if the juvenile has:

(a) Injured or endangered the life or health of self, another juvenile, or staff at the detention center;

(b) Caused disruption in a detention center;

(c) Smuggled contraband into a detention center;

(d) Escaped from a detention center;

(e) Established a pattern of disruptive behavior not conducive to the operations and procedures of a low-security detention center;

(f) A medical issue; or

(g) Another factor that causes an operational or security issue that can be addressed by the transfer.

(8) DJJ may transfer a juvenile initially placed at a high-security detention center to a low-security detention center if the juvenile has:

(a) A special vulnerability, for example, small stature or low weight compared to other juveniles in the facility;

(b) A medical issue; or

(c) Another factor that causes an operational or security issue that can be addressed by the transfer.

Section 2. Placement of Committed Juveniles. (1) Juveniles committed or sentenced to the Department of Juvenile Justice shall be assessed and placed based upon the least restrictive environment within which the juvenile's treatment needs can safely be met, identifying special needs of a juvenile, and identifying the level of structure and supervision required by a juvenile subject to bed availability.

(2) A juvenile shall be placed according to the classification procedures listed in the Classification and Placement Manual.

Section 3. Juvenile Rights. A written list of rights shall be provided to each juvenile during the admission process and signed by the juvenile. The following rights shall be afforded to all juveniles:

(1) Juveniles shall have the right of access to the courts and confidential contact with attorneys.

(2) Juveniles shall be free from discrimination based on race, color, sex, disability, age, national origin, religion, sexual orientation, gender identity, genetic information, political affiliation,

or veteran status in making administrative decisions and providing access to programs.

(3) The juvenile and parents or guardians shall be involved in the treatment planning process to the maximum extent possible.

(4) The juvenile's records shall be confidential.

(5) Audiovisual or tape recordings used as a part of the juvenile's treatment shall only be used for teaching or therapy purposes with written permission from the juvenile and parents or guardians.

(6) Juveniles may participate in research studies approved by the Commissioner's Office with prior written consent of the juvenile and parents or guardians.

(7) Juveniles shall be treated in a humane manner and shall have the right to be protected from exploitation, neglect, and physical, sexual, and emotional abuse. This shall prohibit corporal punishment, intentional injury, use of intimidation, threatening, or abusive language toward the juvenile, either verbally, in writing, or by gesture. Any suspected abuse or neglect of a juvenile shall be reported in accordance with KRS 620.030.

(8) An academic and vocational program to meet an individual juvenile's needs shall be provided.

(9) Each juvenile detention center, youth development center, and group home shall designate space and time frames for juveniles to voluntarily participate in religious activities. Religious practices that pose a danger to the juvenile, other juveniles, or staff, or that create a danger to the security of the facility shall be prohibited.

(10) Juveniles shall have the right to refuse to participate in uncompensated work assignments unless the work is related to housekeeping or maintenance of the facility or personal hygienic needs, or the work is part of an approved vocational or training program.

(11) Access to medical, dental, and mental health care including twenty-four (24) hour emergency medical services shall be provided for juveniles in juvenile detention centers, youth development centers, and group homes.

(12) Living units shall have adequate lighting, heat, ventilation, and an overall safe environment maintained in compliance with state and local fire and safety laws and regulations.

(13) Juveniles shall be afforded daily opportunity for personal hygiene.

(14) Three meals a day and two snacks shall be provided to each juvenile in residential facilities. Special diets shall be provided when necessary to meet health or religious requirements.

(15) Juveniles shall be afforded the opportunity for a sufficient night's sleep in residential facilities.

(16) Juveniles shall be informed of the right to file a grievance.

(17) Juveniles shall be informed of the procedures for contacting outside investigative units to report any act in which the health or welfare of a resident is harmed or threatened with harm by a facility staff person. The juvenile shall sign an acknowledgment of receipt of these procedures.

(18) Telephones programmed to dial directly to the Internal Investigations Branch shall be installed and kept in good working order in each residential facility. A toll-free number for contacting the IIB shall be available and conspicuously posted in juvenile access areas of group homes and detention facilities. Telephones shall be located in areas that provide maximum availability while preserving program scheduling and services.

(19) Juveniles may also report allegations of dependency, abuse, neglect, and special incidents to the Cabinet for Health and Family Services.

Section 4. Out-of-State Placement. Referrals for out-of-state placement may be initiated if there are no resources within Kentucky to meet the juvenile's specific treatment needs.

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

(a) The "Department of Juvenile Justice Policy and Procedures: Admissions", February 11, 2019, which includes the following: 200Definitions (Amended 2/11/19); 201Classification (Amended 2/11/19); 202Youth Placement Priority (Amended

11/30/18); 203Daily Census and Population (Amended 11/30/18); 204Administrative Transfers (Amended 11/30/18); 205Youth Rights (Amended 2/11/19); 206Youth Access to Outside Investigative Agencies (Amended 11/30/18); and 207Out-of-State Placement (Amended 11/30/18); and

(b) The "Classification and Placement Manual", Amended 2/11/19, is incorporated by reference.

(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/lrcfilings.aspx>.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 12 Noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov), telephone number (502) 564-3279, facsimile number (502) 564-6686.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes admission, classification, and notice requirements for juveniles in the custody of the department in juvenile detention centers, youth development centers, and group homes.

(b) The necessity of this administrative regulation is: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance concerning admissions and classification of juveniles.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation sets admission requirements in the regulation and deletes the policy manual involving admissions from incorporation by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment provides the admission requirements in the regulation for easy reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 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.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the admission requirements in the regulation for easy reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 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: The facilities will need to comply with the admission and classification requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 not anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish 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, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

(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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current

costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] A major economic impact to the agency is not anticipated. 505 KAR 1:100

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

**505 KAR 1:180. [Department of Juvenile Justice Policy and Procedures Manual: day]Day treatment admissions[services].**

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, [15A.210, 200.145,] 605.150, 635.095, 635.100(7), [635.500,] 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 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 establishes the admissions requirements for department day treatment programs. [incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.]

Section 1. General [Incorporation by Reference]. (1) A juvenile's admission to a day treatment program shall depend on the program's capacity.

(2) Prior to a juvenile being placed in a day treatment program, an assessment of the juvenile's individual needs shall be

completed.

(3) The Department of Juvenile Justice shall provide services to juveniles in day treatment programs without discrimination on the basis of race, color, sex, disability, age, national origin, religion, sexual orientation, gender identity, genetic information, political affiliation, or veteran status.

Section 2. Eligibility Criteria for Day Treatment Admissions. (1) Juveniles ages twelve (12) to seventeen (17) shall be eligible for admission consideration for a day treatment program. Juveniles aged eighteen (18) shall only be eligible for admission to a department day treatment program if they are committed to DJJ and have educational needs that can best be met in the day treatment setting.

(2) Admission priority shall be given to juveniles in the following order:

(a) DJJ committed or probated juveniles;

(b) Other juveniles adjudicated on public or status offenses;

(c) Juveniles who are court ordered;

(d) Juveniles referred by the FAIR Team;

(e) Juveniles referred by the Department of Community Based Services; and

(f) School-referred juveniles with severe behavioral issues in the school and in the community.

Section 3. Referral Process. (1) The referring agent shall provide to the Superintendent or designee a written referral for the juvenile that includes the following information:

(a) Identifying information: name, address, date of birth, sex, and race or ethnic origin;

(b) Reason for referral, including presenting problems;

(c) Emergency contact information and date information was gathered;

(d) Name of referring agency or committing authority;

(e) Education and school history;

(f) Social history if applicable;

(g) Special medical problems or needs;

(h) Personal physician, if applicable;

(i) Legal status, including jurisdiction, length, and conditions of placement;

(j) Signature of both interviewee and employee gathering information;

(k) Needs assessment for a juvenile who is probated, committed, or sentenced to the department; and

(l) Any other information pertinent to the juvenile.

(2) A referral that does not include adequate information may be denied by the superintendent.

(3) The referring individual or agency shall be notified of a decision within two (2) weeks of the program receiving a complete referral packet. If the juvenile is not admitted, a written response shall be provided to the referring individual or agency with recommendations for other services or placement options.

(4) Upon written request from the respective juvenile, an explanation of the reason the juvenile was not accepted into the program shall be provided.

Section 4. Accommodations. A juvenile or caregiver may request an accommodation for a disability through any day treatment program staff. A day treatment program shall make accommodation for a juvenile with a disability. The day treatment program shall make appropriate referrals for care and treatment, if needed, and may provide connection to resources if a juvenile has a disability that manifests in behaviors that may present a threat to self or others. The program shall follow each child's Individual Education Plan and 504 Plan.

Section 5. Admission Revocation and Removal from Program. Once a juvenile has been admitted, the superintendent in consultation with the treatment team may revoke the admission approval and request the juvenile's removal from the program. The reason for removal shall be documented, and may include:

(1) Fighting or violent behavior;

(2) Chronic program disruption;

# VOLUME 49, NUMBER 12– JUNE 1, 2023

- (3) Truancy or failure to attend; or  
 (4) Failure to make progress in the program including:  
 (a) Non-productivity;  
 (b) Not completing assigned work;  
 (c) Sleeping; or

(d) Other indicators of lack of progress in the educational program. [The "Department of Juvenile Justice Policy and Procedures Manual: Day Treatment Services", February 11, 2019 is incorporated by reference and includes the following:

1000	Definitions (Added 2/11/19);
1001	Programs and Services (Added 11/08/18);
1002	Admissions (Added 2/11/19);
1003	Intake and Orientation (Added 2/11/19);
1004	Correspondence to the Court System (Added 11/08/18);
1005	Student's Dress Code and Personal Property (Added 2/11/19);
1006	Family and Community Contacts: Telephone and Visitation (Added 11/08/18);
1007	Level System (Added 11/08/18);
1008	Individual Treatment Plan (Added 2/11/19);
1009	Treatment Team Composition, Function, and Responsibility (Added 2/11/19);
1010	Counseling Services (Added 2/11/19);
1011	Family Engagement (Added 11/08/18);
1012	Individual Client Records (Added 2/11/19);
1013	Progress Notes (Added 11/08/18);
1014	Behavior Management (Added 2/11/19);
1015	Graduated Responses, Sanctions, and Incentives (Added 2/11/19);
1016	Restraints (Added 2/11/19);
1017	Searches (Added 2/11/19);
1018	Contraband, Seizure, and Chain of Custody (Added 2/11/19);
1019	Incident Reporting (Added 2/11/19);
1020	Grievance Procedure (Added 2/11/19);
1021	Staff Requirements for the Supervision of Students (Added 2/11/19);
1022	Instructional Staffing (Added 2/11/19);
1023	Educational Records (Added 2/11/19);
1024	Educational Programming, Assessment, and Transition (Added 2/11/19);
1025	Evaluation of Integrated Educational and Vocational Plan (Added 11/08/18);
1026	Technical Education Safety (Added 2/11/19);
1027	Library Services (Added 2/11/19);
1028	Recreation (Added 2/11/19);
1029	Work Programs (Added 2/11/19);
1030	Drug Screening and Testing (Added 2/11/19);
1031	Transportation of Students (Added 2/11/19);
1032	Use of Non-Governmental Funds and Youth Activity Funds Account (Added 2/11/19); and
1033	Youth Council (Added 11/08/18);

(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.]

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy 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 administrative regulation establishes the admissions requirements for department day treatment programs.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning the day treatment admissions.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation sets day treatment program admission requirements in regulation and deletes the policy manual involving day treatment policies from incorporation by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment provides the day treatment program admission requirements in administrative regulation for easy reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 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.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the day treatment program admission requirements in the regulation for easy reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 38 DJJ employees, 156 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: The DJJ staff and juveniles will have to follow the requirements for the day treatment admissions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of day treatment admissions.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 not anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish 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 and school district employees involved in a day treatment program

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

(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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not

anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

##### 810 KAR 4:090. Owners.

RELATES TO: KRS 230.215, 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.310, 230.320(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which horse racing shall be conducted in Kentucky. KRS 230.310 requires any person who desires to participate in racing in Kentucky as an owner to apply to the commission for a license, and authorizes the commission to promulgate administrative regulations pertaining to licensing. KRS 230.320 authorizes the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. The function of this administrative regulation is to outline the requirements for owners to participate in horse racing in Kentucky.

Section 1. Owner's License Required. A horse shall not be raced in this state unless the owner or each of the part owners, except as established in Section 4 of this administrative regulation, has been granted a current owner's license or temporary license by the commission.

Section 2. Owner's License Limitations. (1) A licensed owner or trainer may personally serve as a farrier or jockey for horses he or she owns or are registered as in his or her care, if he or she has received from the stewards a certification of the licensee's fitness as a competent farrier or jockey.

(2) A licensed owner shall:

(a) Own or have under lease a horse eligible to race and be prepared to prove same upon call of the stewards; and

(b) Not engage in an activity directly or indirectly involving the racing performance of horses owned by others.

(3)

(a) Except as established in paragraph (b) of this subsection, a licensed owner shall be at least eighteen (18) years old.

(b) The commission may grant an owner's license to a person less than eighteen (18) years of age who is a son or daughter of a licensed owner in this state, if the parent:

1. Holds an owner's license in this state; and

2. Files with the license application of the minor an agreement whereby the parent assumes responsibility for meeting all financial, contractual, or other obligations relating to racing of the applicant son or daughter.

(4) The commission may deny, suspend, or revoke an owner's license for the spouse or any member of the immediate family or



household of a person who is ineligible to hold an owner's license, unless there is a showing on the part of the applicant or licensed owner that his or her participation in racing as an owner shall in no way circumvent the intent of the administrative regulation by permitting a person, under the control or direction of a person ineligible for an owner's license, to serve in essence as a substitute for the ineligible person.

### Section 3. Ownership Disclosure.

(1) Licensed owners and licensed trainers shall be jointly responsible for making a full disclosure of the entire ownership of each horse in their care.

(2) Disclosure under this section shall identify in writing all persons who directly, or indirectly through a lien, lease partnership, corporate stockholding, syndication, or other joint venture, hold any present or reversionary right, title, or interest in and to a horse, and those persons who by virtue of any form of interest may exercise control over or benefit from the racing of the horse. The degree and time of ownership held by each person shall also be designated.

(3) Disclosure under this section shall be made when registering each horse with the racing secretary upon arrival on association grounds or at time of entry, whichever event occurs first, and shall be revised immediately upon any subsequent change in the ownership.

(4) Disclosure under this section together with all written agreements, and affidavits setting out oral agreements, pertaining to the ownership of or rights to a horse, shall be filed with the stewards.

(5) All documents pertaining to the ownership or lease of a horse filed with the stewards shall be available for public inspection.

(6) The stewards may review the ownership of each horse entered to race. The stewards may determine the validity for racing purposes of all leases, transfers, and agreements pertaining to ownership of a horse and may call for adequate evidence of ownership at any time. The stewards may declare ineligible to race any horse, the ownership or control of which is in question.

### Section 4. Joint Ownership.

(1) ~~No person owning five (5) percent or less of a horse shall be required to obtain a license.~~~~[More than five (5) individual persons shall not be licensed as owners of a single horse.]~~

(2) If more than ~~two (2) individuals~~~~[five (5) individual persons]~~ own interests in a single horse, through a partnership, corporation, syndication, or other joint venture, then those individual persons shall designate a member of the partnership, corporation, syndicate, or joint venture to represent the entire ownership of and be responsible for the horse as the licensed principal owner.

(3) The commission may deny, suspend, or revoke the license of any owner whose ownership of a horse is qualified or limited in part by rights or interests in or to the horse being held or controlled by any other individual person or persons who would be ineligible to be licensed as an owner.

### Section 5. Program Listing of Owners.

(1) Names of all persons licensed as owners of each horse shall be listed in the daily program, subject to subsection (2) of this section.

(2) Up to ten (10) individual owners or entities may be listed in the program as owners of a single horse. If space limitations preclude listing of first names, then at least two (2) initials shall precede surnames.

(3) Stable names, partnerships, corporations, syndicates, or other joint ventures may be listed in the program with the principal owner's name shown parenthetically.~~[Stable names, or corporate names, registered in other racing jurisdictions may be shown parenthetically if program space limitations permit.]~~

(4) Lessees licensed as owners shall be designated on the program as lessees of each leased horse.

### Section 6. Leases.

(1) A horse may be raced under lease with approval of the

stewards, who may suspend or void approval at any time.

(2) A lease shall not be approved by the stewards for racing purposes unless:

(a) Lessee is licensed as an owner and lessor is either licensed as an owner or is eligible to be licensed as an owner;

(b) Each of the signatures of the lessors and lessees on the lease agreement is subscribed and sworn to before a notary public;

(c) Term of the lease is no less than one (1) year, unless sooner terminated by claim or retirement of the horse;

(d) Conditions of the lease specify whether or not the horse can be entered in a race to be claimed. If agreeable to lessor that the horse may be entered in a claiming race, then the lease shall specify the minimum price for which the horse may be entered and the name of the payee of the claiming price;

(e) Conditions of the lease specify that upon claim of the horse, the lease shall terminate and all rights in and to the horse shall pass to claimant as a bona fide purchaser; and

(f) After reviewing the full ownership of the leased horse, and the interests of all persons involved in the lease and the term and conditions of the lease, the stewards in their discretion find that the lease:

1. Completely divests lessors or sublessors of further control or direction of the racing performance of the horse while under lease; and

2. The resultant program listing of lessee shall not mislead the betting public by reason of the absence in the program listing of the name of a person or persons possessing a beneficial interest in the leased horse.

### Section 7. Thoroughbred Racing Colors.

(1) Thoroughbred owners shall be responsible for designing and providing individual racing colors, consisting of jackets and caps of distinctive color and pattern to be worn by jockeys during a race.

(2) The stewards may refuse to permit the use of racing colors that include advertising, or promotions, symbols or words, or that otherwise, in the opinion of the commission, are not in keeping with the traditions of the turf.

(3) A thoroughbred shall not be raced in racing colors other than those registered in the name of the horse's owner without special permission of the stewards. If an owner races two (2) or more horses in the same race, jackets shall be identical while caps may be varied in color or design.

(4) Owners and trainers shall be jointly responsible for the condition of racing colors, ensuring~~[insuring]~~ that they are neat, clean, and in good repair, and that an adequate number of sets of racing colors are placed in the care of the clerk of scales.

(5) The clerk of scales and the valet serving a jockey shall be jointly responsible for having the correct jacket and cap on each rider upon leaving the jockey room for the paddock.

### Section 8. Authorized Agent.

(1) A licensed owner may, as a principal, authorize any person, as an agent, to act on the owner's behalf in all matters pertaining to racing in this state and ownership of horses on association grounds.

(2) A licensed owner shall be jointly liable and responsible with his or her licensed authorized agent for all acts and omissions of the authorized agent in a racing matter.

Section 9. Suspension. A horse owned wholly or in part by an owner whose license has been suspended shall not be permitted to race during suspension.

### Section 10. Partnerships.

(1) If requested by the stewards or the commission, partnerships~~[Partnerships]~~ that own or control a present or reversionary interest in a horse to be raced shall file partnership papers with an owner's license application and shall set forth:~~[shall register with the commission.]~~

(2) ~~Partnership papers shall be filed with an owner's license application and shall set forth:]~~

(a) The name and address of every person having an interest

in the horse involved;

- (b) The relative proportion of the interests;
- (c) To whom winnings are payable;
- (d) In whose name the horse shall run;
- (e) With whom the power of entry and declaration rests;
- (f) The terms of any contingency, lease, or any other arrangement; and
- (g) The names of the horses involved.

(2) [(3)] All partnership registrations shall be signed by the principal partner or by his or her authorized agent.

(3) [(4)] Any alteration in a recorded partnership shall be reported in writing to the commission and signed by all the partners, or their authorized agent.

(4) [(5)] All the parties in a partnership and each of them shall be jointly and severally liable for all stakes, fees, and other obligations.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: May 10, 2023

FILED WITH LRC: May 12, 2023 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 21, 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 July 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, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the requirements and responsibilities imposed upon horse owners who participate in racing in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth the rules and requirements to participate as a horse owner in horse racing in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.310 authorizes the Commission to promulgate administrative regulations governing the licensing of participants in horse racing, including horse owners.

(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 statutes by setting forth owner requirements that ensure and enhance the integrity of racing in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The primary proposed changes are summarized as follows: Removes language from the Joint Ownership section limiting the number of individual persons that can be licensed as owners of a single horse. Amends language under the Joint Ownership section such that if more than two (2) individuals own an interest in a single

horse, then those individuals shall designate one of the individual owners to represent the entire ownership group and be responsible for the horse as the licensed principal owner. Adds language to the Joint Ownership section that no person owning five percent (5%) or less of a horse shall be required to obtain a license. Amends language under the Program Listing of Owners section to allow for up to ten (10) individual owners or entities to be listed in the program as owners of a single horse. Stable names, partnerships, corporations, syndicates, or other joint ventures may be listed in the program with the principal owner's name shown parenthetically. Adds language to the Leases section to clarify that a lease shall not be approved by the stewards for racing purposes unless the lessor is licensed as an owner or is eligible to obtain an owner's license. Amends language under the Partnerships section such that partnership papers shall be filed with an owner's license application if requested by the stewards or the commission.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to clarify licensing requirements and allow for more owners to be licensed and listed in racing programs.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.310 authorizes the Commission to promulgate administrative regulations governing the licensing of participants in horse racing, including horse owners.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow more owners to be licensed and listed in racing programs, thus potentially increasing licensing revenue and horse ownership in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KHRC is affected by this regulation. In 2017, the Commission issued approximately 7,000 licenses to horse owners participating in racing. This figure is consistent from year to year. Our licensed associations will have more flexibility to include additional owner names in racing programs.

(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: Horse owners desiring the participate in horse racing in Kentucky will be required to obtain a license and adhere to the requirements of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A Thoroughbred owner's license costs \$150. A Standardbred owner's license costs \$125. An owner's license for a Quarter Horse or other horse costs \$35.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Horse owners will benefit from clear licensing conditions. More people will be able to be listed in racing programs as owners of horses.

(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 amendment.

(b) On a continuing basis: There is no continuing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any costs incident to the issuance of licenses will be funded through the Commission's budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the amended 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 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, KRS 230.310, KRS 230.360

(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 may generate additional revenue for state government for its first year, as a result of more licenses being issued. This regulation will not generate additional revenue for local governments during its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation may generate additional revenue for state government for subsequent years, as a result of more licenses being issued. This regulation will not generate additional revenue for local governments during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional 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 additional funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Some revenue may be generated for state government, as a result of more licenses being issued.

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 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 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 regulation will not cost regulated entities during the first year.

(d) How much will it cost the regulated entities for subsequent years? This regulation will not cost 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 (+/-): \$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)] As set forth above, this regulation will not have a major economic impact on state government, local government, or regulated entities.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(Amendment)**

**810 KAR 7:030. Kentucky Thoroughbred Development Fund.**

RELATES TO: KRS 138.510, 230.215, 230.225(5)(c), 230.400

STATUTORY AUTHORITY: KRS 230.215(2), 230.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(1) declares that it is the policy and intent of the Commonwealth to foster and to encourage the business of legitimate horse racing with pari-mutuel wagering thereon in the Commonwealth on the highest possible plane. KRS 230.215(2) vests in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth and to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality. KRS 230.225(5)(c) states that the racing commission shall be responsible for recommending tax incentives and implementing incentive programs to ensure the strength and growth of the equine industry. KRS 230.400 establishes the Kentucky Thoroughbred Development Fund and requires the Kentucky Horse Racing Commission to promulgate administrative regulations as may be necessary to carry out its provisions and purposes. This administrative regulation establishes standards for eligibility and the administration of payments from the Kentucky Thoroughbred Development Fund.

**Section 1. Definitions.**

~~[(1) "Applicant" means the qualified entity who registers the foal or horse with the KTDF official registrar.]~~

~~[(2) "Historical horse race handle" means monies wagered at a licensed Kentucky association on historical horse races as defined in 810 KAR 2:001.]~~

~~[(3) "Inter-state wagering" means monies wagered from a Kentucky thoroughbred association on thoroughbred races conducted outside of Kentucky.]~~

~~[(4) "Intra-state wagering" means monies wagered at a Kentucky thoroughbred association on thoroughbred races conducted at another Kentucky association.]~~

~~[(1) [(5)] "KTDF" means the Kentucky Thoroughbred Development Fund, as established by KRS 230.400.]~~

~~[(2) "KTDF Advisory Committee" means a five (5) member committee established by KRS 230.400.]~~

~~[(3) [(6)] "KTDF" means the Kentucky Thoroughbred Owners and Breeders, Inc., as the official registrar for the KTDF in accordance with KRS 230.400.]~~

~~[(7) "Live racing handle" means the monies wagered by individuals present on association grounds on thoroughbred races physically conducted on association grounds.]~~

~~[(8) "Nonlive racing handle" means the monies wagered at an association located in Kentucky on thoroughbred races not physically conducted at the association's grounds.]~~

~~[(9) "Official Registrar" means the association recognized and designated as the sole official registrar of the KTDF for the purpose of registering Kentucky thoroughbred stallions and Kentucky bred thoroughbreds in accordance with KRS 230.400.]~~

~~[(4) "Licensed association" means a person or legal entity conducting horse racing pursuant to a license issued under 810 KAR 3:010.]~~

**Section 2. KTDF Monies Earned.**

Money shall be allocated to the credit of each licensed association in the amount the licensed association contributed to the KTDF pursuant to KRS 230.400. [(1) One (1) live thoroughbred association:

(a) Live racing handle. An association conducting live racing shall earn KTDF money in the amount of 0.75 percent of the total

live racing handle pursuant to KRS 138.510(1).

(b) Nonlive racing handle. An association conducting live racing shall earn KTDF money in the amount of two (2) percent of the total nonlive racing handle pursuant to KRS 138.510(2).

(2) More than one (1) live thoroughbred association. Unless there is an agreement among the thoroughbred associations conducting live racing to the contrary, if two (2) or more thoroughbred associations are conducting live racing on the same day, the monies earned from the handle for that day shall be divided as provided by this subsection.

(a) The association conducting the live racing shall earn KTDF money in the amount of seventy-five hundredths (0.75) percent of that association's live racing handle pursuant to KRS 138.510(1).

(b) Intra-state wagering monies shall be allocated to that Kentucky thoroughbred association on which the wagering is placed for purposes of calculating that association's KTDF earnings.

(c) Inter-state wagering monies originating from an association conducting live thoroughbred racing shall be allocated to that association for purposes of calculating that association's KTDF earnings.

(d) Inter-State wagering monies from all other Kentucky associations shall be divided evenly among the associations conducting live racing.

(3) Historical horse race handle. An association offering wagering on historical horse races shall earn KTDF money as provided by KRS 138.510(1).

(4) Unless otherwise stated, all KTDF money earned under this section shall be deposited in the KTDF account for that association.]

### Section 3. KTDF Reconciliation.

(1) Each licensed association shall file with the commission a copy of the pari-mutuel tax form filed with the Department of Revenue, along with a copy of the check submitted for each report. These reports shall be filed weekly.

[(2) Each association shall report to the commission the actual KTDF purse distribution within fifteen (15) calendar days after the last day of a live race meeting.]

(2) [(3)] The commission shall reconcile the weekly reports submitted by the licensed association with the Department of Revenue's reports and deposits on a monthly basis.

(3) [(4)] If at the close of a live race meet, a licensed [an] association has a surplus balance of KTDF monies earned pursuant to KRS 230.400 [for that meet that has not been distributed in actual KTDF purse distribution], then the licensed association may request to distribute a portion of that balance [choose one of the following options to distribute the remaining balance], subject to the recommendation of the KTDF Advisory Committee and the approval of the commission to:

(a) Supplement purses at future live racing meets held by that licensed association; [Use KTDF monies previously earned to supplement purses at future live racing meets held by that association; or]

(b) Fund supplemental purse structures approved by the commission for a previous live racing meet held by the licensed association to the recipients of the original purse allocation; or [Use KTDF monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations.]

(c) Supplement purses at another licensed thoroughbred Kentucky racetrack.

[(5) If at the close of a live race meet, an association offering wagering on historical horse races has a balance of KTDF monies earned from historical horse race wagers that has not been distributed in actual KTDF purse distribution, then the association may distribute a portion of the balance, subject to the recommendation of the KTDF Advisory Committee and the approval of the commission:

(a) To supplement purses at future live racing meets held by that association;

(b) To supplement purses already distributed at the last live racing meet held by the association to the recipients of the original

purse allocations; or

(c) To supplement purses at another licensed thoroughbred Kentucky racetrack.]

(4) [(6)] Reasonable and customary administrative charges for time spent reconciling the KTDF account may be charged by the commission to each licensed association based on the percentage of funds generated by each licensed association for the previous calendar year.

(5) [(7)] A licensed [An] association, at its option, may pay reasonable advertising charges billed to the association by the KTOB from the association's KTDF available balance, provided the advertising charges are consistent with the intent of the KTDF. Approval of any advertising payment shall be subject to the recommendation of the KTDF Advisory Committee and the approval of the commission.

(6) [(8)] Each licensed association shall submit their purses paid reports, advertising invoices, or any other documentation requested by the commission, pertinent to reimbursement, within fifteen (15) calendar days after the last day of a live race meet.

(b) Each licensed association shall sign an acknowledgment [agreement] from the commission stating that it accepts and agrees with the reconciliation prior to the reimbursement of any KTDF funds.

Section 4. Purse Structure. Each licensed association shall submit its KTDF purse structure proposal to the KTDF Advisory Committee for approval at least forty-five (45) days prior to the opening day of the live racing meet. The KTDF Advisory Committee shall review the proposed purse structure and make a recommendation to the commission whether [or not] to approve the proposed purse structure based upon the best interests of Kentucky racing.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: May 10, 2023

FILED WITH LRC: May 12, 2023 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on July 21 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 PM on July 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, Title: General Counsel, Address: 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, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for eligibility and the administration of payments from the Kentucky Thoroughbred Development Fund ("KTDF").

(b) The necessity of this administrative regulation: This regulation is necessary to exercise the statutory authority set forth in KRS 230.400(7). Specifically, this regulation is necessary to establish the eligibility requirements for those desiring to receive distributions from the KTDF.

(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 230.400(7).

(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 mandates in KRS 230.400.

(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 main proposed changes to this regulation are as follows: Removes obsolete definitions and adds new definitions, including for "licensed association" and "KTDF Advisory Committee." Removes obsolete or duplicative language. This ensures that the regulation is consistent with its enabling statute, KRS 230.400. Amends the regulation such that surplus money from live racing and from historical horse races can be treated the same way by the licensed associations. Added language notes money shall be allocated to the credit of each licensed association in the amount the licensed association contributed to the KTDF. Adds language that a licensed association may pay reasonable advertising charges from its available KTDF balance provided the advertising charges are consistent with the intent of the KTDF and approval of any advertising payment shall be subject to the recommendation of the KTDF Advisory Committee and the approval of the commission.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure statutory compliance, remove unnecessary or obsolete language, add language to explain KTDF money allocation, and add clarifying language regarding the use of KTDF money to pay advertising charges.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.400 requires the Kentucky Horse Racing Commission promulgate administrative regulations as may be necessary to carry out the provisions and purposes of the KTDF. This amendment and regulation fulfill that statutory mandate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the effective administration of the KTDF as statutorily required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects Kentucky's licensed racing associations that offer thoroughbred racing and purse supplements, owners of Kentucky-bred thoroughbreds, farm owners and employees, Kentucky veterinarians and equine health care facilities, horse transportation companies, farriers, farmers and suppliers of hay, feed and grain, equine supply companies providing medical sales, daily maintenance care and tack, Kentucky thoroughbred sale companies, equine tourism generating state/local room tax for lodging, gasoline tax on travel and transportation of horses, farm equipment retail stores, and state and local payroll tax generated by the above businesses.

(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: The entities identified in question (3) will not acquire additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with this administrative regulation or amendment, how much will it cost each of the entities: None of the entities identified in (3) will incur any costs in complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the entities identified in (3) will receive direct and indirect benefits of a stronger racing and 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 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: There is no increased cost. The KTDF is funded by the taxes established in KRS 138.510.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: 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. The statutory authority for this administrative regulation is found in KRS 230.400(7).

(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 imposed upon all participants as 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? Although specific dollar estimates cannot be determined, continued growth and participation in the program over subsequent years will increase payroll taxes imposed upon all participants as 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.

(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.

(c) How much will it cost the regulated entities for the first year? This regulation is not anticipated to generate new costs in the first year.

(d) How much will it cost the regulated entities for subsequent years? This regulation is not anticipated to generate additional costs in subsequent years.

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

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 answers to the questions above.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(Amendment)**

**810 KAR 7:060. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund.**

RELATES TO: KRS 138.510, 230.215, 230.225, 230.443, 230.445

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.445

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 and 230.260 authorize the 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 230.445 establishes the Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund and requires the commission to promulgate administrative regulations to carry out the purpose of the statute and to administer the development fund in a manner to promote and aid in the development of the horse industry in Kentucky; upgrade the quality of racing in Kentucky; and to improve the quality of horses bred in Kentucky. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of purses and payments in these races.

**Section 1. Definitions.**

(1) "Broodmare" means a mare that conceives and carries her genetic foal to term.

(2) "Donor mare" means the mare from which an embryo is harvested for the purpose of performing an embryo transfer.

(3) "Fund" means the Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund established by KRS 230.445.

(4) A "horse of racing age" is defined by 810 KAR 4:010.

[4] "Historical horse race handle" means monies wagered at a licensed Kentucky association on historical horse races as defined in 810 KAR 2:001.

(5) "Inter-state wagering" means monies wagered at a Kentucky racing association on Quarter Horse, Paint Horse, Appaloosa, or Arabian races conducted outside of Kentucky.

(6) "Intra-state wagering" means monies wagered at a Kentucky racing association on Quarter Horse, Paint Horse,

Appaloosa, or Arabian races conducted at another Kentucky association.]

[5] [(7)] "Kentucky bred" means a horse that meets the requirements of this administrative regulation and is:

(a) A Quarter Horse registered with the American Quarter Horse Association, or its successor;

(b) An Appaloosa registered with the Appaloosa Horse Club, or its successor;

(c) An Arabian registered with the Arabian Horse Association Registry, or its successor; or

(d) A Paint Horse registered with the American Paint Horse Association, or its successor.

[(8)] "Live racing handle" means the monies wagered by individuals present on association grounds on Quarter Horse, Paint Horse, Appaloosa, or Arabian races physically conducted on that association's grounds.]

[6] [(9)] "Mare" means a broodmare, donor mare, or recipient mare.

[(10)] "Nonlive racing handle" means the monies wagered at an association located in Kentucky on Quarter Horse, Paint Horse, Appaloosa, or Arabian races not physically conducted on that association's grounds.]

(7) [(14)] "Recipient mare" means a mare of any breed who:

(a) Is implanted with an embryo from a donor mare;

(b) Carries the non-genetic foal to term; and

(c) Is implanted with an electronic horse identification microchip that accurately identifies the horse and is compliant with international standards ISO 11784.

Section 2. Advisory Committee. The fund advisory committee shall consist of five (5) members, all of whom shall be Kentucky residents, to be appointed by the chairman of the commission by July 1 of each year. The committee shall consist of the following:

(1) One (1) member of the commission;

(2) One (1) officer or director of a licensed racing association in Kentucky conducting Quarter Horse, Paint Horse, Appaloosa, or Arabian racing;

(3) One (1) owner of a horse nominated to the fund;

(4) One (1) owner of a mare registered with the fund; and

(5) One (1) member of the Kentucky Quarter Horse Racing Association recommended by that organization's board of directors.

**Section 3. Mare Eligibility.**

(1) In order for a foal to be eligible to earn money from the fund, the broodmare or both the donor and recipient mares shall be registered with the fund on or before February 15 of the year of conception. Late registration may be accepted on or before June 15 of the year of conception as provided by subsection (4) of this section. Notwithstanding other provisions of this regulation to the contrary, all registration fees for mares conceiving foals during the 2023 and 2024 breeding seasons shall be waived, and the registration deadlines for each year of conception shall be extended to December 31 of the year of conception, in order to promote field growth. Weanling and all other applicable fees regarding the foals shall remain in effect for all foals, including foals conceived during 2023 and 2024.

(2) In order to be eligible to be registered with the fund, a mare, whether a broodmare, donor mare, or recipient mare, shall reside in Kentucky for a period of no less than 120 days [continuously] from conception or embryo transfer implantation until foaling, unless one (1) of the exceptions established in this subsection is met.

(a) Medical procedure.

1. A medical procedure is required to be performed to protect the health of the mare or the unborn foal that involves an extraordinary medical situation and the owner of the mare desires to have an expert located outside of Kentucky conduct the procedure;

2. The owner of the mare files with the commission a "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside of Kentucky", KHRC 7-060-3, within fourteen (14) days after the mare

leaves Kentucky and provides information related to the procedure as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky;

4. The mare remains under the care of a veterinarian during the entire period of time she is not residing in Kentucky, other than the time during which she is traveling to and from Kentucky;

5. The mare returns to Kentucky following the medical procedure for which her departure was authorized; and

6. The mare is in Kentucky for foaling, as established by documentation provided to the commission;

(b) Racing:

1. The owner of the mare desires to race the mare in a pari-mutuel race that is:

a. Held outside Kentucky; and

b. Sanctioned by the governing body of the jurisdiction in which the race is to be held;

2. The owner of the mare files with the commission a "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside of Kentucky", KHRC 7-060-3, at least fourteen (14) days before the mare leaves Kentucky and provides information relating to the race outside of Kentucky as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky based on the criteria in this paragraph;

4. The mare returns to Kentucky within ten (10) days after the running of the approved race; and

5. The mare is in Kentucky for foaling as established by documentation provided to the commission; or

(c) Auction:

1. The owner of the mare desires to enter her for sale at a catalogued auction for her breed held outside of Kentucky;

2. The owner of the mare files with the commission a "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside of Kentucky", KHRC 7-060-3, at least fourteen (14) days before the mare leaves Kentucky and provides information relating to the auction as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky based on the criteria in this paragraph;

4. The mare returns to Kentucky no later than thirty (30) days after the auction; and

5. The mare is in Kentucky for foaling, as established by documentation provided to the commission.

(3) The owner of a mare approved to leave the state under subsection (2) of this section shall provide the commission with written notification of the mare's return within forty-eight (48) hours of her return.]

(3)(4) A mare shall be registered with the fund by:

(a) Completing and filing with the commission a "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Mare Registration Form", KHRC 7-060-1 and;

(b) Providing the commission with a photocopy of the mare's official breed registration papers from the American Quarter Horse Association, American Paint Horse Association, Appaloosa Horse Club, the Arabian Horse Association Registry, or The Jockey Club or their respective successors, or documentation regarding a recipient mare's electronic horse identification microchip; and

(c) Paying the registration fee as follows:

1. A twenty-five (25) dollar fee for registrations postmarked no later than February 15 of the year of conception; or

2. A \$200 late fee for registrations postmarked after February 15 and no later than June 15 of the year of conception.]

#### Section 4. Nomination.

(1) Except as set forth in subsection (5) of this section, in order for a horse to be eligible to earn money from the fund, it shall be a Kentucky bred as defined in this administrative regulation and shall be nominated to the fund [on or before December 31 of its yearling year] by:

(a) Completing and filing with the commission a "Kentucky

Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Nomination Form", KHRC 7-060-2 and;

(b) Providing the commission with a photocopy of the horse's official breed registration papers from the American Quarter Horse Association, American Paint Horse Association, Appaloosa Horse Club, or the Arabian Horse Association Registry, or their respective successors; and

(c) Paying the nomination fee as follows:

1. A twenty-five (25) dollar fee for nominations postmarked no later than December 31 of the weanling year; or

2. A \$100 fee for nominations postmarked after the weanling year but no later than December 31 of the yearling year.

(2) Except as provided in subsection (5) of this section, nominations postmarked after December 31 of the yearling year shall not be accepted.]

(2)(3) In order for a foal that is the product of an embryo transfer to be eligible to earn monies from the fund, the donor mare and the recipient mare shall be registered as provided in Section 3 of this administrative regulation and shall meet the other requirements of this administrative regulation.

(3)(4) If a registered donor mare produces more than one (1) foal in one (1) breeding season, two (2) genetic foals may be nominated to the fund as determined by the owner of the donor mare.

(4)(5) A horse born before 2024[2017] shall be eligible for nomination to the fund and participate[participating] in races offering monies from the fund. A horse shall be nominated by:

(a) Completing and filing with the commission a "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Nomination Form", KHRC 7-060-2 and;

(b) Paying a nomination fee of \$300; and

(c) Including the following with the nomination form:

1. A photocopy of the official breed registration papers from the American Quarter Horse Association, American Paint Horse Association, Appaloosa Horse Club, or the Arabian Horse Association Registry, or their respective successors;

2. Registration papers showing ownership and demonstrating that the horse was foaled in Kentucky;

3. An official breed registry shipped semen report or a stallion breeders certificate demonstrating that the horse was conceived in Kentucky; and

4. A signed affidavit from the owner of the mare at the time of her pregnancy stating that the mare resided in Kentucky for a period of no less than 120 days from conceptions or embryo transfer implantation until foaling[during the entirety of her pregnancy].

(5)(6) Nothing in this section shall prevent a registered mare from being eligible to race for monies from the fund.

#### Section 5. Monies Allocated[Earned].

(1) Money deposited to the Fund shall be allocated on an equitable basis as determined by the commission, pursuant to KRS 230.445.

(2) In allocating, the commission will consider at least the following factors:

(a) The amount contributed to the Fund by each association;

(b) The amount of handle collected by each association;

(c) The breed or breeds approved for racing in Kentucky; and

(d) The population of horses by breed registered in Kentucky who are registered with the Fund.

(1) One (1) live association.

(a) Live racing handle. An association conducting live racing shall earn monies to be deposited in the fund account for that association in the amount of one (1) percent of the total live racing handle pursuant to KRS 138.510(1).

(b) Nonlive racing handle. An association conducting live racing shall earn monies to be deposited in the fund account for that association in the amount of two (2) percent of the total nonlive racing handle pursuant to KRS 138.510(2).

(2) More than one (1) live association. Unless there is a commission approved agreement among the associations conducting live racing to the contrary, if two (2) or more associations are conducting live Quarter Horse, Paint Horse,

Appaloosa, or Arabian races on the same day, the monies earned from the handle for that day shall be divided as established in this subsection.

~~(a) Live racing handle. An association conducting Quarter Horse, Paint Horse, Appaloosa, or Arabian races shall earn monies to be deposited in the fund account for that association in the amount of one (1) percent of that association's live racing handle pursuant to KRS 138.510(1).~~

~~(b) The intra-state wagering monies shall be allocated to that association on which the wagering is placed for purposes of calculating that association's fund earnings.~~

~~(c) Inter-state wagering monies originating from an association conducting live Quarter Horse, Paint Horse, Appaloosa, or Arabian races shall be allocated to that association for purposes of calculating that association's fund earnings.~~

~~(d) Inter-state wagering monies from all other Kentucky associations shall be divided evenly among the associations conducting live races.~~

~~(3) Historical horse race handle. An association offering wagering on historical horse races shall earn monies to be deposited in the fund account for that association as provided in KRS 138.510(1).]~~

#### Section 6. Distribution of Funds.

(1) Each association shall submit a request to the advisory committee, including the proposed races eligible to receive monies from the fund and the proposed purse structure for those races, at least forty-five (45) days prior to the opening day of the live racing meet.

(2) Unless there is a commission approved proposal to the contrary, the proposed purse structure shall not exceed the total dollars generated by that breed to the association's fund account.

(3) The advisory committee shall review the proposed eligible races and purse structure and make a recommendation whether to approve the proposed races and purse structure to the commission based upon the best interests of Kentucky racing.

(4) Two (2) or more associations conducting Quarter Horse, Paint Horse, Appaloosa, or Arabian racing may request permission from the advisory committee to combine their respective fund monies to supplement purses at one (1) of the associations. The advisory committee shall recommend to the commission whether to approve the request.

#### Section 7. Reconciliation.

(1) Each association shall file weekly with the commission a copy of the pari-mutuel tax form filed with the Department of Revenue, along with a copy of the check submitted for each report.

(2) Each association shall report to the commission the actual purse distribution within fifteen (15) calendar days after the last day of a live race meeting.

(3) The commission shall on a monthly basis reconcile the weekly reports submitted by the association with the Department of Revenue's reports and deposits.

(4) If, at the close of a live race meet, an association has a balance of monies earned for that meet that has not been distributed in actual fund purse distribution, then the association may choose one (1) of the following options to distribute the remaining balance, subject to the recommendation of the advisory committee and the approval of the commission:

(a) Use fund monies previously earned to supplement purses at future live racing meets held by that association; or

(b) Use fund monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations.

(5) If, at the close of a live race meet, an association offering wagering on historical horse races has a balance of fund monies earned from historical horse race wagers that has not been distributed in actual fund purse distribution, then the association may choose one (1) of the following options to distribute a portion of the balance, subject to the recommendation of the advisory committee and the approval of the commission:

(a) Use the historical horse race fund monies previously earned to supplement purses at future live racing meets held by

that association;

(b) Use historical horse race fund monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations; or

(c) Use historical horse race fund monies previously earned to supplement purses at another licensed Kentucky racetrack.

(6) Reasonable and customary administrative charges for time spent reconciling the account may be charged to each association by the commission based on the percentage of funds generated by each association for the previous calendar year.

(7) Each association shall sign an agreement stating that it accepts and agrees with the reconciliation prior to reimbursement of any funds.

#### Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Mare Registration Form", KHRC 7-060-1, 04/2023[11/2018];

(b) "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Nomination Form", KHRC 7-060-2, 04/2023[11/2018]; and

~~[(c) "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside of Kentucky Form", KHRC 7-060-3, 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, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at <http://khrc.ky.gov>.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: May 10, 2023

FILED WITH LRC: May 12, 2023 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 21, 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 July 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](mailto: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 provides the rules governing eligibility for participation in the Kentucky Quarter Horse, Paint Horse, Appaloosa and Arabian Development Fund (the "Fund") and the administration of the Fund.

(b) The necessity of this administrative regulation: KRS 230.445 requires the Kentucky Horse Racing Commission ("KHRC") to promulgate administrative regulations regarding eligibility for participation in the Fund and the administration of the Fund. This regulation fulfills that statutory mandate.

(c) How this administrative regulation conforms to the content



of the authorizing statutes: KRS 230.445 establishes the Fund and requires the KHRC to "use the development fund to promote races and to provide purses for races for horses bred and foaled in the Commonwealth" and to "provide for distribution of money to the credit of the development fund to persons, corporations, or associations operating licensed tracks within Kentucky conducting quarter horse, paint horse, Appaloosa, or Arabian horse racing." This regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of payments from the Fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specific rules for eligibility to earn monies from the Fund and the distribution of monies from the Fund.

(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) Deletes definitions of "historical horse race handle," "inter-state wagering," "intra-state wagering," "live racing handle," and "nonlive racing handle." Under Section 5 – Monies Allocated, language is added to note money deposited to the Fund shall be allocated on an equitable basis as determined by the commission, pursuant to KRS 230.445, and all other language is eliminated from this section. Fund shall be allocated on an equitable basis as determined by the commission, pursuant to KRS 230.445, and all other language is eliminated from this section. (2) Waives all registration fees for mares conceiving foals during the 2023 and 2024 breeding seasons and extends the registration deadlines for each year of conception to December 31 of the year of conception. (3) Removes the requirement for broodmares, donor mares, and recipient mares to remain in Kentucky continuously for 120 days to be eligible and removes potential exceptions that may apply. This amendment changes the eligibility requirement to state that broodmares, donor mares, and recipient mares must reside in Kentucky for a period no less than 120 days from conception or embryo transfer implantation until foaling.

(4) Deletes the "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside Kentucky Form," KHRC 7-060-3.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure statutory compliance, consistency with other Incentives and Development Fund regulations, and change the eligibility and nomination requirements to promote participation in the Fund and field growth.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.445 requires the Kentucky Horse Racing Commission ("KHRC") to promulgate administrative regulations regarding eligibility for participation in the Fund and the administration of the Fund. This regulation fulfills that statutory mandate.

(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 promoting participating in the Fund and fielding growth.

(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 those persons who breed and race Quarter Horses, Paint Horses, Appaloosas and Arabians in conformity with the requirements of the regulation, 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; retail stores; 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 and owners will have more opportunities to participate in the Fund. All other entities identified

in (3) will not acquire any additional responsibilities, but will reap the benefits of a stronger racing and 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 (3) will incur any costs in complying with the amendment. In fact, certain fees are waived for participants during 2023 and 2024.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the entities identified in question (3) will receive direct and indirect financial benefits of a stronger racing and 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 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: This administrative regulation is funded out of the Fund pursuant to KRS 230.445(4). No additional funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The proposed changes to the administrative regulation does not increase fees or funding. The amendment waives all registration fees for mares conceiving foals during the 2023 and 2024 breeding seasons.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The proposed changes to the administrative regulation does not establish any fees or increase any fees, whether directly or indirectly. The amendment waives all registration fees for mares conceiving foals during the 2023 and 2024 breeding seasons.

(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 230.445.

(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? Although specific dollar estimates cannot be determined, continued growth and participation in the Fund over subsequent years 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.

(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.

(c) How much will it cost the regulated entities for the first year? This regulation is not anticipated to generate new costs in the first year.

(d) How much will it cost the regulated entities for subsequent years? This regulation is not anticipated to generate additional costs in subsequent years.

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

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 questions above.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of Inspector General**  
**Division of Health Care**  
**(Amendment)**

**906 KAR 1:210. Health care services agencies.**

RELATES TO: KRS 216.718 – 216.728, 216.785 – 216.793

STATUTORY AUTHORITY: KRS 216.720(2), 216.728(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.720(2) requires the cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A to establish the application process for registration of health care services agencies. KRS 216.728(2) requires the cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A to establish requirements for health care services agencies to submit quarterly reports. This administrative regulation establishes requirements for health care services agency registration and quarterly reporting.

**Section 1. Definitions.**

- (1) "Assisted-living community" is defined by KRS 216.718(1).
- (2) "Cabinet" is defined by KRS 216.718(2).
- (3) "Controlling person" is defined by KRS 216.718(3).
- (4) "Direct care service" is defined by KRS 216.718(4).
- (5) "Permanent direct care staff" is defined by KRS 216.718(5).
- (6) "Health care services agency" is defined by KRS 216.718(6).

(7) "Hospital" is defined by KRS 216.718(7).

(8) "Long-term care facilities" is defined by KRS 216.718(8).

(9) "Temporary direct care staff" is defined by KRS 216.718(9).

**Section 2. Registration.**

(1) A health care services agency that refers temporary direct care staff to assisted-living communities, long-term care facilities, or hospitals in Kentucky shall register with the cabinet as required by KRS 216.720(1).

(2) In accordance with 2023 Ky. Acts ch. 61, sec. 6 (KRS 216.725), the requirements of this administrative regulation shall not apply to the placement of permanent direct care staff.

**Section 3. Application and Fees.**

(1) An applicant for initial registration or annual renewal as a health care services agency shall submit to the Office of Inspector General:

(a) A completed Application for Registration to Operate a Health Care Services Agency; and

(b) In accordance with KRS 216.720(2)(f), an accompanying fee in the amount of \$3,000, made payable to the Kentucky State Treasurer.

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

(3) In accordance with KRS 216.720(1), each separate location of a health care services agency shall register and obtain a separate registration.

(4)

(a) Name change. A health care services agency shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the agency's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A health care services agency shall not change the location where a facility is operated until an Application for Registration to Operate a Health Care Services Agency accompanied by a fee of \$100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. In accordance with KRS 216.720(4), if a controlling person changes, the health care services agency is sold, or the management is transferred, the agency shall submit to the Office of Inspector General a completed Application for Registration to Operate a Health Care Services Agency accompanied by a fee of \$3,000 no later than thirty (30) calendar days from the effective date of the change.

2. A change of ownership shall be deemed to occur if more than twenty-five (25) percent of an existing health care services agency or capital stock or voting rights of the corporation is purchased, leased, or otherwise acquired by one (1) person from another.

**Section 4. Scope of Operations.**

(1) A health care services agency shall meet all of the minimum requirements as established in KRS 216.722(1)(a) through (f) relating to documentation, health and qualifications of personnel, professional and general liability insurance, an employee dishonesty bond, worker's compensation, and record retention.

(2) A health care services agency shall demonstrate compliance with:

- (a) KRS 216.724;
- (b) KRS 216.789; and
- (c) KRS 216.793.

**Section 5. Quarterly Reports.**

(1) In accordance with KRS 216.728, a health care services agency shall submit quarterly reports to the cabinet on the Quarterly Report form that includes the following information:

(a) The name, professional licensure or certification, and assigned location for each temporary direct care staff;

(b) The length of time the temporary direct care staff person has been assigned to the assisted-living community, long-term care facility, or hospital and the total hours worked; and

(c) For all long-term care facilities or hospitals that participate in the Medicare and Medicaid programs:

1. Copies of all invoices submitted to the long-term care facility or hospital; and

2. Proof of payment by the long-term care facility or hospital.

(2) The quarterly reports shall be submitted to the cabinet for the preceding calendar quarter by February 1, May 1, August 1, and November 1 of each year.

Section 6. Complaints. In accordance with KRS 216.726, a complaint relating to a health care services agency or temporary direct care staff may be made in accordance with the instructions provided in the complaint information document available for download from the Office of Inspector General's Web site: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/default.aspx>.

Section 7. Denial, Expiration, Revocation, and Fines.

(1) The cabinet shall deny an Application for Registration to Operate a Health Care Services Agency if:

(a) The applicant or existing agency knowingly misrepresents or submits false information on the application;

(b) The applicant or existing agency fails to provide the information and fee required by Section 3(1) of this administrative regulation;

(c) The applicant or existing agency fails to comply with Section 4(1) of this administrative regulation; or

(d) A controlling person in the entity applying for registration was a controlling person in a previously registered health care services agency that had its registration revoked for noncompliance during the five (5) year period immediately preceding the filing of the application.

(2)

(a) In accordance with KRS 216.720(4), a health care services agency's registration shall expire one (1) year from the date of issuance.

(b) If the health care services agency fails to renew its registration pursuant to Section 3(2) of this administrative regulation:

1. Its registration shall be cancelled effective one (1) day after the expiration date;

2. The Office of Inspector General shall document the agency's registration as inactive; and

3. The agency shall not continue to refer staff to an assisted-living community, long-term care facility, or hospital in Kentucky until its registration is renewed.

(3) Failure to comply with Section 4(1) of this administrative regulation shall result in the penalties as established in KRS 216.722(2).

(4) The cabinet shall revoke registration:

(a) In accordance with KRS 216.722(3); or

(b) If the cabinet determines that there has been substantial failure by the health care services agency to comply with the provisions of this administrative regulation or KRS 216.718 – 216.728.

Section 8. Notice of Adverse Action.

(1) Except for a violation of KRS 216.722(3), OIG shall provide written notice of adverse action at least thirty (30) calendar days prior to the effective date of the denial or revocation.

(2) The cabinet shall immediately notify a health care services agency that its registration will be revoked in fifteen (15) days if the cabinet determines an agency has knowingly engaged in the conduct described in KRS 216.722(3).

(3) A notice of adverse action issued in accordance with subsection (1) or (2) of this section shall:

(a) Explain the reason for the denial or revocation, and monetary penalty if applicable;

(b) Advise the health care services agency of the right to request an appeal prior to the effective date of the denial or revocation, and monetary penalty if applicable; and

(c) Specify that the adverse action shall be stayed if an appeal is requested.

Section 9. Closure of a Health Care Services Agency. If a health care services agency closes voluntarily or as the result of denial or revocation of the registration, the agency shall relinquish to the cabinet its registration to operate as a health care services agency immediately after the effective date of the closure.

Section 10. Appeals. A health care services agency that submits a written request for appeal within thirty (30) calendar days of the date the agency receives a notice of adverse action, including revocation pursuant to KRS 216.722(3), shall be afforded a hearing in accordance with KRS Chapter 13B.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form OIG 1:210, "Application for Registration to Operate a Health Care Services Agency", May 2023[August–2022] edition; and

(b) Form OIG 1:210-A, "Quarterly Report", May 2023[August 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/ltrapplications.aspx>.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 4, 2023

FILED WITH LRC: May 11, 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 July 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 July 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 July 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](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Kara Daniel; Stephanie Brammer-Barnes, Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for health care services agency registration.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216.718-216.728.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms

to the content of KRS 216.718 – 216.728 by establishing requirements for health care services agency registration.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing requirements for the registration of health care services agencies as required by HB 282 enacted by the 2022 General Assembly and HB 502, clean-up legislation passed during the 2023 legislative session.

(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 accordance with the passage of HB 502, this amendment:

1. Adds definitions for "permanent direct care staff" and "temporary direct care staff" and makes conforming changes throughout the body of the regulation; and

2. Exempts the placement of permanent direct care staff from the requirements of this administrative regulation. It is important to note that HB 502 was clean-up legislation intended to exclude health care workers such as international travel nurses whose assignments are generally twenty-four (24) months or longer from the requirements of KRS 216.718-216.728.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the 2023 passage of HB 502.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216.718-216.728 and HB 502.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by aligning with the changes made by HB 502 to KRS 216.718, 216.722, 216.724, 216.726, and 216.728 as well as a new statute (KRS 216.725).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects health care services agencies. The original version of this administrative regulation was adopted on January 12, 2023. Because the program is relatively new, there are currently 10 applications for registration pending approval.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities seeking registration as a health care services agency will be required to submit an initial and annual renewal application to the cabinet. The requirements for registration and quarterly reporting are established in KRS 216.720 and 216.722, and Sections 3 through 5 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): This amendment does not impose additional costs on health care services agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities seeking registration as a health care services agency must demonstrate compliance with this administrative regulation and KRS 216.718 – 216.728.

(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 will be used to implement and enforce this administrative regulation.

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

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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: The existing language of this regulation establishes an initial and annual registration fee of \$3,000 in accordance with KRS 216.720(2)(f). The existing language of this regulation also establishes a processing fee of \$25 for a change of name and a processing fee of \$100 for a change of location. This amendment does not make any changes to the fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated by it.

## FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts health care services agencies 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 216.720(2), 216.728(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? KRS 216.720(2)(f) establishes an initial and annual registration fee of \$3,000. KRS 216.722(2) authorizes the cabinet to impose a fine of \$25,000 for noncompliance. In addition, this administrative regulation establishes a processing fee of \$25 for a change of name and a processing fee of \$100 for a change of location. However, this amendment will not generate additional revenue.

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

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to the Office of Inspector General for implementation of this amendment 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? In accordance with KRS 216.722(2), this administrative regulation will cost regulated entities a fee of \$3,000 during the first year of registration. In accordance with KRS 216.722(1), regulated entities must carry all professional and general liability insurance

and carry an employee dishonesty bond of \$10,000.

(d) How much will it cost the regulated entities for subsequent years? In accordance with KRS 216.722(2), this administrative regulation will cost regulated entities a fee of \$3,000 for annual renewal during subsequent years. In accordance with KRS 216.722(1), regulated entities must carry all professional and general liability insurance and carry an employee dishonesty bond of \$10,000.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

## CABINET FOR HEALTH AND FAMILY SERVICES

### Department for Medicaid Services

#### Division of Policy and Operations

#### (Amendment)

**907 KAR 20:010. Medicaid procedures for determining initial and continuing eligibility other than procedures related to a modified adjusted gross income eligibility standard or related to former foster care individuals.**

RELATES TO: KRS 205.520, 42 C.F.R. 435.530, 435.531, 435.540, 435.541, 435.914, 435.916, 435.906, 435.926, 42 U.S.C. 416, 1382, 1396a, b, d

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes provisions relating to determining initial and continuing eligibility for assistance under the Medicaid Program except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1. Eligibility Determination Process. (1)(a) Except as provided in subsection (3) or (5) of this section, eligibility shall be determined prospectively.

(b) To receive or continue to receive assistance, a household shall meet technical and financial eligibility criteria, for the appropriate month of coverage, pursuant to:

1. This section;
2. Section 3 of this administrative regulation; and
3. As established in:
  - a. 907 KAR 20:005;
  - b. 907 KAR 20:020; and
  - c. 907 KAR 20:025.

(2) A decision regarding eligibility or ineligibility for Medicaid shall be supported by facts recorded in the case record.

(a) The applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of financial and technical eligibility as required by 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025; and
2. Give written consent to those contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(b)1. The department may schedule an appointment with an applicant or recipient to receive specified information as proof of eligibility.

2. Failure to appear for the scheduled appointment or to furnish the required information shall be considered a failure to present adequate proof of eligibility if the applicant or recipient was informed in writing of the scheduled appointment and the required information.

(3) Retroactive eligibility for Medicaid not related to the receipt of SSI benefits shall be effective no earlier than the third month prior to the month of application if:

- (a) A Medicaid service was received;
- (b) Technical and financial eligibility requirements were met as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025; and

(c) The applicant is excluded from managed care organization participation in accordance with 907 KAR 17:010.

(4) Eligibility for qualified Medicare beneficiary coverage shall be effective the month after the month of case approval if technical and financial eligibility requirements were met as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025.

(5) Retroactive eligibility for benefits for a specified low-income Medicare beneficiary benefits, Medicare qualified individual group 1 (QI-1), or a qualified disabled and working individual shall be effective no earlier than the third month prior to the month of application if the individual meets technical and financial eligibility requirements as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025.

(6) An SSI-related recipient, in accordance with HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97, shall be eligible for Medicaid benefits effective the month prior to the first month of SSI payment if the individual:

(a) Is eligible to be enrolled with a managed care organization in accordance with 907 KAR 17:010; and

(b) Meets Medicaid eligibility requirements for that month.

(7) An SSI-related recipient, in accordance with HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97, shall be retroactively eligible for Medicaid benefits effective no earlier than the third month prior to the first month of SSI payment if the individual:

(a) Is excluded from managed care organization participation in accordance with 907 KAR 17:010; and

(b) Meets Medicaid eligibility requirements for these months.

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting within thirty (30)~~ten (10)~~ days a change in circumstances which may affect eligibility.

(2) Eligibility shall be redetermined:

- (a) Every twelve (12) months; or
- (b) If a report is received or information is obtained about a change in circumstances.

Section 3. Continuous Eligibility for Children. (1) An individual who is younger than nineteen (19) shall receive continuous eligibility, consistent with 42 C.F.R. 435.926.

(2) The continuous eligibility period for a child recipient shall be for a period of twelve (12) months.

(3) A child's eligibility during a continuous eligibility period shall only be terminated under the following circumstances:

- (a) The child becomes nineteen (19) during the continuous eligibility period.
- (b) The child, or representative, voluntarily requests that the eligibility be terminated;
- (c) The child ceases to be a resident of the Commonwealth;
- (d) The agency determines that the eligibility was granted due

to:

1. Agency error; or
2. Fraud, abuse, or perjury attributed to the child or representative; or
- (e) The death of the child.

Section 4. Determination of Incapacity or Permanent and Total Disability. (1) Except as provided in subsections (2) and (3) of this section, a determination that a parent with whom the needy child lives is incapacitated, or that the individual requesting Medicaid due to disability is both permanently and totally disabled, shall be made by the medical review team following review of both medical and social reports.

(2) A parent shall be considered incapacitated without a determination from the medical review team if:

- (a) The parent declares physical inability to work;
- (b) The worker observes some physical or mental limitation; and

(c) The parent:

- 1. Is receiving SSI benefits;
- 2. Is age sixty-five (65) years or over;
- 3. Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 U.S.C. 1382c, 416, or 423 by either the Social Security Administration or the medical review team;

4.a. Has previously been determined to be incapacitated or both permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested; and

b. Has not demonstrated any visible improvement in condition;

5. Is receiving Retirement, Survivors, and Disability Insurance benefits, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;

6. Is receiving Veterans Affairs benefits based on 100 percent disability, as verified by an award letter; or

7. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days.

If application was made prior to the admission, the physician shall indicate if incapacity existed as of the application date.

(3) An individual shall be considered permanently and totally disabled without a determination from the medical review team if the individual:

(a) Receives RSDI or railroad retirement benefits based on disability;

(b) Received SSI benefits based on disability during a portion of the twelve (12) months preceding the application month and discontinuance was due to income or resources and not to improvement in physical condition;

(c) Has been determined to meet the definition of blindness or both permanent and total disability as contained in 42 U.S.C. 416 or 1382 by the Social Security Administration; or

(d) 1. Has previously been determined to be permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested; and

2. Has not demonstrated any visible improvement in condition.

(4)(a) A child who was receiving SSI benefits on August 22, 1996 and who, but for the change in definition of childhood disability established by 42 U.S.C. 1396a(a)(10) would continue to receive SSI benefits, shall continue to meet the Medicaid definition of disability.

(b) If a redetermination is necessary, and in accordance with 923 KAR 2:470, the definition of childhood disability effective on August 22, 1996 shall be used.

Section 5.~~[Section 4.]~~ Disqualification. An adult individual shall be disqualified from receiving Medicaid for a specified period of time if the department or a court determines the individual has committed an intentional program violation in accordance with 907 KAR 1:675, Program integrity.

Section 6.~~[Section 5.]~~ Applicability. The provisions and requirements of this administrative regulation shall not apply to an individual whose Medicaid eligibility is determined:

(1) Using the modified adjusted gross income as the income standard pursuant to 907 KAR 20:100; or

(2) Pursuant to 907 KAR 20:075.

~~[Section 6. Incorporation by Reference. (1) "HCFA Program Issuance Transmittal Notice Region IV", May 7, 1997, MCD-014-97, is incorporated by reference.~~

~~(2) This material may be:~~

~~(a) Inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or~~

~~(b) Viewed at <http://www.chfs.ky.gov/dms/incorporated.htm>.]~~

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 14, 2023

FILED WITH LRC: April 20, 2023 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 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 July 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 July 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](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid program policies and requirements regarding initial and continuing eligibility for individuals who are not eligible via the modified adjusted gross income (MAGI) or as former foster care youth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program policies and requirements regarding initial and continuing eligibility for individuals who are not eligible via the modified adjusted gross income (MAGI) or as former foster care youth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing Medicaid program policies and requirements regarding initial and continuing eligibility for individuals who are not eligible via the modified adjusted gross income (MAGI) or as former foster care youth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid program policies and requirements regarding initial and continuing eligibility for individuals who are not eligible via the modified adjusted gross income (MAGI) or as former foster care youth.

(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 implements a continuous eligibility requirement for all children. The continuous eligibility period will

last for twelve (12) months and may only be terminated if the child becomes older than 19, voluntarily requests termination, ceases to be a Kentucky resident, dies, or the agency determines that eligibility was granted in error or due to fraud, abuse, or perjury. In addition, a form that is no longer used has been removed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement a new continuing eligibility requirement for children among the MAGI population.

(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 continuous eligibility requirement for children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by clearly adopting a continuous eligibility requirement for children.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 500,000 children in the Medicaid program will begin to receive continuous eligibility. In addition, the department and MCOs will be impacted.

(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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children will receive continuous eligibility.

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

(a) Initially: DMS does not anticipate additional costs in administering this administrative regulation in the first year.

(b) On a continuing basis: DMS does not anticipate additional costs administering this program in future years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the requirements established herein apply to all 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 for Medicaid Services will be affected by the amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 435.906 and 435.926 authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of these amendments.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of these amendments.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate cost savings for regulated entities in the first year.

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

(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.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14) and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

KRS 194A.050(1) requires the cabinet secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. 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.”

(3) Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state’s Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. 42 U.S.C. 1396a(a)(10)(A)(i)(IX) creates the new eligibility group comprised of former foster care individuals and bars the application of certain existing Medicaid eligibility requirements to this population.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, additional or stricter limits are not imposed.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional or stricter limits are not imposed.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(Amendment)**

**907 KAR 20:045. Special income requirements for hospice and 1915(c) home and community based services.**

RELATES TO: KRS 205.520, 42 C.F.R. Part 435, 38 U.S.C. 5503, 42 U.S.C. 1396a, n

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes special income requirements for 1915(c) home and community based waiver and hospice services, except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

Section 1. Special Provisions for Recipients Participating in a 1915(c) Home and Community Based Services Waiver Program. (1) Medicaid eligibility for a recipient receiving 1915(c) home and community based services shall be determined if necessary to establish eligibility for Medicaid benefits for a case with income in excess of the basic maintenance standard taking into consideration the special provisions established in:

- (a) This section; and
- (b) 907 KAR 20:035.

(2) Income protected for the basic maintenance of a 1915(c) home and community based services waiver program participant who is eligible as medically needy or under the special income level established in this section shall be the standard used for an individual in the Federal SSI Program in addition to the SSI general exclusion from income.

(3) A 1915(c) home and community based services waiver program participant who participates in a 1915(c) home and community based services waiver program for thirty (30) consecutive days, including the actual days of institutionalization within that period, and who has income which does not exceed the special income level, shall be determined to be eligible as categorically needy under the special income level.

(4) If a Supports for Community Living (SCL) Program participant has income in excess of the special income level, eligibility of the participant shall be determined on a monthly spend-down basis with the cost of SCL services projected.

(5) Institutional deeming rules shall apply in accordance with 907 KAR 20:035.

(6)(a) In the posteligibility determination of available income, the basic maintenance needs allowance shall include a mandatory withholding from income.

(b) Mandatory withholdings shall:

- 1. Include state and federal taxes; and
- 2. Not include child support, alimony, or a similar payment resulting from an action by the recipient.

(7) A veteran or the spouse of a veteran who is receiving services in a 1915(c) home and community based services waiver program and who is receiving a Veterans Affairs benefit shall have ninety (90) dollars excluded from the eligibility and posteligibility determination process.

(8) Veterans Affairs payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in a Medicaid eligibility and posteligibility determination for a veteran or the spouse of a veteran receiving services from a home and community based waiver program.

(9) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall not be excluded in the posteligibility determination.

Section 2. Special Provisions for Hospice Recipients. Medicaid eligibility for a participant in the Medicaid Hospice Program shall be determined in accordance with the provisions in this section.

(1) Income protected for basic maintenance shall be:

(a) The SSI standard and the SSI general exclusion from income for the hospice participant in the posteligibility determination for a noninstitutionalized individual eligible on the basis of the special income level;

(b) The medically needy standard established in 907 KAR 20:020, Section 1, plus the SSI general exclusion for a noninstitutionalized medically needy participant, who shall spend-down on a quarterly basis;

(c) The medically needy standard for the appropriate family size plus the SSI general exclusion for the institutionalized medically needy;

(d) Forty (40) dollars per month for the hospice participant institutionalized in a long-term care facility;

(e) For a veteran or the spouse of a veteran who is receiving services from a hospice and who is receiving a Veterans Affairs benefit, ninety (90) dollars, which shall be excluded from the eligibility and posteligibility determination process; or

(f) The amount of Veterans Affairs payments for unmet medical expenses (UME) and aid and attendance (A&A), which shall be excluded in a Medicaid eligibility and posteligibility determination for a veteran or the spouse of a veteran receiving services from a hospice.

(2) If eligibility is determined for an institutionalized spenddown case, the attributed cost of care against which available income of the hospice participant shall be applied shall be the hospice routine home care per diem for the hospice providing care as established by 42 U.S.C. 1395f(i) plus the private pay rate for the nursing facility.

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual if the recipient is eligible based on the special income level.

(4) A hospice participant shall be eligible for a benefit based on this section if he or she has elected coverage under the Medicaid Hospice Program rather than the regular Medicaid Program.

(5) Institutional deeming rules shall apply in accordance with 907 KAR 20:035 with regard to the categorically needy including a participant eligible on the basis of the special income level.

(6) Community deeming procedures shall be used in accordance with 907 KAR 20:040 for a noninstitutionalized hospice recipient who is:

(a) A medically needy individual, who shall spend-down on a quarterly basis; and

(b) Not eligible under the special income level.

(7)(a) In the post eligibility determination of available income, the basic maintenance needs allowance shall include a mandatory



withholding from income.

(b) Mandatory withholdings shall:

1. Include state and federal taxes; and
2. Not include child support, alimony, or a similar payment resulting from an action by the recipient.

(8) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall not be excluded in the posteligibility determination.

Section 3. Continuous Eligibility for Children. (1) An individual who is younger than nineteen (19) shall receive continuous eligibility, consistent with 42 C.F.R. 435.926.

(2) The continuous eligibility period for a child recipient shall be for a period of twelve (12) months.

(3) A child's eligibility during a continuous eligibility period shall only be terminated under the following circumstances:

(a) The child becomes nineteen (19) during the continuous eligibility period.

(b) The child, or representative, voluntarily requests that the eligibility be terminated;

(c) The child ceases to be a resident of the commonwealth;

(d) The agency determines that the eligibility was granted due to:

1. Agency error; or

2. Fraud, abuse, or perjury attributed to the child or representative; or

(e) The death of the child.

Section 4. Applicability. The provisions and requirements of this administrative regulation shall not apply to an individual whose Medicaid eligibility is determined:

(1) Using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or

(2) Pursuant to 907 KAR 20:075.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 14, 2023

FILED WITH LRC: April 20, 2023 at 2:45 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on July 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 July 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 July 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes special income requirements

for individuals who are eligible via the 1915(c) waivers or hospice.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish special income requirements for individuals who are eligible via the 1915(c) waivers or hospice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing special income requirements for individuals who are eligible via the 1915(c) waivers or hospice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing special income requirements for individuals who are eligible via the 1915(c) waivers or hospice.

(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 implements a continuous eligibility requirement for all children. The continuous eligibility period will last for twelve (12) months and may only be terminated if the child becomes older than 19, voluntarily requests termination, ceases to be a Kentucky resident, dies, or the agency determines that eligibility was granted in error or due to fraud, abuse, or perjury.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement a new continuing eligibility requirement for children among the MAGI population.

(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 continuous eligibility requirement for children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by clearly adopting a continuous eligibility requirement for children.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 500,000 children in the Medicaid program will begin to receive continuous eligibility. In addition, the department and MCOs will be impacted.

(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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children will receive continuous eligibility.

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

(a) Initially: DMS does not anticipate additional costs in administering this administrative regulation in the first year.

(b) On a continuing basis: DMS does not anticipate additional costs administering this program in future years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

The amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the requirements established herein apply to all 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 for Medicaid Services will be affected by the amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 435.906 and 435.935 authorize the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of these amendments.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of these amendments.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate cost savings for regulated entities in the first year.

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

(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.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14) and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) requires the cabinet secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. 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."

(3) Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. 42 U.S.C. 1396a(a)(10)(A)(i)(IX) creates the new eligibility group comprised of former foster care individuals and bars the application of certain existing Medicaid eligibility requirements to this population.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, additional or stricter limits are not imposed.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional or stricter limits are not imposed.

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

#### **907 KAR 20:075. Eligibility provisions and requirements regarding former foster care individuals, and individuals who were in out-of-state equivalents to foster care.**

RELATES TO: KRS 205.520, 42 C.F.R. 435.150

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid eligibility provisions and requirements for an individual between the age of nineteen (19) and twenty-six (26) years, who formerly was in foster care, or an out-of-state equivalent to foster care, and was receiving Medicaid benefits at the time that the individual aged out of foster care, or the out-of-state equivalent.

Section 1. Former Foster Care Eligibility Criteria. An individual between the age of nineteen (19) and twenty-six (26) years, who formerly was in foster care, or an out-of-state equivalent to foster care, and was receiving Medicaid benefits at the time the individual's age exceeded the foster care, or out-of-state equivalent, age limit shall be eligible for Medicaid benefits if the individual meets the requirements of this administrative regulation.

Section 2. Income Standard. There shall be no income standard for individuals between the age of nineteen (19) and twenty-six (26) years and who formerly were in foster care, or an out-of-state equivalent to foster care, but aged out of foster care or the out-of-state equivalent.

Section 3. Resource Standard. There shall be no resource standard for individuals between the age of nineteen (19) and twenty-six (26) years and who formerly were in foster care, or an out-of-state equivalent to foster care, but aged out of foster care or the out-of-state equivalent.

Section 4. Attestation of Having Aged Out of Foster Care. (1) An individual between the age of nineteen (19) and twenty-six (26) years, who formerly was in foster care, or an out-of-state equivalent to foster care, and was receiving Medicaid benefits at the time the individual's age exceeded the foster care, or out-of-state equivalent to foster care, [age limit,] shall attest, during the application process, that the individual was receiving Medicaid benefits at the time that the individual reached the age which exceeded the foster care, or out-of-state equivalent to foster care, age limit.

(2) An individual who does not attest as established in subsection (1) of this section shall not be eligible for Medicaid benefits under this administrative regulation.

Section 5. Citizenship and Residency Requirements. (1) The citizenship requirements established in 42 C.F.R. 435.406 shall apply.

(2) To satisfy the Medicaid:

(a) Citizenship requirements, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;

2. A qualified alien who entered the United States before August 22, 1996, and is:

a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

b. Granted asylum pursuant to 8 U.S.C. 1158;

c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

e. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

g. An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

h. A battered alien pursuant to 8 U.S.C. 1641(c);

i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph or the unmarried surviving spouse of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

3. A qualified alien who entered the United States on or after August 22, 1996 and is:

a. Granted asylum pursuant to 8 U.S.C. 1158;

b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

c. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C.

1231(b)(3);

d. An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unmarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;

h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

(b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403.

Section 6. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and (3) of this section, an applicant for or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.

(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

Section 7. Institutional Status. (1) An individual shall not be eligible for Medicaid if the individual is a:

(a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of this section;

(b) Patient in a mental hospital or psychiatric facility unless the individual is:

1. Under age twenty-one (21) years of age; or

2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday; or

(c) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases.

(2) An inmate shall be eligible for Medicaid during the period of time the inmate is admitted to a hospital if the inmate:

(a) Has been admitted to a hospital;

(b) Has been an inpatient at the hospital for at least twenty-four (24) consecutive hours; and

(c) Meets the Medicaid eligibility criteria established in this administrative regulation.

Section 8. Application Process, Initial and Continuing Eligibility Determination. (1) An individual may apply for Medicaid benefits by:

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

(b) Applying over the telephone by calling:

1. 1-855- 459-6328; or

2. 1-855-326-4654 if deaf or hearing impaired;

(c) Faxing an application to 1-502-573-2007;

(d) Mailing a paper application to Office of Health Benefits Exchange, 12 Mill Creek, Frankfort, Kentucky 40601; or

(e) Going to the applicant's local Department for Community Based Services Office and applying in person.

(2) An individual shall attest in accordance with Section 4 of this administrative regulation when applying for Medicaid benefits.

(3)(a) An application shall be processed (approved, denied, or a request for additional information sent) by the department or other entity involved in processing the given application within

forty-five (45) days of application submittal.

(b) If a trusted source indicates that an applicant is incarcerated, a request for additional information shall be generated by the department or other entity involved in processing the application requesting verification of the applicant's incarceration dates or status.

(c) If an applicant fails to provide information in response to a request for additional information within forty-five (45) days of the receipt of the request, the application shall be denied.

Section 9. Continuous Eligibility for Children. (1) An individual who is between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care, while receiving Medicaid coverage shall receive continuous eligibility, consistent with 42 C.F.R. 435.926.

(2) The continuous eligibility period for an individual who is between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care, while receiving Medicaid coverage recipient shall be for a period of twelve (12) months.

(3) The eligibility during a continuous eligibility period of an individual who is between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care, while receiving Medicaid coverage shall only be terminated under the following circumstances:

(a) The individual becomes older than twenty (26) during the continuous eligibility period.

(b) The individual voluntarily requests that the eligibility be terminated;

(c) The individual ceases to be a resident of the Commonwealth;

(d) The agency determines that the eligibility was granted due to:

1. Agency error; or

2. Fraud, abuse, or perjury attributed to the individual; or

(e) The death of the individual.

Section 10. Adverse Action, Notice, and Appeals. The adverse action, notice, and appeals provisions established in 907 KAR 20:060 shall apply to former foster care, or out-of-state equivalent, individuals between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care, while receiving Medicaid coverage.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 14, 2023

FILED WITH LRC: April 20, 2023 at 2:45 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on July 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 July 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 July 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

## REGULATORY IMPACT ANALYSIS And Tiering Statement

Contact Person: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions and requirements regarding Medicaid eligibility for a new eligibility group mandated by the Affordable Care Act. The new group is comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care and aged out of foster care while receiving Medicaid coverage at the time of aging out of foster care. To qualify for Medicaid coverage the individuals have to attest to having received Medicaid benefits at the time they aged out of foster care but there is no income standard or resource standard/test for this population as the Affordable Care Act prohibits such standards from being applied to this population. Additionally, the individuals have to meet residency and citizenship requirements that other Medicaid applicants/recipients have to meet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with an Affordable Care Act mandate to establish Medicaid eligibility for a new eligibility group comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care and aged out of foster care while receiving Medicaid benefits at the time of aging out of foster care.

(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 eligibility requirements for former foster youth.

(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 eligibility requirements for former foster youth.

(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 including individuals who were in out-of-state foster care as eligible foster care individuals. The amendment also implements a continuous eligibility requirement for former foster care youth. The continuous eligibility period will last for twelve (12) months and may only be terminated if the individual becomes older than 19, voluntarily requests termination, ceases to be a Kentucky resident, dies, or the agency determines that eligibility was granted in error or due to fraud, abuse, or perjury.

(b) The necessity of the amendment to this administrative regulation: This population has already been eligible for coverage within the Medicaid program. The federal government has directed that this eligibility group should be included within the state plan. This conforming change is being made as a result of that direction. In addition, a new continuing eligibility requirement is needed.

(c) How the amendment conforms to the content of the authorizing statutes: DMS has been instructed to utilize the state plan to cover individuals who were in out-of-state foster care. The authorizing statutes establish a framework for DMS to negotiate the Medicaid program with the federal government. The amendment also conforms to the content of the authorizing statutes by implementing a continuous eligibility requirement for children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies eligibility policy for a specific population of Medicaid recipients and clearly adopts a continuous eligibility requirement for children.

(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 a group of adult recipients in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in

question (3) will have to take to comply with this administrative regulation or amendment. Regulated entities will be required to take no new actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The members will continue to have access to Medicaid services.

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

(a) Initially: DMS does not anticipate additional costs as a result of this amendment.

(b) On a continuing basis: DMS does not anticipate additional costs as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching state funds appropriated in the biennium budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 435.150

(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. Requires states to cover former foster care children. Former foster youth from other states are allowed to be covered under the Medicaid state plan or under Section 1115 waivers.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

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

#### FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520 and 42 C.F.R. 435.150.

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment will generate no revenue for DMS.

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

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

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no additional costs to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

(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.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Amendment)

#### 907 KAR 20:100. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(e)(14)

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

requirements for individuals whose Medicaid eligibility is determined using the modified adjusted gross income as the income standard. The affected individuals include children under the age of nineteen (19) years, pregnant women to 365 days postpartum, caretaker relatives, and adults under age sixty-five (65) who do not have a dependent child under the age of nineteen (19) years and are not otherwise eligible for Medicaid benefits.

Section 1. Applicability.

(1)(a) The provisions and requirements of this administrative regulation shall apply to individuals whose Medicaid eligibility is determined using the modified adjusted gross income as the income standard.

(b) An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be an individual who is:

1. A child under the age of nineteen (19) years, excluding a child in foster care;

2. A caretaker relative with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

3. A pregnant woman, with income up to 195 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), including the postpartum period to 365 days after delivery;

4. An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), who:

a. Does not have a dependent child under the age of nineteen (19) years; and

b. Is not otherwise eligible for Medicaid benefits; or

5. A targeted low income child with income up to 150 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2).

(2)(a) If an eligibility determination indicates that an individual's income exceeds 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall apply an additional cushion of five (5) percent of the federal poverty level toward the eligibility determination for the individual as described pursuant to 42 U.S.C. 1396a(e)(14)(I)(i).

(b) If after the five (5) percent adjustment, the individual's income is under the adjusted income threshold, the individual shall meet the modified adjusted gross income standard.

(c) A pregnant person's federal poverty level calculation pursuant to 42 U.S.C. 9902(2) shall be at least two (2) and shall include the pregnant person and the number of children expected to be delivered. Other members of the household shall be calculated and included consistent with KAR Title 907.

(3) The provisions and requirements of this administrative regulation shall not apply to an individual whose Medicaid eligibility is determined using an eligibility standard that is not the modified adjusted gross income.

Section 2. MAGI-based Methods. The department shall use the MAGI-based methods established in 42 C.F.R. 435.603 to determine whether an individual meets the Medicaid income eligibility requirements if the eligibility standard is the modified adjusted gross income.

Section 3. Resources Not Considered. An individual's resources shall not be considered for the purpose of determining Medicaid eligibility if the eligibility standard is the modified adjusted gross income.

Section 4. Citizenship and Residency Requirements.

(1) The citizenship requirements established in 42 C.F.R. 435.406 shall apply.

(2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid:

(a) Citizenship requirements, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;

2. A qualified noncitizen who entered the United States before August 22, 1996, and is:

- a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

- b. Granted asylum pursuant to 8 U.S.C. 1158;

- c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

- d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

- e. A noncitizen whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

- f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

- g. A noncitizen who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

- h. A battered noncitizen pursuant to 8 U.S.C. 1641(c);

- i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

- j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

- k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph or the unremarried surviving spouse of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

- l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

3. A qualified noncitizen who entered the United States on or after August 22, 1996, and is:

- a. Granted asylum pursuant to 8 U.S.C. 1158;

- b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

- c. A noncitizen whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

- d. A noncitizen who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

- e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

- f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

- g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unremarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;

- h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

- i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

- (b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403.

- (3) A qualified or nonqualified noncitizen shall be eligible for medical assistance pursuant to 42 C.F.R. 440.255 and as provided in this paragraph.

- (a) The individual shall meet the income, resource, and categorical requirements of the Medicaid Program.

- (b) Coverage for the individual shall be:

1. Limited to the medical care and services necessary for the treatment of an emergency medical condition or pregnancy of the

individual;

2. Not related to an organ transplant procedure; and

3. For a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(c) The individual's coverage shall be recertified every twelve (12) months.

(4)(a) The satisfactory documentary evidence of citizenship or nationality requirement in subsection (2)(a)1 of this section shall not apply to an individual who:

1. Is receiving SSI benefits;

2. Previously received SSI benefits but is no longer receiving them;

3. Is entitled to or enrolled in any part of Medicare;

4. Previously received Medicare benefits but is no longer receiving them;

5. Is receiving:

a. Disability insurance benefits under 42 U.S.C. 423; or

b. Monthly benefits under 42 U.S.C. 402 based on the individual's disability pursuant to 42 U.S.C. 423(d);

6. Is in foster care and who is assisted under Title IV-B of the Social Security Act, which is codified as 42 U.S.C. 621 through 628b; or

7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act, which is codified as 42 U.S.C. 670 through 679c.

(b) The department's documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396b(x).

(5) The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf.

(6)(a) Except as established in paragraph (b) of this subsection, an individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met.

(b) The retroactive eligibility period shall begin no earlier than January 1, 2014 for an individual who gains Medicaid eligibility solely by qualifying:

1. As a former foster care individual pursuant to 907 KAR 20:075; or

2. As an adult with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), who:

a. Does not have a dependent child under the age of nineteen (19) years; and

b. Is not otherwise eligible for Medicaid benefits.

(7) The documentation of citizenship requirements established in this administrative regulation shall not apply to a noncitizen under nineteen (19) years of age who is lawfully present in the United States of America.

(8) Except as established in subsection (9) of this section, a noncitizen shall be considered to be lawfully present in the United States of America if the individual:

(a) Is a qualified noncitizen;

(b) Is a noncitizen in a valid immigrant status;

(c) Is a noncitizen who has been paroled into the United States of America in accordance with 8 U.S.C. 1182(d)(5) for less than one (1) year, except for an individual:

1. Paroled for:

a. Prosecution; or

b. Deferred inspection; or

2. Pending removal proceedings;

(d) Is a noncitizen who:

1. Has been granted:

a. Temporary resident status in accordance with 8 U.S.C. 1160 or 1225a;

b. Temporary protected status in accordance with 8 U.S.C.

1254a or is an individual with a pending application for temporary protected status who has been granted employment authorization;

c. Employment authorization under 8 C.F.R. 274a.12(c);

d. Deferred action status; or

e. An administrative stay of removal under 8 C.F.R. Part 241;

2. Is a family unity beneficiary in accordance with Section 301 of Pub. L. 101-649 as amended, and 8 C.F.R. Part 236;

3. Is under deferred enforced departure in accordance with a decision made by the President of the United States of America; or

4. Is a beneficiary of an approved visa petition who has a pending application for an adjustment of status;

(e) Is an individual with a pending application for asylum:

1.a. Under 8 U.S.C. 1158;

b. For withholding of removal under 8 U.S.C. 1231; or

c. Under the Convention of Torture; and

2. Who:

a. Has been granted employment authorization; or

b. Is under the age of fourteen (14) years and has had an application pending for at least 180 days;

(f) Is an individual who has been granted withholding of removal under the Convention Against Torture;

(g) Is a child who has a pending application for special immigrant juvenile status as described in 8 U.S.C. 1101(a)(27)(J); or

(h) Is a victim of severe trafficking in persons in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386, as amended in 22 U.S.C. 7105(b)).

(9) An individual with deferred action under the Department of Homeland Security's deferred action for the childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, shall not be considered to be lawfully present with respect to any of the categories listed in subsection (8) of this section.

#### Section 5. Provision of Social Security Numbers.

(1)(a) Except as provided in subsections (2) and (3) of this section, an applicant for or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(b) If a parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a Social Security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failing to meet technical eligibility requirements.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.

(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

#### Section 6. Institutional Status.

(1) An individual shall not be eligible for Medicaid if the individual is a:

(a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of this section;

(b) Patient in a state tuberculosis hospital unless he or she has reached age sixty-five (65);

(c) Patient in a mental hospital or psychiatric facility unless the individual is:

1. Under age twenty-one (21) years of age;

2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday; or

3. Sixty-five (65) years of age or over; or

(d) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).

(2) An inmate shall be eligible for Medicaid during the period of time the inmate is admitted to a hospital if the inmate:

(a) Has been admitted to a hospital;

(b) Has been an inpatient at the hospital for at least twenty-four (24) consecutive hours; and

(c) Meets the Medicaid eligibility criteria established in this administrative regulation.

Section 7. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have assigned to the Cabinet for Health and Family Services any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 8. Third-party Liability as a Condition of Eligibility.

(1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;
2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or
3. May interfere with adoption considerations or proceedings.

(2) A failure of an individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman with income up to 195 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2) shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 9. Application Process, Initial and Continuing Eligibility Determination.

(1) An individual may apply for Medicaid by:

- (a) Using the Web site located at [www.kyconnect.ky.gov](http://www.kyconnect.ky.gov);
- (b) Applying over the telephone by calling:
  1. 1-855-459-6328;
  2. 1-855-306-8959 to speak to the DCBS Family Support Call Center; or
  3. 1-855-326-4654 if deaf or hearing impaired;
- (c) Faxing an application to 1-502-573-2007;
- (d) Mailing a paper application to DCBS Family Support, P.O. Box 2104, Frankfort, Kentucky 40602; or
- (e) Going to the applicant's local Department for Community Based Services Office and applying in person.

(2)(a) An application shall be processed (approved, denied, or a request for additional information sent) within forty-five (45) days of application submittal.

(b) Immediately after submittal if there is a variance of ten (10) percent or more regarding income information reported by the applicant versus information available from a trusted source or sources, a request for additional information shall be generated for the applicant requesting documentation to prove the applicant's income.

(c) If a trusted source indicates that an applicant is incarcerated, a request for additional information shall be generated requesting verification of the applicant's incarceration dates.

(d) If an applicant fails to provide information in response to a request for additional information within thirty (30) days of the receipt of the request, the application shall be denied.

(3)(a) An annual renewal of eligibility shall occur without an individual having to take action to renew eligibility, unless:

1. The individual's eligibility circumstances change resulting in the individual no longer being eligible for Medicaid; or
2. A request for additional information is generated due to a change in income or incarceration status.

(b)1. If an individual receives a request for additional information as part of the renewal process, the individual shall provide the information requested within forty-five (45) days of receiving the request.

2. If an individual fails to provide the information requested

within forty-five (45) days of receiving the request, the individual's eligibility shall be terminated on the forty-fifth day from the request for additional information.

(4) An individual shall be required to report to the department any changes in circumstances or information related to Medicaid eligibility.

Section 10. Continuous Eligibility for Children. (1) An individual who is younger than nineteen (19) shall receive continuous eligibility, consistent with 42 C.F.R. 435.926.

(2) The continuous eligibility period for a child recipient shall be for a period of twelve (12) months.

(3) A child's eligibility during a continuous eligibility period shall only be terminated under the following circumstances:

- (a) The child becomes nineteen (19) during the continuous eligibility period.
- (b) The child, or representative, voluntarily requests that the eligibility be terminated;
- (c) The child ceases to be a resident of the Commonwealth;
- (d) The agency determines that the eligibility was granted due to:

1. Agency error; or
2. Fraud, abuse, or perjury attributed to the child or representative; or
- (e) The death of the child.

Section 11. Adverse Action, Notice, and Appeals. The adverse action, notice, and appeals provisions established in 907 KAR 20:060 shall apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

Section 12.[Section 14.] Miscellaneous Special Circumstances.

(1) A person during pregnancy, and as though pregnant through the end of the month containing the 365th day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(l)(1), shall meet the income requirements for this eligibility group in accordance with this administrative regulation.

(2) If an eligible child is receiving covered inpatient services, except for services in a long term care facility or behavioral health services in an inpatient facility on a long-term basis, on a birthday which will make the child ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age.

(3) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of the child's birth if the child has not reached his or her first birthday.

(4)(a) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(b) If a parent is not included in the case, a caretaker relative or relatives may be included to the same extent the caretaker relative would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.

(5) For an individual eligible on the basis of utilizing his or her excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.

(6) If a family member is pregnant, the unborn child shall be considered as a family member for income determination purposes.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 14, 2023

FILED WITH LRC: April 20, 2023 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 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 July 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 July 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income (or MAGI.)

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income. The Affordable Care Act mandates that the modified adjusted gross income be used (effective January 1, 2014) to determine Medicaid eligibility for certain populations rather than the prior Medicaid eligibility rules; thus, the administrative regulation is necessary to comply with the federal mandate.

(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 complying with a federal mandate to establish the modified adjusted gross income as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations of individuals.

(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 complying with a federal mandate to establish the modified adjusted gross income as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations of individuals.

(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 implements a continuous eligibility requirement for all children. The continuous eligibility period will last for twelve (12) months and may only be terminated if the child becomes older than 19, voluntarily requests termination, ceases to be a Kentucky resident, dies, or the agency determines that eligibility was granted in error or due to fraud, abuse, or perjury.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement a new continuing eligibility requirement for children among the MAGI population.

(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 continuous eligibility requirement for children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by clearly adopting a continuous eligibility requirement for children.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: Approximately 500,000 children in the Medicaid program will begin to receive continuous eligibility. In addition, the department and MCOs will be impacted.

(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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children will receive continuous eligibility.

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

(a) Initially: DMS does not anticipate additional costs in administering this administrative regulation in the first year.

(b) On a continuing basis: DMS does not anticipate additional costs administering this program in future years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the requirements established herein apply to all regulated entities.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2).

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. 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."

(3) Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations governed by the new requirements include children under nineteen (19) [excluding children in foster care]; pregnant women; caretaker relatives with income up to 133 percent of the federal poverty level; adults with no child under nineteen (19) with income up to 133

percent of the federal poverty level who are not otherwise eligible for Medicaid benefits; and targeted low-income children with income up to 150 percent of the federal poverty level. Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard. Additionally, states are prohibited from applying an asset or resource test for eligibility purposes for the aforementioned population. States are also required to create and adopt an income threshold (under the modified adjusted gross income) that ensures that individuals who were eligible for Medicaid benefits prior to January 1, 2014 (the date that the modified adjusted gross income standard is adopted) do not lose Medicaid coverage due to the modified adjusted gross income standard taking effect.

(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.

#### FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 435.603 authorizes 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? DMS estimates that the Medicaid expansion has brought in at least \$1.4 billion in federal funds into the state in 2021 (this number is exclusive of rate enhancement programs utilized for hospitals and emergency medical transport). In addition, DMS estimates that more than 16,700 jobs have been created within the commonwealth as a result of the Medicaid expansion. Furthermore, in 2021, approximately \$30 million in income tax revenue, \$29.4 million in sales tax increases, and \$12 million in local occupational and payroll taxes were generated when compared to not expanding the Medicaid program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS estimates that the Medicaid expansion has brought in at least \$1.4 billion in federal funds into the state in 2021 (this number is exclusive of rate enhancement programs utilized for hospitals and emergency medical transport). In addition, DMS estimates that more than 16,700 jobs have been created within the commonwealth as a result of the Medicaid expansion. Furthermore, in 2021, approximately \$30 million in income tax revenue, \$29.4 million in sales tax increases, and \$12 million in local occupational and payroll taxes were generated when compared to not expanding the Medicaid program.

(c) How much will it cost to administer this program for the first year? The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

(d) How much will it cost to administer this program for subsequent years? The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual 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? 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.

(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.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Quality Living (Amendment)

#### 910 KAR 3:030. Traumatic brain injury trust fund operations program.

RELATES TO: KRS 13B, 42.320(2)(d), 45A.075, 45A.080, 189A.050(3)(d)1, 205.900(3), 211.470-211.478, 314.011

STATUTORY AUTHORITY: KRS 211.474(1), EO 2009-541

NECESSITY, FUNCTION, AND CONFORMITY: EO 2009-541 transferred the functions and funds of KRS 189A.050(3)(d)1 to the Department for Aging and Independent Living. KRS 211.474(1) requires the Traumatic Brain Injury Trust Fund Board of Directors to promulgate administrative regulations necessary to carry out the provisions of KRS 211.470 through 211.478. This administrative regulation establishes the Traumatic Brain Injury Trust Fund Operations Program.

#### Section 1. Definitions.

(1) "Applicant" means a person:

(a) Who applies for the program, including a legally responsible individual on behalf of an applicant;

(b) Who participates in the development of, and agrees to, a service plan for the use of the program; and

(c) For whom a completed service plan is submitted to the program.

(2) "Benefit" means financial assistance provided to a recipient to cover the cost of services approved by the service plan review committee.

(3) "Benefit management program" or "program" means the entity recommended by the board that provides case management

services and facilitates distribution of trust fund monies.

(4) "Board" is defined by KRS 211.470(1).

(5) "Cabinet" is defined by KRS 211.470(2).

(6) "Case management" means a process, coordinated by a case manager, for linking a recipient to appropriate, comprehensive, and timely home or community based services as identified in the service plan by:

- (a) Planning;
- (b) Referring;
- (c) Monitoring; and
- (d) Advocating.

(7) "Case manager" means the individual employee responsible for:

(a) Coordinating services and supports from all agencies involved in providing services required by the service plan;

(b) Ensuring all service providers have a working knowledge of the service plan; and

(c) Ensuring services are delivered as required.

(8) ~~"Community residential services" means retraining and rehabilitation of a recipient in a nonemergency situation in a community setting.~~

(9) "Companion services" means nonmedical supervision and socialization services for the purpose of:

(a) Preventing the need for institutionalization; and

(b) Assisting a recipient in maintaining community placement based upon an approved service plan.

(9) [(40)] "Conflict free" means a scenario in which an agency, including any subsidiary, partnership, not-for-profit, or other business entity under the control of the agency, is providing case management to an individual without providing any other waiver service.

(10) [(41)] "Department" means the Department for Aging and Independent Living (DAIL).

(11) [(42)] "Educational or experiential equivalent" means:

(a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and

(b) At least 400 documented hours of experience assisting brain injured or other disabled individuals through:

- 1. Practicum placement;
- 2. Clinicals; or
- 3. Volunteerism.

(12) [(43)] "Environmental modification" means a physical adaptation to a recipient's home:

(a) For the purpose of helping a recipient function with greater independence in the recipient's own home; or

(b) Which is necessary to accommodate medical equipment and supplies required for the recipient's welfare.

(13) [(44)] "Fund" or "trust fund" is defined by KRS 211.470(4).

(14) [(45)] "Good cause" means a circumstance beyond the control of a recipient that affects the recipient's ability to access an approved benefit, including:

(a) Illness or hospitalization of the individual that is expected to last thirty (30) days;

(b) Death or incapacitation of the primary caregiver; or

(c) Unavailability of a service provider that is expected to last thirty (30) days.

(15) [(46)] "Immediate family" is defined by KRS 205.8451(3).

(16) [(47)] "Integrated environment" means other individuals in a nonresidential setting integrated with those individuals who have a brain injury and in which both are being served to improve community living skills.

(17) [(48)] "KYTBI data system" means the internet based data system used to monitor, track, and maintain recipient information, annual and lifetime allocations, and case work performed on behalf of a recipient.

(18) [(49)] "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:

(a) A biological, adoptive, or foster parent of a minor child who provides care to the child;

(b) The legal guardian who is responsible for the care of the recipient; or

(c) A spouse of a recipient.

(19) [(20)] "Medical records" means records signed by a physician documenting an applicant's or recipient's traumatic brain injury including:

(a) Hospital records; or

(b) Diagnostic imaging reports as related to KRS 211.470(3).

(20) [(24)] "Natural supports" means a non-paid person, or community resource who can provide, or has historically provided assistance to the consumer or, due to the familial relationship, would be expected to provide assistance when capable.

(21) [(22)] "Noncrisis behavior programming" means an individually-designated nonemergency service plan intended to increase a recipient's adaptive social behavior that is provided by a behavioral therapist or clinical psychologist.

(22) [(23)] "Occupational therapist" is defined by KRS 319A.010(3).

(23) [(24)] "Occupational therapy" means the therapeutic use of self-care, work, and leisure activities to enhance independent functioning or skill development.

(24) [(25)] "Personal care assistance services" is defined by KRS 205.900(3).

(25) [(26)] "Physical therapist" is defined by KRS 327.010(2).

(26) [(27)] "Physical therapy" is defined by KRS 327.010(1).

(27) [(28)] "Prevocational service" means a service designed to develop a prerequisite skill necessary to prepare a recipient for paid or unpaid employment provided beyond other external program resources and provided by an occupational therapist or rehabilitation counselor.

(28) [(29)] "Psychological and mental health services" means services provided by a mental health professional licensed by the state which are:

(a) Designed to help a recipient to resolve personal issues or interpersonal problems resulting from a traumatic brain injury; or

(b) Provided to a recipient's direct caregiver to preserve the stability of a recipient's community living situation, as part of an approved service plan.

(29) [(30)] "Recipient" means an eligible applicant who receives a benefit as defined by Section 1(2) of this administrative regulation.

(30) [(34)] "Respite care" means a skilled or unskilled service provided to a recipient on a short-term basis if there is an absence or need for relief of a recipient's caregiver.

(31) [(32)] "Service plan" means a document that itemizes the goals, services, equipment, or items which are subject to review by the service plan review committee.

(32) [(33)] "Service plan review committee" or "SPRC" means a committee composed of persons with traumatic brain injuries or their legally responsible individual ~~family members~~ and professionals in the field of brain injury as outlined in Section 4(5)(b).

(33) [(34)] "Specialized medical equipment and supplies" means items which are of direct medical or therapeutic benefit to a recipient and assist the recipient to maintain community placement.

(34) [(35)] "Speech-language pathologist" is defined by KRS 334A.020(3).

(35) [(36)] "Speech and language therapy" means an intervention designed to maximize a recipient's language, pragmatic, articulation, swallowing, and cognitive skills.

(36) [(37)] "Structured day program services" means a service:

(a) Provided by a certified or licensed entity; and

(b) Performed in a nonresidential setting which is designed to develop and improve a recipient's skills through activities and skill trainings in areas of:

- 1. Personal well being;
- 2. Social and community living; and
- 3. Independent living management.

(37) [(38)] "Supported employment services" means supervision and training of a recipient in a work site at which persons without disabilities are employed and for a recipient who:

(a) Is unlikely to obtain competitive employment at or above minimum wage; or

(b) Needs ongoing support to perform competitive employment.

(38) [(39)] "Traumatic brain injury" is defined in KRS

211.470(3).

(39) [(40)] "Wrap-around service" means a service, equipment, or item, not excluded by KRS 211.474(2)(e), which will enhance a recipient's ability to live in the community, consistent with the recipient's overall service plan.

Section 2. Board Operating Procedures. (1)(a) A board member shall adhere to the bylaws of the board and the confidentiality requirements as specified in KRS 211.474(3).

(b) If a member fails to act in accordance with the bylaws, the chair of the board shall recommend to the governor the dismissal of that member.

(2) A board member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

1. Personal;
2. Professional; or
3. Financial; or

(b) Directly assist another individual, regardless of where the person resides, to apply for benefits from the fund, except a board member:

1. May refer another individual but not directly assist another individual to apply for benefits from the fund; and
2. Shall not refer himself or an eligible family member or receive benefits from the fund at the same time as being a member of the board.

(3) The board shall review a quarterly report of the program's activities in accordance with Section 4(8) of this administrative regulation.

(4) The board shall direct the department to:

- (a) Issue a request for proposal for the benefit management program in accordance with KRS 45A.080; or
- (b) Operate the program within the department.

Section 3. Department Duties.

(1) The department may issue a request for proposal:

- (a) If directed by the board; and
- (b) In accordance with KRS 45A.080.

(2) The department may rescind all or part of an awarded benefit if the recipient does not utilize all or part of the benefit within a twelve (12) month plan period.

Section 4. Duties of the Program. The program shall:

(1) ~~Maintain~~ [Establish] a toll free telephone number for the purpose of enabling individuals with a traumatic brain injury to apply for benefits from the fund;

(2) Engage in public information activities for the purpose of informing individuals with a traumatic brain injury about the availability of case management services and benefits from the fund and other sources;

(3) Review an applicant's documentation of the applicant's diagnosed brain injury and Kentucky residency to determine eligibility as specified in Section 5 of this administrative regulation;

(4) Assign a case manager within two (2) business days of the determination;

(5) Establish a SPRC [service plan review committee]:

(a) For the purpose of reviewing proposed service plans for approval or denial;

(b) Which shall:

1. Include a minimum of one (1) person with a traumatic brain injury or the legally responsible individual [guardian or advocate] of a person with a traumatic brain injury;
2. Include a minimum of one (1) professional with expertise in the field of traumatic brain injury; and
3. Not have two (2) individuals from the same agency or family serve consecutive terms; and

(c) In which a member shall be limited to serve twelve (12) consecutive months but may be reappointed to the SPRC [service plan review committee] twelve (12) months after the date of the expiration of the member's most recent term of service on the committee;

(6) Accept a request for benefits from the fund;

(7) Distribute benefits to a recipient based upon an approved

service plan;

(8) Submit a list of approved or denied service plans in a quarterly report to the department;

(9) Provide conflict free case management services:

(a) To applicants and recipients statewide, including the provision of assistance in accessing a needed support or service, regardless of funding source; and

(b) By a case manager who:

1. Possesses a bachelor's degree in a health or human services profession from an accredited college or university with:

- a. One (1) year experience in health or human services; or
- b. The educational or experiential equivalent in the field of brain injury or physical disabilities;

2. Is a currently licensed RN as defined by KRS 314.011(5) who has at least two (2) years of experience as a professional nurse in the field of brain injury or physical disabilities;

3. Is a currently licensed LPN as defined by KRS 314.011(9) who has:

a. At least three (3) years of experience in the field of brain injury or physical disabilities; and

b. An RN to consult and collaborate with regarding changes to the service plan; or

4. Has a master's degree from an accredited college or university;

(10) Be certified by the DAIL beginning July 1, 2015; and

(11) Be supervised by a case management supervisor who shall have four (4) years or more experience as a case manager.

Section 5. Eligibility.

(1) An applicant shall be eligible for a benefit from the fund:

(a) In accordance with:

1. KRS 211.470(3); and
2. KRS 211.472(2)(a) and (c); and

(b) If the applicant is a legal resident of Kentucky.

(2) A resident of an institution or hospital shall not be eligible for benefits from the fund:

(a) Unless the resident is anticipated to be within two (2) weeks of discharge and the benefits facilitate a discharge to the community; and

(b) If funding is available.

(3) An applicant shall provide medical records of the applicant's traumatic brain injury to the program.

(4) An applicant shall document that the applicant has no other public or private payor source, other than the trust fund, which covers the type of service the applicant is requesting.

Section 6. Procedures for Obtaining a Benefit from the Fund.

(1)(a) A benefit for assistance from the fund shall be directly related to an applicant's brain injury or care of the applicant.

(b) A referral for benefits may be made by, or on behalf of, an eligible person by contacting the program in the following manner:

1. Telephone;
2. In person;
3. In writing;
4. Facsimile;
5. Email; or
6. Online.

(2) Upon receipt of referral, the program shall notify the applicant or referral source of the documentation needed to determine eligibility as specified in Section 5 of this administrative regulation.

Section 7. Benefits Available from the Fund.

(1) An applicant may apply for one (1) or more benefits from the fund as follows:

(a) Noncrisis behavior programming;

(b) Case management;

(c) Personal care assistance services [Community residential services], which shall include at least the following:

1. Dressing;
2. Oral hygiene;
3. Hair care;
4. Grooming;

5. Bathing;
6. Housekeeping;
7. Laundry;
8. Meal preparation;
9. Shopping; or
10. ~~[Room and board; and~~
- 11.] Twenty-four (24) hour supervision of a recipient;
- (d) Companion services;
- (e) Environmental modification to the recipient's residence if:
  - 1.a. The recipient is listed on the deed or recorded land contract and a copy is provided to the case manager;
  - b. The recipient is a minor residing in a home owned by his parent; or
  - c. The recipient is an adult residing in a home owned by his legal guardian and provides:
    - (i) Written documentation, by the owner, approving the modification;
    - (ii) A copy of the legal documents verifying parental status or guardianship;
    - (iii) A copy of the deed documenting the owner who has provided the written approval for modification; and
    - (iv) Written documentation that the dwelling is safe and free of structural defect;
  - d. A letter from the landlord, if under a lease agreement, approving an environmental modification; or and]
2. The recipient or owner provides:
  - a. At least two (2) estimates of cost and scope of modification; or at least one (1) estimate of cost and scope of modification approved by the Department branch manager;
  - b. A copy of the chosen contractor's license and liability insurance policy or a signed release of liability that no contractor is available within thirty (30) miles of the recipient's residence; and
  - c. Documentation from a health care professional that the requested modification is necessary;
  - (f) Occupational therapy provided by an occupational therapist;
  - (g) Physical therapy provided by a physical therapist;
  - (h) Prevocational service, which shall include at least the following:
    1. Assisting a recipient to understand the meaning, value, and demands of work;
    2. Assisting a recipient to learn or reestablish skills, attitudes, and behaviors necessary for employment; or
    3. Assisting the individual to improve functional capacities;
  - (i) Psychological and mental health services, which may include the following:
    1. Training to improve interpersonal skills;
    2. Social skills;
    3. Problem-solving skills;
    4. Training to remediate a cognitive problem resulting from the traumatic brain injury;
  5. Treatment for a substance abuse problem related to the traumatic brain injury;
  6. Psychological assessment; and
  7. Neuropsychological evaluation;
  - (j) Respite care in:
    1. The recipient's own home;
    2. Another personal residence; or
    3. Another setting, if approved by the program;
  - (k) Specialized medical equipment and supplies with written documentation of need from a:
    1. Physician;
    2. Licensed health care provider; or
    3. Licensed therapist;
  - (l) Speech and language therapy provided by a speech-language pathologist which may include the following:
    1. Articulation therapy;
    2. The design of and instruction in the use of augmentative communication strategies or devices;
    3. Cognitive retraining strategies; or
    4. Swallowing therapy;
  - (m) Structured day program services, which shall include at least the following:
    1. Direct supervision of the recipient;

2. Specific training to allow a recipient to improve functioning and to reintegrate into the community;
3. Social skills training;
4. Sensory skill development;
5. Motor skill development;
6. Teaching of concepts and skills necessary for the increased independence of the recipient; and
7. Other services to increase:
  - a. Adaptive behavioral responses; and
  - b. Community reintegration;
  - (n) Supported employment services; or
  - (o) Wrap-around services, which may include the following:
    1. Assistance in transporting a recipient, such as to and from:
      - a. A medical appointment;
      - b. A therapy appointment;
      - c. A counseling appointment; or
    - d. Other destinations in the community as specified in the recipient's service plan;
  2. Dental services by a licensed professional;
  3. Vision services by an optometrist, ophthalmologist, or optician;
  4. Hearing services by a licensed audiologist;
  5. Modification to the recipient's vehicle for accessibility if the:
    - a. Recipient, or legally responsible individual is listed on the vehicle title and a copy is provided to the case manager; or
    - b. Owner provides written documentation:
      - (i) Approving the vehicle modification;
      - (ii) That the vehicle is for the use of the recipient;
      - (iii) That the vehicle is safe and mechanically sound; and
      - (iv) That the vehicle is insured.
  - (2) Program funds shall not be expended to pay for:
    - (a) Attorney fees or other legal fees;
    - (b) Court costs or fines assessed as a result of a conviction for a criminal offense;
    - (c) The cost of incarceration;
    - (d) Other court ordered monetary judgments;
    - (e) Insurance premiums, copays, or deductibles;
    - (f) The purchase or leasing of vehicles;
    - (g) The purchase or renting of homes;
    - (h) Home owner association fees;
    - (i) Vacations;
    - (j) Recreational activities;
    - (k) Food, including groceries or eating out;
    - (l) Utilities;
    - (m) Immediate family; ~~or~~
    - (n) Natural supports; or
    - (o) modifications to rental properties over \$2,500.

#### Section 8. Case Management Services.

- (1) Following the program's determination of eligibility, the assigned case manager shall contact a recipient no later than three (3) business days and complete the following responsibilities:
  - (a) Conduct an independent assessment;
  - (b) Identify the recipient's needs for service and supports;
  - (c) Identify potential resources to meet the applicant's need for services and supports;
  - (d) Assist the applicant in obtaining needed services and supports regardless of funding source;
  - (e) Determine that the fund is the payor of last resort;
  - (f) Coordinate, arrange, and document identified service needs of the recipient;
  - (g) Develop an individualized service plan that shall:
    1. Relate to assessed needs;
    2. Identify a source of service utilized in this administrative regulation; and
    3. Be signed by the recipient or recipient's representative and case manager, with a copy provided to the recipient;
  - (h) Assist in the identification of local resources for individuals with traumatic brain injury;
  - (i) Document all virtual and in person face-to-face contacts with the recipient in the KYTBI data system including time in and out, if applicable;
  - (j) Maintain caseload as assigned:

1. Upon available funding, at a minimum one (1):
  - a. In person face[Face]-to-face contact at least every six (6) months[other month];
  - b. In person face[Face]-to-face at place of residence at least annually; and
  - c. Phone contact, or virtual face-to-face during any month an in person[a] face-to-face contact does not occur; and
2. Document in the KYTBI data system each contact made with the recipient including the face-to-face visit's time in and out and mileage, if applicable; and
- (k) Complete a proposed service plan which shall specify:
  1. The name, address, and telephone number of the applicant;
  2. The TBI Trust Fund identification number;
  3. A clinical summary of the recipient's traumatic brain injury;
  4. An explanation of needed services and supports;
  5. The requested benefit from the fund;
  6. Documentation of the recipient's lack of a payor source for the requested service including:
    - a. An explanation of circumstances leading to the need to request funding; and
    - b. Attempts to find other funding such as:
      - (i) An agency denial or documentation of a noncovered service by insurance or other entity;
      - (ii) Department for Medicaid Services denial; or
      - (iii) Denial from other community programs;
  7. The signature of the applicant, or the applicant's legal representative, indicating agreement with the terms of the service plan; and
  8. The mechanism for distribution of benefits from the fund.
- (2) The case manager shall submit the proposed service plan in the KYTBI data system upon completion of all supporting documents.
- (3) The program designee shall verify completion of the service plan and place the case on the SPRC[service plan review] list in chronological order of receipt.

Section 9. Service Plan Review Committee (SPRC) Duties.

- (1) The SPRC[service plan review committee] shall:
  - (a) Verify the trust fund is payor of last resort of the submitted service plan specified in Section 8(1)(h) of this administrative regulation, based upon supplemental documents outlined in Section 5(3) and (4) of this administrative regulation and is not a duplication of services;
  - (b) Verify eligibility of an applicant or recipient's service plan in accordance with Section 5 of this administrative regulation;
  - (c) Consider a service plan in the chronological order in which the completed service plan is received;
  - (d) Review the service plan to determine if the benefit requested from the fund meets the requirements of KRS 211.474(2)(d);
  - (e) Approve or deny an applicant or recipient's service plan;
  - (f) Approve reimbursement for the delivery of services according to a recipient's approved service plan; and
  - (g) Notify the program of an approved or denied service plan.
- (2) The SPRC[service plan review committee] may:
  - (a) Approve the proposed service plan, for a period not to exceed twelve (12) months;
  - (b) Amend the proposed service plan; or
  - (c) Deny the proposed service plan and may provide recommendations to the applicant and the applicant's assigned case manager about other available resources or means to meet the applicant's need for services and supports.
- (3) If the applicant disagrees with the decision made by the SPRC[service plan review committee], the applicant may appeal the decision in accordance with Section 15 of this administrative regulation.
- (4) The SPRC[service plan review committee] shall not approve the distribution of a benefit to a recipient in excess of \$15,000 within any twelve (12) month period and \$60,000 per lifetime pursuant to KRS 211.474(2)(c).
- (5) The SPRC[service plan review committee] shall not approve the distribution of benefits to an applicant:
  - (a) Who does not meet the eligibility requirements established

in Section 5 of this administrative regulation;

- (b) If the requested benefits are intended for a purpose other than the direct health, safety, and welfare of the applicant;
  - (c) If the applicant fails to demonstrate a good faith effort that no other payor source is available to obtain the requested benefit;
  - (d) If other resources are available to the applicant to substantially meet a reasonable need for which the benefit is requested, including trusts, settlements, or restitution; or
  - (e) If the benefit requested is for the purpose of reimbursing the recipient for expenses incurred prior to approval of a service plan by the SPRC[service plan review committee].
- (6) A service plan shall be signed by the director of the program or the director's designee, and the applicant or the applicant's legally responsible individual.

Section 10. Approved Service Plan.

- (1) A recipient shall receive notification of an approved benefit based upon the following types of services:
  - (a) Individual;
  - (b) Purchased goods; or
  - (c) Contractors.
- (2) A recipient with an approved service plan may change a service provider within an approved service category if there is no increased cost of the service.
- (3) A recipient may make a permitted change by informing the case manager by:
  - (a) Telephone;
  - (b) Email;
  - (c) Facsimile; or
  - (d) In writing.
- (4) The case manager may approve a service provider change in a service plan made without review by the SPRC[service plan review committee].
- (5) Involuntary termination and loss of approved benefits may[shall] be initiated if an individual fails to access the approved benefits as outlined in the service plan within ninety(90) calendar days of notification of approval of the service plan without good cause shown.
  - (a) The recipient or his designee shall have the burden of providing documentation of good cause as to the reason services cannot be accessed within ninety (90) calendar days, including:
    1. A statement signed by the recipient or legal representative;
    2. A copy of letters to providers;
    3. A copy of letters from providers; and
    4. A copy of documentation from physicians or other health care professionals.
  - (b) Upon receipt of documentation of good cause, the program shall grant one (1) sixty (60) day extension in writing.

Section 11. Service Provider Requirements.

- (1) A service provider may be:
  - (a) An employee of the recipient who shall provide:
    1. A completed I-9 and a copy of two (2) documents from the list of approved documents;
    2. A completed W-9;
    3. A signed service agreement;
    4. A criminal background check as required by law;
    5. Verification of abuse, neglect, and fraud training; and
    6. Completed timesheets submitted bi-weekly by noon on Monday or the following work day if Monday is a state recognized holiday;
  - (b) A licensed or certified agency that shall provide a:
    1. Copy of the agency's license or certification;
    2. Signed service agreement; and
    3. Completed W-9; or
  - (c) A licensed and insured contractor who shall provide:
    1. A copy of the business license;
    2. A copy of the liability insurance;
    3. A completed W-9;
    4. A signed service agreement;
    5. Pictures before work begins; and
    6. Pictures of the completed work.
- (2) Upon notification of an approved service plan, the service

provider shall:

- (a) Accept the reimbursement approved in Section 9(1)(f) of this administrative regulation as payment in full;
  - (b) Not require additional payment from a recipient;
  - (c) Submit an invoice for payment to the program entity within forty-five (45) days from date of service; and
  - (d) Not attempt to recoup from the ~~SPRC[service plan review committee]~~ beyond an approved reimbursement without prior written agreement by the recipient or legal representative.
- (3) A request for payment submitted after forty-five (45) days of the date of service delivery shall not be:
- (a) Reimbursed by the Benefit Management Program; or
  - (b) Billed to the board or recipient.

Section 12. Procedures for Distribution of Benefits from the Fund.

- (1) The program shall distribute the fund to a service provider, contractor, or retailer for services rendered.
- (2) The payment terms shall be specified in the service agreement.
- (3) The service provider or recipient shall provide to the program documentation of the delivery of a service or benefit to a recipient according to the terms of the service agreement.
- (4) A service shall be reimbursed or paid if it is delivered in accordance with a recipient's approved service agreement.
- (5) An expenditure not included in an approved service agreement shall not be paid by the provider, board, or cabinet.
- (6) The cost of providing case management services to an applicant or recipient shall be exempt from the benefit limits established in Section 9(4) of this administrative regulation.

Section 13. Procedures for Placement on a Waiting List.

- (1) The program may establish a waiting list for benefits from the fund if it determines that no further funding is available.
- (2) The waiting list shall be implemented as follows:
  - (a) An applicant or recipient shall be placed on the waiting list upon receipt, completion, and verification of a service plan by a program designee.
  - (b) The order of placement on the waiting list shall be determined chronologically by date and time of verification.
  - (c) A recipient shall be notified by his case manager of verification of placement on the waiting list.
- (3) The applicant shall be removed from the waiting list if:
  - (a) The applicant secures requested benefit through another resource;
  - (b) The applicant refuses a benefit in an approved service plan, unless the individual has made a permitted change in accordance with Section 10(2) through (4) of this administrative regulation; or
  - (c) The applicant is deceased.
- (4) The removal from the waiting list shall not prevent the submission of a new application at a later date for the applicant.
- (5) If the applicant is removed from the waiting list, the program shall notify the applicant, or his legal representative, in writing within ten (10) business days from the removal.

Section 14. Discharge Criteria.

- (1) A recipient shall be discharged from the Brain Injury Trust Fund Program if:
  - (a) The recipient reaches the maximum \$60,000 lifetime benefit, except if the board waives the expenditure in accordance with KRS 211.474(2)(c);
  - (b) The recipient is noncompliant with program requirements;
  - (c) The recipient chooses to be terminated from participation in the program;
  - (d) The recipient, caregiver, family, or guardian threatens or intimidates a case manager or other program staff;
  - (e) Services accessed are referred and provided by another agency for continued service, if applicable;
  - (f) There is a substantiation of fraud related to the program involving:
    - 1. The recipient; or
    - 2. Both the recipient and the service provider;
  - (g) The recipient is no longer eligible pursuant to KRS

211.470(3)(a) through (f); or

- (h) The recipient is deceased.
- (2) A recipient may be discharged from the Brain Injury Trust Fund Program if:
  - (a) A service plan is completed for an approved timeframe and no other service is needed;
  - (b) A requested service plan is denied;
  - (c) Contact cannot be made with the recipient by the program within three (3) months of last case management contact; or
  - (d) No case management services have been provided within a six (6) month period.
- (3) Recipients may reapply to the program without submittal of medical records except in accordance with subsection (1)(a) of this section.
- (4) All discharges shall be appealable in accordance with Section 15, except in accordance with subsection (1)(a) or (f) of this section.

Section 15. Procedures for Appealing the Denial of an Application for Benefits from the Fund.

- (1) If an applicant is determined to be ineligible for benefits from the fund because medical records do not provide documentation of a traumatic brain injury, the applicant may submit:
  - (a) Medical documentation to support the diagnosis of the injury; or
  - (b) Additional medical opinions about the disability.
- (2)(a) The program shall notify the applicant in writing if the ~~SPRC[service plan review committee]~~ does not approve a requested benefit.
- (b) Notification shall be made within five (5) business days of the committee's decision.
- (3) The program or the board shall not be liable for the cost of:
  - (a) A medical opinion obtained by an applicant; or
  - (b) An appeal.
- (4) An applicant who wishes to appeal the denial of eligibility or benefits shall notify the program, in writing, within thirty (30) days of notification of the denial.
- (5) Upon receipt of a written appeal, the program shall encumber funds if applicable and available in the amount requested until final resolution of the appeal.
- (6) The program shall acknowledge receipt of a written appeal to the applicant, in writing, within three (3) business days of receipt.
- (7) The program shall provide an opportunity for an informal dispute resolution for an applicant or his representative:
  - (a) To appear before the program director or designee and the benefits management program administrator to present facts or concerns about the denial; and
  - (b) Within ten (10) business days of receipt of written appeal.
- (8) The program shall inform an applicant, in writing, of the decision resulting from the informal dispute resolution within ten (10) business days of the review.
- (9) An applicant dissatisfied with the result of the informal dispute resolution may request an administrative hearing:
  - (a) Within thirty (30) calendar days of the decision; and
  - (b) By submitting a written request for appeal to the Office of the Ombudsman and Administrative Review, Quality Advancement Branch, 275 E. Main St. 2 E-O Frankfort, Kentucky 40621;
  - (c) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.[appeal to the Division of Administrative Hearings of the Office of Communications and Administrative Review. The appeal shall be:
    - (a) In writing;
    - (b) Made within thirty calendar (30) days of receipt of the decision by the program; and
    - (c) Submitted to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.
- ~~(10) The department shall request the Division of Administrative Hearings of the Office of Communications and Administrative Review to conduct a hearing pursuant to KRS Chapter 13B.]~~

VICTORIA ELRIDGE, Commissioner

CARRIE BANAHAN, Deputy Secretary

APPROVED BY AGENCY: April 28, 2023

FILED WITH LRC: May 4, 2023 at 3:45 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on July 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 July 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 July 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: Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation sets out the requirements for the Traumatic Brain Injury Trust Fund (TBITF) program. This administrative regulation provides for the operations of the TBITF Board operations, duties of the program, eligibility requirements to receive services, benefits, and services available through the program, service provider requirements, waiting list, discharge criteria, and provides for an informal dispute resolution process and an appeal process.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to carry out the requirements of the traumatic brain injury trust fund program pursuant to KRS 211.470 through 211.478 by establishing the TBITF program service requirements. This administrative regulation sets out the eligibility for services and responsibilities of the participants, program and service providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of KRS 211.470 through 211.478 by establishing the Traumatic Brain Injury Trust Fund program and the requirements for eligibility and service provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation assists in the effective administration of the statutes by establishing the minimum requirements for eligibility and service provision. This amendment updates terminology, documentation requirements, and that services provided through the TBITF are not duplicative of services received through other programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates terminology, changes establish to maintain a toll free number, updates the benefits available from the program and the required visits provided by the case manager. Changes the involuntary termination and loss of approved benefits from shall to may be initiated under certain circumstances, requires copies of the documents required to be presented to complete the I-9 be maintained, specifies when time sheet are due, and updates the appeal rights to include an informal dispute resolution and address to

submit a request for an appeal.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the terminology and benefits of the TBITF program and to specify the appeals process and where to submit an appeal.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides for benefits and services to individuals with a Traumatic Brain Injury as authorized by KRS 211.470 through 211.478. The amendment establishes additional clarification on documents required and the provision of case management.

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation provides more clarity on needed documentation and service provisions. The TBITF program provides needed services to individuals with a traumatic brain injury, to assist them to remain in their own home for as long as possible.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation will affect up to 250 individuals who are receiving paid services through the Trust Fund and up to 760 individuals who are awaiting referral documentation to be approved to the Trust Fund. This amended regulation will not affect businesses or organizations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with this administrative regulation, this action should not have any effect on regulated entities other than the Trust Fund itself and those individuals being served by the Trust Fund.

(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 as amended has no cost to any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals served through the TBITF will obtain needed services and supports to live as independently as possible in the community.

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

(a) Initially: There are no additional costs to the Department for Aging and Independent Living for implementation of this amended administrative regulation.

(b) On a continuing basis: There are no additional costs to the Department for Aging and Independent Living of this amended administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the TBITF program is the restricted TBITF account.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated by it.



FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation does impact the Cabinet for Health and Family Services, Department for Aging and Independent Living.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.470 through 211.478.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation does not generate any revenue, there is no increase in revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation does not generate any revenue, there is no increase in revenue.

(c) How much will it cost to administer this program for the first year? There are no additional costs to the Department for Aging and Independent Living for implementation of this amended administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to the Department for Aging and Independent Living for implementation of this amended administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There are no cost savings with the implementation of this amended administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings with the implementation of this amended administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? There are no additional costs with the implementation of this amended administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? There are no additional costs with the implementation of this amended administrative regulation in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] There is no major economic impact with this amended administrative regulation. There is no change to the income or expenditures for the implementation of this amendment.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Income Support**  
**Division of Child Support**  
**(Amendment)**

**921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.**

RELATES TO: KRS 205.710-205.802, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.450, 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, 42 U.S.C. 651-669B  
STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.795 and 405.520 authorize the secretary of the cabinet to promulgate administrative regulations to operate the Child Support Enforcement Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established.

(1) A child support and medical support obligation shall be established by:

(a) A court of competent jurisdiction; or

(b) An administrative order.

(2) The obligation shall be the amount as established administratively or judicially, as computed by the:

(a) CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation;

(b) CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception; or

(c) Any other child support obligation form incorporated by reference in an administrative regulation promulgated by the agency.

(3) The amount determined shall be the amount to be collected. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statutes and legal process in establishing the amount of a child support and medical support obligation, including KRS 403.211, 403.212, 403.2121, 405.430, and 454.220.

(5) In addition to the deductions established in KRS 403.212(3)(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as established in KRS 403.212(3)(i)(3)(2)(h)3, shall be calculated by using:

(a) That parent's portion of the total support obligation as indicated on the worksheet, if:

1. There is a support order; and

2. A copy of the child support obligation worksheet is obtained; or

(b) 100 percent of the income of the parent with whom the prior born child resides, if:

1. There is no support order;

2. There is a support order, but no support obligation worksheet; or

3. A worksheet cannot be obtained.

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

(a) Complete service of process; or

(b) Document an unsuccessful attempt to serve process.

(7) If service of process has been completed, the cabinet shall, if necessary:

(a) Establish paternity;

- (b) Establish a child support or medical support obligation; or
- (c) Send a copy of any legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.
- (8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

#### Section 2. Administrative Establishment.

- (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:
  - (a) Paternity is not in question;
  - (b) There is no existing order of support for the child;
  - (c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and
  - (d) The noncustodial parent's, or obligor's, address is known.
- (2) To gather necessary information for administrative establishment, as appropriate the cabinet shall:
  - (a) Send to the custodial parent or nonparent custodian forms:
    - 1. CS-133, Custodial Parent Information Request;
    - 2. CS-132, Child Care Expense Verification; and
    - 3. CS-136, Health Insurance Information Request;
  - (b) Send to the custodial parent the CS-65, Statement of Income and Resources;
  - (c) Send to the noncustodial parent forms:
    - 1. CS-64, Noncustodial Parent Appointment Letter;
    - 2. CS-65, Statement of Income and Resources;
    - 3. CS-132, Child Care Expense Verification; and
    - 4. CS-136, Health Insurance Information Request;
  - (d) Send a CS-130, Income Information Request, to the employer of the:
    - 1. Custodial parent; or
    - 2. Noncustodial parent, or obligor; and
  - (e) Issue a CS-84 Administrative Subpoena in accordance with KRS 205.712(2)(k) and (n), if appropriate.
- (3) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212 and 403.2121 or subsection (4) of this section.
- (4) In a default case, the cabinet shall establish the obligation based upon the needs of the child or the previous standard of living of the child, whichever is greater in accordance with KRS 403.211(5).
- (5) After the monthly support obligation is determined, the cabinet shall serve a CS-66, Administrative Order/Notice of Monthly Support Obligation, in accordance with the requirements of KRS 405.440 and 42 U.S.C. 654(12).
- (6) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (7) of this section.
- (7) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:
  - (a) Administratively upon notice to the obligor or obligee; or
  - (b) Judicially through a court of competent jurisdiction.

#### Section 3. Review and Adjustment of Child Support and Medical Support Orders.

- (1) In accordance with KRS 405.430(6), the cabinet may modify the monthly support established. Every thirty-six (36) months the cabinet shall notify each party subject to a child support order of the right to request a review of the order.
- (2) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review upon the request of:
  - (a) Either parent;
  - (b) The state agency with assignment; or
  - (c) Another party with standing to request a modification.
- (3) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:
  - (a) Conduct the review;
  - (b) Modify the order; or
  - (c) Determine that circumstances do not meet criteria for modification.
- (4) The cabinet shall provide notification within fourteen (14)

calendar days of modification or determination to each parent or custodian, if appropriate, and legal representatives by issuing a CS-79, Notification of Review Determination, in accordance with KRS 205.712(2)(m).

(5) In accordance with subsections (2) and (3) of this section, the cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child as established in KRS 403.211(7)(a) through (d).

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

#### Section 4. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "CS-64, Noncustodial Parent Appointment Letter", 3/10;
  - (b) "CS-65, Statement of Income and Resources", 6/2021;
  - (c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", 3/10;
  - (d) "CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation", 7/2023[7/2022];
  - (e) "CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception", 7/2023[7/2022];
  - (f) "CS-79, Notification of Review Determination", 3/10;
  - (g) "CS-84, Administrative Subpoena", 7/2022;
  - (h) "CS-130, Income Information Request", 7/2022;
  - (i) "CS-132, Child Care Expense Verification", 3/10;
  - (j) "CS-133, Custodial Parent Information Request", 3/10; and
  - (k) "CS-136, Health Insurance Information Request", 12/15.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dis/Pages/cse.aspx>.

STEVEN P. VENO, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 10, 2023

FILED WITH LRC: May 11, 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 July 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 July 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 July 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 [CHFSEgs@ky.gov](mailto:CHFSEgs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the establishment, review, and modification of child and medical support orders.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to implement requirements for the establishment, review, and modification of child and medical support orders in accordance with 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, and 42 U.S.C. 651-669B

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 403.211-403.213 to clarify the criteria to determine child support obligations. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist with further establishing procedures to ensure effective administration of and conforming to KRS 403.211 through 403.213.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates statutory citations and material incorporated by reference to conform with the delayed effective date contained in HB 501 of the 2022 Regular Session.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update statutory citations and material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the cabinet in establishing, reviewing, and modifying child support and medical support orders. This amendment identifies each party that has a right to request a review or modification of the child or medical support order, conforming to 45 C.F.R. 303.8.

(d) How the amendment will assist in the effective administration of the statutes: The forms being revised have been updated to reflect the changes implemented in HB 501 (2022 Regular Session) in regard to determining and establishing a child support obligation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1. Administrative Office of the Courts- 868 employees, 114 district court judges, 98 circuit court judges, 60 family court judges; 2. Private attorneys -18,720; 3. Child Support Enforcement attorneys and staff- 657; 4. Participants in the Child Support Program- 503,000

(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: Administrative Office of the Courts – must educate the judiciary regarding the new Worksheet for Monthly Child Support Obligation and the Worksheet for Monthly Child Support Obligation Exception. Private attorneys – will access the updated information to become familiar with the revised forms. Child Support Enforcement attorneys and staff – will receive guidance from the Child Support Program regarding the revised forms. Participants with new cases, or cases where participants request a review and possible modification, will utilize the revised forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will not increase accrued benefits to regulated entities but provides updated forms for determining an obligation.

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

(a) Initially: There will be minimal costs associated with implementing the changes on our websites.

(b) On a continuing basis: The administrative regulation will not have additional costs 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 sources of funding include state general funds and federal funds under 42 U.S.C. 601-619, Title IV-D of the Social Security Act.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32

(2) State compliance standards. KRS 194A.050(1), 205.710-205.802, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.450, 405.991, 406.021, 406.025, 454.220

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with 42 U.S.C. 651-669B

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Income Support, Child Support Enforcement Program, are 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. 42 U.S.C. 651-669B, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, KRS 194A.050(1), 205.710-205.802, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.450, 405.991, 406.021, 406.025, 454.220

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

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

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

(c) How much will it cost to administer this program for the first year? No new or additional costs are necessary to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 any cost savings for the regulated entities for the first year.

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

(c) How much will it cost the regulated entities for the first year? There will be no cost to the regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to the regulated entities 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.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will have no major economic impact as defined above.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Protection and Permanency**  
**(Amendment)**

**922 KAR 1:360. Private child care placement, levels of care, and payment.**

RELATES TO: KRS 199.011, 199.640-199.680, 199.801, 600.020(25), [605.090(1)(b), -(d), 610.110, -]42 U.S.C. 622, 672, 675

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) and 605.090(1)(d) authorize the cabinet to establish by administrative regulation the rate setting methodology and the rate of payment for child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations establishing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice or the cabinet, in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon the conditions established by the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level and placement setting; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care and placement setting; and (f) procedures for determination of components of the model program cost

analysis.

**Section 1. Definitions.**

(1) "Cabinet" is defined by KRS 199.011(3).

(2) "Child-caring facility" or "facility" is defined by KRS 199.011(5).

(3) "Child-placing agency" or "agency" is defined by KRS 199.011(6).

(4) "Department" is defined by KRS 199.011(7) and 199.641(1)(b).

(5) "Emergency shelter" is defined by KRS 600.020(25).

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;

2. Placement;

3. Performance measurement; and

4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means the standard representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care and placement setting in accordance with Section 2(2) of this administrative regulation.

(11) "Medically complex" means a child who is determined to have a medical condition as defined by 922 KAR 1:495 and further described in 922 KAR 1:350, Section 4.

(12) "Model program cost analysis" is defined by KRS 199.641(1)(c).

(13) "Placement coordinator" means an individual whose responsibilities are established in KRS 199.801.

(14) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(15) "Time study" is defined by KRS 199.641(1)(d).

(16) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning, treatment, service, and supervision needs; and

(b) Assigning the appropriate level of care.

**Section 2. Referral Process for Level of Care System Placement.**

(1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age or a child who is medically complex regardless of age at the time:

(a) The child is referred for placement with a child-caring facility or child-placing agency;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age or is found to be medically complex; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the following child-specific information:

(a) Identifying data;

(b) Individual strengths and limitations;

(c) Daily living skills;

- (d) Physical health needs including:
  1. Any significant medical history;
  2. Current diagnoses, assessments, and treatment; and
  3. Documentation indicating the child's medically complex status if the child is medically complex;
- (e) Behavioral health needs including:
  1. Screening tools utilized based upon the child's age; and
  2. Current diagnoses, assessments, and treatment recommendations;
- (f) Medications;
- (g) History of substance abuse, high risk, or other significant behavior including:
  1. Sexual acting out; and
  2. Legal history, status, or other court involvement;
- (h) Out-of-home care placement information including:
  1. Reason for entering out-of-home care;
  2. History of abuse, neglect, or dependency;
  3. Current custody status;
  4. Current and previous placements; and
  5. Permanency goal;
- (i) Social supports;
- (j) Educational functioning, grade level, and any special educational need; and
- (k) Religious background and practices.

(3)(a) If a child needs placement within a child-caring facility or a child-placing agency, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the placement coordinator.

(b) The placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement in accordance with KRS 199.801 and 922 KAR 1:370, a cabinet staff person shall:

(a) Complete the ~~[DPP-114T, Transitional Child-Caring and Child-Placing Level of Care Schedule, through January 31, 2023, or the ]DPP-114, Child Caring and Child Placing Level of Care Schedule[, effective February 1, 2023,]~~ with the level of care payment rate for placement type:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. If there is an emergency placement, within two (2) business days of the placement or receipt of the assigned level of care;

(b) Arrange transportation for the child to the placement; and

(c) Notify the placement coordinator of the selected placement.

(5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:

(a) Submit a level of care packet to the gatekeeper for a child who does not have a current level of care assignment; and

(b) Inform the placement coordinator of the location and date of placement.

(6) The placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.

### Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child referred by the cabinet or currently placed in a child-caring facility or child-placing agency for the purpose of establishing an initial or reassigned level of care. The child shall be:

(a) Four (4) years of age or older; or

(b) Determined to be medically complex by designated cabinet staff;

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to an assessment of the child's treatment, supervision, and service needs consistent with one (1) of the three (3) levels of care; and

(b) Return the completed CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment, to the department and the child-caring facility or the child-placing agency;

(3) Assess a child placed in a child-caring facility in accordance with 42 U.S.C. 675a(c) within the first thirty (30) days of placement;

(4) Conduct a utilization review for a child:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b) 1. Every three (3) months thereafter if the child is in a child-caring facility; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(5) Reassign a child's level of care after the previous level has expired;

(6) Monitor each child-caring facility and child-placing agency;

(7) Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes; and

(8) For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, to the child-caring facility or child-placing agency and the cabinet after a level is conducted or reassigned.

### Section 4. Levels of Care. A level of care shall be assigned in accordance with this section.

(1) A Level I child shall be a child who requires a routine home environment that:

(a) Provides for the basic needs of the child;

(b) Provides guidance and nurturing;

(c) Provides supervision to meet the needs of the child;

(d) Provides educational support;

(e) Provides access to routine medical care; and

(f) Ensures the emotional and physical well-being of the child.

(2) A Level II child shall be a child who:

(a) Requires a routine home environment that meets the requirements of subsection (1) of this section;

(b) Has identified treatment needs based on available behavioral health screening and assessment information, current treatment recommendations, or has been determined to be medically complex;

(c) Has a history of complex trauma related to maltreatment;

(d) Requires supervision in a structured supportive setting with:

1. Counseling available from professional staff;

2. Educational support; and

3. Services designed to improve physical and behavioral health and wellbeing;

(e) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(f) Requires a program flexible enough to allow increased:

1. Independence if the child is capable; or

2. Structure during temporary periods of regression.

(3) A Level III child shall be a child who:

(a) Has significant treatment needs as indicated by:

1. Available behavioral health screening and assessment information or current treatment recommendations that require specialized or frequent treatment services;

2. A determination by designated cabinet staff that the child has a high degree of medical complexity that requires specialized medical care;

3. The presence of both significant behavioral health needs requiring treatment and a determination of medical complexity by designated cabinet staff; or

4. A severe impairment or disability that requires a caregiver to attend to all care needs of the child; and

(b) Requires a highly structured supportive setting:

1. With frequent therapy or therapeutic services provided by a qualified mental health professional or other treatment professional allowed pursuant to 922 KAR 1:300 within a treatment program designed to improve social, emotional, and educational adaptive behavior;

2. That includes twenty-four (24) hour supervision; or

3. That provides safe and effective care for a severe, chronic

medical condition, behavioral health issue, or other highly specialized needs.

Section 5. Payment Methodology and Rates.

(1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the "model program cost analysis" defined by KRS 199.641(1)(c).

(b) Each private child-caring facility and child-placing agency shall report to the cabinet annually, on the DPP-888, Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs and Facilities.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private child-caring facilities and child-placing agencies; and

b. Level of care of children served by private child-caring facilities and child-placing agencies that contract with the cabinet.

(b)1. For children whose level is determined, the median level of care shall be represented by an index factor of one (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of eighty (80)~~[ninety (90)]~~ percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

a. Board;

b. Care; and

c. Treatment components; or

2. For an emergency shelter without a treatment license:

a. Board; and

b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;

2. Child safety after reunification with the child's family;

3. Adequate educational support;

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

5. Increased placement stability during the service period;

6. Increased achievement of permanency goals; and

7. Increased stability in less restrictive or permanent placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes established in paragraph (a) of this subsection; and

2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be

included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

(a) Reduced length of stay in out-of-home placement;

(b) Increased safety from child abuse or neglect;

(c) Increased number of children moving into and remaining in permanent placement;

(d) Increased number of children and their families cared for in close proximity to their home communities;

(e) Increased number of children reunified with their families;

(f) Increased accountability for success in after care; or

(g) Decreased reentry into state custody.

Section 6. Residential Care.

(1) A child-caring facility that cares for children in the custody of the cabinet shall be licensed pursuant to 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:300, Section 8, Residential Treatment Program, if providing treatment-oriented services.

(3) Only a child assigned as Level III shall be placed in residential care.

(4) The daily rate for residential care to a child-caring facility shall be:

(a) \$193.50 per child for a child-caring facility determined by designated cabinet staff to not meet the requirements of a specified setting for placement in accordance with 42 U.S.C. 672(k)(2); and

(b) ~~\$336.00~~~~[\$298.50]~~ per child for a child-caring facility determined by designated cabinet staff to meet the requirements of a specified setting for placement in accordance with 42 U.S.C. 672(k)(2).

Section 7. Emergency Shelter Care.

(1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) ~~\$220.59~~~~[\$193.50]~~ per child per day for a child-caring facility with a treatment license; or

(b) ~~\$165.44~~~~[\$145.12]~~ per child per day for a child-caring facility without a treatment license.

(2) If a child with an assigned level of care enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency.

(1) The basic daily rate for foster care shall be ~~\$51.33~~~~[\$44.82]~~.

(2) ~~The~~~~[If assessed on or after July 1, 2022, upon the next~~

utilization review, the] daily rate for foster care shall be ~~\$51.33~~[\$44.82] per child for:

(a) A child under the age of four (4) who has not been assigned a level; and

(b) A child over the age of four (4) with a level I assigned level of care.

(3) ~~The~~[If assessed prior to July 1, 2022, the daily rates for therapeutic or treatment foster care shall be as follows:

(a) ~~Levels I and II, if the child is stepped down from Level III or higher \$76.10 per child;~~

(b) ~~Level III – \$83.16 per child;~~

(c) ~~Level IV – \$101.23 per child; and~~

(d) ~~Level V – \$139.96 per child.~~

(4) ~~If assessed on or after July 1, 2022, upon the next utilization review, the] daily rates for therapeutic or treatment foster care shall be:~~

(a) ~~Level II – \$99.50~~[\$83.16] per child; and

(b) ~~Level III – \$139.96 per child.~~

(4) A private agency foster home shall not receive a per diem that is less than the corresponding public foster home per diem published at <https://www.chfs.ky.gov/agencies/dcbp/dpp/Pages/agreements.aspx>.

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, the amount established in Section 8(1) of this administrative regulation for the committed child of an adolescent parent who is committed to the cabinet.

#### Section 10. Independent Living Programs.

(1) An independent living program shall be licensed pursuant to 922 KAR 1:305 and shall meet the standards for independent living programs established in 922 KAR 1:310 and 922 KAR 1:340.

(2) The daily rate for an independent living program shall be:

(a) ~~\$99.50~~[\$83.16] per child for Level I or Level II; and

(b) \$139.96 per child for Level III.

(3) A Level III child in an independent living setting shall require increased structure, supervision, case management, and treatment services.

Section 11. Programs with Decoupled Rates. ~~[(4)]~~ A child-caring facility or child-placing agency providing highly specialized behavioral health services may be paid for board and treatment services separately through agreement with the:

~~(1) [(a)]~~ Department for the cost of room, board, and watchful oversight; and

~~(2) [(b)]~~ Department for Medicaid Services or its designee for behavioral health treatment services.

#### Section 12. Provider Requirements.

(1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

a. The evaluation and treatment of behavioral health needs; and

b. Identification and alleviation of related trauma symptoms, disability, or distress experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the trauma, disability, or distress;

c. Provide access to improving the educational or vocational

status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. To the gatekeeper, a Child and Adolescent Needs and Strengths assessment report completed within the past six (6) months or another supplemental tool approved by the gatekeeper; and

2. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP):

a. On a quarterly basis, for a private child care residential placement; or

b. On a semiannual basis for a foster care placement;

(d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or

2. The Joint Commission.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

#### Section 13. Utilization Review and Authorization of Payment.

(1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports established in Section 12(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as established in Section 12(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as established in Section 14 of this administrative regulation.

#### Section 14. Redetermination.

(1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information that supports the request for a new level;

and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, for a utilization review;
2. CRP-4, Children's Review Program Notice of Level of Care Redetermination;
3. CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, for a utilization review; or
4. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment, for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review due date or admission, and if the gatekeeper assigns a higher level with a CRP-4, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date if the complete utilization review materials were received on or before the utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review due date or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4, an appeal may be requested in accordance with Section 16 or 17 of this administrative regulation.

#### Section 15. Reassignment.

(1) If the level of care expires and the child is moved to a different child-caring facility or child-placing agency placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;
2. The most recent Child and Adolescent Needs and Strengths assessment report or a comparable assessment of the child; and
3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary.

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as established in Section 14 of this administrative regulation.

#### Section 16. Informal Dispute Resolution.

(1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within thirty (30) calendar days unless an extension is granted by the secretary or designee:

1. Due to extenuating circumstances that prolong the review; and
2. With notice provided to the contract agent.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section (17) of this administrative regulation.

Section 17. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

#### Section 18. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "CRP-2, Children's Review Program Notice of Level of Care Payment Authorization", 01/22;

(b) "CRP-4, Children's Review Program Notice of Level of Care Redetermination", 01/22;

(c) "CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", 01/22;

(d) "CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment", 01/22;

(e) "CRP-7, Children's Review Program Application for Level of Care Payment (ALP)", 07/22;

(f) ~~["DPP-114T, Transitional Child-Caring and Child-Placing Level of Care Schedule", 07/22;~~

(g) "DPP-114, Child Caring and Child Placing Level of Care Schedule", 05/23[02/23]; and

~~(h) ["DPP-888, Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs and Facilities", 07/22.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbps/Pages/default.aspx>.

LESA DENNIS, Acting Commissioner

CARRIE BANAHAN, Deputy Secretary

APPROVED BY AGENCY: April 25, 2023

FILED WITH LRC: May 4, 2023 at 3:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 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 July 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 July 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](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility, a payment rate for each level, gatekeeper responsibilities, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program costs analysis.



(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) and 605.090(1)(d) authorize the cabinet to establish by administrative regulation the rate setting methodology and the rate of payment for child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations establishing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice or the cabinet in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon the conditions established by the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605.

(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 levels of care and associated payments for a child's placement at a child-caring facility or child-placing agency consistent with the level and quality of care and service provided.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child in the custody of the cabinet with a child-caring facility or child-placing agency, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

(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 increases the per diem rates for specific levels of care provided for children with the highest needs in the custody of the state. The annual audited cost report and time study and preliminary data from the most recent rate study have been evaluated and the Department for Community Based Services (DCBS) has determined that a mid-cycle inflation adjustment is necessary to adequately reimburse child-placing and child-caring providers. Because documentation and analysis show that this rate increase is justified and needed, federal funding will be utilized in implementing this amendment. Documentation that the department received from the Children's Alliance requests that, "this rate increase be implemented as soon as possible as private child-caring and child-placing agencies are struggling to cover their rapidly rising costs given the swift and unprecedented inflation rates, respond to the workforce crisis that has ensued since the pandemic and meet the increased need for behavioral health services. Providers need financial relief as soon as possible...". Material incorporated by reference is also being amended to reflect this rate increase.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase the reimbursement rate for the care of children placed in child-caring and child-placing facilities. Facilities have struggled to maintain staff at safe staff-to-child ratios, which has caused facilities to not be able to accept the placement of children in the state's custody with high medical or behavioral health needs. DCBS needs to ensure that these facilities remain open and able to accept and care for children. Audits and studies have shown that the current rates are not adequate; therefore, this increase will be paid with federal funds. The Children's Alliance has stressed the urgent need to increase rates so that agencies can continue to provide needed services to the most vulnerable citizens. The rate increase is anticipated to assist with provider capacity, thereby better assuring placement options and quality care for children in state custody. The health and welfare of these children are jeopardized without the payment rate increase, in addition to threats to federal child welfare funding due to an inadequate service array for children requiring out-of-home care.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 199.641(2) states, "...when the department chooses to contract with a child-caring facility or child-placing agency for services to a child in the custody of or committed to the department, the department shall make payments to that facility based on the rate setting methodology developed from the model program cost analysis." This amendment ensures that payments to facilities are consistent with cost analyses, audits, and studies, and that private facilities have adequate funds to provide safe staff-to-child ratios and can continue to accept the placement of children requiring higher levels of care.

(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 increasing some payment rates so that they are more consistent with actual provider costs, thereby better facilitating placement options and preserving the health and welfare of children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 2023, there were 5,057 unique children placed in a private facility or agency setting according to their needed level of care established in this administrative regulation. There were 49 child-caring agencies and 122 child-placing agencies licensed to operate in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The children affected by this administrative regulation will have no new action required. Federal law has increased the standards that must be met for some of the entities providing care pursuant to this administrative regulation; therefore, they will be receiving increased per diems for providing care and meeting these new standards. It is the intent of the department that these increases will also help maintain staff and private foster homes so that the placement of children with higher therapeutic or medical needs will be accepted.

(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 affected entities, only to the department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will receive a per diem rate increase through this amendment. This rate increase is designed to offset the cost of meeting higher standards and to address the staffing crisis experienced by many facilities. Children in the state's custody will benefit from having more placement options and providers that can provide the level of care they need.

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

(a) Initially: The per diem increases are within existing appropriations.

(b) On a continuing basis: The per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding for these programs include federal Title IV-E (of the Social Security Act) foster care maintenance, general funds, and agency and restricted funds derived from the Temporary Assistance for Needy Family (TANF) block grant and Medicaid.

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

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

(9) TIERING: Is tiering applied? This administrative regulation does include tiering as different per diem rates and standards are associated with specific levels of care provided to children in the state's custody.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672, 675

(2) State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672, 675

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The increase in per diem rates are necessary in order to meet the higher standards required by the Family First Prevention Services Act and to address the staffing crisis experienced by facilities in providing care to children with high needs.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or 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 Cabinet for Health and Family Services, specifically the Department for Community Based Services (DCBS), is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1), 42 U.S.C. 622, 672

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of audits and studies to ensure the per diem increases are sustainable within appropriations.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings are anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated.

(c) How much will it cost the regulated entities for the first year? There are no costs to regulated entities.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Community Based Services

##### Division of Child Care

##### (Amendment)

#### 922 KAR 2:180. Requirements for registered relative child care providers in the Child Care Assistance Program.

RELATES TO: KRS [17.165, 17.545(2), 17.990, 189.125, 199.011(3), (4), 199.894(1), [199.462, 199.892] 199.896, 199.898, [199.8982, 199.8994, 214.010, 314.011(5), 527.070(1), 620.020(8), 620.030, 45 C.F.R. Part 98], 20 U.S.C. 6081-6084, 42 U.S.C. 601-619, 9857-9858g]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8994(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.8994(6) requires the cabinet to promulgate administrative regulations to establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child care provider that receives a child care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care. 45 C.F.R. Part 98 authorizes states to deliver high-quality, coordinated early childhood care and education services and improve the overall quality of child care services and programs. This administrative regulation establishes requirements for providers to participate in the Child Care Assistance Program and the application procedures.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(2) "Child" is defined by KRS 199.011(4).

(3) "Closed" means the provider is no longer a registered relative program provider.

(4) "Conditional approval" means time-limited approval while completing required training.

(5) [~~"Corporal physical discipline" is defined by KRS 199.896(18).~~]

(6)] "Denied" means the application for program registration is not approved and the applicant will be penalized.

(6)](7) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(8) "Health professional" means a person actively licensed in Kentucky as a:

- (a) Physician;
- (b) Physician assistant;
- (c) Advanced practice registered nurse; or
- (d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(9)] "Parent" is defined by 45 C.F.R. 98.2.

(7)](40)] "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(8)](41)] "Related" means the child has[having] one (1) of the following relationships with the registered relative provider:

- (a) [Child;
- (b)] Grandchild;
- (b) Great-grandchild;
- (c) Niece;
- (d) Nephew; or
- (e) Sibling, if the registered relative provider lives in a separate residence.];

- (f) Step-child;
- (g) Child in legal custody of the provider; or
- (h) Child living with the provider acting in loco parentis.]

(9)](42)] "Revoked" means the provider is no longer a registered provider and the provider will be penalized.

(10)](43)] "Withdrawn" means the application for program registration is removed from consideration without a penalty.

Section 2. Application Rights and Requirements for Relative Child Care Provider Registration. (1) [An individual shall notify the cabinet or its designee of the individual's intent to apply for child care provider registration:

- (a) Directly by:
  - 1. Telephone; or
  - 2. Written statement; or
- (b) Indirectly by being designated as the choice for providing unregulated child care by an applicant for benefits under the Child Care Assistance Program (CCAP) in accordance with 922 KAR 2:160.

(2) An individual may apply or reapply for child care provider registration on the same day that the notice of intent to apply in accordance with subsection (1) of this section is made with the cabinet or its designee.

(3) An individual who intends and requests to apply for registration as a child care provider shall not be required to appear in person to complete an application and supporting documentation in accordance with subsections (4) and (5) of this section, but may receive all necessary forms and instructions by mail.

(4)] To apply for relative child care provider registration in CCAP, an individual shall.];

(a) Be related to a child receiving CCAP in accordance with 922 KAR 2:160; and

(b) [within thirty (30) calendar days of giving notice of intent to apply pursuant to subsection (1) of this section:

- (a)] Submit:
  - 1.a. A completed DCC-95, Application for Registered Relative Child Care Provider in Provider's Home; or
  - b. A completed DCC-96, Application for Registered Relative Child Care Provider in Child's Home;
- 2. [Written verification from a health professional that the individual is:
  - a. Free of active tuberculosis; and
  - b. In good general health and able to care for children;
- 3. A completed DCC-94A, Registered Relative Child Care Provider Information Form;
- 3.4. A completed IRS W-9, Request for Taxpayer Identification Number and Certification;
- 4. Proof by photo identification or birth certificate that the individual is eighteen (18) years or older;
- 5. Verification of Social Security number;

6. Completed background checks in accordance with 922 KAR 2:280; and

7. Verification that the individual has completed the cabinet-approved training on billing and the DCC-94E required by 922 KAR 2:160.]and

(2)]5. A written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care that includes:

- a. A designated relocation site;
- b. Evacuation routes;
- c. Measures for notifying parents of the relocation site and ensuring a child's return to the child's parent; and
- d. Actions to address the needs of an individual child to include a child with a special need. The cabinet shall post an online template of an evacuation plan that fulfills requirements of this administrative regulation for an individual's free and optional use;
- (b) Show proof by photo identification or birth certificate that the individual is eighteen (18) years or older;
- (c) Show verification of Social Security number; and
- (d) Submit to background checks in accordance with 922 KAR 2:280.

(5)](a) An applicant may receive conditional approval in accordance with Section 4(2) of this administrative regulation.];

(b) Within ninety (90) calendar days of submitting an application to be a registered relative child care provider in CCAP pursuant to subsection (1) of this section, the applicant shall provide verification that the applicant has obtained training approved by the cabinet or its designee in the areas of:

1. Recognition of child abuse and neglect, which shall include one and one-half (1.5) hours of cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.896(16); and

2. Age-appropriate cardiopulmonary resuscitation (CPR) and first aid certified by a cabinet-approved training agency; and

(c) An applicant who fails to complete the training required by paragraph (b) of this subsection shall be subject to cabinet action in accordance with Section 4(4) of this administrative regulation[giving notice of intent to apply for registration as a child care provider in CCAP pursuant to subsection (1) of this section, the applicant shall provide verification that the applicant has obtained six (6) hours of training approved by the cabinet or its designee, in the areas of:

- 1. Health, safety, and sanitation;
- 2. Recognition of child abuse and neglect, which may include cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.896(16); and
- 3. Developmentally appropriate child care practice.

(c) An applicant who fails to complete training in accordance with paragraph (b) of this subsection shall be subject to cabinet action in accordance with Section 4(4) of this administrative regulation].

Section 3. Additional Requirements for Registered Relative Providers in Provider's Home. [(4)] If a registered relative child care provider provides child care services in the provider's home, the provider shall provide written verification that each member of the provider's household who is age eighteen (18) or older has completed background checks in accordance with 922 KAR 2:280.];

(a) Submit written verification from a health professional that each member of the provider's household age eighteen (18) or older is free from tuberculosis;

(b) Provide written verification that each member of the provider's household who is age eighteen (18) or older has submitted to background checks in accordance with 922 KAR 2:280; and

(c) Complete and sign the DCC-107A, Registered Provider Home Safety Checklist, with a cabinet representative.

(2) A registered child care provider shall certify that the provider's home and each play area used for child care are safe and have adequate:

- (a) Heat;
- (b) Light; and
- (c) Ventilation.

(3) Each floor of a registered child care provider's home used for child care shall have at least one (1):

- (a) Unblocked exit to the outside;
- (b) Smoke detector;
- (c) Fire extinguisher; and
- (d) Carbon monoxide detector if the home:
  1. Uses fuel burning appliances; or
  2. Has an attached garage.

(4) A registered child care provider's home and areas accessible to children in care shall be free of hazards, and the following items shall be inaccessible to a child in care:

- (a) Cleaning supplies, poisons, paints, and insecticides;
- (b) Knives, scissors, and other sharp objects;
- (c) Power tools, lawn mowers, hand tools, nails, and other similar equipment;
- (d) Matches, cigarettes, vaping devices, lighters, combustibles, and flammable liquids;
- (e) Alcoholic beverages; and
- (f) Medications.

(5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored and locked in locations separate from each other and inaccessible to a child in care.

(6) Electrical outlets not in use shall be covered.

(7) An electric fan, floor furnace, freestanding heater, wood burning stove, or fireplace, shall:

- (a) Be out of the reach of a child; or
- (b) Have a safety guard to protect a child from injury.

(8) A registered child care provider shall use protective gates to block all stairways if a child in care is under age three (3).

(9) Stairs and steps shall:

- (a) Be in good repair; and
- (b) Include railing of comparable length to the stairs or steps.

(10) A registered child care provider's home shall have:

(a) At least one (1) working telephone with a residential line or an active mobile service; and

(b) An accessible list of emergency telephone numbers, including the numbers for the:

- 1. Police;
- 2. Fire station;
- 3. Emergency medical care;
- 4. Poison control center; and
- 5. Reporting of child abuse and neglect.

(11) A registered child care provider's home shall have a:

(a) Refrigerator in working order that maintains a temperature of forty-five (45) degrees Fahrenheit or below; and

(b) Freezer that maintains a temperature of zero degrees Fahrenheit.

(12) A registered child care provider shall maintain first aid supplies that include:

- (a) Liquid soap;
- (b) Band aids;
- (c) Sterile gauze; and
- (d) Adhesive tape.

(13) A registered child care provider shall wash hands with liquid soap and running water:

- (a) Before and after diapering a child;
- (b) Before and after food preparation;
- (c) Before feeding a child;
- (d) After smoking or vaping; and
- (e) At other times as necessary to prevent the spread of disease.

(14) In accordance with KRS 199.896(18), a registered child care provider shall not use corporal physical discipline on a child entrusted to the provider's care.

(15) Pets or livestock shall be vaccinated and not left alone with a child.

(16) If transportation is provided by a registered child care provider, the provider shall:

- (a) Have written permission from a parent or guardian to transport the child;
- (b) Have a vehicle equipped with seat belts; and
- (c) Comply with KRS 189.125 regarding child restraint and seating.

(17)(a) If a registered provider provides child care in the provider's home, the cabinet or its designee shall complete an initial or an annual home inspection of the registered child care provider in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and this administrative regulation.

(b) If the cabinet or its designee finds that the registered provider is noncompliant with Sections 2(4), 5, 6, or 7(2) of this administrative regulation or this section, the registered provider shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days from the cabinet's statement of noncompliance.

(c) A corrective action plan shall include:

- 1. Specific action undertaken to correct a violation;
- 2. The date action was or shall be completed;
- 3. Action utilized to assure ongoing compliance;
- 4. Supplemental documentation requested as a part of the plan; and
- 5. Signature of the provider and the date of signature.

(d) The cabinet or its designee shall review the plan and notify a registered provider within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

- 1. Accept the plan;
- 2. Not accept the plan; or
- 3. Take negative action in accordance with Section 8 of this administrative regulation.

(e) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(f) A registered provider notified of an unaccepted plan shall:

- 1. Submit an amended plan within ten (10) calendar days of notification; or
- 2. Be subject to negative action in accordance with Section 8 of this administrative regulation.

(g) If a registered provider fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall take negative action in accordance with Section 8 of this administrative regulation.

(h) The cabinet shall not review or accept more than three (3) corrective action plans from a registered provider in response to the same written statement of deficiency.

(18) A registered provider's voluntary closure shall not preclude the cabinet's pursuit of negative action.]

#### Section 4. Actions on Applications.

(1) The cabinet or its designee shall approve, deny, or withdraw an individual's application for registration within thirty (30) calendar days from receipt of the individual's application[notice of intent to apply made] in accordance with Section 2(1) of this administrative regulation.

(2) The cabinet or its designee may conditionally approve an individual who submitted a complete [made a notice and] application pursuant to Section 2(1) [and (4)] of this administrative regulation, to provide child care services to a child for ninety (90) calendar days, if the applicant complies with:

- (a) Sections 2(4), 5, and 6 of this administrative regulation; and
- (b) Section 3 of this administrative regulation, if child care is given in the home of the provider; and
- (c) 922 KAR 2:280.

(3) The cabinet or its designee shall approve an individual who submitted an[made a notice and] application pursuant to Section 2[(1) and (4)] of this administrative regulation as a registered relative child care provider for one (1) year, if the applicant complies with:

- (a) Section 2(2)[Sections 2(4) through (5), 5, and 6] of this administrative regulation; and
- (b) Section 3 of this administrative regulation if child care is given in the home of the provider; and
- (c) 922 KAR 2:280 for:
  1. The applicant; and
  2. Any member of the applicant's household who is age eighteen (18) or older if child care is given in the home of the provider].

(4) If a conditionally approved provider~~[, as specified in subsection (2) of this section,]~~ has not completed the training requirement pursuant to Section 2(2)~~[(5)]~~ of this administrative regulation, ~~[or if a background check has not been completed in accordance with 922 KAR 2:280,]~~ the cabinet or its designee shall:

(a) Not approve an applicant for payment pursuant to 922 KAR 2:160 past the ninety (90) days of conditional approval; and

(b) Deny another:

1. Period of conditional approval for the same applicant; or

2. Application from the same applicant unless training:

a. ~~Training~~ has been completed in accordance with Section 2(2)~~[(5)]~~ of this administrative regulation~~[- and~~

b. ~~Background checks have been completed in accordance with 922 KAR 2:280].~~

(5) The cabinet may confirm training verification provided by an applicant, conditionally approved applicant, or registered relative child care provider through the cabinet-approved training database maintained in accordance with 922 KAR 2:240.

Section 5. General Requirements for Registered Relative Child Care Providers. (1) A registered relative child care provider shall not:

(a) Live in the same residence as the child in care;

(b) Hold a license to provide child care in accordance with 922 KAR 2:090; or

(c) Hold certification to provide child care in accordance with 922 KAR 2:100~~[- or~~

(d) ~~Provide care for more than three (3) children unrelated to the provider in accordance with KRS 199.898(1)(a)].~~

(2) A registered relative child care provider shall not provide other home based services, including services, such as:

(a) A personal care home in accordance with 902 KAR 20:036;

(b) A family care home in accordance with 902 KAR 20:041;

(c) An adult day care in accordance with 910 KAR 1:160; or

(d) Supports for community living in accordance with 907 KAR 1:145 or 907 KAR 12:010.

(3) A registered relative child care provider shall:

(a) Comply with the:

1. Provisions of KRS 199.898; and

2. Provider requirements in accordance with 922 KAR 2:160, Section 14~~[+3]~~; and

(b) ~~[Allow the cabinet, the cabinet's designee, another agency with regulatory authority, and a parent of a child in care access to the premises where a child receives care during the hours that the child care services are provided; and~~

(c) Report within ten (10) calendar days any change to the provider's:

1. Address;

2. Name;

3. Telephone number;

4. Household members; or

5. Location where the child care is provided.

(4)(a) A registered relative child care provider who provides~~[gives]~~ care in the provider's home shall comply with the requirements of Section 3~~[(4)]~~ of this administrative regulation within thirty (30) calendar days for a:

1. New household member who is eighteen (18) years or older;

or

2. Household member who turns age eighteen (18).

(b) If a background check in accordance with Section 3~~[(4)]~~ and 922 KAR 2:280 is pending on a member of the registered provider's household who is eighteen (18) years or older, the registered relative child care provider who provides~~[gives]~~ care in the provider's home shall prohibit unsupervised contact between the household member and a child in care.

(5)(a) A registered relative child care provider shall maintain an attendance sheet in which the daily arrival and departure times of each child are recorded in accordance with 922 KAR 2:160, Section 14~~[+3]~~.

(b) A registered child care provider shall retain attendance sheets completed in accordance with paragraph (a) of this subsection for five (5) years.

(6)(a) Care for a child with a special need shall be consistent

with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

(7) ~~[While providing child care services, a registered provider and another person in the provider's home shall:~~

(a) ~~Be free of the influence of alcohol or a controlled substance, except for use of a controlled substance as prescribed by a physician; and~~

(b) ~~Prohibit smoking or vaping in the presence of a child in care.~~

(8) A registered relative child care provider shall report to the cabinet or designee within twenty-four (24) hours:

(a) [Within twenty-four (24) hours from the time of discovery:

1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

2. An accident or injury to a child that requires medical care;

3. An incident that results in legal action by or against the registered child care provider that:

a. Affects:

(i) A child in care;

(ii) The registered child care provider; or

(iii) An adult residing in the registered child care provider's household if child care services are provided in the provider's home; or

b. Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

4. An incident involving a fire or other emergency, including a vehicular accident while the provider is transporting a child receiving child care services;

5. A report of child abuse or neglect that:

1. ~~[a.]~~ Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

2. ~~[b.]~~ Names:

a. ~~[(i)]~~ The registered relative child care provider as the alleged perpetrator; or

b. ~~[(ii)]~~ A member of the registered relative child care provider's household as the alleged perpetrator if child care services are provided in the provider's home; or

b. ~~[6.a.]~~ The registered child care provider is disqualified in accordance with 922 KAR 2:280; or

b. If child care is given in the provider's home, a member of the registered provider's household who is eighteen (18) years or older meets a disqualifying criterion or background check result in accordance with 922 KAR 2:280;

(b) An incident of child abuse or neglect pursuant to KRS 620.030;

(c) The death of a child in care within one (1) hour; or

(d) The provider's temporary or permanent closure as soon as practicable, which shall also be given to the parent of a child in care.

Section 6. Child Ratios. During hours of operation, a registered relative child care provider shall not care for more than:

(1) ~~[Three (3) children receiving CCAP per day;~~

(2) Six (6) children receiving CCAP per day~~[- if these children are:~~

(a) A part of a sibling group; and

(b) Related to the provider; or

2. ~~[(3)]~~ A total of eight (8) children inclusive of the provider's own children.

Section 7. Renewal of Registration. (1) The cabinet or its designee shall send a reminder notice to a registered relative child care provider at least forty-five (45) calendar days prior to the expiration date of the provider's registration issued in accordance with Section 4(3) of this administrative regulation.

(2) To renew child care provider registration prior to the expiration of the registration, a registered child care provider shall:

(a) Meet the requirements specified in:

1. Sections 2~~[(4)]~~, 5, and 6 of this administrative regulation; and

2. 922 KAR 2:280;

(b) Complete, and provide verification of, ~~[three (3) hours of training in early care and education approved by the cabinet or its designee;~~

~~1. To include] one and one-half (1 1/2) hours of pediatric abusive head trauma training once and each subsequent five (5) years of employment or operation as a child care provider;~~

~~(c) Obtain certification in cabinet-approved age-appropriate cardiopulmonary resuscitation (CPR) and first aid; and~~

~~(d) Complete cabinet-approved training on billing and utilizing the DCC-94E in accordance with 922 KAR 2:160.];~~

~~a. Within first year of employment or operation as a child care provider; and~~

~~b. Completed once during each subsequent five (5) years of employment or operation as a child care provider; and~~

~~2. In one (1) or more of the following subjects:~~

~~a. Child growth and development;~~

~~b. Learning environments and nutrition;~~

~~c. Health, safety, and nutrition;~~

~~d. Family and community partnerships;~~

~~e. Child assessment;~~

~~f. Professional development and professionalism; or~~

~~g. Program management and evaluation;~~

~~(c) Submit an updated version of the evacuation plan established in Section 2(4)(a)5 of this administrative regulation;~~

~~(d) Retain a copy of the updated evacuation plan; and~~

~~(e) Provide a copy of the updated evacuation plan to each parent of a child in care.~~

~~(3) In addition to the requirements of subsection (2) of this section, a registered provider who gives care in the provider's home shall also comply with the requirements of Section 3 of this administrative regulation.]~~

Section 8. Negative Action for an[An] Applicant or a[A] Registered Relative Child Care Provider.

(1) If a registered relative child care provider or a member of the provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(2) The cabinet or its designee shall send written notice of negative action to:

(a) An applicant for registration, if the application is:

1. Withdrawn; or

2. Denied; or

(b) A registered relative child care provider, if the provider's registration is:

1. Closed; or

2. Revoked.

(3) The notice of negative action shall include the:

(a) Reason for the negative action; and

(b) Effective date.

(4) An application for registration shall be denied or a registered provider's registration shall be revoked if:

(a) ~~[Written verification from a health professional confirms a diagnosis of tuberculosis;~~

~~(b)] A disqualifying criterion or background check result in accordance with 922 KAR 2:280 is met;~~

~~(b)](e)] A history of behavior exists that may impact the safety or security of a child in care including:~~

~~1. A conviction, an Alford plea, or a guilty plea related to the abuse or neglect of an adult; or~~

~~2. Other behavior or condition indicating inability to provide reliable care to a child;~~

~~(c)](d) The provider uses or allows the use of any form of corporal physical discipline on a child entrusted to the provider's care;~~

~~(e) The cabinet has probable cause to believe there is an immediate threat to the health, safety, or welfare of a child;~~

~~(f)] The applicant or provider has been discontinued or disqualified from participation in:~~

~~1. CCAP, including an intentional program violation in accordance with 922 KAR 2:020; or~~

~~2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program; or~~

~~(d)](g)] The applicant or provider knowingly misrepresents or submits false information on a form required by the cabinet; or~~

~~(h) During the hours that child care services are provided, the provider refuses access by:~~

~~1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:~~

~~a. A child in care; or~~

~~b. The location of the child care; or~~

~~2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records].~~

(5) If an applicant has had a previous ownership interest in a child care [child-care] provider that had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or a pending adverse action in accordance with 922 KAR 2:090, 2:100, 2:120, or this administrative regulation, the cabinet shall grant the applicant registration if:

(a) A seven (7) year period has expired from the:

1. Date of the prior denial, suspension, or revocation;

2. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or a pending adverse action;

3. Last day of legal remedies being exhausted; or

4. Date of the final order from an administrative hearing; ~~and]~~

(b) The applicant complies with:

1. Sections 2, 5, and 6 of this administrative regulation;

2. If care is given in the home of the provider, Section 3 of this administrative regulation; and

3. 922 KAR 2:280;

(c) The applicant completes, and provides verification of, ~~an additional twelve (12) hours of] training approved by the cabinet or its designee[ in early care and education];~~

(d) The applicant has not had an application, certificate, license, registration, or permit to operate as a child care provider denied, revoked, or voluntarily relinquished for:

1. A disqualifying criterion or background check result in accordance with 922 KAR 2:280; or

2. Discontinuance or disqualification from participation in:

a. CCAP, including an intentional program violation, in accordance with 922 KAR 2:020; or

b. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program.

(6) An application may be withdrawn:

(a) If all required documentation for the application process is not received within thirty (30) calendar days in accordance with Section 2(4)] of this administrative regulation; or

(b) At the request of the applicant.

(7) A registered relative child care provider's status may be closed:

(a) At the request of the provider; or

(b) If the provider fails to comply with requirements in Section 3, 5, 6, or 7(2) of this administrative regulation.

(8) The voluntary withdrawal, closure, or relinquishment of a provider's registration shall not preclude the cabinet's pursuit of adverse action.

Section 9. Appeal of Negative Action. If the cabinet or its designee denies or withdraws an application for registration, revokes a provider's registration, or closes a provider, the applicant or provider may request an appeal in accordance with 922 KAR 2:260.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-94A, Registered Relative Child Care Provider Information Form", 2023[2018];

(b) "DCC-95, Application for Registered Relative Child Care

Provider in Provider's Home", 2023[2018];

(c) "DCC-96, Application for Registered Relative Child Care Provider in Child's Home", 2023[2018]; and

(d) ["DCC-107A, Registered Provider Home Safety Checklist", 2018; and

(e)] "IRS W-9, Request for Taxpayer Identification Number and Certification", December 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbS/Pages/default.aspx>.

LESA DENNIS, Acting Commissioner  
CARRIE BANAHA, Deputy Secretary

APPROVED BY AGENCY: April 18, 2023

FILED WITH LRC: April 20, 2023 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 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 July 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 July 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: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for child care providers to register and participate in the Child Care Assistance Program (CCAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for child care providers to register and participate in CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of requirements for a child care provider to register and participate in CCAP. The requirements contained herein are consistent with statute.

(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 requirements for a child care provider to register and participate in CCAP. These requirements are consistent with statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment addresses non-compliances that were noted during Kentucky's federal

monitoring visit conducted in 2022. The federal government has urged amendments be made in this administrative regulation for consistency with Child Care and Development Fund (CCDF) rules. Through this amendment, only relatives of children in care will be able to be approved as registered child care providers. Non-relative providers will have to become certified child care providers. Because registered providers will only be relatives moving forward, many requirements are being deleted from this administrative regulation, including a notice of intent to apply. 45 C.F.R. 98.42(b)(2)(ii) provides the authority for license-exempt child care providers, which includes relatives, to operate as long as they comply with health and safety standards. This includes grandparents, great grandparents, siblings (if they live in a separate residence), aunts, and uncles providing care for children related to them. These requirements will still be maintained for certified and licensed child care providers through 922 KAR 2:090 and 922 KAR 2:100. Forms incorporated in this administrative regulation are also being amended to clarify that registered child care providers are required to be related to the children in their care.

(b) The necessity of the amendment to this administrative regulation: These amendments are required in order to address federal non-compliance issues identified through federal audit.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the Child Care and Development Fund (CCDF) program, 45 C.F.R. Part 98, and state statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will ensure Kentucky is meeting federal and state requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants and existing registered child care providers will be impacted by this administrative regulation. As of April 2023, there were forty-four registered providers in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers who are relatives to children in their care will not need to take additional steps to remain eligible. Providers who are not relatives will need to transition to become certified in accordance with 922 KAR 2:100. The Department for Community Based Services, Division of Child Care, will assist with this transition.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to relative child care providers. Providers who will need to become certified in accordance with 922 KAR 2:100 may need to make modifications to meet regulatory requirements. There is also an application and renewal fee associated with becoming certified - the fee for an initial certificate for a certified family child care home and a bi-annual certification renewal fee is \$10. The DCBS Division of Child Care (DCC) has made grant funding available to all individuals who open a new certified family child care home. Utilizing American Rescue Plan Act (ARPA) Funds, DCC offers one-time grants of up to \$5,000 to assist in purchasing items needed to establish and open a certified family child care home. These funds assist new providers in caring for children in a regulated environment, ensuring child safety and security. The grant application is available online at <https://www.chfs.ky.gov/agencies/os/oas/Pages/grants.aspx>.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Some unnecessary requirements are being eliminated for relative registered providers through this regulatory amendment. Applicants who are currently registered providers and are not relatives of the children in their care will be transitioned to become a certified child care provider, which has increased health and safety measures.

These providers may receive \$5,000 in grant funding to help meet additional requirements and establish a certified family child care home. These providers will also receive support from the Family Child Care Network (FCCN), which has regional offices with specialists who help potential providers, recruit in-home providers, offer training and technical assistance, and provide ongoing support to regulated in-home providers. In addition, the regional offices build relationships and connections among in-home providers in the area and across the state.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs 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 Child Care and Development Fund Block Grant, state match, and maintenance of effort funds for the block grant, with limited agency funds support the direct implementation of this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, this administrative regulation will be implemented in the same manner throughout the state.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. Part 98

(2) State compliance standards. KRS 194A.050(1), 199.8994(6)

(3) Minimum or uniform standards contained in the federal mandate. The requirements established in this administrative regulation comply with the federal mandate.

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

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

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, Division of Child Care, administers this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.8994(6), 45 C.F.R. Part 98

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will generate no 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 amendment to this administrative regulation will generate no revenue in the subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment does eliminate some regulatory requirements for registered relative child care providers, but significant cost savings are not anticipated.

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

(c) How much will it cost the regulated entities for the first year? There will be no additional costs to relative child care providers. Registered providers who are not related to the children in their care will need to become certified in accordance with 922 KAR 2:100 and may need to make modifications to meet regulatory requirements. There is also an application and renewal fee associated with becoming certified - the fee for an initial certificate for a certified family child care home and a bi-annual certification renewal fee is \$10. The DCBS Division of Child Care has made grant funding available to all individuals who open a new certified family child care home. Utilizing American Rescue Plan Act (ARPA) Funds, one-time grants up to \$5,000 are available to assist in paying fees and purchasing items needed to establish and open a certified family child care home. The grant application is available online at <https://www.chfs.ky.gov/agencies/os/oas/Pages/grants.aspx>.

(d) How much will it cost the regulated entities for subsequent years? There will be no new costs to registered relative providers; however, there is a \$10 fee to become a certified family child care home and \$10 renewal fee.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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



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](#).

**BOARDS AND COMMISSIONS**

**Board of Nursing**

**(New Administrative Regulation)**

**201 KAR 20:700. Medication aide training programs and credentialing of medication aides.**

RELATES TO: KRS 194A.705(2), 216.510(1), 314.133

STATUTORY AUTHORITY: KRS 314.131, 314.133

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 and 314.133 requires the Kentucky Board of Nursing (KBN) to promulgate administrative regulations to establish requirements for the credentialing of medication aides, including educational requirements, standards for training programs including delegation of the administration of oral or topical medications and preloaded insulin injection, credentialing requirements, and fees for initial, renewal, and reinstatement of credentials, and any other necessary fees. This administrative regulation establishes requirements for KBN approval of medication aide training programs and requirements for the credentialing of medication aides.

Section 1. Definitions. (1) "Board" means the Kentucky Board of Nursing.

(2) "Certified medication aide I" or "CMA I" means a person who:

(a) Has received specialized training under the supervision of a nurse; and

(b) Is permitted to administer oral or topical medications under the delegation of a nurse upon successful completion of a board approved examination.

(3) "Certified medication aide II" or "CMA II" means a person who:

(a) Meets the requirements of a CMA I; and

(b) Receives additional specialized training under the supervision of a nurse to administer only insulin via preloaded insulin pen upon successful completion of a board approved examination.

(4) "Didactic" means the component of a medication aide training program that includes lecture, verbal instruction, or other means of exchanging theoretical information between the instructor and students, including a classroom setting or distance learning technology.

(5) "Kentucky medication aide" means a state registered nurse aide (SRNA) who:

(a) Has successfully completed the medication aide examination administered by the Kentucky Community and Technical College System (KCTCS);

(b) Administers oral or topical medications under the delegation of a nurse to a resident of a long-term care facility; and

(c) Is accepted by the board as having a credential that shall be equivalent to a CMA I.

(6) "Long-term care facility" is defined by KRS 216.510(1).

(7) "Mentor" means a didactic instructor with teaching experience.

(8) "Training program" means formal specialized medication aide training provided by an individual, facility, college, or school.

Section 2. Medication Aide Training Program Approval. (1) A KMA medication aide training and testing program administered by a college within KCTCS shall:

(a) Be deemed compliant with the requirements of this administrative regulation; and

(b) Not be required to submit an application to the board unless the KMA program provides training to individuals seeking a CMA II credential.

(2) Unless exempt under subsection (1) of this section, a

training program shall not admit an individual until the program has been approved by the board.

(3) The following may request approval from the board to provide medication aide training for individuals seeking a CMA I or CMA II credential:

(a) A long-term care facility that has a license in good standing and offers medication aide training to:

1. Its own employees; or

2. Employees of a long-term care facility owned by the same company;

(b) A Kentucky university or college program; or

(c) Other proprietary education program located in Kentucky.

(4) In-state training programs.

(a) An in-state entity seeking board approval of its training program shall:

1. Submit a completed Application for Medication Aide Training Program via the portal at [www.kbn.ky.gov](http://www.kbn.ky.gov) accompanied by a fee of:

a. \$200 for initial approval of a CMA I training program; or

b. \$300 for initial approval of a CMA I and CMA II training program;

2. Prepare each candidate seeking a CMA I credential to pass:

a. The Medication Aide Competency Examination (MACE) administered by National Council of State Boards of Nursing; or

b. Other competency examination approved by the board; and

3. If the training program prepares a candidate seeking a CMA II credential, it shall prepare the candidate to pass a competency examination approved by the board.

(b) If the training program administers a proprietary competency examination to candidates seeking a CMA I or CMA II credential, the program shall submit a copy of the examination to the board for prior approval.

(5) Out-of-state training.

(a) An individual who completes a medication aide training program provided by an out-of-state training provider shall:

1. As a condition of obtaining the CMA I credential, pass the MACE or other competency examination approved by the board; or

2. As a condition of obtaining the CMA II credential:

a. Complete an out-of-state training program that meets the requirements of Section 6(7) and (8) of this administrative regulation; and

b. Pass a competency examination approved by the board.

(b) An out-of-state medication aide training program shall be exempt from the application requirements of subsection (4)1. of this section.

Section 3. Medication aide training program administration. (1) The training program shall appoint a program administrator who shall be responsible for the administrative oversight of the program; and

(2) Submit the following in writing to the board:

(a) Name of the program administrator;

(b) Date the program administrator will assume responsibility for administrative oversight of the program; and

(c) A copy of the program administrator's curriculum vitae;

(3) The training program shall notify the board in writing of a change of program administrators within thirty (30) days of the personnel change; and

(4) Develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each training program location; and

(5) Maintain a system of official records and reports essential to the operation of the training program according to the program's written policies that shall:

(a) Address how the program's records will be maintained in a secure manner to protect from loss or unauthorized distribution or

use;

(b) Ensure that all records shall be retained for at least five (5) years;

(c) Ensure that each trainee roster includes:

1. The nurse instructor's name and licensure information;

2. Each trainee's:

a. Name;

b. Date of birth;

c. Last four (4) digits of the trainee's Social Security number; and

d. Program activity and completion dates;

(d) Document how the program will conduct a periodic and systematic plan of evaluation; and

(e) Ensure that a list of successful graduates of the training program is maintained.

Section 4. Program administrator. The program administrator shall be:

(1) The facility administrator on record for each facility; or

(2) A registered nurse who has the following qualifications:

(a) An unencumbered Kentucky nursing license or multistate privilege to practice; or

(b) A temporary work permit as nurse in Kentucky.

Section 5. Instructors. (1) The number of instructors shall be adequate to implement the training program as determined by:

(a) Program outcomes;

(b) Instruction objectives; and

(c) The educational technology utilized.

(2) The program administrator shall be responsible for approving the instructors.

(3) Didactic instructors.

(a) The training program's didactic instructor shall have the following qualifications:

1. An unencumbered Kentucky nursing license or multistate privilege to practice; or

2. A temporary work permit as nurse in Kentucky.

(b) If the didactic instructor does not have prior teaching experience, the program administrator shall assign a mentor to the didactic instructor for the purpose of assisting with implementation of an educational development plan.

(4) Clinical instructors and preceptors.

(a) A clinical instructor shall hold a current:

1. Unencumbered Kentucky nursing license or multistate privilege to practice; or

2. Temporary work permit as nurse in Kentucky.

(b) A preceptor shall:

1. Meet the clinical instructor requirements in paragraph (a) of this subsection; or

2. Hold a current medication aide certification; and

3. Have a minimum of six (6) months experience passing medications.

(5) Each training program shall maintain records in accordance with Section 3 of this administrative regulation to document that each clinical instructor has been oriented to the:

(a) Course;

(b) Program outcomes;

(c) Student learning objectives;

(d) Evaluation methods used by the instructors; and

(e) Role expectations.

Section 6. Standards for Training Programs and Medication Aide Certification. (1) A training program shall conduct an evaluation as required by Section 3(5)(d) of this administrative regulation to:

(a) Validate that identified program outcomes have been achieved; and

(b) Provide evidence of improvement based on an analysis of the results.

(2) As a condition of admission to a training program for a CMA I credential, the applicant shall:

(a) Be able to read, write, and speak English;

(b) Have basic math skills;

(c) Have a high school diploma or equivalent; and

(d)1. Have at least six (6) months of continuous work experience as a State registered nurse aide (SRNA) in a nursing facility that is certified under Title XVIII or XIX of the Social Security Act; or

2. Direct care staff member of a:

a. Long-term care facility that is not certified under Title XVIII or XIX of the Social Security Act;

b. Facility operated by the Department of Juvenile Justice; or

c. Residential facility licensed by the Cabinet for Health and Family Services if authorized under the facility's scope of licensure.

(3) A training program that prepares an individual for a CMA I credential shall:

(a) Include at least:

1. Forty (40) clock hours of didactic course work;

2. Twenty (20) clock hours of skills laboratory; and

3. Forty (40) clock hours of direct patient contact with a clinical instructor;

(b) Ensure that the didactic course work and skills laboratory shall be completed in no shorter than a two (2) week course;

(c) Ensure that the candidate is precepted for a minimum of sixty (60) clock hours; and

(d) Maintain a log of clinical hours for each trainee in which the instructor and preceptor document completion of the clock hours required by subparagraphs 1. to 3. of this paragraph.

(4)(a) Upon completion of CMA I training, a candidate shall complete the MACE or other board approved examination within sixty (60) days.

(b) If the candidate does not pass the examination after two (2) attempts or if more than sixty (60) days have elapsed since completion of the CMA I training, the candidate shall provide documentation of repeating the CMA I training to be eligible to retake the examination.

(5) The curriculum for a CMA I training program shall include the following topics:

(a) Medication orders, documentation, storage, and disposal;

(b) Mathematics, weights and measures;

(c) Forms of medications;

(d) Medication basics, including terms, abbreviations, dosage, and actions;

(e) Safety and rights of medication administration;

(f) Preparation and actual medication administration;

(g) Prevention of medication errors;

(h) Causes and reporting of medication errors;

(i) Building of relationships;

(j) Reporting of symptoms or side effects;

(k) Reporting of changes from the resident's normal condition, status, or routine;

(l) Documentation of medication administration;

(m) Routes of administration;

(n) Factors affecting how the body uses medication;

(o) Classes of medications related to body systems and common actions;

(p) Location of resources and references;

(q) Rights of individuals;

(r) Specific legal and ethical issues;

(s) Knowledge of infection control related to medication administration;

(t) Roles of the supervising nurse;

(u) Role of the medication aide; and

(v) Responsibility of the medication aide when accepting delegated tasks.

(6) As a condition of admission to a training program for a CMA II credential, the applicant shall have successfully completed the CMA I specialized training and passed the board approved CMA I examination.

(7) A training program that prepares an individual for a CMA II credential shall include:

(a) A minimum of sixteen (16) clock hours of didactic course work in insulin administration via a prefilled insulin pen;

(b) A minimum of eight (8) clock hours of clinical training with continuous, direct, on-site supervision by a nurse to be completed within sixty (60) days of completion of the didactic course work;

(c) A minimum of twenty (20) documented insulin injections via prefilled insulin pen that shall be:

1. Directly supervised by a nurse; and
2. Completed within sixty (60) days of completion of the didactic course work; and

(d) A board approved competency examination.

1. Upon completion of the CMA II training, a candidate shall complete a board approved examination within sixty (60) days.

2. If the candidate does not pass the examination after two (2) attempts or if more than sixty (60) days have elapsed since completion of the CMA II training, the candidate shall provide documentation of repeating the CMA II training to be eligible to retake the examination.

(8) The curriculum for a CMA II training program shall include the following topics:

- (a) Pathophysiology of diabetes;
- (b) Diabetes disease management;
- (c) Blood glucose testing and use of equipment;
- (d) Understanding the meaning of glucose levels;
- (e) Insulin administration procedure;
- (f) Potential complications and adverse reactions; and
- (g) Role and responsibility.

(9) Implementation of the curriculum.

(a) A training program shall be developed to include outcomes, planned instruction, learning activities, and methods of evaluation.

(b) The instruction methods and activities of both instructor and trainee shall be specified. The activities shall be congruent with stated objectives, and content shall reflect adult learning principles.

(c) A copy of the training program's curriculum shall be on file and available to the board upon request.

(d) Didactic instruction may be offered through distance learning technologies. The instruction offered through the use of distance learning technologies shall be comparable to that offered in an in-person program.

(10) Substantive changes to the training program's standards for medication training or certification shall be:

(a) Submitted to the board portal at [www.kbn.ky.gov](http://www.kbn.ky.gov) with a completed Application for Medication Aide Training Program within thirty (30) days of implementation; and

(b) Subject to a change of status fee of:

1. \$200 for a CMA I training program; or
2. \$300 for a CMA II training program.

(11) A training program shall respond to a written request from the board for documentation within thirty (30) days of the date of the board's request.

(12) The board shall have the authority to amend a program's standards for medication training or certification if it fails to comply with the requirements of the administrative regulation. Upon written notification, the training provider shall comply with the requirements within thirty (30) days.

(13) The board may deny, suspend, or revoke approval or the change of status of a medication aide training program, based upon the following:

(a) Failure to meet or maintain the requirements set forth in this administrative regulation; or

(b) Submitting false, misleading or deceptive statements, information or documentation to the board or its designees.

(14) If approval of the training program is denied, suspended, or revoked, the board shall do so in writing stating the reasons for the adverse action.

Section 7. Program Completion Requirements and Recertification. (1) Each individual who successfully completes a board approved medication aide training program and passes the medication aide training and competency evaluation shall register via the board's nursing portal at [www.kbn.ky.gov](http://www.kbn.ky.gov).

(2) The training program shall submit to the board:

- (a) The name of the certified individual;
  - (b) Title of training program, date of completion, and location;
  - (c) A program code number issued by the board; and
  - (d) Name and signature of the program administrator;
- (3) A training program shall:

- (a) Maintain a record of graduates for at least five (5) years;

and

(b) Provide a copy of the training program's graduate records to the board upon request.

(4) Recertification.

(a) The credential for a CMA I or CMA II shall expire one (1) year from the date of initial certification or recertification.

(b) To recertify as a CMA I or CMA II, the medication aide shall provide the board with:

1. Documentation of a yearly evaluation and validation of competency;

2. Proof of at least four (4) clock hours of medication-specific education;

3. A minimum of forty (40) hours worked prior to expiration of certification; and

4. A certification fee of twenty-five (25) dollars.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Medication Aide Training Program (CMA I)", 05/23; and

(b) "Application for Medication Aide Training Program (CMA I and II)", 05/23.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at: <https://kbn.ky.gov/General/Pages/Document-Library.aspx>.

AUDRIA DENKER, President

APPROVED BY AGENCY: May 4, 2023

FILED WITH LRC: May 9, 2023 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2023, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, [Jeffrey.Prather@ky.gov](mailto:Jeffrey.Prather@ky.gov). Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather; General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets educational requirements for medication aide training programs and the credentialing of medication aides.

(b) The necessity of this administrative regulation: This regulation is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By establishing educational requirements for medication aide training programs and the credentialing of medication aides.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing program educational requirements, approved by the Kentucky Board of Nursing (Board), for the approval of medication aide training programs and the certification of medication aides (CMA). There are two classes of CMAs are created: CMA I, and CMA 2. An individual with the CMA I certification will be trained in a KBN approved

program to administer oral and topical medications in a long-term care facility; an individual with a CMA II will be trained in an approved program to also administer preloaded insulin injections.

(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 not an amendment to an existing administrative regulation. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation that is needed to conform with KRS 314.133.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation that sets the standards for medication aide I and II training programs and the credentialing of those medication aides.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation that sets the standards for medication aide I and II training programs and the credentialing of those medication aides.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In addition to individuals, colleges and universities the may offer the training, there are approximately 100 assisted living communities, 290 nursing facilities, 16 independent care facilities, 105 personal care homes, and a provider categorized as an "Alzheimer's Nursing Home". Therefore, there are over 500 facilities that will be able to offer the training under 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: The entities with need to have individuals in their facilities who are trained as CMA I or CMA II to administer medications to their residents. The entities may institute their own training program as long as it has approved by the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost is \$200 for review and approval of a CMA I program and \$300 for a CMA II program. There are no renewal fees. However identical fees if the entity substantially changes its CMA training program(s) at a later time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The facilities with be in compliance with the Cabinet for Health and Family Services statutory and regulatory requirements regarding medication administration. The Board approved training program provides another avenue to employ trained staffing to assist with medical care of residents.

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

(a) Initially: There is no additional cost beyond the application fee.

(b) On a continuing basis: There is no additional cost, unless the program substantially changes its training program.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: New fees are mandated by KRS 314.133(4) and will be necessary to compensate the Board for staff time.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It establishes fees pursuant to KRS 314.133(4).

(9) TIERING: Is tiering applied? The changes will apply equally, there is no tiering.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be

impacted by this administrative regulation? Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131 and 314.133.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost saving.

(c) How much will it cost the regulated entities for the first year? No additional cost.

(d) How much will it cost the regulated entities for subsequent years? No additional cost.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (New Administrative Regulation)

#### 301 KAR 11:020. Procurement of architectural and engineering services.

RELATES TO: KRS Chapter 45A, KRS Chapter 150  
STATUTORY AUTHORITY: KRS 150.025, 150.0242, 45A.800, 45A.835, 45A.195, 45A.440, 45A. 695

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Department of Fish and Wildlife Resources is authorized by KRS 150.0242 to conduct all procurements necessary for the performance of its duties in accordance with the procurement procedures outlined in KRS Chapter 45A, Chapter 150, and administrative regulations promulgated under KRS Chapter 150. KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.0242 requires the department to promulgate administrative regulations

## VOLUME 49, NUMBER 12– JUNE 1, 2023

pursuant to KRS Chapter 13A to implement its procedures for the procurement of engineering services pursuant to KRS 150.0242 and 45A.800 to 45A.838.

Section 1. Solicitations. A solicitation for architectural or engineering services shall comply with the provisions of KRS 45A.825 and include the following evaluation factors:

- (1) Experience and ability:
  - (a) Experience of key personnel that will be assigned to the project, including principal in charge, project manager, other key professional and technical staff;
  - (b) Previous projects completed by the firm similar to the proposed project;
  - (c) Types of projects on which the firm or key personnel have been the prime design professional or provided significant professional design services;
  - (d) Qualifications of the proposed project team;
  - (e) Volume of design work in the last two (2) years.
- (2) Past performance:
  - (a) For the two (2) year period prior to solicitation of services, the ability to design projects within specific project budgets and schedules.
  - (b) Design performance and experience of firm and key personnel with prior projects of similar scope.
  - (c) Construction supervision services and post construction services if relevant.
  - (3) Existing workload relative to the size of the firm and capacity to perform the project.
  - (4) Geographical location with respect to the project:
    - (a) Location of offices of persons that will perform the work.
    - (b) Size of staff, including professional personnel, in the offices that will perform the work.
  - (c) Additional evaluation factors and other criteria required by the specific needs and scope of the project as set out in the requests for bids.

### Section 2. Prequalification.

- (1) In order to submit a response to a request for proposal, an architectural or engineering firm shall be prequalified by Kentucky Department of Fish and Wildlife Resources (KDFWR).
- (2) A firm shall prequalify by filing with the department a completed current Federal Architect – Engineer Qualifications Form, Standard Form 330. This form may be submitted concurrently with a response to a request for proposals.
- (3) The prime consultant shall be registered in the Commonwealth of Kentucky with the appropriate professional governing body.
- (4) Prequalification shall remain valid for the fiscal year in which it was received. To requalify, a firm shall submit an updated Federal Architect – Engineer Qualifications, Standard Form 330.
- (5) A firm desiring to be considered for an award as a prime shall provide:
  - (a) An original certificate of a continuous professional liability policy in an amount not less than \$1,000,000 with a response to a request for proposals.
  - (b) Proof of current Kentucky workers compensation insurance coverage.
  - (6) A certificate of self-insurance shall not be accepted by the department.

### Section 3. Receipt of Proposals.

- (1) Proposals shall be received at the designated location prior to the closing time and date for the receipt of proposals indicated in the solicitation or any extension thereof made by addendum. Proposals received after the closing time and date for the receipt of bids shall be considered for evaluation and award only if:
  - (a) No other bids were received;
  - (b) The re-advertisement time delay would affect the operations of the department; and
  - (c) In the reasonable judgment of the purchasing officer, the bid was finalized prior to the official closing time and date for the receipt of bids.
- (2) Submittals received that do not conform with the

requirements of the solicitation shall be deemed non-responsive.

Section 4. Department Employee Responsibilities. All department personnel engaged in the procurement of engineering, architectural, or related services or the implementation of the provisions of KRS 45A.800 to 45A.835 shall comply with the following:

- (1) Consider the interests of the Commonwealth of Kentucky and the department first when contracting for professional services;
- (2) Request and accept assistance from other department and state personnel as required without allowing it to impair the dignity and responsibility of the employee's position;
- (3) Seek to obtain the maximum value for each dollar spent for professional services;
- (4) Strive for honesty and truth in contracting;
- (5) Denounce all forms of bribery or favors;
- (6) Invite all firms to submit their qualifications for consideration by the department;
- (7) Assist other department personnel in the contracting for professional services as necessary; and
- (8) Comply with both the letter and the spirit of KRS 45A.340.

### Section 5. Selection Committee Evaluations.

- (1) Each member of an architectural or engineering services selection committee shall use the project evaluation sheet provided by the department procurement branch in evaluating a firm's proposal.
- (2) Upon completion of evaluation of all the responses to a request for proposals, each evaluation committee member shall sign his/her individual project evaluation sheet and shall submit the sheet to the chairperson of the committee. The chairperson of the selection committee shall record the composite score from each individual evaluation sheet on the evaluation summary sheet for the project. The evaluation summary sheet shall be signed by each participating member of the selection committee. This procedure shall also apply to project interview evaluation sheets used during the interview process as required by KRS 45A.825(8).
- (3) All evaluation sheets and evaluation summaries for a project shall be maintained by the department procurement branch.

### Section 6. Incorporation by Reference.

- (1) "Architect-Engineer Qualifications", July 2021 edition, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or online at: <https://www.gsa.gov/Forms/TrackForm/32994> for the "Architect – Engineer Qualifications".

RICH STORM, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 10:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 28, 2023, at 9:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax: (502) 564-0506, email: [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov)

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

FISCAL NOTE

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation sets forth procurement procedures necessary for the performance of the department's duties in accordance with procurement procedures outlined in KRS 45A and the procurement of architectural and engineering services pursuant to KRS 150.0242 and KRS 45A.800 to KRS 45A.835.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to outline regulations for procurement as listed in KRS Chapter 45A and Chapter 150, specifically for architectural and engineering services.

(c) How does this administrative regulation conform to the authorizing statute: This administrative regulation is necessary to comply with state law recently enacted from the 2023 legislative session authorizing the department to outline regulations for procurement as listed in KRS Chapter 45A and Chapter 150.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will outline the procedures used by the department for procurement of architectural and engineering services set forth in statute.

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

(a) How the amendment will change the existing administrative regulation: n/a.

(b) The necessity of the amendment to this administrative regulation: n/a.

(c) How does the amendment conform to 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 that will be affected: Architectural and Engineering firms that respond to KDFWR's solicitations for architectural and engineering 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: There will be no impact to the architectural and engineering firms because they were required to respond to similar solicitations produced by the Finance Cabinet to perform services for the KDFWR previously.

(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: Respond to solicitations with required information.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost from previous requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Firms will be able to contract with KDFWR.

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

(a) Initially: No additional cost to the Commonwealth. KDFWR will be doing the work instead of the Finance and Administration Cabinet.

(b) On a continuing basis: N/A

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: N/A

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

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

(9) TIERING: Is tiering applied? No tiering is not being applied, all architectural or engineering firms responding to solicitations will be subject to the same requirements to provide a fair and equitable selection process.

(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 Finance and Administration Cabinet and KDFWR.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. SB 241(2023), KRS 45A.805, KRS 45A.810, KRS 45A.815, KRS 45A.825, KRS 45A.827, KRS 45A.830, KRS 45A.835, KRS 45A.836, KRS 45A.837, KRS 45A.838, KRS 150.0242, KRS 150.025.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional cost to the Commonwealth. KDFWR will be doing the work instead of The Finance and Administration Cabinet.

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

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

(c) How much will it cost to administer this program for the first year? No additional cost to the Commonwealth. KDFWR will be doing the work instead of The Finance and Administration Cabinet.

(d) How much will it cost to administer this program for subsequent years? No additional cost to the Commonwealth. KDFWR will be doing the work instead of The Finance and Administration Cabinet.

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: No additional cost to the Commonwealth. KDFWR will be doing the work instead of Finance.

(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. No cost savings to the Commonwealth. KDFWR will be doing the work instead of The Finance and Administration Cabinet.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? none

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? none

(c) How much will it cost the regulated entities for the first year? No additional costs

(d) How much will it cost the regulated entities for subsequent years? No additional costs

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: No additional costs

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] None.

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Juvenile Justice**  
**(New Administrative Regulation)**

**505 KAR 1:185. Day treatment programs.**

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645, 34 C.F.R. 300.111

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 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 establishes general requirements for day treatment programs for juveniles committed to the department.

Section 1. Educational Services. (1) Educational services shall be provided to juveniles in a day treatment program. Educational services shall be made available to each juvenile upon admission and shall be open entry and open exit.

(2) Educational services shall be individualized to meet the assessment, educational, rehabilitative, and developmental instructional needs of each juvenile.

(3) Vocational Assessment. Juveniles who enter a day treatment program without a previously administered vocational assessment shall be administered a vocational assessment. The results shall be used to:

(a) Determine a juvenile's vocational aptitude and interests, learning and working styles, and career clusters;

(b) Assist DJJ and school district educational staff to integrate academic, vocational and work assignments, and treatment goals; and

(c) Provide a juvenile with workplace readiness skills.

(4) The results of educational and vocational assessments from the school district shall be used for the initial development, periodic review, and revision of an integrated Individual Plan of Instruction, Individual Education Plan if applicable, Individual Treatment Plan, Individual Learning Plan, Individual Learning Plan Addendum if applicable, and Aftercare Plan.

(5) ITP, IPI, IEP, and Aftercare Plan. DJJ shall participate with school district staff in the development, review, and revision of a juvenile's ITP, IPI, the IEP if applicable, and Aftercare Plan. The IPI and IEP, if applicable, shall be integrated with the ITP and completed within fourteen (14) school days of admission.

(6) Child Find. Any staff who suspects that a juvenile may have an educational disability shall communicate that concern in writing to the Administrative Duty Officer and report it to the treatment team.

Section 2. Technical Programming. (1) If technical programming is available, the program shall have specific criteria for enrolling juveniles, and the criteria shall be included in the orientation handbook.

(2) The Superintendent shall ensure that juveniles only use power driven machines and tools under the following circumstances:

(a) The juvenile has been enrolled in a technical training program;

(b) The juvenile is performing tasks designated by the Office of Career and Technical Education for the training program in which the juvenile is enrolled;

(c) The certified technical teacher of the training program is supervising the juvenile;

(d) The juvenile has successfully completed the safety training and the safety test necessary to use the machines and tools or complete the task; and

(e) The certified technical teacher shall document that the student has completed safety training.

(3) The certified technical teacher of the training program and facility staff shall monitor the emotional state and consider the

mental stability of the juvenile prior to allowing the juvenile to use power driven machines and tools or perform a potentially hazardous task.

Section 3. Searches. A juvenile may be searched for safety and security purposes. A search may include the juvenile's hair.

Section 4. Behavior. (1) During school hours, teachers shall direct juvenile behavior while juveniles are engaged with educational programming such as lessons, hands-on activities, school-day outings, community mentoring, vocational classes, and all teacher-led learning.

(2) Teachers shall collaborate with DJJ staff regarding appropriate consequences for an undesirable behavior.

(3) Teachers shall be included in the disciplinary review with the juvenile and DJJ staff.

(4) Acceptable school behavior and discipline information shall be incorporated into the Orientation Handbook and reviewed with each juvenile. A copy of the Orientation Handbook shall be posted at the school site. DJJ and education staff shall be provided a copy of the Orientation Handbook.

Section 5. Personal Property. (1) Allowable Personal Property. A juvenile may bring the following to a day treatment program:

(a) Key to access the juvenile's dwelling;

(b) Cell phone; and

(c) Cash, not to exceed ten (10) dollars.

(2) The program may set a different cash limit considering the needs of the juveniles in the program and the negative effects of available cash.

(3) The program may require allowed personal property to be locked away and not in the juvenile's possession during the school day or instructional time.

(4) Confiscated personal property shall be logged and secured. Law enforcement may be contacted if the juvenile's personal property poses a safety or security risk to the program.

(5) A juvenile may be reimbursed for damaged or lost personal property on a limited basis at the discretion of the superintendent.

(6) Unclaimed personal property shall be stored and retained at the program for not longer than thirty (30) school days.

Section 6. Telephone and Visitation. (1) A day treatment program shall provide juvenile access to a telephone for emergency calls.

(2) Visitation. Parental and caregiver visits shall be encouraged, and the program shall make provisions for assisting the parent or caregiver in visitation to the program. Visits shall be permitted for a parent or caregiver, or attorney during program hours, except if there is documented evidence that a visitor poses a threat to the safety of the juveniles or the security of the program or may disrupt the program.

Section 7. Counseling Services. (1) Counseling services shall be provided to each juvenile in accordance with the juvenile's individual treatment plan. Staff shall be available to provide counseling in emergency situations and upon a juvenile's request in accordance with each juvenile's ITP.

(2) Each juvenile attending school in a day treatment program shall have an opportunity for individual and group counseling.

(a) Individual counseling shall be:

1. Provided to each juvenile at a minimum of one (1) scheduled hour per week;

2. Used to help the juvenile make developmentally appropriate changes in thinking and behavior; and

3. Used to assist the juvenile in meeting goals and tasks identified on the juvenile's ITP;

(b) Group counseling. Group counseling shall be:

1. Provided to each juvenile at a minimum of two (2) scheduled hours per week;

2. Used to help the juvenile make developmentally appropriate changes in thinking and behavior;

3. Used to discuss specific and common issues, conflicts, and concerns;

(3) The juvenile's counselor may engage the juvenile's parent or caregiver as needed to assist the juvenile in meeting their educational treatment objectives.

Section 8. Youth Council. (1) A program shall have a youth council that meets monthly with the superintendent or designee. The youth council shall include representatives from each treatment group who shall present juvenile concerns.

(2) The youth council shall discuss and offer recommendations to the superintendent on issues including the following:

- (a) Staff and juvenile relations;
- (b) Programming issues;
- (c) Physical plant concerns;
- (d) Recreation;
- (e) Education;
- (f) Health and dietary issues; and
- (g) Youth activity fund.

(3) Written minutes shall be kept of each youth council meeting and shall be held on file for three (3) years by the superintendent or designee. The superintendent or designee and all participants shall sign an attendance sheet at the meeting.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy 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 administrative regulation establishes general requirements for day treatment programs for juveniles committed to the department.

(b) The necessity of this administrative regulation is: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning the day treatment program.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the

authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 38 DJJ day treatment employees, 156 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: The DJJ staff and juveniles will have to follow the requirements of the day treatment program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will assist in the effective and orderly management of the day treatment programs.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(6) What is the source of 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 not anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish 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 and school district employees involved in a day treatment program

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

(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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.



(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Juvenile Justice  
(New Administrative Regulation)**

**505 KAR 1:200. Cell entry teams, emergency response teams, and emergency response training.**

RELATES TO: KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 15A.305, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 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. KRS 15A.305(8)(b) requires the department to conduct monthly documented trainings related to emergency response. KRS 15A.305(8)(d) requires the department to establish emergency response teams at juvenile detention centers and youth development centers and further requires the emergency response teams to conduct monthly drills. KRS 15A.305(8)(e) requires memoranda of understanding with local law enforcement for emergency response and the inclusion of local law enforcement in emergency response training. This administrative regulation authorizes the creation of cell entry teams and requires emergency response teams and training.

Section 1. Definitions. (1) "Cell entry team" means a team of staff that are deployed to remove a juvenile from a cell or other confined area.

(2) "Emergency Response Team" or "ERT" means a team of staff trained and equipped to respond to emergencies within facilities operated by the department, including:

(a) Natural disaster;

(b) Riot, fire, or any other occurrence that create a risk to the safety or security of the facility, juveniles, staff, or volunteers;

(c) The escape of a juvenile from a facility operated by the department; or

(d) Other similarly emergent events.

Section 2. Cell Entry Team. (1) The department may establish and train cell entry teams.

(2) The department shall use reasonable force necessary to gain the compliance of a juvenile during a cell entry or other action by a cell entry team.

(3) A juvenile shall comply with the orders of a cell entry team.

Section 3. Emergency Response Team. (1) The department shall establish and train emergency response teams for detention centers and youth development centers.

(2) If a use of force is necessary during any emergency to which the ERT responds, the ERT shall use only reasonable force to resolve the emergency.

(3) The ERT shall conduct monthly drills for emergency response. The monthly drills may include:

(a) Riot;

(b) Fire;

(c) Tornado;

(d) Mass evacuation;

(e) Facility infrastructure failure;

(f) Search; or

(g) Other topics related to proper response to unexpected or emergent circumstances.

Section 4. Emergency Response Training and Coordination.

(1) DJJ shall contact local law enforcement to:

(a) Obtain memoranda of understanding with local law enforcement for emergency response; and

(b) Include them in emergency response training involving DJJ facilities.

(2) A juvenile detention center or a youth development center shall conduct monthly training for staff concerning emergency response. The monthly training may include:

(a) Riot;

(b) Fire;

(c) Tornado;

(d) Mass evacuation;

(e) Facility infrastructure failure;

(f) Search; or

(g) Other topics related to proper response to unexpected or emergent circumstances.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy 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 administrative regulation authorizes the creation of cell entry teams and requires emergency response teams.

(b) The necessity of this administrative regulation: This administrative regulation is needed to comply with requirements in KRS 15A.305(8).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation complies with the requirement in KRS 15A.305(8)(d) for emergency response teams in juvenile detention centers and youth development centers.

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

(a) How the amendment will change this existing administrative regulation: Not applicable

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 518 DJJ employees, 300 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: DJJ must establish the teams, train the teams, and establish monthly drills for the emergency response team. Staff will have to follow the requirements in the administrative regulation. Juveniles and their families will be made aware of the establishment of the cell entry teams and ERTs and their activities.

(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 tasers or pepper spray. These costs are for the numerous 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 numerous 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: This administrative regulation does establish 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, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

(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 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? This administrative 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 numerous 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? This administrative regulation is not anticipated to generate any cost

savings.

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

(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 numerous 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  
(New Administrative Regulation)**

**505 KAR 1:210. Restraints and control methods.**

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 15A.305, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 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. KRS 15A.305(8)(c) requires that appropriate staff working with detained youth have controlled access to and are properly trained in the use of appropriate defensive equipment comparable to that used by the Department of Corrections, including tasers, pepper spray, and shields. This administrative regulation establishes the use of restraints and control methods for juveniles in the custody of or placed with the department.

Section 1. Definitions. (1) "Planned use" means the prearranged use of a chemical agent or conductive energy device to prevent loss of life, injury to staff or juveniles, damage to state property, escape, or to maintain the secure and orderly operation of the facility.

(2) "Reactive use" means the emergency use of a chemical agent or conductive energy device in response to a specific act to prevent loss of life, injury to staff or juveniles, damage to state property, or escape.

Section 2. Restraint or Control Actions. (1) In addition to verbal commands and de-escalation, the restraint or control actions

allowed shall include physical restraints, mechanical restraints, chemical agents, shields, and conductive energy devices including stun shields.

(2) The restraint or control action shall not be used as punishment.

(3) Staff shall not use any force-related equipment other than what is authorized.

(4) Only the minimum force necessary to accomplish the control action shall be used.

(5) Staff shall use only reasonable force to control the juvenile during a physical restraint.

(6) A show of force may be employed if it is deemed practical and appropriate to the situation. A show of force may include maneuvering by the cell entry team or display of force and equipment available for use if the necessity arises.

Section 3. Mechanical Restraints. (1) Authorized mechanical restraints shall include handcuffs, flex-cuffs, leg shackles, waist chains, and other items authorized in writing by the commissioner of the department.

(2) Mechanical restraints shall be applied with only reasonable force necessary to restrain the juvenile.

(3) DJJ shall not use any type of mechanical restraint on a female juvenile during active labor and delivery of a child. Any exception shall require approval by and guidance on methodology from the Director of Medical Services and shall be based on documented security risks. The Director of Medical Services shall provide guidance on the use of restraints on a pregnant juvenile prior to active labor and delivery.

Section 4. Chemical Agents. (1) The only chemical agent authorized for use on a juvenile shall be oleoresin capsicum (OC).

(2) Reactive use of a chemical agent shall be authorized by the trained staff being issued the chemical agent canister.

(3) A planned use of a chemical agent shall require authorization from the Superintendent or designee. If time and circumstances reasonably permit, the juvenile's individual client record and medical file, if available, shall be examined by appropriate staff to determine if the juvenile has a significant:

(a) Medical problem that may be adversely affected by the chemical agent; or

(b) History of psychotic behavior and whether the individual may react significantly different than anticipated to chemical agents.

(4) A juvenile shall receive a medical evaluation after being exposed to a chemical agent.

(5) If not in use or issued to staff, chemical agents shall be stored in a secure location with controlled access.

Section 5. Conductive Energy Devices. (1) Conductive energy devices shall be used only after all lesser degrees of force have been tried or given due deliberate consideration.

(2) Use of a conductive energy device shall require authorization from the Superintendent or designee.

(3) If time and circumstances permit, the juvenile's individual client record and medical file, if available, shall be examined by appropriate staff to determine if the juvenile has a significant:

(a) Medical problem that may be adversely affected by the conductive energy device; or

(b) History of psychotic behavior and whether the individual may react significantly different than anticipated to conductive energy device.

(4) A juvenile shall receive a medical evaluation after the use of a conductive energy device.

(5) When not in use, conductive energy devices shall be stored in a secure location with controlled access.

Section 6. Reporting. An incident report shall be completed any time a physical restraint, chemical agent, or conductive energy device is used outside of authorized training. An incident report shall be completed any time a mechanical restraint is used on a juvenile outside of transport. 505 KAR 1:210. Restraints and control methods.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 12 noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on July 21, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Amy Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, 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 administrative regulation establishes the use of restraints and control methods for juveniles in the custody of or placed with the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.160, 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody 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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 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 will be instructed and trained on proper restraint techniques as well as the use of chemical agents and conductive energy devices. Juveniles and their families will be informed of the type of restraints used as well as the possibility of chemical agents and conductive energy devices being used.

(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 tasers or pepper spray. These costs are for the numerous administrative regulations being filed.

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

(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 numerous 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: This administrative regulation does establish 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, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

(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 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? This administrative 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

numerous 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? This administrative regulation is not anticipated to generate any cost savings.

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

(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 numerous 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**  
**(New Administrative Regulation)**

**505 KAR 1:220. Transportation of juveniles.**

RELATES TO: KRS 15A.065, 15A.0652, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 196.173, 605.080, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, 15A.210, 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. KRS 15A.305(8)(c) requires that appropriate staff

working with detained youth have controlled access to, and are properly trained in the use of, appropriate defensive equipment comparable to that used by the Department of Corrections, including tasers, pepper spray, and shields. This administrative regulation establishes requirements for the transportation of juveniles in the custody of the department.

Section 1. (1) A juvenile shall be searched before being placed in a vehicle for transport. Cross-gender searches shall only be conducted under exigent circumstances. Otherwise, searches shall be conducted by same gendered staff.

(2) Department staff shall determine if a juvenile may be notified in advance of a pending transportation trip.

(a) The default shall be to not give notice unless consideration of the factors in paragraph (b) of this subsection allow for notice.

(b) Consideration shall be given to:

1. The purpose of or reason for the transport;

2. Classification and behavior of the juvenile;

3. Whether the juvenile's parent or caregiver is being informed or will be present;

4. Safety and security issues, including:

a. Timing of the notice; and

b. Escape or AWOL risk.

(3) A juvenile in detention or a level 4 youth development center being transported shall be restrained with mechanical restraints and shall be transported in a vehicle with a security screen. Other juveniles may be transported in mechanical restraints if needed. However, juveniles shall not be secured or restrained to any part of the vehicle. A pregnant juvenile shall be restrained in compliance with KRS 196.173.

(4) Staff transporting juveniles may be equipped with chemical agents, conductive energy devices, additional mechanical restraints, and a cell phone.

(5) Seat belts shall be used in a vehicle.

(6) Transporting staff shall not allow a juvenile to visit or contact any person except a parent or caregiver by any means unless authorized in advance by the superintendent or designee.

(7) A juvenile shall not leave the vehicle at any stop unless the transporting staff escorts the juvenile.

(8) In an emergency or a collision, restraints may be removed from the juvenile only if the transportation staff determines that an urgent situation exists requiring removal of the restraints. Any restraints removed shall be limited to those restraints that compromise the health or safety of the juvenile.

(9) If the transportation of a juvenile is expected to extend through a mealtime, a sack lunch shall be prepared and placed in the transport vehicle or provision shall be made to feed the juvenile upon arrival.

(10) DJJ staff transporting a juvenile shall observe the same gender requirements of KRS 605.080.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy 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 administrative regulation establishes requirements for the transportation of juveniles in the custody of the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody 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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 699 DJJ employees, 504 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 will be trained in search, restraint, and transportation requirements. Juveniles and families will be informed that juveniles will be searched, restrained, and that chemical agents and conductive energy devices may be used.

(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 tasers or pepper spray. These costs are for the numerous administrative regulations being filed.

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

(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 numerous 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: This administrative regulation does establish 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, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

(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 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? This administrative 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 numerous 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? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost

savings.

(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 numerous 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

#### (New Administrative Regulation)

#### 505 KAR 1:230. Facility capacity, staffing, and population count.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, 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 establishes requirements for a maximum capacity to be established for each department facility, staffing, and a daily population count to be made.

#### Section 1. Bed Capacity.

(1) A facility shall not exceed the maximum capacity established by the State Fire Marshal.

(2) The department shall establish and maintain recommended maximum bed capacities at each facility.

(3) The Commissioner or designee may waive the recommended capacity maximum of a juvenile facility established in subsection (2) of this section, if it is determined that a waiver does not seriously affect the security, supervision of juveniles, programs, or the safe, healthful, or efficient operation of the facility.

Section 2. Required Staffing Levels for Juvenile Facilities. (1) Each juvenile facility shall have adequate staff to provide reasonable security to the juveniles and ensure their wellbeing.

(2) A juvenile or group of juveniles shall not be given control or authority over other juveniles.

(3) At least one same sex staff member of the juvenile population shall be on duty at all times.

(4) In an emergency, the superintendent may use other approved physical management certified DJJ staff to fulfill required

youth worker staff coverage on a shift-by-shift basis.

Section 3. Daily Census. (1) A facility operated by or contracted with the department shall conduct a daily census of the juveniles in its custody.

(2) A facility shall report any other information regarding the juvenile population in the daily census that the commissioner or designee directs.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy 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 administrative regulation establishes requirements for a maximum capacity to be established for each department facility, staffing, and a daily population count to be made.

(b) The necessity of this administrative regulation is: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody 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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 670 DJJ employees, 504 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: The facilities will have to be aware of capacity and options available. Facility staff and juveniles will have to cooperate for the daily census.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(6) What is the source of 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 not anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish 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, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

(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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

##### 810 KAR 2:100. Self-exclusion.

RELATES TO: KRS 230.260(15), 61.870-61.884

STATUTORY AUTHORITY: KRS 230.260(15)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 authorizes the Horse Racing Commission to promulgate administrative regulations prescribing conditions for a self-exclusion list for people who identify as problem or compulsive gamblers. This statute also requires the Commission to promulgate regulations prescribing conditions for notifications of the availability of this list by racing associations.

##### Section 1. Self-Exclusion List.

(1) The racing commission shall establish and maintain a self-exclusion list for individuals who self-identify as problem or compulsive gamblers.

(2) The list shall include the names and other identifying information of the individuals who have self-excluded from gambling at racing tracks, as set forth in Section 3(1) of this administrative regulation.

##### Section 2. Notice to the Public.

(1) Each racing association shall display a notice to the public of the existence of the self-exclusion list and the method or methods individuals may use to self-identify at the track, online, or by phone.

(2) The notice shall be displayed at public entrances to the wagering-specific locations of the racing track and on the racing association's Web site.

(3) The notice shall include information about the consequences of self-exclusion, including that the individual will be prohibited from entering the racing track and participating in any gambling activity at the track.



(4) The notice and its placement locations shall be approved by the commission.

Section 3. Collection of Self-Exclusion Information.

(1) Each racing association shall collect self-exclusion information from individuals who self-identify as problem or compulsive gamblers.

(2) The self-exclusion information collected shall include the individual's name, address, date of birth, and other identifying information as prescribed by the racing commission.

(3) The racing association shall provide the self-exclusion information to the racing commission on a weekly basis and in a manner approved by the commission.

Section 4. Compilation of Comprehensive List.

(1) The racing commission shall compile and maintain a comprehensive list of all individuals who have self-excluded from gambling at racing tracks.

(2) The comprehensive list shall include the self-exclusion information provided by each racing association.

(3) The comprehensive list shall be provided to all racing associations and updated on an as-needed basis, but at least monthly.

Section 5. Confidentiality of Self-Exclusion Information.

(1) Pursuant to KRS 61.878(1)(a) and 230.260, information collected under this subsection shall be excluded from the application of KRS 61.870 to 61.884.

(2) Self-exclusion information shall be kept confidential and shall not be disclosed except as necessary to enforce these regulations or as required by law.

Section 6. Self-exclusion Policy.

(1) Each racing association may establish its own self-exclusion policy. Each policy shall be approved by the racing commission to ensure the best interests of horse racing and compliance with KRS 230.260.

(2) The policy may cover how the racing association chooses to exclude individuals on the exclusion list. The policy may include identification and verification, forfeiture of prizes by excluded persons, security personnel, technology, employee training, contractual obligations, or collaboration with other racing associations.

(3) Each racing association shall review its self-exclusion policy at least once every two years and amend it as necessary to ensure compliance with commission regulations and its effectiveness in achieving the purposes for which it is established.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: May 10, 2023

FILED WITH LRC: May 12, 2023 at 9:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 21, 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 July 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 establishes a self-exclusion list for individuals who self-identify as problem or compulsive gamblers.

(b) The necessity of this administrative regulation: KRS 230.260(15) requires the Kentucky Horse Racing Commission to promulgate administrative regulations establishing a self-exclusion list for individuals who self-identify as being problem or compulsive gamblers. This regulation fulfills that statutory mandate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(15) requires the Kentucky Horse Racing Commission to promulgate administrative regulations establishing a self-exclusion list for individuals who self-identify as being problem or compulsive gamblers. This administrative regulation fulfills that statutory mandate. This administrative regulation also requires each racing association to display a notice to the public of the self-exclusion list and the method or methods individuals may use to self-identify as stated in the statute. This administrative regulation also requires each racing association to forward self-exclusion information to the Kentucky Horse Racing Commission, who shall compile the information into a comprehensive list to provide to the racing associations, as required by statute.

(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 mandates in KRS 230.260(15).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects Kentucky's licensed racing associations.

(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 each of the regulated entities identified in question (3) will have to take to comply with this regulation or amendment: Kentucky's licensed racing associations will be required to display a notice to the public of the existence of the self-exclusion list and the method or methods individuals may use to self-identify, collect self-exclusion information, provide self-exclusion information to the Kentucky Horse Racing Commission on a weekly basis, and review any self-exclusion policy at least once every two years to ensure compliance with regulations and its effectiveness in achieving the purposes for which it is established.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The licensed racing associations are expected to have little to no costs to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation promotes the integrity of Kentucky's racing and wagering industries.

(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: There is no increased 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 increase in fees or funding will be necessary to implement this administrative regulation.

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

(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 230.260(15).

(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 the first year.

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

(c) How much will it cost to administer this program for the first year? 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 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 (+/-): 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.

(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.

(c) How much will it cost the regulated entities for the first year? This regulation is anticipated to generate little to no new costs in the first year.

(d) How much will it cost the regulated entities for subsequent years? This regulation is anticipated to generate little to no new costs in subsequent years.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): While self-exclusion lists are currently maintained by the individual tracks, there could be minimal data entry required, with such costs assumed to be negligible.

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 answers to the questions above.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (New Administrative Regulation)

#### 922 KAR 2:245. Kentucky Infant and Toddler Credential.

RELATES TO: KRS 620.020(8)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(17), 199.8982(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(17) and 199.8982(3) require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials, including video instruction material. This administrative regulation establishes the requirements for applicants to complete the required training and education in order to obtain a Kentucky Infant and Toddler Credential.

Section 1. Definitions. (1) "Applicant" means an individual making an application for any level of an Infant and Toddler Credential.

(2) "Child Development Associate" or "CDA" means the nationally recognized credential approved by the Council for Professional Recognition.

(3) "Clock hour" means a sixty (60) minute period of instruction.

(4) "Infant" means a child who is less than twelve (12) months of age.

(5) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(6) "Toddler" means a child between the age of twelve (12) and thirty-six (36) months.

Section 2. Eligibility Criteria, Application, and Approval for the Kentucky Infant and Toddler Credential for All Levels.

(1) An individual applying for a Kentucky Infant and Toddler Credential shall:

(a) Be at least eighteen (18) years of age;

(b) Complete and submit the following to the cabinet or its designee:

1. Verification of the completion of the cabinet-approved training "Introduction to Kentucky Credentials";

2. Verification of the completion of cabinet-approved training on trauma informed care;

3. Verification of the possession of a current Pediatric First Aid and CPR certification;

4. Verification of the possession of a current Pediatric Abusive Head Trauma certification;

5. The DCC-245A, "Kentucky Infant and Toddler Credential Candidate Self-Assessment"; and

6. The DCC-245, "Kentucky Infant and Toddler Credential Application", which shall include documentation verifying that the individual meets the applicable requirements for the appropriate credential level established in Section 3, 4, or 5 of this administrative regulation;

(c) Submit a letter of recommendation to the cabinet or its designee from a:

1. Current supervisor; or

2. Parent or guardian of a child that is currently registered in the applicant's program if the applicant does not have a supervisor; and

(d) Meet the instructional and work or volunteer requirements established in Section 3, 4, or 5 of this administrative regulation.

(2) Upon approval of the documentation required by subsection (1) of this section, the cabinet or its designee shall award the individual a:

(a) Letter of approval; and

(b) Kentucky Infant and Toddler Credential for a credential level established in Sections 3 through 5 of this administrative regulation.

Section 3. Level 1 Infant and Toddler Associate Credential Requirements. In order to be approved as a Level 1 Kentucky Infant and Toddler Associate, an individual shall:

(1) Have completed sixty (60) clock hours of instruction in cabinet-approved infant and toddler topics within the past two (2) years; or

(2) Have completed sixty (60) clock hours of instruction from an institution of secondary education in cabinet-approved infant and toddler topics.

Section 4. Level 2 Kentucky Infant and Toddler Professional Credential Requirements. In order to be approved as a Level 2 Kentucky Infant and Toddler Professional, an individual shall:

(1) Have completed 120 clock hours of instruction in cabinet-approved infant and toddler topics within the past two (2) years and provide to the cabinet or designee a detailed resume that includes 480 hours of work or volunteer experience in providing services directly to infants and toddlers in the past three (3) years;

(2) Possess a current Infant and Toddler CDA;

(3) Possess a current Family Child Care CDA and have completed an additional thirty (30) hours of instruction in cabinet-approved infant and toddler topics in the past three (3) years; or

(4) Possess a current Family Child Care CDA and have obtained the Level 1 Kentucky Infant and Toddler Associate credential within the past three (3) years.

Section 5. Level 3 Kentucky Infant and Toddler Leader Credential Requirements. In order to be approved as a Level 3 Kentucky Infant and Toddler Leader, an individual shall:

(1) Possess:

(a) An associate or bachelor's degree or higher in early care and education with a minimum of nine (9) credit hours specifically focusing on cabinet-approved infant and toddler topics; or

(b) A bachelor's degree or higher in a field not related to early care and education with sixty (60) additional hours of instruction in cabinet-approved infant and toddler topics completed within the past two (2) years; and

(2) Provide a detailed resume that includes 480 hours of work or volunteer experience in providing services directly to infants and toddlers within the past three (3) years.

Section 6. Renewal of All Levels of a Kentucky Infant and Toddler Credential.

(1) A Kentucky Infant and Toddler Credential shall be:

(a) Valid for three (3) years; and

(b) Renewable.

(2) An application for renewal shall be submitted to the cabinet or its designee and shall include:

(a) A completed DCC-245;

(b) Documentation of forty-five (45) hours of cabinet-approved training or college coursework in infant and toddler topics within the past three (3) years;

(c) A detailed resume that includes 480 hours of work or volunteer experience in providing services directly to infants and toddlers within the past three (3) years;

(d) Current Pediatric First Aid and CPR Certification;

(e) Current Pediatric Abusive Head Trauma Certification;

(f) A completed DCC-245A; and

(g) A letter of recommendation from a:

1. Current supervisor; or

2. Parent or guardian of a child that is currently registered in the applicant's program if the applicant does not have a supervisor.

Section 7. Denial of Application or Renewal.

(1) The cabinet shall deny a Kentucky Infant and Toddler Credential or renewal if the individual fails to comply with:

(a) Section 2 of this administrative regulation for an initial application; or

(b) The corresponding requirements for the requested credential or renewal established in Sections 3, 4, 5, or 6 of this administrative regulation.

(2) If the Kentucky Infant and Toddler Credential is denied, the individual:

(a) Shall be informed as to the unmet requirements that resulted in the denial; and

(b) May reapply after the requirements that caused the denial are met.

Section 8. Revocation of Credential.

(1) The cabinet shall revoke a Kentucky Infant and Toddler Credential from an applicant who:

(a) Falsifies a record; or

(b) Fails to comply with the requirements established in this administrative regulation.

(2) An individual whose credential has been revoked may:

(a) Request a hearing pursuant to 922 KAR 2:260; or

(b) Reapply for a Kentucky Infant and Toddler Credential after two (2) years from the date of revocation.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) DCC-245, "Kentucky Infant and Toddler Credential Application", 2023; and

(b) DCC-245A, "Kentucky Infant and Toddler Credential Candidate Self-Assessment", 2023;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbcs/Pages/default.aspx>.

LESA DENNIS, Acting Commissioner

CARRIE BANAHA, Deputy Secretary

APPROVED BY AGENCY: April 27, 2023

FILED WITH LRC: May 11, 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 July 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 July 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 July 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for an individual to obtain a Kentucky Infant and Toddler Credential.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process for child care staff to voluntarily apply for and obtain this credential. Credentials assist in increasing the professionalism in the early childhood education field. Additionally, this will help increase the quality of trainings offered across the state, as they are specialized and focused on the age group and content area of the credential. When providers take trainings tailored to the age group of children they serve, it increases the quality of care for those children and their families. New, required forms are incorporated in this administrative regulation. This administrative regulation is necessary to establish the requirements of KRS 199.896(17) and 199.8982(3), which require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials. The credential and approval process established in this administrative regulation ensures model training is available for child care providers. Currently, twenty states have an infant and toddler credential. Out of the twenty, eighteen states have qualification requirements specifically for child care center staff who work with infants and toddlers. Five other states include the credential in their quality rating improvement system and the DCBS Division of Child Care intends to do this as well to potentially increase a provider's All STARS rating.

(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 requirements and process for an applicant to obtain a Kentucky Infant and Toddler Credential.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing criteria and requirements for a Kentucky Infant and Toddler Credential. KRS 199.896(17) and 199.8982(3) require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of February 2023, there were approximately 200 certified family child care homes and 1,800 licensed child care providers. Staff who work in these facilities specifically with infants and toddlers may want to pursue this

credential although it will not be required by the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Child care provider staff are not required to obtain this credential, but if they choose to do so, the processes and requirements are established in this administrative regulation. The training and education required for each level is detailed within the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with obtaining this credential.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Obtaining these credentials is a professional development higher standard. Earning the credential states that individuals have the knowledge, special skills, and experience necessary to provide the highest level of quality in care and education for young children.

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

(a) Initially: There are no costs associated.

(b) On a continuing basis: There are no costs associated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Tobacco Master Settlement Agreement funds are the source of funding for child care credentialing programs.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Child Care, administers this program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(17), 199.8982(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? This administrative regulation will not generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? Tobacco Master Settlement Agreement funds are used in the administration of child care credentialing programs. No costs are associated with this specific credential.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this specific credential.

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 does not include cost savings for regulated entities.

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

(c) How much will it cost the regulated entities for the first year? There are no costs associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. No, this administrative regulation is not anticipated to have a major economic impact to regulated entities.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Child Care**  
**(New Administrative Regulation)**

**922 KAR 2:255. Kentucky School-Aged Youth Development Credential.**

RELATES TO: KRS 158.030, 164.518(3)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(17), 199.898(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(17) and 199.898(3) require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials, including video instruction material. KRS 164.518(3) requires the cabinet to participate in the promulgation of administrative regulations including monetary incentives for scholarship program participants. This administrative regulation establishes the requirements that shall be met for an applicant to obtain a School-Aged Youth Development Credential.

**Section 1. Definitions.**

(1) "Applicant" means an individual making an application for any level of a School-Aged Youth Development Credential.

(2) "Child Development Associate" or "CDA" means the nationally recognized credential approved by the Council for Professional Recognition.

(3) "Clock hour" means a sixty (60) minute period of instruction.

(4) "School-aged" means a child who meets the age requirements established in KRS 158.030 or who attends

kindergarten, elementary, or secondary education.

Section 2. Eligibility Criteria, Application, and Approval for the Kentucky School-Aged Youth Development Credential for All Levels.

(1) An individual applying for a Kentucky School-Aged Youth Development Credential shall:

(a) Be at least eighteen (18) years of age;

(b) Complete and submit the following to the cabinet or its designee:

1. Verification of the completion of the cabinet-approved training "Introduction to Kentucky Credentials";

2. Verification of the completion of cabinet-approved training on trauma informed care;

3. Verification of the possession of a current Child and Adult First Aid and CPR Certification;

4. The DCC-255A, "Kentucky School-Aged Youth Development Credential Candidate Self-Assessment"; and

5. The DCC-255, "Kentucky School-Aged Youth Development Credential Application", which shall include documentation verifying that the individual meets the applicable requirements for the appropriate credential level established in Section 3, 4, or 5 of this administrative regulation; and

(c) Submit a letter of recommendation to the cabinet or its designee from a:

1. Current supervisor; or

2. Parent or guardian of a child that is currently registered in the applicant's program if the applicant does not have a supervisor; and

(d) Meet the instructional and work or volunteer requirements established in Section 3, 4, or 5 of this administrative regulation.

(2) Upon approval of the documentation required by subsection (1) of this section, the cabinet or its designee shall award the individual a:

(a) Letter of approval; and

(b) Kentucky School-Aged Youth Development Credential for a credential level established in Sections 3 through 5 of this administrative regulation.

Section 3. Level 1 Kentucky School-Aged Youth Development Associate Credential Requirements. In order to be approved as a Level 1 Kentucky School-Aged Youth Development Associate, an individual shall:

(1) Have completed sixty (60) clock hours of instruction in cabinet-approved school-aged or youth development topics within the past two (2) years; or

(2) Have completed sixty (60) clock hours of instruction from an institution of secondary education in cabinet-approved school-aged or youth development topics.

Section 4. Level 2 Kentucky School-Aged Youth Development Professional Credential Requirements. In order to be approved as a Level 2 Kentucky School-Aged Youth Development Professional, an individual shall:

(1) Have completed 120 clock hours of instruction in cabinet-approved school-aged or youth development topics within the past two (2) years and provide to the cabinet or designee a detailed resume that includes 480 hours of work or volunteer experience in providing services directly to school-aged children in the past three (3) years;

(2) Possess a current Military School-Age CDA;

(3) Possess a current Preschool CDA and have completed an additional thirty (30) hours of instruction in cabinet-approved school-age or youth development topics in the past three (3) years; or

(4) Possess a current Preschool CDA and have completed all requirements for a Level 1 Kentucky School-Aged Youth Development Associate within the past three (3) years.

Section 5. Level 3 Kentucky School-Aged Youth Development Leader Credential Requirements. In order to be approved as a Level 3 Kentucky School-Aged Youth Development Leader, an individual shall:

(1) Possess:

(a) An associate or bachelor's degree or higher in a school-age or youth development field with a minimum of nine (9) credit hours specifically focusing on cabinet-approved school-age or youth development topics; or

(b) A bachelor's degree or higher in a field not related to school-age or youth development with sixty (60) additional hours of instruction in cabinet-approved school-age or youth development topics within the past two (2) years; and

(2) Provide a detailed resume that includes 480 hours of work or volunteer experience in providing services directly to school-aged children within the past three (3) years.

Section 6. Renewal of All Levels of a Kentucky School-Aged Youth Development Credential.

(1) A Kentucky School-Aged Youth Development Credential shall be:

(a) Valid for three (3) years; and

(b) Renewable.

(2) An application for renewal shall be submitted to the cabinet or its designee and include:

(a) A completed DCC-255;

(b) Documentation of forty-five (45) clock hours of cabinet-approved training or college coursework in school-age or youth development topics within the past three (3) years;

(c) A detailed resume that includes 480 hours of work or volunteer experience in providing services directly to school-age children in the past three (3) years;

(d) Current Child and Adult First Aid and CPR Certification;

(e) A completed DCC-255A; and

(f) A letter of recommendation from a:

1. Current supervisor; or

2. Parent or guardian of a child that is currently registered in the applicant's program if the applicant does not have a supervisor.

Section 7. Denial of Application or Renewal.

(1) The cabinet shall deny a Kentucky School-Aged Youth Development Credential or renewal if the individual fails to comply with:

(a) Section 2 of this administrative regulation for an initial application; or

(b) The corresponding requirements for the requested credential or renewal established in Section 3, 4, 5, or 6 of this administrative regulation.

(2) If the School-Aged Youth Development Credential is denied, the individual:

(a) Shall be informed as to the unmet requirements that resulted in the denial; and

(b) May reapply after the requirements that caused the denial are met.

Section 8. Revocation of Credential.

(1) The cabinet shall revoke a Kentucky School-Aged Youth Development Credential from an applicant who:

(a) Falsifies a record; or

(b) Fails to comply with the requirements established in this administrative regulation.

(2) An individual whose credential has been revoked may:

(a) Request a hearing pursuant to 922 KAR 2:260; or

(b) Reapply for a Kentucky School-Aged Youth Development Credential after two (2) years from the date of revocation.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) DCC-255, "Kentucky School-Aged Youth Development Credential Application", 2023; and

(b) DCC-255A, "Kentucky School-Aged Youth Development Credential Candidate Self-Assessment", 2023;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at

<https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

LESA DENNIS, Acting Commissioner

CARRIE BANAHAN, Deputy Secretary

APPROVED BY AGENCY: April 26, 2023

FILED WITH LRC: May 11, 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 July 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 July 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 July 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](mailto:CHFSregs@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for an individual to obtain a Kentucky School-Aged Youth Development Credential.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process for child care provider staff to voluntarily apply for and obtain this credential. Credentials assist in increasing the professionalism in the early childhood education field. Additionally, this will help increase the quality of trainings offered across the state as they are specialized and focused on the age group and content area of the credential. When providers take trainings tailored to the age group of children they serve, it increases the quality of care for children and families. New, required forms are incorporated in this administrative regulation. This administrative regulation is necessary to establish the requirements of KRS 199.896(17) and 199.8982(3), which require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials. The credential and approval contained in this administrative regulation ensures model training is available for child care providers. Approximately 15 other states offer a similar credential with apprenticeships that increase workforce development in this job sector.

(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 criteria to obtain a Kentucky School-Aged Youth Development Credential.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing criteria and requirements for a Kentucky School-Aged Youth Development Credential. KRS 199.896(17) and 199.8982(3) require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of February 2023, there were approximately 200 certified family child care providers and 1,800 licensed child care providers. Staff who work in these facilities specifically with school-aged children after school and during school breaks may want to pursue this credential although it will not be required by the state. These staff are often excluded from training and professional development, which is commonly centered around infants and toddlers. This credential will provide these staff with specialized training and credentialing and result in increased training opportunities specific to these providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Child care provider staff are not required to obtain this credential, but if they choose to do so, this administrative regulation outlines the requirements for an individual to obtain a Kentucky School-Aged Youth Development Credential. The training and education for each level is detailed within the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with obtaining this credential.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Obtaining these credentials is a professional development higher standard. Earning the credential states that you have the knowledge, special skills, and experience necessary to provide the highest level of quality in care and education for children.

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

(a) Initially: There are no costs associated.

(b) On a continuing basis: There are no costs associated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Tobacco Master Settlement Agreement funds are the source of funding for child care credentialing programs.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Child Care, administers this program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(17), 199.898(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? This administrative regulation will not generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? Tobacco Master Settlement Agreement funds are used in the administration of child care credentialing programs. No costs are associated with this specific credential.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this specific credential.

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 does not include cost savings for regulated entities.

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

(c) How much will it cost the regulated entities for the first year? There are no costs associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. No, this administrative regulation is not anticipated to have a major economic impact to regulated entities.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of May 9, 2023

**Call to Order and Roll Call**

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 9, 2023 at 1:00 p.m. in Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken.

**Present were:**

**Members:** Senator Stephen West, Co-Chair; Representative Derek Lewis, Co-Chair; Senators Julie Raque Adams, Damon Thayer, and David Yates; 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:** Todd Allen, Education Professional Standards Board; Alison Chavies, Blake Christopher, Bryan Hubbard, Kentucky Opioid Abatement Advisory Commission; Jeff Allen, Board of Dentistry; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Steven Fields, Rich Storm, Department of Fish and Wildlife Resources; Bill Bell, Jay Huber, Jon Johnson, Department of Highways; Todd Allen, Department of Education; Lisa King, Marcus Roland, Workers' Compensation Funding Commission; Justin Burse, Gary Stephens, Jessica Sullivan, Department of Financial Institutions; Stephanie Brammer-Barnes, Kara Daniel, Adam Mather, Office of Inspector General; Victoria Elridge, Sarah Puttoff, Beth Reardon, Department for Aging and Independent Living; Representative Steve Bratcher, self; Wesley Duke, Lisa Lee, Jonathan Scott, Department for Medicaid Services.

**Administrative Regulations Reviewed by this Subcommittee:**

**EDUCATION AND LABOR CABINET: Education Professional Standards Board: Certification Procedures**

016 KAR 004:060. Certificate renewals and teaching experience. Todd Allen, general counsel, represented the board.

In response to a question by Co-Chair West, Mr. Allen stated that this administrative regulation, which related to the renewal of teaching certifications, expanded opportunities for meeting renewal standards. This administrative regulation was not anticipated to worsen Kentucky's teacher shortage.

**DEPARTMENT OF LAW: Kentucky Opioid Abatement Advisory Commission**

040 KAR 009:010E. General application procedure. Alison Chavies, executive staff advisor; Blake Christopher, general counsel; and Bryan Hubbard, chair and executive director, represented the commission.

In response to questions by Co-Chair Lewis, Mr. Christopher stated that the recourse for misappropriation of funds would depend upon the type of misappropriation involved. Options included debiting the misappropriated amount toward future funding, precluding future funding, and reimbursing the misappropriated amount. The commission had statutory provisions to refer cases of misappropriation to the Attorney General for investigation and further action. The commission may tier reporting requirements in the future, so that entities receiving smaller funding amounts have fewer reporting requirements. There were already statutory provisions that allowed a city to rely on the county for reporting purposes if the city's funding allotment was de minimis.

In response to questions by Co-Chair West, Mr. Christopher stated that the settlement would provide approximately \$842 million to be disbursed over the next fifteen (15) to twenty (20) years of scheduled payments, with fifty (50) percent going directly to cities and counties and fifty (50) percent going to the commission. More settlements from other companies could be added to the overall fund in the future.

040 KAR 009:010. General application procedure.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND AUTHORITY paragraphs and Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

040 KAR 009:020E. Local government application procedure.

040 KAR 009:020. Local government application procedure.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**BOARDS AND COMMISSIONS: Board of Dentistry**

201 KAR 008:533. Licensure of dentists. Jeff Allen, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs; Sections 2, 7, 9, and 16; and incorporated material to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 008:563. Licensure of dental hygienists.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs; Sections 1, 2, 4 through 10, 15, and 17; and incorporated material to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Nursing**

201 KAR 020:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board.

In response to questions by Senator Yates, Ms. Jenkins stated that calculation changes had made it difficult to accurately determine the number of students in nursing programs. This "snapshot" approach aligned with the national association's system of calculation, as well as with many other states' methods.

In response to a question by Co-Chair West, Ms. Jenkins stated that many Kentucky universities had increased enrollment in nursing programs.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1, 5, and 10; and incorporated material to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:390. Nursing Incentive Scholarship Fund.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 6, 8, and 10 to comply with the



drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game**

301 KAR 002:015. Feeding of wildlife. Steven Fields, staff attorney, and Rich Storm, commissioner, represented the department.

In response to a question by Co-Chair West, Mr. Storm stated that Kentucky was experiencing a ten (10) year high pertaining to turkey harvesting.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 002:090. Means by which migratory game birds may be taken.

**Wildlife**

301 KAR 004:110. Administration of drugs to wildlife.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**TRANSPORTATION CABINET: Department of Highways: Motorcycle and Bicycle Safety**

601 KAR 014:050. Motorcycle Safety Education Program. Jay Huber, administrator, RideSMART Kentucky Program, and Jon Johnson, assistant general counsel, represented the department.

**EDUCATION AND LABOR CABINET: Department of Education: Academic Standards**

704 KAR 008:060. Required academic standards for social studies. Todd Allen, general counsel, represented the department.

**Workers' Compensation Funding Commission**

803 KAR 030:010. Special fund assessments. Lisa King, executive director, and Marcus Roland, general counsel, represented the commission.

In response to questions by Co-Chair West, Ms. King stated that this administrative regulation was not related to payment of claims. This administrative regulation was clarifying Kentucky-written Workers' Compensation premium assessment provisions for transparency purposes.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 5, 11, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PUBLIC PROTECTION CABINET: Department of Financial Institutions: General Provisions**

808 KAR 001:170. Licensing and registration. Justin Burse, acting commissioner; Gary Stephens, assistant general counsel; and Jessica Sullivan, assistant director, Non-depository Division, represented the department.

In response to questions by Co-Chair West, Mr. Burse stated that the fee system was being reorganized to be based on loan volume and calculated within a minimum and maximum amount. Brokers and mortgage companies would now have one (1) yearly fee, rather than several separate fees. This change was statutorily driven and would increase fees for most brokers and mortgage companies. Fees had not been raised for almost thirty (30) years.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 9 and 11 to comply with the drafting requirements of KRS

Chapter 13A; (2) to amend Section 5 to clarify that branches do not have to pay the registration renewal fee individually; (3) to amend Section 11 to insert a reference to KRS 12.357, which exempted military spouses from licensure fees under certain circumstances; and (4) to amend Section 4(2)(c) to revise the date to submit third quarter Mortgage Call Reports from November 1 to November 14, which was the date required by the NMLS data system. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Health Services and Facilities**

902 KAR 020:480. Assisted living communities. Stephanie Brammer-Barnes, regulation coordinator; Kara Daniel, assistant inspector general; and Adam Mather, inspector general, represented the office. Representative Steve Bratcher appeared in support of this administrative regulation.

In response to a question by Co-Chair West, Representative Bratcher stated that Senate Bill 11 from the 2022 Regular Session of the General Assembly reorganized assisted living category provisions with the goal of allowing residents to more easily age in place, rather than moving from facility to facility based on medical needs. This administrative regulation also allowed certified medication aides to administer preloaded insulin. The Kentucky Board of Nursing supported this change.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5, 7 through 10, and 12 through 18 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 15(7) to comply with new credentialing requirements and Senate Bills 110 and 111 from the 2023 Regular Session of the General Assembly. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 020:490. Rural emergency hospitals.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 5, 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.

**Department for Aging and Independent Living: Children with Special Health Care Needs Services**

910 KAR 001:180. Homecare program for the elderly. Victoria Elridge, commissioner; Sarah Puttoff, regulation coordinator; and Beth Rearden, social services specialist, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 9 and 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.

**Other Business:** Co-Chair Lewis introduced Commissioner Rich Storm's daughter, Avery, who was in fifth grade and had recently harvested her first white-tailed deer. The subcommittee welcomed Avery. Co-Chair West stated that several members had concerns about some emergency administrative regulations that had been filed by the Department for Medicaid Services. This subcommittee considered these emergency administrative regulations.

**The subcommittee determined that the following emergency administrative regulations were deficient pursuant to KRS 13A.030(2)(a):**

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services**

907 KAR 001:038E. Hearing Program coverage and requirements. Wesley Duke, general counsel; Lisa Lee, commissioner; and Jonathan Scott, regulation coordinator, represented the department.

In response to questions by Senator Thayer, Mr. Duke stated that these emergency administrative regulations were in compliance with Senate Bill 65 from the 2023 Regular Session of the General Assembly because these versions were substantially different from those previously found deficient. Each program revised reimbursement rates, services covered, and services provided. Ms. Lee stated that the adult fee schedule incorporated in 907 KAR 1:126E was significantly revised from the previous version. 907 KAR 1:126E was intended to provide preventative dental care and to help recipients return to the workforce. 907 KAR 1:632E was revised to update the fee schedule, increasing reimbursement rates and adding services, and to increase the quality of frames. 907 KAR 1:038E was revised to update the fee schedule, increase reimbursement rates for hearing instruments, and allow for hearing instrument batteries to be replaced if cost effective. Mr. Duke stated that all revisions were done in concert with the applicable Technical Advisory Committees. Senator Thayer stated that this executive branch administration had worked less with the General Assembly than any administration in modern history.

In response to questions by Co-Chair West, Ms. Lee stated that reimbursement rates were increased pertaining to 907 KAR 1:038E, 1:126E, and 1:632E. The department did not consult with members of the Senate Standing Committee on Health Services during the development of this version of these emergency administrative regulations. \$31 million for this program would be federally funded, and \$5.6 million would be from the agency's current appropriation, including savings from Senate Bill 50 from the 2020 Regular Session of the General Assembly. Mr. Duke stated that the department expected to absorb any difference between the cost of the previous version of these administrative regulations and this version within the current appropriation. Ms. Lee stated that ninety (90) percent of Medicaid recipients were affiliated with a Managed Care Organization (MCO). With MCO capitation rates based on a per-member-per-month basis, no increase in appropriations was anticipated. Ms. Lee stated that the department would follow up with information on the process for rebasing Medicaid nursing facility rates and the current status. Nurses were not currently satisfied with those rates, and the department was working with nursing facility organizations to address those concerns. In response to House Joint Resolution 38 from the 2023 Regular Session of the General Assembly, the department had increased some reimbursement rates for ambulance-related services and was in the process of developing additional related revisions. The department was working with CMS to determine if a Medicaid waiver could apply or if a state plan amendment would be a better alternative to establish ambulance treatment services that did not result in hospital visits. The department continued to examine the Michelle P. Waiver Program and how to better assist those individuals. Funding prioritization needed to be a joint effort between the department and the legislature. Ms. Lee invited legislators to attend meetings of the Medicaid Advisory Council. There were cabinet officials who spoke with legislators during the 2023 Regular Session of the General Assembly; however, Ms. Lee did not meet directly with Senator Meredith as was recommended by Co-Chair West. Mr. Duke stated that he believed a cabinet official met with Senator Meredith, but he was not certain.

In response to questions by Senator Yates, Ms. Lee stated that some of the changes to these emergency administrative regulations were for compliance with federal law. Specifically, balance billing to Medicaid recipients was prohibited. Preliminary indications were that, because of expanded services, 37,157 adults now had glasses, and 1,390 recipients had dentures. Ms. Lee read an email from a Medicaid recipient who had dental problems, had surmounted addiction issues, and was hoping to get a job. Her dental issues were a salient obstacle in attaining employment. The Technical Advisory Committees were comprised of dental, hearing, and vision practitioners. The federal government was providing

funding for these programs at a ratio of approximately six-to-one (6:1).

In response to questions by Senator Raque Adams, Ms. Lee stated that reimbursement rates were not increased across the board. There were slight increases for specific services, and the department did not anticipate a significant increase in the fiscal projections from the previous versions of these administrative regulations. Many Medicaid rates were based on Medicare rates. Medicare had reduced some reimbursement rates in the area of behavioral healthcare, and Medicaid therefore combined in-patient and out-patient behavioral health reimbursement rates, thus minimally reducing some rates for specific codes within that program. The department agreed to follow up with the subcommittee to provide the specific projected savings amount for this reduction. Kentucky's Medicaid administrative regulation pertaining to behavioral health specifically referenced the Medicare fee schedule. CMS required the department to provide sound methodology for establishing reimbursement rates. One (1) methodology was linking Medicaid and Medicare rates. The department would need to revise the Medicaid behavioral health administrative regulation in order to change the methodology. The department was in routine meetings to address children's behavioral healthcare issues. Children were not coming from out of state into Kentucky for behavioral healthcare services, which was indicative that Kentucky did not have the array of services necessary. Kentucky was currently sending approximately thirty (30) children out of state for behavioral healthcare. The department would follow up with the subcommittee with information regarding how many Medicaid dental providers served rural communities. Senator Raque Adams stated that she had not gotten responses from the cabinet regarding a letter that she had sent.

In response to questions by Co-Chair Lewis, Ms. Lee stated that poor oral health led to other health problems, such as heart disease and diabetes, which were widespread in Kentucky. Preterm deliveries could also be related to poor oral health. These programs were also vital to getting adults back into the workforce. In 2022, Kentucky ranked forty-third in overall health, but forty-ninth in oral healthcare. Mr. Duke stated that Senate Bill 65 from the 2023 Regular Session allowed for continued payment for services that had already been initiated. These emergency administrative regulations were, in part, to cover the gap. The department would follow up with the subcommittee and provide minutes from the Technical Advisory Committee meetings that pertained to these emergency administrative regulations. Co-Chair Lewis stated that there were many things in these emergency administrative regulations that would benefit his constituents; however, the process mattered.

Representative Grossberg stated that these emergency administrative regulations seemed substantially different from the versions previously found deficient by this subcommittee, including substantial fee increases. Potential costs could be absorbed without further appropriation. Eighty-six (86) percent of the funding would come from the federal government. Kentucky would receive \$36 million at a state cost of only \$5.8 million. Through these programs, approximately 60,000 adult Medicaid recipients had received glasses, 932 dentists had received reimbursements for crowns for more than 5,600 recipients, nearly 1,200 recipients had received dentures, and providers had received over \$11 million. None of these things would have happened without the changes to these emergency administrative regulations, and these emergency administrative regulations should continue through the process, if for the benefits of the dental care provisions alone. Oral health affected physical and economic health. The first thing a potential employer noticed was a person's smile. Additionally, Kentucky was currently experiencing an opioid abuse crisis. The primary cause of opioid addiction was a person who had not received proper dental care being legally prescribed opioids for dental pain. Preventative dentistry could prevent some of the addiction and lives lost.

Representative Frazier thanked the department for adjusting the fee schedule pertaining to 907 KAR 1:038E. Audiology was a medical profession, with practitioners with expertise in the services provided. The department should consider removing the medical referral requirement for audiology services and consider establishing an electronic claims submission system.

Representative Bridges stated that these emergency administrative regulations did not seem significantly different than those previously found deficient by this subcommittee. It was important to bring healthcare to all Kentuckians; however, there were other, core programs that needed funding and were not getting the necessary attention while this program was expanding to provide new services. This seemed to be a move in opposition to clearly expressed legislative intent.

In response to questions by Co-Chair West, Ms. Lee stated that the federal match for Michelle P. Waiver Program funding was approximately seventy (70) to seventy-five (75) percent, depending on the services provided. The federal match for nursing facilities funding was complicated to determine because the Medicaid reimbursement rate system itself was complex, but typically the match was approximately seventy (70) percent. The department was being very strategic by funding services that would offset other expenses, such as emergency room visits related to lack of dental care. Every service facilitated by the department constituted a core service.

Senator Thayer stated that Kentucky had 1.7 million citizens who were recipients of Medicaid and one of the lowest workforce participation rates in the nation. Medicaid should provide services to those individuals who truly needed healthcare assistance and to those individuals who were transitioning into the workforce. Kentucky was unable to afford its current Medicaid Program; therefore, expanding services was irresponsible. In response, Representative Grossberg stated that Kentucky could not afford not to fund these services. Senator Yates stated that public safety and public health were prime concerns regarding funding priorities and represented the moral character of Kentucky's budgeting process. There would be a negative economic impact if these services were not provided. While the process was important, maintaining legislative power should not be at the expense of the health of constituents. Representative Bridges stated that more data was necessary to demonstrate that these emergency administrative regulations would have a positive impact on workforce participation. Ms. Lee stated that the department would follow up with the subcommittee to provide data and surveys demonstrating that these emergency administrative regulations would have a positive impact on workforce participation. There was relevant data, especially pertaining to dental care. Senator Raque Adams stated that the department was expanding services at the same time that behavioral health rates were being cut. The department was sending children out of state for care that Kentucky should be providing. Co-Chair Lewis stated that the documentation justifying these emergency administrative regulations included three (3) reports from 2018 and three (3) reports from 2011 through 2015, which did not seem like an emergency because these reports were dated. These emergency administrative regulations seemed to be creating an appropriation that was not established by the General Assembly. Many of these provisions seemed beneficial, but the department and the legislature needed to work together on this matter. Co-Chair West stated that this vote regarding deficiency was not about the subject matter of these emergency administrative regulations. Expanding dental services was a good idea. Kentucky had a mental health crisis, including addiction, but the department was cutting reimbursement rates for mental health. The problem was that the department was not cooperating with the legislature, and it was incumbent upon this subcommittee to protect the legislative roll in the administrative regulation process.

Senator Thayer made a motion, seconded by Senator Raque Adams, to find these emergency administrative regulations deficient. A roll call vote was conducted, and with five (5) votes to find these

emergency administrative regulations deficient, two (2) votes against finding these emergency administrative regulations deficient, and one (1) pass vote, these emergency administrative regulations were found deficient.

Senator Yates explained his vote against finding these emergency administrative regulations deficient. He hoped that the department and the legislators would work together to reach an agreement to raise reimbursement rates and address the other issues from these emergency administrative regulations. Without these expansions, many Kentuckians would be hurt.

Representative Bridges explained his vote to find these emergency administrative regulations deficient. He supported providing healthcare, but it was necessary to maintain the administrative regulation process. He encouraged the department to follow the process and consider the intent of the General Assembly. Some people would be hurt by this, but others were being hurt by being overlooked by other programs.

Representative Grossberg explained his vote against finding these emergency administrative regulations deficient. The consequences of finding these emergency administrative regulations deficient would hurt many. He hoped that both sides of this issue were sincere in a desire to work together toward a common goal.

Co-Chair West explained his vote to find these emergency administrative regulations deficient. The previous versions of these administrative regulations were found deficient by this subcommittee, and Senate Bill 65 from the 2023 Regular Session of the General Assembly rendered those versions void. The legislature had made its intent on this matter clear. If the department moved forward with these provisions by implementing these emergency administrative regulations, any harm that resulted from limiting these provisions in the future would be the responsibility of the department and this executive branch administration.

*Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 12 was added to this administrative regulation to reflect the finding of deficiency.*

907 KAR 001:126E. Dental services' coverage provisions and requirements.

*Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 23 was added to this administrative regulation to reflect the finding of deficiency.*

907 KAR 001:632E. Vision program coverage provisions and requirements.

*Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 15 was added to this administrative regulation to reflect the finding of deficiency.*

**The following administrative regulations were deferred or removed from the May 9, 2023, subcommittee agenda:**

**BOARDS AND COMMISSIONS: Board of Licensure for Long-term Care Administrators**

201 KAR 006:060. Fees.

**Board of Nursing**

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

**Board of Social Work**

201 KAR 023:016. Temporary permission to practice.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary**

501 KAR 006:150. Eastern Kentucky Correctional Complex policies and procedures.

**VOLUME 49, NUMBER 12– JUNE 1, 2023**

**Department of Juvenile Justice: Child Welfare**

505 KAR 001:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.

505 KAR 001:140. Department of Juvenile Justice Policies and Procedures Manual: Detention Services.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: State Health Plan**

900 KAR 005:020E. State Health Plan for facilities and services.

**Certificate of Need**

900 KAR 006:075E. Certificate of need nonsubstantive review.

**Payment and Services**

907 KAR 003:190. Reimbursement for treatment related to clinical trials.

**Department for Community Based Services: Child Welfare**

922 KAR 001:100. Public agency adoptions.

922 KAR 001:330. Child protective services.

**The subcommittee adjourned at 2:35 p.m. The next meeting of this subcommittee was tentatively scheduled for June 13, 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.

**NONE**

## CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 49<sup>th</sup> year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

### Locator Index - Effective Dates

L - 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

L - 16

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

L - 31

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this Register year.

### Technical Amendment Index

L - 33

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

L - 35

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 <a href="#">Administrative Registers of Kentucky</a> .					
<b>SYMBOL KEY:</b>			Am Comments	748	9-15-2022
* Statement of Consideration not filed by deadline			As Amended	1241	11-9-2022
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			Replaced	1250	3-7-2023
*** Withdrawn before being printed in Register			105 KAR 001:450E	48 Ky.R. 2921	5-5-2022
IJC Interim Joint Committee			Withdrawn	#	8-15-2022
(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.			105 KAR 001:451E	49 Ky.R. 722	8-19-2022
			Am Comments	1243	11-15-2022
			Replaced	1598	5-2-2023
			200 KAR 017:110E	48 Ky.R. 5	6-2-2021
			As Amended	1098	9-14-2021
			Expired		2-27-2022
			200 KAR 017:111E	49 Ky.R. 247	6-21-2022
			Replaced	1411	4-4-2023
			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 002:414E	49 Ky.R. 2046	3-22-2023
			Withdrawn		5-11-2023
			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
016 KAR 009:080E	49 Ky.R. 2200	4-26-2023			
016 KAR 009:100E	49 Ky.R. 2205	4-26-2023			
016 KAR 009:110E	49 Ky.R. 240	7-13-2022			
Replaced	1248	3-7-2023			
031 KAR 002:030E	49 Ky.R. 718	9-1-2022			
Replaced	937	5-2-2023			
031 KAR 003:031E	48 Ky.R. 2902	4-28-2022			
Replaced	1026	1-31-2023			
031 KAR 004:071E	48 Ky.R. 2904	4-28-2022			
Replaced	1027	1-31-2023			
031 KAR 004:131E	48 Ky.R. 2906	4-28-2022			
Replaced	1027	1-31-2023			
031 KAR 004:141E	48 Ky.R. 2909	4-28-2022			
Replaced	1029	1-31-2023			
031 KAR 004:195E	48 Ky.R. 256	6-23-2021			
Expired		3-20-2022			
031 KAR 004:196E	48 Ky.R. 2911	4-28-2022			
Replaced	1029	1-31-2023			
031 KAR 004:200E	48 Ky.R. 258	6-23-2021			
Expired		3-20-2022			
031 KAR 004:201E	48 Ky.R. 2913	4-28-2022			
Replaced	1030	1-31-2023			
031 KAR 004:210E	48 Ky.R. 2914	4-28-2022			
Replaced	1030	1-31-2023			
031 KAR 005:011E	48 Ky.R. 2916	4-28-2022			
Replaced	1030	1-31-2023			
031 KAR 005:025E	48 Ky.R. 259	6-23-2021			
Expired		3-20-2022			
031 KAR 005:026E	48 Ky.R. 2918	4-28-2022			
Replaced	1031	1-31-2023			
040 KAR 009:010E	49 Ky.R. 1563	1-6-2023			
040 KAR 009:020E	49 Ky.R. 1565	1-6-2023			
101 KAR 002:095E	48 Ky.R. 2684	4-15-2022			
Replaced	2795	9-27-2022			
101 KAR 002:210E	49 Ky.R. 719	9-15-2022			
Replaced	857	4-4-2023			
101 KAR 006:020E	48 Ky.R. 2687	4-15-2022			
Replaced	2878	9-27-2022			
102 KAR 001:360E	48 Ky.R. 2167	12-28-2021			
Expired		9-24-2022			
102 KAR 001:361E	49 Ky.R. 974	9-22-2022			
Replaced	1598	5-2-2023			
103 KAR 043:340E	49 Ky.R. 6	6-2-2022			
Expired		2-27-2023			
105 KAR 001:415E	49 Ky.R. 243	6-28-2022			

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
202 KAR 007:545E	48 Ky.R. 2704	3-30-2022	900 KAR 006:075E	48 Ky.R. 2370	1-27-2022
Replaced	2851	11-1-2022	Am Comments	2716	4-15-2022
202 KAR 007:560E	48 Ky.R. 2926	5-3-2022	As Amended	49 Ky.R. 306	7-14-2022
Replaced	3036	9-28-2022	Replaced	347	8-25-2022
202 KAR 007:701E	49 Ky.R. 272	7-12-2022	Resubmitted	1882	3-15-2023
As Amended	751	9-13-2022	Am Comments	2257	5-11-2023
Replaced	1059	11-15-2022	900 KAR 012:005E	49 Ky.R. 530	8-8-2022
300 KAR 001:020E	49 Ky.R. 525	7-25-2022	Replaced	49 Ky.R. 640	1-12-2023
Withdrawn		8-25-2022	900 KAR 014:010E	48 Ky.R. 2548	2-21-2022
300 KAR 001:021E	49 Ky.R. 727	8-25-2022	As Amended	2556	3-7-2022
Replaced	1414	4-4-2023	Am Comments	2952	5-11-2022
300 KAR 006:011E	48 Ky.R. 2929	4-29-2022	As Amended	49 Ky.R. 308	7-14-2022
Replaced	49 Ky.R. 1062	1-31-2023	Replaced	74	8-25-2022
503 KAR 001:140E	49 Ky.R. 277	7-13-2022	Resubmitted	2052	3-29-2023
Replaced	1074	1-31-2023	901 KAR 005:120E	49 Ky.R. 286	6-30-2022
503 KAR 003:130E	49 Ky.R. 732	08-18-2022	Am Comments	755	9-13-2022
Replaced	1423	04-04-2023	Replaced	1429	1-12-2023
505 KAR 001:120E	49 Ky.R. 1567	1-13-2023	902 KAR 002:020E	48 Ky.R. 2939	4-26-2022
Am Comments	1886	3-6-2023	Replaced	49 Ky.R. 830	11-15-2022
505 KAR 001:140E	49 Ky.R. 1569	1-13-2023	902 KAR 002:230E	48 Ky.R. 1474	10-1-2021
Am Comments	1888	3-6-2023	Expired		6-28-2022
As Amended	2075	4-11-2023	902 KAR 002:240E	48 Ky.R. 1476	10-1-2021
505 KAR 001:200E	49 Ky.R. 2208	5-15-2023	As Amended	2014	12-9-2021
505 KAR 001:210E	49 Ky.R. 2211	5-15-2023	Expired		6-28-2022
505 KAR 001:220E	49 Ky.R. 2213	5-15-2023	902 KAR 002:250E	48 Ky.R. 1477	10-1-2021
601 KAR 002:233E	47 Ky.R. 2335	4-12-2021	Expired		6-28-2022
Replaced	48 Ky.R. 429	11-30-2021	902 KAR 020:490E	49 Ky.R. 1576	12-29-2022
603 KAR 010:011E	48 Ky.R. 736	7-30-2021	902 KAR 055:015E	49 Ky.R. 2054	3-23-2023
Expired		4-26-2022	907 KAR 001:026E	49 Ky.R. 1579	12-29-2022
701 KAR 008:010E	49 Ky.R. 984	10-13-2022	As Amended	1731	2-14-2023
701 KAR 008:020E	49 Ky.R. 989	10-13-2022	Am Comments	1890	3-15-2023
701 KAR 008:030E	49 Ky.R. 998	10-13-2022	Withdrawn	SB 65, 2023 RS	3-29-2023
701 KAR 008:040E	49 Ky.R. 1001	10-13-2022	907 KAR 001:038E	49 Ky.R. 1586	12-29-2022
701 KAR 008:050E	49 Ky.R. 1005	10-13-2022	As Amended	1736	2-14-2023
702 KAR 001:192E	48 Ky.R. 1999	12-8-2021	Withdrawn	SB 65, 2023 RS	3-29-2023
Am Comments	2374	2-11-2022	Resubmitted	49 Ky.R. 2057	4-12-2023
As Amended		3-7-2022	As Amended	2261	5-9-2023
Expired		9-4-2022	907 KAR 001:065E	49 Ky.R. 288	7-1-2022
787 KAR 001:090E	49 Ky.R. 1571	12-22-2022	Replaced	1313	1-12-2023
787 KAR 001:100E	49 Ky.R. 1575	12-22-2022	907 KAR 001:126E	49 Ky.R. 2062	4-12-2023
787 KAR 001:360E	48 Ky.R. 2937	4-28-2022	As Amended	2263	5-9-2023
Replaced	49 Ky.R. 563	12-6-2022	907 KAR 001:632E	49 Ky.R. 1590	12-29-2022
800 KAR 001:020E	48 Ky.R. 2174	12-17-2021	As Amended	1738	2-14-2023
Am Comments	2554	3-15-2022	Withdrawn	SB 65, 2023 RS	3-29-2023
Expired		9-13-2022	Resubmitted	49 Ky.R. 2069	4-12-2023
803 KAR 002:182E(r)	48 Ky.R. 2531	5-13-2021	As Amended	2268	5-9-2023
Expired		2-7-2022	907 KAR 003:160E	49 Ky.R. 1008	9-30-2022
803 KAR 002:321E	48 Ky.R. 2001	11-23-2021	Replaced	1622	2-16-2023
Replaced	2141	7-5-2022	907 KAR 004:020E	49 Ky.R. 532	7-19-2022
803 KAR 002:330E	48 Ky.R. 753	7-20-2021	Replaced	1273	1-12-2023
Expired		4-16-2022	907 KAR 004:030E	49 Ky.R. 535	7-19-2022
803 KAR 002:426E	48 Ky.R. 2003	11-23-2021	Replaced	1275	1-12-2023
Replaced	2143	7-5-2022	907 KAR 020:010E	49 Ky.R. 2234	5-15-2023
803 KAR 025:089E	49 Ky.R. 284	6-24-2022	907 KAR 020:020E	49 Ky.R. 538	7-19-2022
As Amended	754	9-13-2022	Replaced	648	1-12-2023
Replaced	1263	3-7-2023	907 KAR 020:045E	49 Ky.R. 2237	5-15-2023
803 KAR 025:195E	48 Ky.R. 2710	4-15-2022	907 KAR 020:075E	49 Ky.R. 2240	5-15-2023
Am Comments	49 Ky.R. 15	6-14-2022	907 KAR 020:100E	49 Ky.R. 542	7-19-2022
Replaced	49 Ky.R. 813	1-3-2023	Replaced	651	1-12-2023
803 KAR 025:305E	48 Ky.R. 1473	9-28-2021	Resubmitted	2243	5-15-2023
Expired		6-25-2022	907 KAR 023:020E	49 Ky.R. 9	6-1-2022
806 KAR 017:570	49 Ky.R. 2215	5-15-2023	Replaced	820	10-26-2022
807 KAR 005:001E	49 Ky.R. 734	9-14-2022	908 KAR 003:010E	48 Ky.R. 2550	2-21-2022
810 KAR 004:010E	49 Ky.R. 2048	3-29-2023	Replaced	49 Ky.R. 370	8-25-2022
900 KAR 005:020E	48 Ky.R. 2368	1-27-2022	921 KAR 004:122E	48 Ky.R. 2005	12-1-2021
Am Comments	2715	4-15-2022	Replaced	2146	6-2-2022
As Amended	49 Ky.R. 306	7-14-2022	922 KAR 001:360E	48 Ky.R. 2176	12-28-2021
Replaced	347	8-25-2022	Replaced	3014	7-20-2022
Resubmitted	49 Ky.R. 1880	3-15-2023	Resubmitted	49 Ky.R. 2248	5-15-2023
Am Comments	2256	5-11-2023	922 KAR 002:160E	49 Ky.R. 296	7-1-2022



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	1015	10-11-2022	031 KAR 004:201	48 Ky.R. 3118	
Replaced	1098	11-15-2022	As Amended	49 Ky.R. 1030	1-31-2023
<hr/>			031 KAR 004:210	48 Ky.R. 3119	
<b>ORDINARY ADMINISTRATIVE REGULATIONS</b>			As Amended	49 Ky.R. 1030	1-31-2023
009 KAR 001:070	48 Ky.R. 2529		031 KAR 005:011	48 Ky.R. 3121	
As Amended	2955	7-19-2022	As Amended	49 Ky.R. 1030	1-31-2023
011 KAR 004:080			031 KAR 005:026	48 Ky.R. 2918	1-31-2023
Amended	48 Ky.R. 2779		As Amended	49 Ky.R. 1031	
As Amended	49 Ky.R. 309	11-1-2022	040 KAR 002:150	49 Ky.R. 1129	
Amended	1330		Amended	1744	5-30-2023
As Amended	1741	5-30-2023	As Amended	49 Ky.R. 1707	
011 KAR 005:001			As Amended	2272	
Amended	49 Ky.R. 1332		040 KAR 009:020	49 Ky.R. 1709	
As Amended	1741	5-30-2023	As Amended	2273	
011 KAR 005:037	49 Ky.R. 1370		045 KAR 001:030		
As Amended	1743	5-30-2023	Amended	49 Ky.R. 1473	
011 KAR 005:145			045 KAR 001:040		
Amended	48 Ky.R. 2781		Amended	49 Ky.R. 1958	
As Amended	49 Ky.R. 309	11-1-2022	045 KAR 001:050		
Amended	1335		Amended	49 Ky.R. 1135	
As Amended	1744	5-30-2023	As Amended	1597	5-2-2023
011 KAR 015:090			101 KAR 001:325		
Amended	48 Ky.R. 2783		Amended	49 Ky.R. 1337	5-30-2023
As Amended	49 Ky.R. 310	11-1-2022	101 KAR 002:034		
011 KAR 016:020			Amended	49 Ky.R. 1960	
Amended	48 Ky.R. 2788		101 KAR 002:046		
As Amended	49 Ky.R. 314	11-1-2022	Amended	48 Ky.R. 2790	9-27-2022
011 KAR 022:010	48 Ky.R. 2875		101 KAR 002:066		
As Amended	49 Ky.R. 315	11-1-2022	Amended	48 Ky.R. 2792	9-27-2022
011 KAR 023:010	48 Ky.R. 2877		101 KAR 002:095		
As Amended	49 Ky.R. 316	11-1-2022	Amended	48 Ky.R. 2795	9-27-2022
013 KAR 003:050			Amended	49 Ky.R. 1966	
Amended	49 Ky.R. 856		101 KAR 002:102	48 Ky.R. 2797	
As Amended	1411	4-4-2023	As Amended	49 Ky.R. 549	9-27-2022
016 KAR 003:080			101 KAR 002:181	49 Ky.R. 2030	
Amended	48 Ky.R. 2614	10-4-2022	101 KAR 002:190		
016 KAR 004:060			Amended	48 Ky.R. 2802	9-27-2022
Amended	49 Ky.R. 1810		101 KAR 002:210		
016 KAR 009:080			Amended	49 Ky.R. 857	4-4-2023
Amended	49 Ky.R. 2334		101 KAR 003:015	48 Ky.R. 2805	
016 KAR 009:100	49 Ky.R. 479		As Amended	49 Ky.R. 553	9-27-2022
As Amended	1023	1-31-2023	101 KAR 003:045		
Amended	2339		Amended	49 Ky.R. 1968	
016 KAR 009:110	49 Ky.R. 481		101 KAR 006:020	48 Ky.R. 2878	9-27-2022
As Amended	1024		102 KAR 001:361	49 Ky.R. 1199	
As Amended	1248	3-7-2023	As Amended	1598	5-2-2023
017 KAR 003:020			105 KAR 001:001		
Amended	49 Ky.R. 1469		Amended	49 Ky.R. 1535	
As Amended	1898		As Amended	1899	
030 KAR 002:010			105 KAR 001:070		
Amended	48 Ky.R. 2111		Repealed	49 Ky.R. 1201	5-2-2023
As Amended	2558	7-5-2022	105 KAR 001:071	49 Ky.R. 1201	5-2-2023
030 KAR 009:010	49 Ky.R. 1198		105 KAR 001:220		
As Amended	1590	5-2-2023	Amended	49 Ky.R. 2342	
031 KAR 002:030	49 Ky.R. 937	5-2-2023	105 KAR 001:365		
031 KAR 003:031	48 Ky.R. 3108		Amended	49 Ky.R. 1537	
As Amended	49 Ky.R. 1026	1-31-2023	As Amended	1900	
031 KAR 004:071	48 Ky.R. 3109		105 KAR 001:370		
As Amended	49 Ky.R. 1027	1-31-2023	Repealed	49 Ky.R. 1202	5-2-2023
031 KAR 004:131	48 Ky.R. 3111		105 KAR 001:371	49 Ky.R. 1202	5-2-2023
As Amended	49 Ky.R. 1027	1-31-2023	105 KAR 001:390		
031 KAR 004:141	48 Ky.R. 2917		Amended	48 Ky.R. 2811	9-27-2022
As Amended	49 Ky.R. 1029	1-31-2023	As Amended	49 Ky.R. 317	
031 KAR 004:170			105 KAR 001:411	49 Ky.R. 1203	
Amended	48 Ky.R. 3026		Am Comments	1633	
As Amended	49 Ky.R. 1029	1-31-2023	As Amended	1750	5-30-2023
031 KAR 004:196	48 Ky.R. 3116		105 KAR 001:415	49 Ky.R. 485	
As Amended	49 Ky.R. 1029	1-31-2023	Am Comments	1106	
			As Amended	1250	3-7-2023

# **LOCATOR INDEX - EFFECTIVE DATES**

<b>Regulation Number</b>	<b>46 Ky.R. Page No.</b>	<b>Effective Date</b>	<b>Regulation Number</b>	<b>46 Ky.R. Page No.</b>	<b>Effective Date</b>
105 KAR 001:450 Withdrawn	48 Ky.R. 3125 *	8-15-2022	201 KAR 002:360 Amended	49 Ky.R. 862	
105 KAR 001:451 Am Comments	49 Ky.R. 938 1447		As Amended	1754	3-9-2023
As Amended	1598	5-2-2023	201 KAR 002:380 Amended	49 Ky.R. 625	
106 KAR 001:141	49 Ky.R. 161		Am Comments	1451	
As Amended	1033	11-16-2022	As Amended	1755	
106 KAR 001:171	49 Ky.R. 163		As Amended	2078	
As Amended	1033	11-16-2022	201 KAR 002:430	48 Ky.R. 1063	
106 KAR 001:181	49 Ky.R. 165		Am Comments	2239	
As Amended	1034	11-16-2022	Withdrawn		7-1-2022
106 KAR 001:191	49 Ky.R. 166		201 KAR 002:440	48 Ky.R. 2131	
As Amended	1034	11-16-2022	Am Comments	2758	
106 KAR 001:201	49 Ky.R. 168		As Amended	2956	7-20-2022
As Amended	1034	11-16-2022	201 KAR 002:450	49 Ky.R. 693	
106 KAR 001:211	49 Ky.R. 170		Am Comments	1454	
As Amended	1035	11-16-2022	As Amended	1757	3-9-2023
106 KAR 001:221	49 Ky.R. 173		201 KAR 002:460	49 Ky.R. 946	
As Amended	1037	11-16-2022	Withdrawn		1-4-2023
106 KAR 001:231	49 Ky.R. 176		201 KAR 005:002	49 Ky.R. 1371	
As Amended	1038	11-16-2022	Am Comments	1943	
106 KAR 001:241	49 Ky.R. 177		As Amended	2080	
As Amended	1038	11-16-2022	201 KAR 005:038	49 Ky.R. 1209	
106 KAR 001:251	49 Ky.R. 179		Withdrawn		11-15-2022
As Amended	1039	11-16-2022	201 KAR 005:045	49 Ky.R. 1211	
106 KAR 001:261	49 Ky.R. 181		Withdrawn		11-15-2022
As Amended	1039	11-16-2022	201 KAR 005:055		
106 KAR 001:291	49 Ky.R. 182		Amended	49 Ky.R. 1974	
As Amended	1040	11-16-2022	201 KAR 005:105	49 Ky.R. 1212	
106 KAR 001:341	49 Ky.R. 184		Withdrawn		11-15-2022
As Amended	1040	11-16-2022	201 KAR 006:040		
106 KAR 001:371	49 Ky.R. 185		Amended	48 Ky.R. 1828	
As Amended	1040	11-16-2022	As Amended	2720	7-20-2022
106 KAR 002:021	49 Ky.R. 186		201 KAR 006:060		
As Amended	1041	11-16-2022	Amended	48 Ky.R. 3029	
106 KAR 002:031	49 Ky.R. 188		201 KAR 008:016		
As Amended	1041	11-16-2022	Amended	49 Ky.R. 1340	
109 KAR 017:010	49 Ky.R. 2031		As Amended	1757	3-9-2023
200 KAR 001:016	49 Ky.R. 190		201 KAR 008:520		
As Amended	758	1-3-2023	Amended	48 Ky.R. 2822	
200 KAR 017:111	49 Ky.R. 488		As Amended	49 Ky.R. 1758	3-9-2023
As Amended	1411	4-4-2023	201 KAR 008:533	49 Ky.R. 1859	
200 KAR 041:010	49 Ky.R. 943		As Amended	2273	
As Amended	1412	4-4-2023	201 KAR 008:550		
201 KAR 001:050			Amended	48 Ky.R. 2824	
Amended	49 Ky.R. 2347		Am Comments	49 Ky.R. 600	
201 KAR 001:100			As Amended	759	10-26-2022
Amended	47 Ky.R. 1816		201 KAR 008:563	49 Ky.R. 1863	
As Amended	2575	8-31-2021	As Amended	2276	
201 KAR 001:190			201 KAR 008:571		
Amended	48 Ky.R. 2112		Amended	49 Ky.R. 1342	
As Amended	2558	7-5-2022	As Amended	1759	3-9-2023
Amended	49 Ky.R. 1639		201 KAR 008:600	48 Ky.R. 2531	
As Amended	2076		Withdrawn	*	6-15-2022
201 KAR 002:015			201 KAR 008:601	49 Ky.R. 948	
Amended	48 Ky.R. 2815		As Amended	1761	3-9-2023
As Amended	49 Ky.R. 758	11-15-2022	201 KAR 009:305		
201 KAR 002:020			Amended	49 Ky.R. 369	
Amended	48 Ky.R. 2817		As Amended	1041	11-15-2022
As Amended	49 Ky.R. 320	8-25-2022	201 KAR 009:470		
201 KAR 002:030			Amended	49 Ky.R. 1344	3-9-2023
Amended	49 Ky.R. 859		201 KAR 011:121		
Withdrawn		1-4-2023	Amended	48 Ky.R. 2830	
201 KAR 002:050			Am Comments	49 Ky.R. 606	
Amended	48 Ky.R. 2819	8-25-2022	As Amended	1601	5-2-2023
201 KAR 002:106			201 KAR 012:030		
Amended	48 Ky.R. 2116	6-2-2022	Amended	49 Ky.R. 397	
201 KAR 002:225			As Amended	1042	1-31-2023
Amended	48 Ky.R. 2820		201 KAR 012:060		
As Amended	49 Ky.R. 321	8-25-2022	Amended	49 Ky.R. 401	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	1045	1-31-2023	Amended	49 Ky.R. 1478	
201 KAR 012:082			As Amended	1909	
Amended	49 Ky.R. 403		201 KAR 016:610		
As Amended	1046	1-31-2023	Amended	49 Ky.R. 1480	
201 KAR 012:190			201 KAR 017:110		
Amended	49 Ky.R. 408		Amended	48 Ky.R. 2498	
As Amended	1050	1-31-2023	As Amended	2958	7-20-2022
201 KAR 012:230			201 KAR 019:035		
Amended	49 Ky.R. 410	1-31-2023	Amended	48 Ky.R. 3031	
201 KAR 012:260			As Amended	49 Ky.R. 558	12-6-2022
Amended	49 Ky.R. 411		201 KAR 019:087		
As Amended	1050	1-31-2023	Amended	48 Ky.R. 3033	
201 KAR 012:290			As Amended	49 Ky.R. 558	12-6-2022
Amended	49 Ky.R. 413		201 KAR 019:225		
As Amended	1051	1-31-2023	Amended	49 Ky.R. 2349	
201 KAR 014:015			201 KAR 020:070		
Amended	48 Ky.R. 1830	7-5-2022	Amended	48 Ky.R. 2847	
201 KAR 014:030			As Amended	49 Ky.R. 325	8-25-2022
Amended	48 Ky.R. 1831	7-5-2022	201 KAR 020:085		
201 KAR 014:040			Amended	48 Ky.R. 2615	
Amended	48 Ky.R. 1833		As Amended	49 Ky.R. 19	8-25-2022
As Amended	2561	7-5-2022	201 KAR 020:110		
201 KAR 014:050			Amended	48 Ky.R. 2616	
Amended	48 Ky.R. 1834		As Amended	49 Ky.R. 19	8-25-2022
As Amended	2561	7-5-2022	201 KAR 020:220		
201 KAR 014:065			Amended	48 Ky.R. 1849	
Amended	48 Ky.R. 1835	7-5-2022	As Amended	2721	7-20-2022
201 KAR 014:085			201 KAR 020:240		
Amended	48 Ky.R. 1837		Amended	48 Ky.R. 2849	
As Amended	2562	7-5-2022	As Amended	49 Ky.R. 326	8-25-2022
201 KAR 014:105			Amended	2351	
Amended	48 Ky.R. 1839		201 KAR 020:260		
As Amended	2564	7-5-2022	Amended	49 Ky.R. 413	
201 KAR 014:110			As Amended	1053	11-15-2022
Amended	48 Ky.R. 1841		201 KAR 020:280		
As Amended	2564	7-5-2022	Amended	48 Ky.R. 1841	
201 KAR 014:115			As Amended	2723	7-20-2022
Amended	48 Ky.R. 1843		201 KAR 020:310		
As Amended	2565	7-5-2022	Amended	49 Ky.R. 417	11-15-2022
201 KAR 014:125			201 KAR 020:360		
Amended	48 Ky.R. 1844		Amended	48 Ky.R. 1855	
As Amended	2566	7-5-2022	As Amended	2724	7-20-2022
201 KAR 014:150			Amended	49 Ky.R. 1812	
Amended	48 Ky.R. 1846		As Amended	2280	
As Amended	2567	7-5-2022	201 KAR 020:370		
201 KAR 014:180			Amended	48 Ky.R. 2618	
Amended	48 Ky.R. 1848		As Amended	49 Ky.R. 20	8-25-2022
As Amended	2567	7-5-2022	Amended	1346	
201 KAR 015:030			As Amended	1762	3-9-2023
Amended	48 Ky.R. 2836	11-1-2022	201 KAR 020:390		
201 KAR 015:040			Amended	49 Ky.R. 1815	
Amended	48 Ky.R. 2838	11-1-2022	As Amended	2282	
201 KAR 015:050			201 KAR 020:411		
Amended	48 Ky.R. 2839		Amended	49 Ky.R. 1642	
As Amended	49 Ky.R. 322	11-1-2022	As Amended	2082	
201 KAR 015:110			201 KAR 020:472		
Amended	48 Ky.R. 2843	11-1-2022	Amended	49 Ky.R. 1645	
201 KAR 015:125			As Amended	2084	
Amended	48 Ky.R. 2846	11-1-2022	201 KAR 020:476		
201 KAR 016:550			Amended	49 Ky.R. 1649	
Amended	49 Ky.R. 1473		As Amended	2087	
As Amended	1903		201 KAR 020:478		
201 KAR 016:552	49 Ky.R. 1540		Amended	49 Ky.R. 1652	
As Amended	1905		Am Comments	2316	
201 KAR 016:560			201 KAR 020:480		
Amended	49 Ky.R. 1475		Amended	48 Ky.R. 2500	
As Amended	1907		As Amended	2959	7-20-2022
201 KAR 016:562	49 Ky.R. 1543		201 KAR 020:490		
As Amended	1908		Amended	49 Ky.R. 420	
201 KAR 016:572			As Amended	1056	11-15-2022

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
201 KAR 020:620			201 KAR 026:230		
Amended	49 Ky.R. 422		Amended	48 Ky.R. 1882	
As Amended	1057	11-15-2022	As Amended	2574	6-2-2022
201 KAR 020:650			201 KAR 026:250		
Amended	49 Ky.R. 423		Amended	48 Ky.R. 1884	6-2-2022
As Amended	1058	11-15-2022	201 KAR 026:270		
201 KAR 020:700	49 Ky.R. 2424		Amended	48 Ky.R. 1886	
201 KAR 021:025			As Amended	2576	6-2-2022
Amended	49 Ky.R. 1976		201 KAR 026:310		
201 KAR 021:041			Amended	48 Ky.R. 1888	
Amended	49 Ky.R. 1978		Am Comments	2459	
201 KAR 021:042			As Amended	2576	6-2-2022
Amended	49 Ky.R. 1981		201 KAR 031:010		
201 KAR 021:075			Amended	49 Ky.R. 1137	5-2-2023
Amended	49 Ky.R. 1983		201 KAR 031:030		
201 KAR 021:095			Repealed	49 Ky.R. 1215	5-2-2023
Amended	49 Ky.R. 1985		201 KAR 031:031	49 Ky.R. 1215	5-2-2023
201 KAR 021:105	49 Ky.R. 2032		201 KAR 031:040		
201 KAR 022:001			Amended	49 Ky.R. 1140	
Amended	48 Ky.R. 2266		As Amended	1605	5-2-2023
As Amended	2726	7-20-2022	201 KAR 031:050		
201 KAR 022:020			Amended	49 Ky.R. 1142	
Amended	48 Ky.R. 2501		As Amended	1606	5-2-2023
As Amended	2960	7-20-2022	201 KAR 033:015		
201 KAR 022:045			Amended	48 Ky.R. 2507	
Amended	49 Ky.R. 2353		As Amended	2962	7-20-2022
201 KAR 022:053			201 KAR 035:070		
Amended	48 Ky.R. 2267		Amended	48 Ky.R. 2270	
As Amended	2727	7-20-2022	As Amended	2963	7-20-2022
Amended	49 Ky.R. 627		201 KAR 042:010		
As Amended	1252	1-12-2023	Amended	48 Ky.R. 1241	7-5-2022
201 KAR 022:070			201 KAR 042:020		
Amended	48 Ky.R. 2503	7-20-2022	Amended	48 Ky.R. 1242	
201 KAR 022:170			As Amended	2577	
Amended	48 Ky.R. 2505		As Amended IJC	49 Ky.R. 21	6-2-2022
As Amended	2961	7-20-2022	201 KAR 042:030		
Amended	49 Ky.R. 1483		Amended	48 Ky.R. 1244	
As Amended	1910		As Amended	2578	7-5-2022
201 KAR 023:016	49 Ky.R. 1214		201 KAR 042:035		
201 KAR 023:051	49 Ky.R. 1374		Amended	48 Ky.R. 1246	
Am Comments	1803		As Amended	2578	7-5-2022
As Amended	1910		201 KAR 042:040		
201 KAR 026:115			Amended	48 Ky.R. 1248	
Amended	1859		As Amended	2579	7-5-2022
As Amended	2568	6-2-2022	201 KAR 042:050		
201 KAR 026:125			Amended	48 Ky.R. 1251	
Amended	48 Ky.R. 1861		As Amended	2581	7-5-2022
As Amended	2568	6-2-2022	201 KAR 042:061	48 Ky.R. 1971	
201 KAR 026:130			As Amended	2582	7-5-2022
Amended	48 Ky.R. 1863		201 KAR 042:070		
As Amended	2569	6-2-2022	Amended	48 Ky.R. 1255	
201 KAR 026:155			As Amended	2584	7-5-2022
Amended	48 Ky.R. 1866		201 KAR 042:080		
As Amended	2571	6-2-2022	Amended	48 Ky.R. 1891	
201 KAR 026:160			As Amended	2585	7-5-2022
Amended	48 Ky.R. 1868		201 KAR 042:110		
As Amended	2572	6-2-2022	Amended	48 Ky.R. 1258	
201 KAR 026:175			As Amended	2587	7-5-2022
Amended	48 Ky.R. 1870	6-2-2022	201 KAR 043:010		
201 KAR 026:185			Amended	48 Ky.R. 1894	
Amended	48 Ky.R. 1873		As Amended	49 Ky.R. 22	10-4-2022
201 KAR 026:185			201 KAR 043:020		
Amended	48 Ky.R. 1873	6-2-2022	Amended	48 Ky.R. 1896	
201 KAR 026:190			As Amended	49 Ky.R. 23	10-4-2022
Amended	48 Ky.R. 1875		201 KAR 043:030		
As Amended	2573	6-2-2022	Amended	48 Ky.R. 1898	
201 KAR 026:215			As Amended	49 Ky.R. 24	10-4-2022
Amended	48 Ky.R. 1878	6-2-2022	201 KAR 043:040		
201 KAR 026:225			Amended	48 Ky.R. 1900	
Amended	48 Ky.R. 1880	6-2-2022	Am Comments	2602	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	49 Ky.R. 24	10-4-2022	Amended	49 Ky.R. 864	
201 KAR 043:050			As Amended	1607	2-2-2023
Amended	48 Ky.R. 1904		301 KAR 002:081		
Am Comments	2605		Amended	49 Ky.R. 869	
As Amended	49 Ky.R. 27	10-4-2022	As Amended	1611	2-2-2023
201 KAR 043:060			301 KAR 002:082		
Amended	48 Ky.R. 1909		Amended	49 Ky.R. 876	
As Amended	49 Ky.R. 31	10-4-2022	As Amended	1616	2-2-2023
201 KAR 043:070			301 KAR 002:090		
Repealed	49 Ky.R. 33	10-4-2022	Amended	49 Ky.R. 77	
201 KAR 043:071	48 Ky.R. 1974		As Amended	765	10-20-2022
As Amended	49 Ky.R. 33	10-4-2022	Amended	1819	
201 KAR 043:080			301 KAR 002:095		
Amended	48 Ky.R. 1911		Amended	49 Ky.R. 79	
Am Comments	2610		As Amended	766	10-20-2022
As Amended	49 Ky.R. 33	10-4-2022	301 KAR 002:132		
201 KAR 043:090	48 Ky.R. 1975		Amended	48 Ky.R. 2861	
As Amended	49 Ky.R. 33	10-4-2022	As Amended	49 Ky.R. 327	8-18-2022
201 KAR 043:100			301 KAR 002:142		
Amended	48 Ky.R. 1913		Amended	49 Ky.R. 81	11-3-2022
As Amended	49 Ky.R. 34	10-4-2022	301 KAR 002:144		
201 KAR 046:020			Amended	49 Ky.R. 1654	
Amended	48 Ky.R. 2274	7-20-2022	As Amended	2089	
201 KAR 046:060			301 KAR 002:172		
Amended	48 Ky.R. 2509		Amended	48 Ky.R. 2866	
As Amended	2966	7-20-2022	As Amended	49 Ky.R. 330	8-18-2022
202 KAR 007:201			301 KAR 002:185		
Amended	49 Ky.R. 1484		Amended	49 Ky.R. 880	
As Amended	1911		As Amended	1417	2-2-2023
202 KAR 007:301			301 KAR 002:219	49 Ky.R. 1376	5-30-2023
Amended	49 Ky.R. 1488		301 KAR 002:221		
As Amended	1913		Amended	48 Ky.R. 2869	
202 KAR 007:330			As Amended	49 Ky.R. 333	8-18-2022
Amended	49 Ky.R. 1492		Amended	1348	
As Amended	1916		As Amended	1763	5-30-2023
202 KAR 007:401			301 KAR 002:222		
Amended	49 Ky.R. 1497		Amended	49 Ky.R. 1987	
202 KAR 007:510			301 KAR 002:224		
Amended	49 Ky.R. 2355		Repealed	49 Ky.R. 1376	5-30-2023
202 KAR 007:545			301 KAR 002:225		
Amended	48 Ky.R. 2851	11-1-2022	Amended	49 Ky.R. 882	
202 KAR 007:555			As Amended	1418	2-2-2023
Amended	49 Ky.R. 1502		301 KAR 002:226		
Withdrawn		5-22-2023	Repealed	49 Ky.R. 1376	5-30-2023
202 KAR 007:560			301 KAR 002:228		
Amended	48 Ky.R. 3036	9-28-2022	Amended	49 Ky.R. 1350	
202 KAR 007:601			As Amended	1764	5-30-2023
Amended	49 Ky.R. 1506		301 KAR 002:245	49 Ky.R. 1545	
202 KAR 007:701			As Amended	1919	
Amended	49 Ky.R. 425		301 KAR 002:251		
As Amended	1059	11-15-2022	Amended	49 Ky.R. 886	2-2-2023
300 KAR 001:020	49 Ky.R. 694		301 KAR 002:300		
Withdrawn		8-25-2022	Amended	49 Ky.R. 83	10-20-2022
300 KAR 001:021	49 Ky.R. 950		Amended	1656	
As Amended	1414	4-4-2023	As Amended	2090	
300 KAR 006:011	48 Ky.R. 3130		301 KAR 003:022		
Am Comments	49 Ky.R. 823		Recodified to 301 KAR 005:022		1-13-2023
As Amended	1062	1-31-2023	301 KAR 003:120		
301 KAR 001:001	49 Ky.R. 2034		Amended	49 Ky.R. 1516	
301 KAR 001:201			As Amended	1920	
Amended	48 Ky.R. 2856	8-18-2022	301 KAR 004:001		
301 KAR 001:410			Amended	48 Ky.R. 899	
Amended	48 Ky.R. 1915	5-31-2022	As Amended	49 Ky.R. 35	
Amended	49 Ky.R. 430		As Amended IJC	561	8-18-2022
As Amended	1067	11-3-2022	301 KAR 004:010		
301 KAR 002:015			Amended	48 Ky.R. 901	
Amended	49 Ky.R. 1144	2-2-2023	As Amended	2968	6-9-2022
Amended	49 Ky.R. 1818		301 KAR 004:020		
As Amended	2284		Amended	48 Ky.R. 902	
301 KAR 002:075			As Amended	2968	6-9-2022

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
301 KAR 004:100			302 KAR 028:030		
Amended	48 Ky.R. 906		Repealed	49 Ky.R. 495	11-3-2022
As Amended	2968	6-9-2022	302 KAR 028:040		
301 KAR 004:110			Repealed	49 Ky.R. 495	11-3-2022
Amended	48 Ky.R. 908		302 KAR 028:050		
As Amended	2969	6-9-2022	Repealed	49 Ky.R. 495	11-3-2022
Amended	49 Ky.R. 1822		302 KAR 028:060		
As Amended	2284		Repealed	49 Ky.R. 495	11-3-2022
301 KAR 005:001			302 KAR 029:010		
Amended	48 Ky.R. 910		Repealed	49 Ky.R. 496	11-3-2022
As Amended	2589	6-9-2022	302 KAR 029:011	49 Ky.R. 496	11-3-2022
Amended	49 Ky.R. 1659		302 KAR 029:020		
301 KAR 005:010			Repealed	49 Ky.R. 496	11-3-2022
Amended	49 Ky.R. 1661		302 KAR 029:030		
As Amended	2092		Repealed	49 Ky.R. 496	11-3-2022
301 KAR 005:020			302 KAR 029:040		
Amended	49 Ky.R. 1662		Repealed	49 Ky.R. 496	11-3-2022
As Amended	2093		302 KAR 029:050		
301 KAR 005:022			Repealed	49 Ky.R. 496	11-3-2022
Recodified from 301-003:022		1-13-2023	302 KAR 029:060		
Amended	49 Ky.R. 1664		Repealed	49 Ky.R. 496	11-3-2022
As Amended	2094		302 KAR 029:070		
301 KAR 005:030			Repealed	49 Ky.R. 496	11-3-2022
Amended	48 Ky.R. 911		302 KAR 040:010		
As Amended	2589	6-9-2022	Amended	49 Ky.R. 1145	
301 KAR 005:100			As Amended	1620	5-2-2023
Amended	48 Ky.R. 913		302 KAR 050:021		
As Amended	2591	6-9-2022	Amended	48 Ky.R. 1631	
301 KAR 006:001			Am Comments	2460	7-5-2022
Amended	48 Ky.R. 915		302 KAR 050:031		
As Amended	2033	4-5-2022	Amended	48 Ky.R. 1640	
Amended	49 Ky.R. 2128		Am Comments	2469	7-5-2022
301 KAR 006:020			302 KAR 050:046	48 Ky.R. 1672	
Amended	49 Ky.R. 2130		Am Comments	2476	7-5-2022
301 KAR 011:020	49 Ky.R. 2427		302 KAR 050:056		
302 KAR 026:010	49 Ky.R. 191	10-20-2022	Amended	48 Ky.R. 1647	
302 KAR 026:020	49 Ky.R. 193		Am Comments	2478	7-5-2022
As Amended	767	10-20-2022	302 KAR 050:080		
302 KAR 026:030	49 Ky.R. 203		Amended	48 Ky.R. 1652	
As Amended	775	10-20-2022	Am Comments	2483	7-5-2022
302 KAR 026:040	49 Ky.R. 205	10-20-2022	302 KAR 079:009	49 Ky.R. 225	10-20-2022
302 KAR 026:050	49 Ky.R. 207		302 KAR 079:010		
As Amended	776	10-20-2022	Repealed	49 Ky.R. 225	10-20-2022
302 KAR 026:060	49 Ky.R. 210		401 KAR 051:010		
As Amended	778	10-20-2022	Amended	48 Ky.R. 2278	
302 KAR 026:070	49 Ky.R. 212		As Amended	2729	6-9-2022
As Amended	778	10-20-2022	401 KAR 058:040		
302 KAR 026:080	49 Ky.R. 215		Amended	49 Ky.R. 1996	
As Amended	780	10-20-2022	401 KAR 063:060		
302 KAR 026:090	49 Ky.R. 218		Amended	49 Ky.R. 1148	5-2-2023
As Amended	782	10-20-2022	500 KAR 002:020		
302 KAR 026:100	49 Ky.R. 220	10-20-2022	Amended	49 Ky.R. 2002	
302 KAR 026:150	49 Ky.R. 222		500 KAR 003:010		
As Amended	783	10-20-2022	Amended	49 Ky.R. 2132	
302 KAR 027:010			500 KAR 003:020		
Repealed	49 Ky.R. 494	11-3-2022	Amended	49 Ky.R. 2134	
302 KAR 027:011	49 Ky.R. 494	11-3-2022	500 KAR 010:001		
302 KAR 027:020			Amended	49 Ky.R. 890	4-4-2023
Repealed	49 Ky.R. 494	11-3-2022	500 KAR 010:020		
302 KAR 027:040			Amended	49 Ky.R. 891	4-4-2023
Repealed	49 Ky.R. 494	11-3-2022	500 KAR 010:030		
302 KAR 027:050			Amended	49 Ky.R. 894	4-4-2023
Repealed	49 Ky.R. 494	11-3-2022	500 KAR 010:040		
302 KAR 027:060			Amended	49 Ky.R. 896	
Repealed	49 Ky.R. 494	11-3-2022	As Amended	1420	4-4-2023
302 KAR 028:010			500 KAR 016:010	49 Ky.R. 1378	
Repealed	49 Ky.R. 495	11-3-2022	As Amended	1765	5-30-2023
302 KAR 028:011	49 Ky.R. 495	11-3-2022	501 KAR 006:030		
302 KAR 028:020			Amended	48 Ky.R. 2118	
Repealed	49 Ky.R. 495	11-3-2022	As Amended	2592	7-5-2022

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
501 KAR 006:040			As Amended	49 Ky.R. 1070	1-31-2023
Amended	49 Ky.R. 1353		502 KAR 013:030		
Am Comments	1805		Amended	48 Ky.R. 1291	
As Amended	1923		As Amended	49 Ky.R. 1071	1-31-2023
501 KAR 006:050			502 KAR 013:040		
Amended	49 Ky.R. 899		Amended	48 Ky.R. 1292	
Am Comments	1455		As Amended	49 Ky.R. 1072	1-31-2023
As Amended	1621	5-2-2023	502 KAR 013:050		
501 KAR 006:080			Amended	48 Ky.R. 1294	
Amended	49 Ky.R. 902		As Amended	49 Ky.R. 1073	1-31-2023
As Amended	1422	4-4-2023	502 KAR 013:060		
501 KAR 006:130			Amended	48 Ky.R. 1295	
Amended	49 Ky.R. 903		As Amended	49 Ky.R. 1073	1-31-2023
As Amended	1422	4-4-2023	502 KAR 013:080		
501 KAR 006:150			Amended	48 Ky.R. 1297	
Amended	49 Ky.R. 1824		As Amended	49 Ky.R. 1074	1-31-2023
501 KAR 006:290			502 KAR 015:010		
Am Comments	2484		Amended	48 Ky.R. 1300	
As Amended	2593	7-5-2022	As Amended	2594	7-5-2022
501 KAR 016:310			502 KAR 015:020		
Amended	49 Ky.R. 2363		Amended	48 Ky.R. 1301	
502 KAR 010:010			As Amended	2405	5-31-2022
Amended	48 Ky.R. 1260		502 KAR 030:010		
As Amended	49 Ky.R. 334	8-16-2022	Amended	48 Ky.R. 1306	
502 KAR 010:020			Am Comments	2250	
Amended	48 Ky.R. 1262		As Amended	49 Ky.R. 36	10-4-2022
As Amended	49 Ky.R. 335	8-16-2022	502 KAR 030:020		
502 KAR 010:030			Amended	48 Ky.R. 1308	
Amended	48 Ky.R. 1263		Am Comments	2252	
Am Comments	2241	8-16-2022	As Amended	49 Ky.R. 37	10-4-2022
502 KAR 010:035			502 KAR 030:030		
Amended	48 Ky.R. 1264		Amended	48 Ky.R. 1309	
As Amended	49 Ky.R. 335	8-16-2022	Am Comments	2253	
502 KAR 010:040			As Amended	49 Ky.R. 38	10-4-2022
Amended	48 Ky.R. 1266		502 KAR 030:050		
Am Comments	2243		Amended	48 Ky.R. 1310	
As Amended	49 Ky.R. 335	8-16-2022	Am Comments	2254	
502 KAR 010:050			As Amended	49 Ky.R. 38	10-4-2022
Amended	48 Ky.R. 1268		502 KAR 030:060		
As Amended	49 Ky.R. 337	8-16-2022	Amended	48 Ky.R. 1312	
502 KAR 010:060			As Amended	49 Ky.R. 39	10-4-2022
Amended	48 Ky.R. 1269		502 KAR 030:070		
As Amended	49 Ky.R. 338	8-16-2022	Amended	48 Ky.R. 1314	
502 KAR 010:070			Am Comments	2256	10-4-2022
Amended	48 Ky.R. 1270		503 KAR 001:140		
Am Comments	2246	8-16-2022	Amended	49 Ky.R. 433	
502 KAR 010:080			As Amended	1074	1-31-2023
Amended	48 Ky.R. 1272		503 KAR 003:130		
As Amended	49 Ky.R. 338	8-16-2022	As Amended	1423	4-4-2023
502 KAR 010:090			503 KAR 007:010		
Amended	48 Ky.R. 1273		As Amended	49 Ky.R. 957	4-4-2023
As Amended	49 Ky.R. 339	8-16-2022	505 KAR 001:010		
502 KAR 010:110			Amended	49 Ky.R. 2365	
Amended	48 Ky.R. 1276		505 KAR 001:100		
As Amended	49 Ky.R. 341	8-16-2022	Amended	49 Ky.R. 2370	
502 KAR 010:120			505 KAR 001:120		
Amended	48 Ky.R. 1278		Amended	49 Ky.R. 1668	
As Amended	49 Ky.R. 342	8-16-2022	Am Comments	2318	
502 KAR 011:010			505 KAR 001:140		
Amended	48 Ky.R. 1280		Amended	49 Ky.R. 1670	
As Amended	49 Ky.R. 784	1-3-2023	Am Comments	2320	
502 KAR 011:060			505 KAR 001:180		
Amended	48 Ky.R. 1282		Amended	49 Ky.R. 2373	
As Amended	49 Ky.R. 786	1-3-2023	505 KAR 001:185		
502 KAR 011:070			505 KAR 001:200		
Amended	48 Ky.R. 1284		505 KAR 001:210		
As Amended	49 Ky.R. 786	1-3-2023	505 KAR 001:220		
502 KAR 013:010			505 KAR 001:230		
Amended	48 Ky.R. 1289		600 KA 004:010		
Am Comments	2248		Amended	49 Ky.R. 630	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	1254	3-1-2023	Amended	48 Ky.R. 999	
601 KAR 014:050			As Amended	49 Ky.R. 41	10-4-2022
Amended	49 Ky.R. 1826		781 KAR 001:020		
603 KAR 005:155			Amended	48 Ky.R. 1002	
Amended	49 Ky.R. 87	10-18-2022	As Amended	49 Ky.R. 43	10-4-2022
603 KAR 005:350	49 Ky.R. 498		781 KAR 001:030		
As Amended	1255	3-1-2023	Amended	48 Ky.R. 1006	
701 KAR 008:010			As Amended	49 Ky.R. 45	10-4-2022
Amended	49 Ky.R. 1153		781 KAR 001:040		
As Amended	1924		Amended	48 Ky.R. 1008	
701 KAR 008:020			As Amended	49 Ky.R. 46	10-4-2022
Amended	49 Ky.R. 1158		781 KAR 001:050		
As Amended	1928		Amended	48 Ky.R. 1011	
701 KAR 008:030			As Amended	49 Ky.R. 48	10-4-2022
Amended	49 Ky.R. 1167		782 KAR 001:010		
701 KAR 008:040			Amended	48 Ky.R. 1014	
Amended	49 Ky.R. 1170		As Amended	49 Ky.R. 49	10-4-2022
As Amended	1935		782 KAR 001:070		
701 KAR 008:050	49 Ky.R. 1216		Amended	48 Ky.R. 1020	
702 KAR 001:116	48 Ky.R. 2133		As Amended	49 Ky.R. 55	10-4-2022
As Amended	2595	7-5-2022	787 KAR 001:090		
702 KAR 001:140			Amended	49 Ky.R. 1672	
Amended	48 Ky.R. 3039		As Amended	2096	
As Amended	49 Ky.R. 562	9-20-2022	787 KAR 001:100		
702 KAR 001:191	48 Ky.R. 1078		Amended	49 Ky.R. 1675	
Am Comments	2106		As Amended	2097	
As Amended	2210	5-3-2022	787 KAR 001:360		
702 KAR 003:090			Amended	48 Ky.R. 3041	
Amended	48 Ky.R. 2513		As Amended	49 Ky.R. 563	12-6-2022
As Amended	2970	8-30-2022	787 KAR 002:040		
702 KAR 007:125			Amended	48 Ky.R. 2872	
Amended	49 Ky.R. 633		As Amended	49 Ky.R. 344	
As Amended	1256	3-7-2023	As Amended	790	1-3-2023
702 KAR 007:170	48 Ky.R. 2139		787 KAR 003:020	48 Ky.R. 1980	
Am Comments	2760		Am Comments	2611	
As Amended	2971	8-30-2022	As Amended	2732	8-2-2022
703 KAR 005:270			791 KAR 001:010		
Amended	49 Ky.R. 1832		Amended	48 Ky.R. 1024	
704 KAR 003:303			As Amended	49 Ky.R. 790	1-3-2023
Amended	49 Ky.R. 1521		791 KAR 001:020		
704 KAR 003:305			Amended	48 Ky.R. 1028	
Amended	49 Ky.R. 91		As Amended	49 Ky.R. 793	1-3-2023
Am Comments	1109		791 KAR 001:025		
As Amended	1425	4-4-2023	Amended	48 Ky.R. 1032	
704 KAR 003:395	48 Ky.R. 2135		As Amended	49 Ky.R. 796	1-3-2023
As Amended	2596	7-5-2022	791 KAR 001:027		
704 KAR 003:535	49 Ky.R. 699		Amended	48 Ky.R. 1034	
As Amended	1260	3-7-2023	As Amended	49 Ky.R. 797	1-3-2023
704 KAR 008:060			791 KAR 001:030		
Amended	49 Ky.R. 1523		Amended	48 Ky.R. 1035	
704 KAR 008:120	49 Ky.R. 1547		As Amended	49 Ky.R. 798	1-3-2023
As Amended	1938		791 KAR 001:035		
704 KAR 019:002			Amended	48 Ky.R. 1037	
Amended	48 Ky.R. 2120		As Amended	49 Ky.R. 799	1-3-2023
Am Comments	2762		791 KAR 001:040		
As Amended	2971	8-30-2022	Amended	48 Ky.R. 1039	
705 KAR 004:041			As Amended	49 Ky.R. 799	1-3-2023
Amended	49 Ky.R. 638		791 KAR 001:050		
As Amended	1262	3-7-2023	Amended	48 Ky.R. 1040	
707 KAR 001:002			As Amended	49 Ky.R. 800	1-3-2023
Amended	49 Ky.R. 1525		791 KAR 001:060		
As Amended	1938		Amended	48 Ky.R. 1042	
739 KAR 002:060			As Amended	49 Ky.R. 800	1-3-2023
Amended	49 Ky.R. 2007		791 KAR 001:070		
739 KAR 002:070			Amended	48 Ky.R. 1044	
Amended	49 Ky.R. 96		As Amended	49 Ky.R. 801	1-3-2023
As Amended	787	11-15-2022	791 KAR 001:080		
780 KAR 003:020			Amended	48 Ky.R. 1046	
Amended	48 Ky.R. 2515	8-30-2022	As Amended	49 Ky.R. 802	1-3-2023
781 KAR 001:010			791 KAR 001:100		



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	48 Ky.R. 1048		Amended	48 Ky.R. 2517	10-4-2022
As Amended	49 Ky.R. 803	1-3-2023	803 KAR 002:411		
791 KAR 001:150			Amended	48 Ky.R. 2519	10-4-2022
Amended	48 Ky.R. 1050		803 KAR 002:419		
As Amended	49 Ky.R. 805	1-3-2023	Amended	48 Ky.R. 2521	10-4-2022
791 KAR 001:155			803 KAR 002:426	48 Ky.R. 2143	7-5-2022
Amended	48 Ky.R. 1051		803 KAR 002:445		
As Amended	49 Ky.R. 805	1-3-2023	Amended	48 Ky.R. 2522	10-4-2022
791 KAR 001:160			803 KAR 005:005	48 Ky.R. 2660	
Amended	48 Ky.R. 1053		As Amended	49 Ky.R. 56	10-4-2022
As Amended	49 Ky.R. 806	1-3-2023	803 KAR 025:089		
803 KAR 001:005			Amended	49 Ky.R. 440	
Amended	48 Ky.R. 145		As Amended	1263	3-7-2023
Withdrawn	**	9-7-2022	803 KAR 025:195		
803 KAR 001:006	48 Ky.R. 2326		Amended	48 Ky.R. 2881	
Am Comments	2765		As Amended	49 Ky.R. 611	
As Amended	2973	8-30-2022	803 KAR 030:010		1-3-2023
Amended	49 Ky.R. 1530		Amended	49 Ky.R. 1836	
Impacted by 2023 legislation		3-29-2023	As Amended	2285	
803 KAR 001:025			804 KAR 001:102	48 Ky.R. 2884	
Amended	48 Ky.R. 149		As Amended	49 Ky.R. 344	11-1-2022
Withdrawn	**	9-7-2022	804 KAR 011:041	48 Ky.R. 2886	
803 KAR 001:026	48 Ky.R. 2328		As Amended	49 Ky.R. 345	11-1-2022
As Amended	2974	8-30-2022	804 KAR 014:011	48 Ky.R. 2888	11-1-2022
803 KAR 001:060			806 KAR 003:250	49 Ky.R. 1549	
Amended	48 Ky.R. 154		As Amended	1942	
Withdrawn	**	9-7-2022	806 KAR 006:072	49 Ky.R. 1710	
803 KAR 001:061	48 Ky.R. 2331		As Amended	2098	
Am Comments	2737		806 KAR 009:025		
As Amended	2977	8-30-2022	Amended	49 Ky.R. 99	
803 KAR 001:063			As Amended	810	1-3-2023
Amended	48 Ky.R. 160		806 KAR 009:380	48 Ky.R. 2889	
Withdrawn	**	9-7-2022	As Amended	49 Ky.R. 346	11-1-2022
803 KAR 001:064	48 Ky.R. 2335		806 KAR 009:390	48 Ky.R. 2891	
As Amended	2980	8-30-2022	As Amended	49 Ky.R. 346	11-1-2022
803 KAR 001:065			806 KAR 017:280		
Amended	48 Ky.R.		Amended	49 Ky.R. 1174	
Withdrawn	**	9-7-2022	As Amended	1766	5-30-2023
803 KAR 001:066			806 KAR 017:290		
Amended	48 Ky.R. 164		Amended	49 Ky.R. 1178	
Withdrawn	**	9-7-2022	As Amended	1769	5-30-2023
803 KAR 001:067	48 Ky.R. 2336		806 KAR 017:350		
As Amended	2980	8-30-2022	Amended	48 Ky.R. 605	
803 KAR 001:068	48 Ky.R. 2337		Withdrawn		7-26-2022
As Amended	2980	8-30-2022	Repealed	49 Ky.R. 702	3-7-2023
803 KAR 001:070			806 KAR 017:531	49 Ky.R. 702	3-7-2023
Amended	48 Ky.R. 166		806 KAR 017:585	48 Ky.R. 3138	
Withdrawn	**	9-7-2022	Am Comments	49 Ky.R. 616	
803 KAR 001:071	48 Ky.R. 2339		As Amended	813	
Am Comments	2770		Reprint	973	1-3-2023
As Amended	2981	8-30-2022	806 KAR 037:010		
803 KAR 001:075			Amended	49 Ky.R. 104	
Amended	48 Ky.R. 178		As Amended	1080	1-31-2023
Withdrawn	**	9-7-2022	806 KAR 039:030		
803 KAR 001:076	48 Ky.R. 2342		Amended	49 Ky.R. 905	
As Amended	2984	8-30-2022	Withdrawn		12-1-2022
803 KAR 001:080			806 KAR 010:440		
Amended	48 Ky.R. 180		Amended	49 Ky.R. 1676	
Withdrawn	**	9-7-2022	As Amended	2100	
803 KAR 001:081	48 Ky.R. 2344		806 KAR 010:450		
As Amended	2985	8-30-2022	Amended	49 Ky.R. 1679	
Amended	49 Ky.R. 1355	5-30-2023	As Amended	2102	
803 KAR 001:090			808 KAR 001:170		
Amended	48 Ky.R. 184		Amended	49 Ky.R. 1184	
Withdrawn	**	9-7-2022	As Amended	2291	
803 KAR 001:091	48 Ky.R. 2347		808 KAR 016:010	49 Ky.R. 1713	
Am Comments	2774		As Amended	2104	
As Amended	2987	8-30-2022	808 KAR 016:020	49 Ky.R. 1716	
803 KAR 002:321	48 Ky.R. 2141	7-5-2022	As Amended	2105	
803 KAR 002:402					

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
810 KAR 002:100	49 Ky.R. 2439		As Amended	347	8-25-2022
810 KAR 003:020			Amended	2024	
Amended	48 Ky.R. 2620		900 KAR 006:075		
As Amended	49 Ky.R. 58	10-4-2022	Amended	48 Ky.R. 2526	
810 KAR 004:010			Am Comments	49 Ky.R. 70	
Amended	48 Ky.R. 2626	10-4-2022	As Amended	347	8-25-2022
810 KAR 004:030			Amended	2026	
Amended	48 Ky.R. 2629	10-4-2022	900 KAR 010:120		
Amended	49 Ky.R. 2138		Amended	49 Ky.R. 124	
810 KAR 004:060			As Amended	1263	
Amended	48 Ky.R. 2633	10-4-2022	Reprint	1402	1-12-2023
810 KAR 004:090			900 KAR 010:200		
Amended	49 Ky.R. 2375		Repealed	48 Ky.R. 2144	6-2-2022
810 KAR 007:030			900 KAR 010:201		
Amended	49 Ky.R. 2377		48 Ky.R.	48 Ky.R. 2144	6-2-2022
810 KAR 007:060			900 KAR 012:005		
Amended	49 Ky.R. 2381		Amended	49 Ky.R. 640	1-12-2023
810 KAR 007:040			900 KAR 013:010	48 Ky.R. 2348	7-20-2022
Amended	49 Ky.R. 2011		900 KAR 014:010	48 Ky.R. 2662	
810 KAR 007:050			Am Comments	49 Ky.R. 74	
Amended	48 Ky.R. 2282		Amended	2164	8-25-2022
As Amended	2732	8-2-2022	901 KAR 005:120		
815 KAR 007:130	49 Ky.R. 2153		Amendment	49 Ky.R. 442	
810 KAR 008:010			Am Comments	1305	
Amended	48 Ky.R. 3043		As Amended	1429	1-12-2023
As Amended	49 Ky.R. 564	12-6-2022	901 KAR 005:130	49 Ky.R. 500	
Amended			Am Comments	1307	1-12-2023
810 KAR 008:020			901 KAR 005:140	49 Ky.R. 502	
Amended	49 Ky.R. 2016		Am Comments	1308	1-12-2023
810 KAR 009:010			902 KAR 002:020		
Amended	48 Ky.R. 3050		Amended	48 Ky.R. 3063	
As Amended	49 Ky.R. 570	12-6-2022	Am Comments	49 Ky.R. 830	11-15-2022
815 KAR 007:120			902 KAR 004:030		
Amended	48 Ky.R. 3053		Amended	48 Ky.R. 3071	9-28-2022
Am Comments	49 Ky.R. 617	11-15-2022	902 KAR 008:060		
815 KAR 008:010			Amended	48 Ky.R. 3076	
Amended	48 Ky.R. 3056		As Amended	49 Ky.R. 571	9-28-2022
As Amended	49 Ky.R. 813	1-3-2023	902 KAR 008:100		
Amended	2141		Amended	48 Ky.R. 3079	
815 KAR 010:060			As Amended	49 Ky.R. 572	9-28-2022
Amended	48 Ky.R. 3060		902 KAR 008:120		
Am Comments	49 Ky.R. 620	11-15-2022	Amended	48 Ky.R. 3082	
Amended	2145		As Amended	49 Ky.R. 816	10-26-2022
815 KAR 020:030			902 KAR 008:160		
Amended	49 Ky.R. 2148		Amended	49 Ky.R. 907	
815 KAR 025:020			As Amended	1430	1-12-2023
Amended	49 Ky.R. 2151		902 KAR 010:120		
815 KAR 025:060			Amended	48 Ky.R. 638	
Amended	49 Ky.R. 2156		Am Comments	1784	
815 KAR 035:060			As Amended	2419	
Amended	49 Ky.R. 2160		As Amended	2735	
820 KAR 001:001			As Amended at IJC	49 Ky.R. 394	7-20-2022
Amended	49 Ky.R. 108		902 KAR 010:121		
As Amended	1083	1-31-2023	Amended	48 Ky.R. 1396	
820 KAR 001:005			Am Comments	2263	
Amended	49 Ky.R. 1683		As Amended	49 Ky.R. 349	7-20-2022
As Amended	2107		902 KAR 010:140		
820 KAR 001:025			Amended	48 Ky.R. 3088	
Amended	49 Ky.R. 1686		As Amended	49 Ky.R. 575	9-28-2022
As Amended	2109		902 KAR 010:190		
820 KAR 001:130			Amended	48 Ky.R. 715	
Amended	49 Ky.R. 1689		Am Comments	1806	
As Amended	2110		As Amended	2440	7-20-2022
820 KAR 001:032			902 KAR 020:016		
Amended	49 Ky.R. 111		Amended	48 Ky.R. 2285	
As Amended	1084	1-31-2023	Am Comments	2993	8-25-2022
900 KAR 001:050	48 Ky.R. 3139	2-16-2023	902 KAR 020:018		
900 KAR 005:020			Amended	48 Ky.R. 2123	
Amended	48 Ky.R. 2524		As Amended	49 Ky.R. 63	8-25-2022
Am Comments	49 Ky.R. 69		Amended	2166	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
902 KAR 020:106			907 KAR 003:170		
Amended	48 Ky.R. 2298		Amended	48 Ky.R. 1667	
Am Comments	3005	8-25-2022	Am Comments	2485	
902 KAR 020:365	49 Ky.R. 504		As Amended	2598	6-2-2022
Am Comments	131		907 KAR 004:020		
As Amended	1432	1-12-2023	Amended	49 Ky.R. 642	
902 KAR 020:470	49 Ky.R. 1219		As Amended	1273	1-12-2023
Am Comments	1807		907 KAR 004:030		
902 KAR 020:480	49 Ky.R. 1380		Amended	49 Ky.R. 645	
Am Comments	1946		As Amended	1275	1-12-2023
As Amended	2295		907 KAR 020:010		
902 KAR 020:490	49 Ky.R. 1719		Amended	49 Ky.R. 2388	
Am Comments	2125		907 KAR 020:020		
As Amended	2307		Amended	49 Ky.R. 648	1-12-2023
902 KAR 021:040	49 Ky.R. 506		907 KAR 020:045		
As Amended	1096	11-15-2022	Amended	49 Ky.R. 2391	
902 KAR 030:120			907 KAR 020:050		
Amended	48 Ky.R. 2635		Amended	49 Ky.R. 1194	
As Amended	49 Ky.R. 577	9-28-2022	As Amended	1784	3-9-2023
902 KAR 055:015			907 KAR 020:075		
Amended	49 Ky.R. 2171		Amended	49 Ky.R. 2393	
902 KAR 055:110			907 KAR 020:100		
Amended	49 Ky.R. 1357		Amended	49 Ky.R. 651	1-12-2023
As Amended	2111		Amended	2396	
906 KAR 001:110			907 KAR 023:020		
Amended	48 Ky.R. 2302		Amended	49 Ky.R. 140	
Am Comments	3010	8-25-2022	As Amended	820	10-26-2022
906 KAR 001:210	49 Ky.R. 703		908 KAR 001:374		
As Amended	1434	1-12-2023	Amended	49 Ky.R. 656	
Amended	49 Ky.R. 2385		Am Comments	1458	
907 KAR 001:008			As Amended Standing Comms	1786	2-16-2023
Amended	49 Ky.R. 133		908 KAR 003:010		
Am Comments	1114		Amended	48 Ky.R. 2639	
As Amended	1272	1-12-2023	As Amended	49 Ky.R. 370	09-28-2022
907 KAR 001:026			910 KAR 001:090		
Amended	49 Ky.R. 1691		Amended	49 Ky.R. 451	
As Amended	1773		As Amended	1276	1-12-2023
Withdrawn	SB 65, 2023 RS	3-29-2023	As Amended	1626	3-16-2023
907 KAR 001:038			910 KAR 001:180		
Amended	49 Ky.R. 1698		Amended	49 Ky.R. 1841	
As Amended	1779		As Amended	2309	
Withdrawn	SB 65, 2023 RS	3-29-2023	910 KAR 001:190		
Amended	2174		Amended	48 Ky.R. 1956	
907 KAR 001:044			Am Comments	2490	6-2-2022
Amended	49 Ky.R. 135		910 KAR 003:030		
Withdrawn		10-7-2022	Amended	49 Ky.R. 2401	
907 KAR 001:065			911 KAR 001:060		
Amended	49 Ky.R. 444		Amended	49 Ky.R. 1361	
Am Comments	1313	1-12-2023	As Amended	1796	3-16-2023
907 KAR 001:082			911 KAR 001:085		
Amended	48 Ky.R. 3092		Amended	49 Ky.R. 1366	
Am Comments	49 Ky.R. 838		As Amended	1799	3-16-2023
As Amended	2113		911 KAR 001:090		
907 KAR 001:104			As Amended	1801	
Amended	48 Ky.R. 3105	11-15-2022	921 KAR 001:380		
907 KAR 001:126	49 Ky.R. 2185		Amended	49 Ky.R. 144	10-26-2022
907 KAR 003:190	49 Ky.R. 1868		921 KAR 001:400		
907 KAR 001:632			Amended	49 Ky.R. 457	11-15-2022
Amended	49 Ky.R. 1702		Amended	2408	
As Amended	1781		921 KAR 002:006		
Withdrawn	SB 65, 2023 RS	3-29-2023	Amended	49 Ky.R. 667	
Amended	2178		As Amended	1280	3-16-2023
907 KAR 001:680			921 KAR 002:016		
Amended	49 Ky.R. 911		Amended	49 Ky.R. 676	
As Amended	1783	3-9-2023	As Amended	1288	2-16-2023
907 KAR 003:010			921 KAR 002:017		
Amended	49 Ky.R. 913	3-9-2023	Amended	49 Ky.R. 918	2-16-2023
907 KAR 003:160			921 KAR 002:035		
Amended	49 Ky.R. 1188		Amended	49 Ky.R. 921	2-16-2023
As Amended	1622	2-16-2023	921 KAR 002:040		

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	49 Ky.R. 924	2-16-2023	-----		
921 KAR 002:050			<b>SYMBOL KEY:</b>		
Amended	49 Ky.R. 926	2-16-2023	* Statement of Consideration not filed by deadline		
921 KAR 002:060			** Withdrawn, deferred more than twelve months (KRS		
Amended	49 Ky.R. 929		13A.300(2)(e) and 13A.315(1)(d))		
As Amended	1435	2-16-2023	*** Withdrawn before being printed in Register		
921 KAR 002:370			IJC Interim Joint Committee		
Amended	49 Ky.R. 931	2-16-2023	(r) Repealer regulation: KRS 13A.310(3)-on the effective date of		
921 KAR 002:500			an administrative regulation that repeals another, the		
Amended	49 Ky.R. 684	3-16-2023	regulations compiler shall delete the repealed administrative		
921 KAR 002:510			regulation and the repealing administrative regulation.		
Amended	49 Ky.R. 687	3-16-2023			
921 KAR 002:520					
Amended	49 Ky.R. 690	3-16-2023			
921 KAR 004:122	48 Ky.R. 2146	6-2-2022			
922 KAR 001:100					
Amended	49 Ky.R. 1847				
Am Comments	2322				
922 KAR 001:290	48 Ky.R. 3142				
Am Comments	49 Ky.R. 851				
As Amended	1436	2-16-2023			
922 KAR 001:300					
Amended	49 Ky.R. 148				
Am Comments	1117				
As Amended	1294	2-16-2023			
922 KAR 001:310					
Amended	48 Ky.R. 2642				
Am Comments	49 Ky.R. 373				
As Amended	579	9-28-2022			
922 KAR 001:315	48 Ky.R. 2665				
Am Comments	49 Ky.R. 387	9-28-2022			
922 KAR 001:330					
Amended	49 Ky.R. 1851				
Am Comments	2326				
922 KAR 001:340					
Amended	48 Ky.R. 2656				
Am Comments	49 Ky.R. 392				
As Amended	593	9-28-2022			
922 KAR 001:350					
Amended	49 Ky.R. 460				
Am Comments	1320				
As Amended	1439	2-16-2023			
922 KAR 001:360					
Amended	48 Ky.R. 2306				
Am Comments	3014	7-20-2022			
Amended	49 Ky.R. 2411				
922 KAR 001:470					
Amended	48 Ky.R. 2128				
Am Comments	2775				
As Amended	2987	7-20-2022			
922 KAR 001:530					
Amended	48 Ky.R. 2313				
As Amended	49 Ky.R. 67	7-20-2022			
922 KAR 002:165	49 Ky.R. 1221				
As Amended	1631	2-16-2023			
922 KAR 002:160					
Amended	49 Ky.R. 469				
As Amended	1098	11-15-2022			
922 KAR 002:180					
Amended	49 Ky.R. 2417				
922 KAR 002:245	49 Ky.R. 2441				
922 KAR 002:255	49 Ky.R. 2444				
922 KAR 002:280					
Amended	48 Ky.R. 2316				
As Amended	2988	7-20-2022			
922 KAR 005:070					
Amended	48 Ky.R. 2311				
Am Comments	3021				
As Amended IJC	49 Ky.R. 596	8-25-2022			

# KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
1.020	200 KAR 041:010		505 KAR 001:210E
2.015	902 KAR 020:490E		505 KAR 001:210
	902 KAR 020:490		505 KAR 001:220E
	922 KAR 001:300		505 KAR 001:220
	922 KAR 001:350		505 KAR 001:230
7	201 KAR 005:002	15A.067	505 KAR 001:010
12.020	603 KAR 005:350		505 KAR 001:100
12.245	201 KAR 012:030		505 KAR001:180
12.290	910 KAR 001:090		505 KAR 001:185
12.355	201 KAR 022:045		505 KAR 001:120E
	202 KAR 007:401		505 KAR 001:120
12.357	806 KAR 009:025		505 KAR 001:140E
13B	201 KAR 016:610		505 KAR 001:140
	301 KAR 002:082		505 KAR 001:210E
	503 KAR 001:140		505 KAR 001:210
	701 KAR 008:030E		505 KAR 001:230
	701 KAR 008:030	15A.070	503 KAR 003:130E
	910 KAR 001:090		503 KAR 003:130
	910 KAR 003:030	15A.160	505 KAR 001:200E
	911 KAR 001:090		505 KAR 001:200
13B.010-13B.170	910 KAR 001:180	15A.200-245	505 KAR 001:140E
13B.050	911 KAR 001:085		505 KAR 001:140
13B.080-160	902 KAR 021:040	15A.305	505 KAR 001:010
13B.050	922 KAR 001:300		505 KAR 001:140E
14.025	030 KAR 009:010		505 KAR 001:140
15.291	040 KAR 009:010E		505 KAR 001:200E
	040 KAR 009:010		505 KAR 001:200
	040 KAR 009:020E		505 KAR 001:210E
	040 KAR 009:010		505 KAR 001:210
15.293	040 KAR 009:010E	16.505	105 KAR 001:365
	040 KAR 009:010		105 KAR 001:411
	040 KAR 009:020E		105 KAR 001:415
	040 KAR 009:020	16.505-16.652	105 KAR 001:001
15.330	503 KAR 001:140	16.576	105 KAR 001:411
15.334	500 KAR 002:020	16.577	105 KAR 001:220
15.380	503 KAR 001:140	16.578	105 KAR 001:365
15.382	503 KAR 001:140	16.583	105 KAR 001:220
15.383	500 KAR 002:020		105 KAR 001:365
15.384	503 KAR 001:140	16.645	105 KAR 001:220
15.392	503 KAR 001:140	17.165	922 KAR 001:300
15.394	503 KAR 001:140	17.500	922 KAR 001:300
15.396	503 KAR 001:140	18A.005	101 KAR 001:325
15.3971	503 KAR 001:140	18A.030	101 KAR 002:034
15.400	503 KAR 001:140		101 KAR 002:095
15.440	503 KAR 001:140		101 KAR 002:210E
	503 KAR 003:130E		101 KAR 002:210
	503 KAR 003:130	18A.0751	101 KAR 001:325
15.540	503 KAR 001:140	18A.110	101 KAR 002:034
15.565	503 KAR 001:140		101 KAR 002:095
15.580	503 KAR 001:140		101 KAR 002:181
15A.011	500 KAR 016:010		101 KAR 003:045
15A.065	505 KAR 001:010	18A.111	101 KAR 001:325
	505 KAR 001:100	18A.155	101 KAR 003:045
	505 KAR 001:180	18A.165	101 KAR 002:034
	505 KAR 001:185	18A.202	101 KAR 003:045
	505 KAR 001:120E	18A.225	101 KAR 002:210E
	505 KAR 001:120		101 KAR 002:210
	505 KAR 001:140E	18A.2254	101 KAR 002:210E
	505 KAR 001:140		101 KAR 002:210
	505 KAR 001:200E	36.470	106 KAR 002:021
	505 KAR 001:200	36.474	106 KAR 002:021
	505 KAR 001:210E		106 KAR 002:031
	505 KAR 001:210	36.476	106 KAR 002:021
	505 KAR 001:220E	36.477	106 KAR 002:031
	505 KAR 001:220	38.030	202 KAR 007:330
	505 KAR 001:230	39	202 KAR 007:330
15A.0652	505 KAR 001:100	39A.050	106 KAR 001:141
	505 KAR 001:180		106 KAR 001:171
	505 KAR 001:185		106 KAR 001:181
	505 KAR 001:200E		106 KAR 001:191
	505 KAR 001:200		106 KAR 001:211

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	106 KAR 001:221	61.543	105 KAR 001:451E
	202 KAR 007:330		105 KAR 001:451
	202 KAR 007:701	61.552	105 KAR 001:365
39A.070	106 KAR 001:201		105 KAR 001:451E
39A.180	201 KAR 023:016E		105 KAR 001:451
	201 KAR 023:051E	61.555	105 KAR 001:071
	201 KAR 023:051	61.559	105 KAR 001:220
39A.190	201 KAR 023:016E	61.592	105 KAR 001:220
	201 KAR 023:051E	61.5955	105 KAR 001:365
	201 KAR 023:051	61.597	105 KAR 001:220
39A.350-39A.366	201 KAR 008:533		105 KAR 001:365
39B.010	106 KAR 001:231	61.5991	105 KAR 001:451E
39B.020	106 KAR 001:201		105 KAR 001:451
	106 KAR 001:211	61.600	105 KAR 001:220
	106 KAR 001:241	61.610	105 KAR 001:220
39B.030	106 KAR 001:201	61.615	105 KAR 001:220
39B.060	106 KAR 001:201	61.625	105 KAR 001:365
39B.990	106 KAR 001:231	61.630	105 KAR 001:220
39C.010	106 KAR 001:141	61.637	105 KAR 001:220
39C.050	106 KAR 001:201		105 KAR 001:365
	106 KAR 001:211	61.640	105 KAR 001:365
	106 KAR 001:221	61.645	105 KAR 001:371
	106 KAR 001:261		105 KAR 001:451E
39C.070	106 KAR 001:181		105 KAR 001:451
	106 KAR 001:191	61.665	105 KAR 001:220
39C.080	106 KAR 001:171	61.675	105 KAR 001:451E
39C.110	106 KAR 001:251		105 KAR 001:451
39E.010	106 KAR 001:201	61.680	105 KAR 001:365
	106 KAR 001:221	61.685	105 KAR 001:451E
39E.110	106 KAR 001:201		105 KAR 001:451
39E.150	106 KAR 001:201	61.701	105 KAR 001:411
39F.020	106 KAR 001:341		105 KAR 001:415
39F.030	106 KAR 001:291	61.702	105 KAR 001:365
39F.100	106 KAR 001:341		105 KAR 001:411
39F.110	106 KAR 001:341		105 KAR 001:415
39F.140	106 KAR 001:371	61.870-61.884	201 KAR 016:610
39F.170	106 KAR 001:251		807 KAR 005:001E
39F.190	106 KAR 001:201		810 KAR 002:100
40.320	017 KAR 003:020		922 KAR 001:350
	910 KAR 003:030	61.874	201 KAR 020:240
40.325	017 KAR 003:020	61.900-61.930	500 KAR 002:020
41.305	500 KAR 016:010	61.931-934	807 KAR 005:001E
42.630	200 KAR 041:010	61.932	200 KAR 001:016
42.650	200 KAR 041:010	61.933	200 KAR 001:016
42.740	200 KAR 041:010	61.990	500 KAR 002:020
43.070	045 KAR 001:030		500 KAR 003:020
	045 KAR 001:040	61.991	500 KAR 002:020
	045 KAR 001:050	62.010	500 KAR 002:020
43.075	045 KAR 001:030		500 KAR 003:020
	045 KAR 001:040	62.990	500 KAR 002:020
	045 KAR 001:050		500 KAR 003:020
45.031	200 KAR 017:111	64.810	045 KAR 001:030
45.237-241	921 KAR 002:017		045 KAR 001:040
	921 KAR 002:510		045 KAR 001:050
45A	301 KAR 011:020	64.830	109 KAR 017:010
45A.075	910 KAR 003:030	65.810	807 KAR 005:001E
45A.080	910 KAR 003:030	69.370	109 KAR 017:010
49.220	803 KAR 030:010	68.210	045 KAR 001:030
61.300	500 KAR 002:020		045 KAR 001:040
	500 KAR 003:020		045 KAR 001:050
61.360	500 KAR 003:010	72.020	202 KAR 007:401
	500 KAR 003:020		501 KAR 006:050
61.505	105 KAR 001:071	72.025	501 KAR 006:050
	105 KAR 001:365	74	807 KAR 005:001E
	105 KAR 001:371	75.400	739 KAR 002:060
	105 KAR 001:411	78.510	105 KAR 001:365
	105 KAR 001:415		105 KAR 001:411
61.510	105 KAR 001:365		105 KAR 001:415
	105 KAR 001:411	78.510-78.852	105 KAR 001:001
	105 KAR 001:415	78.545	105 KAR 001:220
	105 KAR 001:451E		105 KAR 001:365
	105 KAR 001:451	78.5510	105 KAR 001:220
61.510-61.705	105 KAR 001:001	78.5512	105 KAR 001:220
61.542	105 KAR 001:365		105 KAR 001:365

KRS SECTION	REGULATION	KRS SECTION	REGULATION
78.5514	105 KAR 001:220		301 KAR 002:300
78.5516	105 KAR 001:220	150.105	301 KAR 004:110
	105 KAR 001:365	150.170	301 KAR 001:410
78.5522	105 KAR 001:220		301 KAR 002:075
78.5524	105 KAR 001:220		301 KAR 002:144
78.5526	105 KAR 001:220		301 KAR 002:245
78.5528	105 KAR 001:220		301 KAR 002:251
78.5532	105 KAR 001:365		301 KAR 002:300
78.5536	105 KAR 001:365	150.175	301 KAR 001:410
	105 KAR 001:411		301 KAR 002:142
	105 KAR 001:415		301 KAR 002:144
78.5540	105 KAR 001:220		301 KAR 002:300
	105 KAR 001:365		301 KAR 005:010
78.5542	105 KAR 001:365		301 KAR 005:020
95.010	739 KAR 002:060	150.180	301 KAR 002:095
91A.350	300 KAR 001:020		301 KAR 002:251
	300 KAR 001:021E		301 KAR 005:022
	300 KAR 001:021	150.183	301 KAR 002:075
95A.040	739 KAR 002:060		301 KAR 002:081
95A.210	739 KAR 002:060		301 KAR 002:082
95A.262	739 KAR 002:070		301 KAR 003:120
117.001	031 KAR 002:030E		301 KAR 005:022
	031 KAR 002:030	150.186	301 KAR 002:082
117.379	031 KAR 002:030E	150.190	301 KAR 002:081
	031 KAR 002:030	150.195	301 KAR 002:075
118.126	030 KAR 009:010		301 KAR 002:081
131.020	103 KAR 043:340E		301 KAR 002:082
131.130	103 KAR 043:340E		301 KAR 005:001
138.210	103 KAR 043:340E	150.235	301 KAR 001:410
138.220	103 KAR 043:340E		301 KAR 002:081
138.226	103 KAR 043:340E		301 KAR 002:082
138.228	103 KAR 043:340E	150.240	301 KAR 005:022
138.290	103 KAR 043:340E	150.275	301 KAR 003:120
138.510	810 KAR 007:030		301 KAR 004:110
	810 KAR 007:060		301 KAR 005:022
142.361	907 KAR 001:065E	150.280	301 KAR 002:095
	907 KAR 001:065		301 KAR 004:110
142.363	907 KAR 001:065		301 KAR 005:022
147.126	907 KAR 001:632E	150.290	301 KAR 002:095
148.0222	603 KAR 005:350		301 KAR 005:022
148.522	300 KAR 001:020	150.305	301 KAR 002:090
	300 KAR 001:021E		301 KAR 002:142
148.525	300 KAR 001:020		301 KAR 002:144
	300 KAR 001:020		301 KAR 002:221
	300 KAR 001:021E		301 KAR 002:222
150	301 KAR 011:020		301 KAR 002:228
150.010	301 KAR 001:001	150.320	301 KAR 002:081
	301 KAR 001:410		301 KAR 002:082
	301 KAR 002:075	150.330	301 KAR 002:075
	301 KAR 002:081		301 KAR 002:081
	301 KAR 002:082		301 KAR 002:082
	301 KAR 002:090		301 KAR 002:090
	301 KAR 002:144		301 KAR 002:219
	301 KAR 002:185		301 KAR 002:221
	301 KAR 002:221		301 KAR 002:222
	301 KAR 002:222		301 KAR 002:225
	301 KAR 002:228		301 KAR 003:120
	301 KAR 002:300	150.340	301 KAR 002:221
	301 KAR 004:110		301 KAR 002:222
150.015	301 KAR 002:015		301 KAR 002:225
	301 KAR 002:075		301 KAR 002:228
	301 KAR 002:081	150.360	301 KAR 002:081
	301 KAR 002:082		301 KAR 002:090
	301 KAR 002:185		301 KAR 002:144
	301 KAR 002:245	150.370	301 KAR 002:081
150.021	301 KAR 002:075		301 KAR 002:251
150.025	301 KAR 001:001	150.390	301 KAR 002:144
	301 KAR 002:090		301 KAR 002:245
	301 KAR 002:221	150.399	301 KAR 002:251
	301 KAR 002:245	150.410	301 KAR 003:120
	301 KAR 004:110	150.415	301 KAR 002:251
	301 KAR 005:022	150.416	301 KAR 002:251
150.061	301 KAR 004:110	150.445	301 KAR 001:410
150.092	301 KAR 002:245	150.450	301 KAR 005:022

KRS SECTION	REGULATION	KRS SECTION	REGULATION
150.485	301 KAR 005:022		707 KAR 001:002
150.520	301 KAR 005:022	158.135	013 KAR 003:050
150.525	301 KAR 005:022	158.140	704 KAR 003:305
150.600	301 KAR 005:022	158.142	704 KAR 003:305
150.603	301 KAR 005:022	158.143	013 KAR 003:050
150.620	301 KAR 001:410	158.150	707 KAR 001:002
150.660	301 KAR 005:022	158.196	704 KAR 008:060
150.720	301 KAR 005:022	158.240	702 KAR 007:125
150.722	301 KAR 002:245	158.281	701 KAR 008:010E
150.990	301 KAR 001:410		701 KAR 008:010
	301 KAR 002:075	158.441	503 KAR 007:010
	301 KAR 002:081	158.4410	503 KAR 007:010
	301 KAR 002:082	158.4414	503 KAR 007:010
	301 KAR 002:142	158.4416	704 KAR 003:535
	301 KAR 002:144	158.443	503 KAR 007:010
	301 KAR 002:185	158.645	703 KAR 005:270
	301 KAR 002:221		704 KAR 003:303
	301 KAR 002:222		704 KAR 003:305
	301 KAR 002:228		704 KAR 008:060
	301 KAR 002:251		704 KAR 008:120
	301 KAR 002:300	158.6451	703 KAR 005:270
	301 KAR 005:020		704 KAR 003:303
150.995	301 KAR 002:251		704 KAR 003:305
151.601	200 KAR 017:111		704 KAR 003:535
151.603	301 KAR 002:225		704 KAR 008:060
151.605	200 KAR 017:111		704 KAR 008:120
151B.403	013 KAR 003:050	158.6453	703 KAR 005:270
156.070	704 KAR 003:303		704 KAR 003:303
	704 KAR 003:535		704 KAR 008:060
	704 KAR 008:060		704 KAR 008:120
	704 KAR 008:120	158.6455	013 KAR 003:050
156.111	016 KAR 009:080E		703 KAR 005:270
	016 KAR 009:080	158.649	701 KAR 008:020E
	922 KAR 001:330		701 KAR 008:020
	922 KAR 001:360E		703 KAR 005:270
156.160	704 KAR 003:303	158.810	705 KAR 004:041
	704 KAR 003:305	159.010	701 KAR 008:010E
	704 KAR 003:535		701 KAR 008:010
	704 KAR 008:060		702 KAR 007:125
156.196	704 KAR 008:120	159.030	702 KAR 007:125
156.802	701 KAR 008:010E	159.035	702 KAR 007:125
157.196	705 KAR 004:041	159.140	702 KAR 007:125
157.200	701 KAR 008:010		922 KAR 001:330
	701 KAR 008:010E	159.170	702 KAR 007:125
	701 KAR 008:010	160.1590	701 KAR 008:010E
	707 KAR 001:002		701 KAR 008:010
157.220	707 KAR 001:002		701 KAR 008:020E
157.224	707 KAR 001:002		701 KAR 008:020
157.226	707 KAR 001:002		701 KAR 008:030E
157.230	707 KAR 001:002		701 KAR 008:030
157.250	707 KAR 001:002		701 KAR 008:040E
157.260	707 KAR 001:002		701 KAR 008:040
157.270	707 KAR 001:002		701 KAR 008:050E
157.280	707 KAR 001:002		701 KAR 008:050
157.285	707 KAR 001:002	160.1591	701 KAR 008:010E
157.290	707 KAR 001:002		701 KAR 008:010
157.320	702 KAR 007:125		701 KAR 008:020E
157.350	702 KAR 007:125		701 KAR 008:020
157.360	707 KAR 001:002		701 KAR 008:030E
158.030	701 KAR 008:010E		701 KAR 008:030
	701 KAR 008:010		701 KAR 008:040E
	702 KAR 007:125		701 KAR 008:040
	707 KAR 001:002		701 KAR 008:050E
	922 KAR 002:255		701 KAR 008:050
158.050	701 KAR 008:010E	160.15911	701 KAR 008:050E
	701 KAR 008:010		701 KAR 008:050
158.070	701 KAR 008:010E	160.1592	701 KAR 008:010E
	701 KAR 008:010		701 KAR 008:010
	701 KAR 008:020E		701 KAR 008:020E
	701 KAR 008:020		701 KAR 008:020
	702 KAR 007:125		701 KAR 008:030E
158.100	701 KAR 008:010E		701 KAR 008:030
	701 KAR 008:010		701 KAR 008:040E
	702 KAR 007:125		701 KAR 008:040



KRS SECTION	REGULATION	KRS SECTION	REGULATION
160.1593	701 KAR 008:050E	160.345	704 KAR 008:120
	701 KAR 008:050		707 KAR 001:002
	701 KAR 008:010E		016 KAR 009:080E
	701 KAR 008:010		016 KAR 009:080
	701 KAR 008:020E		704 KAR 003:535
	701 KAR 008:020		701 KAR 008:010E
	701 KAR 008:030E		701 KAR 008:010
	701 KAR 008:030		703 KAR 005:270
160.1594	701 KAR 008:040E	160.380	016 KAR 009:080E
	701 KAR 008:040		016 KAR 009:080
	701 KAR 008:050E		704 KAR 003:535
	701 KAR 008:050		701 KAR 008:040E
	701 KAR 008:010E		701 KAR 008:040
	701 KAR 008:010		016 KAR 004:060
	701 KAR 008:020E		016 KAR 009:080E
	701 KAR 008:020		016 KAR 009:080
160.1595	701 KAR 008:030E	161.028	016 KAR 004:060
	701 KAR 008:030		016 KAR 009:080E
	701 KAR 008:040E		016 KAR 009:080
	701 KAR 008:040		016 KAR 009:100E
	701 KAR 008:050E		016 KAR 009:100
	701 KAR 008:050		016 KAR 009:110
	701 KAR 008:010E		016 KAR 004:060
	701 KAR 008:010		016 KAR 009:080E
160.1596	701 KAR 008:020E	161.030	016 KAR 009:080
	701 KAR 008:020		016 KAR 009:100E
	701 KAR 008:030E		016 KAR 009:100
	701 KAR 008:030		016 KAR 009:110
	701 KAR 008:040E		016 KAR 009:080E
	701 KAR 008:040		016 KAR 009:080
	701 KAR 008:050E		016 KAR 009:100E
	701 KAR 008:050		016 KAR 009:100
160.1597	701 KAR 008:010E	161.048	016 KAR 009:110
	701 KAR 008:010		701 KAR 008:010E
	701 KAR 008:020E		701 KAR 008:010
	701 KAR 008:020		701 KAR 008:020E
	701 KAR 008:030E		701 KAR 008:020
	701 KAR 008:030		701 KAR 008:040E
	701 KAR 008:040E		701 KAR 008:040
	701 KAR 008:040		702 KAR 007:125
160.1598	701 KAR 008:050E	161.200	102 KAR 001:361E
	701 KAR 008:050		102 KAR 001:361
	701 KAR 008:010E		701 KAR 008:040E
	701 KAR 008:010		701 KAR 008:040
	701 KAR 008:020E		011 KAR 004:080
	701 KAR 008:020		922 KAR 002:255
	701 KAR 008:030E		011 KAR 005:001
	701 KAR 008:030		011 KAR 004:080
160.1599	701 KAR 008:040E	164.744	011 KAR 005:037
	701 KAR 008:040		011 KAR 005:145
	701 KAR 008:050E		011 KAR 004:080
	701 KAR 008:050		011 KAR 004:080
	701 KAR 008:010E		011 KAR 005:037
	701 KAR 008:010		011 KAR 005:145
	701 KAR 008:020E		011 KAR 004:080
	701 KAR 008:020		011 KAR 005:037
160.1599	701 KAR 008:030E	164.7535	011 KAR 005:145
	701 KAR 008:030		011 KAR 004:080
	701 KAR 008:040E		815 KAR 035:060
	701 KAR 008:040		011 KAR 004:080
	701 KAR 008:050E		011 KAR 004:080
	701 KAR 008:050		011 KAR 005:145
	701 KAR 008:010E		011 KAR 004:080
	701 KAR 008:010		011 KAR 004:080
160.1599	701 KAR 008:020E	165A.330	806 KAR 009:025
	701 KAR 008:020		603 KAR 005:350
	701 KAR 008:030E		603 KAR 005:155
	701 KAR 008:030		603 KAR 005:155
	701 KAR 008:040E		601 KAR 014:050
	701 KAR 008:040		603 KAR 005:155
	701 KAR 008:050E		603 KAR 005:155
	701 KAR 008:050		603 KAR 005:155
160.290	704 KAR 003:303	186.401	601 KAR 014:050
	704 KAR 008:060		601 KAR 014:050

KRS SECTION	REGULATION	KRS SECTION	REGULATION
186.531	601 KAR 014:050	199.555	101 KAR 003:045
186.535	601 KAR 014:050		106 KAR 002:031
189.125	922 KAR 001:300	199.570	922 KAR 001:100
189.281	603 KAR 005:350	199.572	922 KAR 001:100
189.390	603 KAR 005:350	199.575	922 KAR 001:100
189.515	603 KAR 005:350	199.640	922 KAR 001:300
189.520	603 KAR 005:350	199.640-199.680	922 KAR 001:360E
189A.050	910 KAR 003:030		922 KAR 001:360
194.540	201 KAR 020:620	199.642	922 KAR 001:300
194A.005	922 KAR 001:330	199.650	922 KAR 001:300
	922 KAR 001:350	199.660	922 KAR 001:300
194A.030	911 KAR 001:085	199.670	922 KAR 001:300
	911 KAR 001:090	199.801	922 KAR 001:360E
194A.060	907 KAR 001:044		922 KAR 001:360
	921 KAR 002:035	199.881-888	922 KAR 002:165
	922 KAR 001:100	199.894	922 KAR 002:160
	922 KAR 001:350		922 KAR 002:180
	922 KAR 002:160	199.8943	922 KAR 002:165
194A.700	900 KAR 014:010E	199.896	922 KAR 002:160
	900 KAR 014:010		922 KAR 002:180
	910 KAR 001:180	199.898	922 KAR 002:160
	902 KAR 020:480		922 KAR 002:180
194A.700-194A.729	201 KAR 020:700	199.8982	922 KAR 002:160
194A.705	501 KAR 006:040	199.899	922 KAR 002:160
196	501 KAR 006:050	200.080-200.120	505 KAR 001:010
	501 KAR 006:080		505 KAR 001:100
	501 KAR 006:130		505 KAR 001:120E
	501 KAR 006:150		505 KAR 001:120
196.030	501 KAR 016:310		505 KAR 001:140E
196.070	501 KAR 016:310		505 KAR 001:140
196.180	501 KAR 016:310		505 KAR 001:180
196.700-196.736	500 KAR 010:001		505 KAR 001:185
	500 KAR 010:020		505 KAR 001:200E
	500 KAR 010:030		505 KAR 001:200
	500 KAR 010:040		505 KAR 001:210E
197	501 KAR 006:040		505 KAR 001:210
	501 KAR 006:050		505 KAR 001:220E
	501 KAR 006:080		505 KAR 001:220
	501 KAR 006:130		505 KAR 001:230
	501 KAR 006:150	200.460	911 KAR 001:060
198B.030	815 KAR 007:130	200.460-200.499	911 KAR 001:085
198B.050	815 KAR 010:060		911 KAR 001:090
198B.050-198B.090	922 KAR 001:300	200.654	911 KAR 001:090
198B.062	815 KAR 007:130	202A.011	907 KAR 001:044
198B.260	908 KAR 001:374		922 KAR 001:330
198B.4003	815 KAR 004:030	202B.010	922 KAR 001:100
198B.4009	815 KAR 004:030	205	921 KAR 002:040
198B.4011	815 KAR 004:030	205.010	910 KAR 001:180
198B.4013	815 KAR 004:030		921 KAR 002:006
198B.4023	815 KAR 004:030	205.170	921 KAR 002:060
198B.4025	815 KAR 004:030	205.175	921 KAR 002:035
198B.4027	815 KAR 004:030	205.177	921 KAR 002:035
198B.4033	815 KAR 004:030	205.193	921 KAR 002:050
198B.650	815 KAR 008:010	205.200	921 KAR 002:016
198B.654	815 KAR 008:010		921 KAR 002:017
198B.656	815 KAR 008:010		921 KAR 002:035
198B.658	815 KAR 008:010		921 KAR 002:050
198B.659	815 KAR 008:010		921 KAR 002:370
198B.660	815 KAR 008:010		921 KAR 002:500
198B.664	815 KAR 008:010		921 KAR 002:520
198B.668	815 KAR 008:010	205.201	910 KAR 001:180
198B.672	815 KAR 008:010	205.203	910 KAR 001:180
198B.676	815 KAR 008:010	205.2001	921 KAR 002:016
199	300 KAR 001:020	205.2003	921 KAR 002:017
	300 KAR 001:021E		921 KAR 002:500
199.011	922 KAR 001:100	205.2005	921 KAR 002:006
	922 KAR 001:300	205.210	921 KAR 002:016
	922 KAR 001:350	205.211	921 KAR 002:016
	922 KAR 001:360E		921 KAR 002:017
	922 KAR 001:360		921 KAR 002:500
	922 KAR 002:180		921 KAR 002:510
199.430	922 KAR 001:100		921 KAR 002:520
199.520	922 KAR 001:100	205.232	921 KAR 002:050
199.525	922 KAR 001:100	205.240	921 KAR 002:035

KRS SECTION	REGULATION	KRS SECTION	REGULATION
205.245	921 KAR 002:035		907 KAR 001:126E
	921 KAR 002:050		907 KAR 001:632E
205.455	910 KAR 001:090		907 KAR 001:632
205.455-465	910 KAR 001:180		910 KAR 001:090
205.510	900 KAR 012:005	205.900	910 KAR 003:030
205.510-205.647	907 KAR 004:020	205.900-205.925	910 KAR 001:090
205.520	907 KAR 001:008	205.990	921 KAR 001:400
	907 KAR 001:026E	205.992	921 KAR 001:380
	907 KAR 001:026	206.10	921 KAR 002:035
	907 KAR 001:038E	209.005	500 KAR 016:010
	907 KAR 001:038	209.030	910 KAR 001:180
	907 KAR 001:126E	209.032	902 KAR 020:480
	907 KAR 001:632E	210.366	201 KAR 026:175E
	907 KAR 001:632	210.370-210.485	907 KAR 003:010
	907 KAR 001:680	211.090	902 KAR 021:040
	907 KAR 003:190	211.1751	902 KAR 008:160
	907 KAR 020:010E	211.180	902 KAR 021:040
	907 KAR 020:010	211.332	201 KAR 021:105
	907 KAR 020:020		900 KAR 012:005
	907 KAR 020:045E	211.334	201 KAR 021:105
	907 KAR 020:045	211.335	201 KAR 021:105
	907 KAR 020:050	211.336	201 KAR 021:105
	907 KAR 020:075E	211.340	902 KAR 020:470
	907 KAR 020:075	211.341	902 KAR 020:470
	907 KAR 020:100E	211.342	902 KAR 020:470
	907 KAR 020:100	211.350-211.380	922 KAR 001:300
	911 KAR 001:090	211.461-211.466	907 KAR 004:030
205.5375	907 KAR 020:050	211.470-211.478	910 KAR 003:030
205.5510-205.5520	907 KAR 023:020	211.645	911 KAR 001:085
205.557	907 KAR 003:160E		911 KAR 001:090
	907 KAR 003:160	211.647	911 KAR 001:085
205.559	900 KAR 012:005		911 KAR 001:090
205.5591	900 KAR 012:005	211.684	922 KAR 001:330
205.560	907 KAR 001:008	212.230	902 KAR 008:160
	907 KAR 003:010	212.240	902 KAR 008:160
	907 KAR 003:160E	212.245	902 KAR 008:160
	907 KAR 003:160	212.890	902 KAR 008:160
	907 KAR 023:020	213.011	901 KAR 005:130
205.5605	907 KAR 003:190	213.046	911 KAR 001:085
205.5606	907 KAR 003:190		911 KAR 001:090
	911 KAR 001:090		921 KAR 001:380
205.5607	907 KAR 003:190		921 KAR 001:400
205.561	907 KAR 023:020	213.081	040 KAR 002:150
205.5631	907 KAR 023:020		901 KAR 005:140
205.5632	907 KAR 023:020	213.096	901 KAR 005:130
205.5634	907 KAR 023:020	213.098	040 KAR 002:150
205.5636	907 KAR 023:020	213.101	901 KAR 005:120
205.5638	907 KAR 023:020	213.106	901 KAR 005:120
205.5639	907 KAR 023:020	213.991	901 KAR 005:140
205.565	907 KAR 003:010	214.034	922 KAR 001:300
205.592	907 KAR 020:050	214.036	922 KAR 001:330
205.622	907 KAR 001:026E		922 KAR 002:160
	907 KAR 001:026	214.615	201 KAR 008:533
	907 KAR 001:038E		201 KAR 008:563
	907 KAR 001:038		201 KAR 008:571
	907 KAR 001:044	216.2970	911 KAR 001:085
	907 KAR 001:126E		911 KAR 001:090
	907 KAR 001:632E	216.380	907 KAR 001:065
	907 KAR 001:632	216.510	201 KAR 020:700
	907 KAR 023:020		900 KAR 014:010E
205.6316	907 KAR 023:020		900 KAR 014:010
205.6317	911 KAR 001:090	216.515	902 KAR 020:480
205.6481-205.6497	907 KAR 004:020	216.530	902 KAR 020:480
	907 KAR 004:030	216.532	902 KAR 020:480
205.703	921 KAR 002:006	216.595	902 KAR 020:480
205.705	921 KAR 001:380	216.718	902 KAR 020:480
205.710-205.802	921 KAR 001:380	216.718-216.728	906 KAR 001:210
	921 KAR 001:400	216.765	902 KAR 020:480
205.720	921 KAR 002:006	216.785-216.793	906 KAR 001:210
205.8451	907 KAR 001:026E	216.789	902 KAR 020:480
	907 KAR 001:026	216B.010	900 KAR 006:075E
	907 KAR 001:038E		900 KAR 006:075
	907 KAR 001:038		902 KAR 020:018
	907 KAR 001:044	216B.010-216B.130	900 KAR 005:020E

KRS SECTION	REGULATION	KRS SECTION	REGULATION	
216B.015	900 KAR 005:020	218A.080	902 KAR 055:015	
	900 KAR 006:075E		902 KAR 055:015E	
	900 KAR 006:075		902 KAR 055:015	
	902 KAR 020:018		902 KAR 055:015E	
	902 KAR 020:365		902 KAR 055:015	
216B.020	902 KAR 020:480	218A.120	902 KAR 055:015E	
	902 KAR 020:480		902 KAR 055:015	
216B.040	900 KAR 006:075E	218A.180	908 KAR 001:374	
	900 KAR 006:075		902 KAR 020:480	
	902 KAR 020:018		902 KAR 055:015E	
216B.042	902 KAR 020:018	218A.202	902 KAR 055:015	
216B.045	902 KAR 020:018		902 KAR 055:110	
216B.050	902 KAR 020:018		908 KAR 001:374	
216B.055	902 KAR 020:018		201 KAR 008:533	
216B.062	900 KAR 006:075E		218A.240	902 KAR 055:110
	900 KAR 006:075	222.231	908 KAR 001:374	
216B.075	902 KAR 020:018	222.462	908 KAR 001:374	
216B.085	902 KAR 020:018	224.10-100	401 KAR 058:040	
216B.090	900 KAR 006:075E		401 KAR 063:060	
216B.095	900 KAR 006:075	224.20-100	401 KAR 058:040	
	900 KAR 006:075E	224.20-110	401 KAR 058:040	
	900 KAR 006:075	401 KAR 063:060		
216B.105	902 KAR 020:365	224.20-120	401 KAR 058:040	
	902 KAR 020:480	224A.011	200 KAR 017:111	
216B.105-216B.125	902 KAR 020:018	224A.020	200 KAR 017:111	
	216B.115	900 KAR 006:075E	224A.035	200 KAR 017:111
900 KAR 006:075		224A.040	200 KAR 017:111	
216B.160	902 KAR 020:480	224A.050-224A.314	200 KAR 017:111	
216B.165	902 KAR 020:480	227.300	815 KAR 010:060	
216B.200-216B.210	902 KAR 020:365	227.331	815 KAR 010:060	
	201 KAR 020:411	227.550	815 KAR 025:060	
216B.455	900 KAR 006:075E	227.550-227.665	815 KAR 025:020	
	900 KAR 006:075	227.560	815 KAR 025:060	
216B.990	900 KAR 006:075E	227.570	815 KAR 025:060	
	900 KAR 006:075	227.580	815 KAR 025:060	
	902 KAR 020:018	227.590	815 KAR 025:060	
217.005-217.215	902 KAR 055:015E	227.600	815 KAR 025:060	
	902 KAR 055:015	227.610	815 KAR 025:060	
	907 KAR 023:020	227.620	815 KAR 025:060	
217.015	201 KAR 016:550	227.630	815 KAR 025:060	
217.177	201 KAR 002:360	227.715	815 KAR 010:060	
217.186	806 KAR 017:280	227.990	815 KAR 010:060	
217.211	302 KAR 026:010		815 KAR 025:060	
217B	302 KAR 026:020	227A.010	815 KAR 035:060	
	302 KAR 026:030	227A.060	815 KAR 035:060	
	302 KAR 026:040	227A.100	815 KAR 035:060	
	302 KAR 026:050	230.215	810 KAR 004:090	
	302 KAR 026:060		810 KAR 004:010E	
	302 KAR 026:070		810 KAR 007:030	
	302 KAR 026:080		810 KAR 007:040	
	302 KAR 026:090		810 KAR 007:060	
	302 KAR 026:100		810 KAR 008:020	
	302 KAR 027:011	230.225	810 KAR 007:030	
	302 KAR 028:011		810 KAR 007:060	
	302 KAR 029:011		810 KAR 008:020	
	217B.120	302 KAR 026:150	230.240	810 KAR 008:020
		302 KAR 027:011	230.260	810 KAR 002:100
		302 KAR 028:011		810 KAR 004:090
217B.190	302 KAR 029:011		810 KAR 007:040	
217B.515	302 KAR 029:011		810 KAR 008:020	
217B.520	302 KAR 029:011	230.265	810 KAR 008:020	
217B.525	302 KAR 029:011	230.290	810 KAR 004:090	
217B.545	302 KAR 029:011		810 KAR 008:020	
217B.550	302 KAR 026:150	230.310	810 KAR 004:090	
	302 KAR 029:011	230.320	810 KAR 004:090	
217B.585	302 KAR 029:011		810 KAR 008:020	
218A.010	902 KAR 055:110	230.370	810 KAR 008:020	
	902 KAR 055:015E	230.400	810 KAR 007:030	
	902 KAR 055:015	230.443	810 KAR 007:060	
218A.020	902 KAR 055:015E	230.445	810 KAR 007:060	
	902 KAR 055:015	230.770	810 KAR 007:040	
218A.040	902 KAR 055:015E	230.802	810 KAR 007:040	
	902 KAR 055:015	234.140	815 KAR 010:060	
218A.060	902 KAR 055:015E	235	301 KAR 006:001	

KRS SECTION	REGULATION	KRS SECTION	REGULATION
235.205	301 KAR 006:020	292.337	808 KAR 010:440
238.500	820 KAR 001:001	292.480	808 KAR 010:440
238.505	820 KAR 001:032	304	900 KAR 010:120
238.510	820 KAR 001:130	304.1-050	806 KAR 006:072
238.515	820 KAR 001:005		806 KAR 017:290
	820 KAR 001:130		806 KAR 037:010
238.525	820 KAR 001:005	304.2-100	806 KAR 017:290
238.530	820 KAR 001:005	304.2-140	806 KAR 017:280
	820 KAR 001:025	304.2-230	806 KAR 017:290
	820 KAR 001:130	304.2-290	806 KAR 006:072
238.535	820 KAR 001:005	304.2-310	806 KAR 017:280
238.540	820 KAR 001:005		806 KAR 017:290
238.545	820 KAR 001:032		806 KAR 017:570E
238.550	820 KAR 001:025	304.2-320	806 KAR 017:570E
238.555	820 KAR 001:005	304.3-240	806 KAR 006:072
	820 KAR 001:025		806 KAR 017:570E
	820 KAR 001:130	304.6	806 KAR 006:072
238.560	820 KAR 001:025	304.12-020	806 KAR 017:570E
	820 KAR 001:130	304.14-110	900 KAR 010:120
238.570	820 KAR 001:025	304.14.120	806 KAR 017:570E
238.995	820 KAR 001:130	304.14-500-304.14-550	806 KAR 017:570E
257.160	201 KAR 016:560	304.15-410	806 KAR 006:072
	201 KAR 016:562	304.17-311	806 KAR 017:570E
258.005	902 KAR 008:160	304.17-412	806 KAR 017:280
258.015	922 KAR 001:350	304.17A-005	806 KAR 017:280
258.035	922 KAR 001:350		806 KAR 017:290
258.065	301 KAR 002:081		806 KAR 017:570E
	301 KAR 002:082		900 KAR 012:005
258.085	301 KAR 002:081		907 KAR 004:020
	301 KAR 002:082		907 KAR 004:030
260.020	302 KAR 040:010	304.17A-138	900 KAR 012:005
260.030	302 KAR 040:010	304.17A.163	806 KAR 017:280
260.038	302 KAR 040:010	304.17A.1631	806 KAR 017:280
271B	922 KAR 001:300		806 KAR 017:290
273.161	922 KAR 001:300	304.17A.167	806 KAR 017:280
275.206	808 KAR 010:450	304.17A-168	806 KAR 017:280
278.010	807 KAR 005:001E		806 KAR 017:290
278.020	807 KAR 005:001E	304.17A-243	900 KAR 010:120
278.100	807 KAR 005:001E	304.17A-245	900 KAR 010:120
278.180	807 KAR 005:001E	304.17A-505	806 KAR 017:290
278.300	807 KAR 005:001E	304.17A-535	806 KAR 017:280
278.410	807 KAR 005:001E		806 KAR 017:290
281.010	907 KAR 004:030	304.17A-600	806 KAR 017:280
286.4	808 KAR 001:170		806 KAR 017:290
286.8-010	808 KAR 001:170	304.17A-607	806 KAR 017:280
286.8-020	808 KAR 001:170		806 KAR 017:290
286.8-030	808 KAR 001:170	304.17A-617	806 KAR 017:290
286.8-032	808 KAR 001:170	304.17A-619	806 KAR 017:280
286.8-034	808 KAR 001:170	304.17A-621-304.17A.-631	806 KAR 017:290
286.8-036	808 KAR 001:170	304.17A-623	806 KAR 017:280
286.8-060	808 KAR 001:170	304.17B-021	806 KAR 017:351
286.8-070	808 KAR 001:170	304.17B-023	806 KAR 017:351
286.8-080	808 KAR 001:170	304.17C-010	806 KAR 017:280
286.8-090	808 KAR 001:170	304.17C-030	806 KAR 017:280
286.8-140	808 KAR 001:170	304.18-034	806 KAR 017:570E
286.8-255	808 KAR 001:170	304.18-045	806 KAR 017:280
286.8-260	808 KAR 001:170	304.24-390	806 KAR 037:010
286.8-290	808 KAR 001:170	304.24-400	806 KAR 037:010
286.9-010	808 KAR 001:170	304.24-415	806 KAR 037:010
289.9-020	808 KAR 001:170	304.3-750	806 KAR 003:250
286.9-030	808 KAR 001:170	304.3-768	806 KAR 003:250
286.9-040	808 KAR 001:170	304.32-147	806 KAR 017:280
286.9-050	808 KAR 001:170	304.32-275	806 KAR 017:570E
286.9-060	808 KAR 001:170	304.32-330	806 KAR 017:280
286.9-071	808 KAR 001:170	304.33	806 KAR 037:010
286.9-073	808 KAR 001:170	304.33-030	806 KAR 017:570E
286.9-080	808 KAR 001:170	304.37-010	806 KAR 037:010
286.12-030	808 KAR 016:010	304.37-020	806 KAR 037:010
286.12-040	808 KAR 016:010	304.37-030	806 KAR 037:010
286.12-050	808 KAR 016:020	304.37-110	806 KAR 037:010
286.12-060	808 KAR 016:010	304.37-120	806 KAR 037:010
286.12-070	808 KAR 016:010	304.37-130	806 KAR 037:010
286.12-080	808 KAR 016:020	304.38-205	806 KAR 017:570E
292	808 KAR 010:450	304.38-225	806 KAR 017:280

KRS SECTION	REGULATION	KRS SECTION	REGULATION
304.39-060	806 KAR 039:030		202 KAR 007:301
304.4-010	806 KAR 009:025		202 KAR 007:330
304.40-075	201 KAR 008:533		202 KAR 007:701
	201 KAR 008:563	311A.142	202 KAR 007:401
304.40-320	900 KAR 012:005	311A.145	202 KAR 007:201
304.5-040	907 KAR 004:020		202 KAR 007:301
	907 KAR 004:030		202 KAR 007:330
304.6	806 KAR 037:010	311A.150	202 KAR 007:330
304.9-030	806 KAR 009:025	311A.160	202 KAR 007:201
304.9-105	806 KAR 009:025		202 KAR 007:701
304.9-130	806 KAR 009:025	311A.165	202 KAR 007:301
304.9-150	806 KAR 009:025		202 KAR 007:701
304.9-160	806 KAR 009:025	311A.170	202 KAR 007:401
304.9-230	806 KAR 009:025		202 KAR 007:701
304.9-260	806 KAR 009:025	311A.175	202 KAR 007:701
304.9-270	806 KAR 009:025	311A.185	202 KAR 007:401
304.9-295	806 KAR 009:025	311A.190	202 KAR 007:401
304.9-320	806 KAR 009:025		202 KAR 007:510
304.9-430	806 KAR 009:025		202 KAR 007:555
304.9-642	806 KAR 009:025	311A.195	202 KAR 007:330
304.39-110	603 KAR 005:350	312.019	201 KAR 021:025
304.47-050	806 KAR 017:280		201 KAR 021:105
310.021	902 KAR 020:018	312.055	201 KAR 021:025
311	911 KAR 001:090	312.085	201 KAR 021:041
311.530-311.620	201 KAR 009:470		201 KAR 021:042
311.595	901 KAR 005:120	312.095	201 KAR 021:041
311.5975	900 KAR 012:005		201 KAR 021:042
311.621-311.643	201 KAR 009:470	312.145	201 KAR 021:041
311.720	901 KAR 005:120		201 KAR 021:042
	902 KAR 020:365	312.175	201 KAR 021:041
	922 KAR 001:350		201 KAR 021:042
311.732	901 KAR 005:140		201 KAR 021:095
311.7731	902 KAR 020:365	312.200	201 KAR 021:075
311.7733	902 KAR 020:365		201 KAR 021:095
311.7734	902 KAR 020:365	312.207	201 KAR 016:572
311.774	901 KAR 005:120	312.220	201 KAR 021:105
311.781	901 KAR 005:120	313.010	201 KAR 008:533
311.782	901 KAR 005:120		907 KAR 001:026E
311.783	901 KAR 005:120		907 KAR 001:026
311.840	907 KAR 003:010		907 KAR 001:126E
	922 KAR 001:350	313.021	201 KAR 008:016
311.901	201 KAR 009:305		201 KAR 008:601
311.905	201 KAR 009:305	313.022	201 KAR 008:016
311.909	201 KAR 009:305		201 KAR 008:601
311.990	201 KAR 009:470	313.030	201 KAR 008:533
311A.010	202 KAR 007:201		201 KAR 008:563
	202 KAR 007:301		201 KAR 008:571
	202 KAR 007:330	313.035	911 KAR 001:060
311A.020	202 KAR 007:330	313.040	201 KAR 008:563
311A.025	202 KAR 007:201		907 KAR 001:026E
	202 KAR 007:301		907 KAR 001:026
	202 KAR 007:330		907 KAR 001:126E
	202 KAR 007:401	313.045	201 KAR 008:571
311A.030	202 KAR 007:201	313.050	201 KAR 008:571
	202 KAR 007:401	313.060	201 KAR 008:563
	202 KAR 007:510	313.080	201 KAR 008:563
	202 KAR 007:555		201 KAR 008:571
311A.050	202 KAR 007:330	313.130	201 KAR 008:563
	202 KAR 007:601		201 KAR 008:571
311A.050-311A.100	202 KAR 007:401	313.254	201 KAR 008:533
311A.060	202 KAR 007:201		201 KAR 008:563
	202 KAR 007:301	313.550	201 KAR 008:016
311A.090	202 KAR 007:330	314.011	201 KAR 020:390
311A.095	202 KAR 007:201		201 KAR 020:411
	202 KAR 007:301		201 KAR 020:490
	202 KAR 007:330		907 KAR 003:160E
311A.100	202 KAR 007:330		907 KAR 003:160
311A.120	202 KAR 007:401		910 KAR 003:030
	202 KAR 007:601		922 KAR 001:350
311A.130	202 KAR 007:301		922 KAR 002:160
	202 KAR 007:601	314.021	201 KAR 020:478
311A.135	202 KAR 007:401	314.025	201 KAR 020:390
	202 KAR 007:701	314.026	201 KAR 020:390
311A.140	202 KAR 007:201	314.027	201 KAR 020:240

KRS SECTION	REGULATION	KRS SECTION	REGULATION
314.035	201 KAR 020:390		201 KAR 012:260
	201 KAR 020:472		201 KAR 012:290
	201 KAR 020:476	317A.060	201 KAR 012:030
	201 KAR 020:478		201 KAR 012:060
314.041	201 KAR 020:240		201 KAR 012:230
	201 KAR 020:260		201 KAR 012:290
	201 KAR 020:370	317A.062	201 KAR 012:260
	902 KAR 020:018	317A.070	201 KAR 012:190
314.042	201 KAR 020:240	317A.090	201 KAR 012:082
	201 KAR 020:370	317A.140	201 KAR 012:060
314.051	201 KAR 020:240		201 KAR 012:190
	201 KAR 020:370	317A.145	201 KAR 012:030
	902 KAR 020:018		201 KAR 012:190
314.071	201 KAR 020:240	318.010	815 KAR 020:030
	201 KAR 020:370	318.020	815 KAR 020:030
314.073	201 KAR 020:240	318.030	815 KAR 020:030
314.075	201 KAR 020:240	318.040	815 KAR 020:030
314.089	201 KAR 020:478	318.050	815 KAR 020:030
314.091	201 KAR 020:370	318.054	815 KAR 020:030
	201 KAR 020:478	318.060	815 KAR 020:030
314.101	201 KAR 020:240	318.080	815 KAR 020:030
314.103	201 KAR 020:370	318.134	815 KAR 007:130
	201 KAR 020:411	319	911 KAR 001:090
	201 KAR 020:476	319.032	201 KAR 026:175E
	201 KAR 020:478	319.050	201 KAR 026:175E
314.111	201 KAR 020:260	319.053	201 KAR 026:175E
	201 KAR 020:310	319.064	201 KAR 026:175E
	201 KAR 020:360	319.071	201 KAR 026:175E
314.131	201 KAR 020:260		201 KAR 026:225E
	201 KAR 020:472	320	907 KAR 001:632E
	201 KAR 020:476		907 KAR 001:632
314.133	201 KAR 020:700	320.230	201 KAR 005:002
314.137	201 KAR 020:472	320.295	201 KAR 005:002
	201 KAR 020:476	320.300	201 KAR 005:002
	201 KAR 020:478		201 KAR 005:055
314.142	201 KAR 020:240	320.310	201 KAR 005:002
	201 KAR 020:411	320.390	201 KAR 005:055
314.161	201 KAR 020:240	320.295	201 KAR 005:038
314.171	201 KAR 020:240	320.310	201 KAR 005:045
314.400-314.414	201 KAR 020:620		201 KAR 005:105
314.404-314.416	201 KAR 020:650	321.185	301 KAR 002:075
314.475	201 KAR 020:310	321.190	201 KAR 016:610
	201 KAR 020:370	321.207	201 KAR 016:550
	201 KAR 020:411		201 KAR 016:552
314.991	201 KAR 020:478		201 KAR 016:560
315.010	201 KAR 002:380		201 KAR 016:562
	201 KAR 002:413E	321.235	201 KAR 016:550
	201 KAR 002:414E		201 KAR 016:552
315.020	201 KAR 002:413E		201 KAR 016:560
	201 KAR 002:414E		201 KAR 016:562
315.025	201 KAR 002:450		201 KAR 016:610
315.030	201 KAR 002:450	321.351	201 KAR 016:550
315.0351	201 KAR 002:450		201 KAR 016:552
	201 KAR 002:460		201 KAR 016:560
315.050	201 KAR 002:030		201 KAR 016:562
	201 KAR 002:413E		201 KAR 016:610
	201 KAR 002:414E	321.353	201 KAR 016:610
315.065	201 KAR 002:413E	321.360	201 KAR 016:610
	201 KAR 002:414E	322.340	807 KAR 005:001E
315.121	201 KAR 002:450	322A.030	201 KAR 031:031
315.131	201 KAR 002:450		201 KAR 031:040
315.135	201 KAR 002:413E	322A.040	201 KAR 031:040
	201 KAR 002:414E	322A.045	201 KAR 031:040
315.191	201 KAR 002:030	322A.050	201 KAR 031:010
	201 KAR 002:380	322A.060	201 KAR 031:010
	201 KAR 002:460		201 KAR 031:050
315.205	201 KAR 002:413E	322A.070	201 KAR 031:010
	201 KAR 002:414E		201 KAR 031:050
315.210	201 KAR 002:030	323.050	201 KAR 019:225
317A.020	201 KAR 012:030	323.215	201 KAR 019:225
	201 KAR 012:082	325.261	201 KAR 001:050
	201 KAR 012:290		201 KAR 001:190
317A.050	201 KAR 012:030	325.270	201 KAR 001:190
	201 KAR 012:082	325.280	201 KAR 001:050

KRS SECTION	REGULATION	KRS SECTION	REGULATION
325.330	201 KAR 001:050	367.97514	040 KAR 002:150
326	907 KAR 001:632E	367.97517	040 KAR 002:150
	907 KAR 001:632	367.97521	040 KAR 002:150
326.030	907 KAR 001:632E	367.97524	040 KAR 002:150
	907 KAR 001:632	367.97527	040 KAR 002:150
326.040	907 KAR 001:632E	369.101-369.120	907 KAR 001:026E
	907 KAR 001:632		907 KAR 001:026
326.060	201 KAR 005:002		907 KAR 001:044
	201 KAR 005:038		907 KAR 001:126E
327.010	201 KAR 022:045		907 KAR 001:632E
327.070	201 KAR 022:045		907 KAR 001:632
327.300	201 KAR 022:170	369.102	807 KAR 005:001E
333	902 KAR 020:018		907 KAR 001:026E
334.010	907 KAR 001:038E		907 KAR 001:026
	907 KAR 001:038		907 KAR 001:126E
334A	911 KAR 001:090	381.280	500 KAR 016:010
334A.020	907 KAR 001:038E	387.010	701 KAR 008:010E
	907 KAR 001:038		701 KAR 008:010
	911 KAR 001:085	391.010	040 KAR 002:150
	911 KAR 001:090	400.203	907 KAR 001:026E
334A.030	907 KAR 001:038E		907 KAR 001:026
	907 KAR 001:038		907 KAR 001:126E
335.010-335.160	201 KAR 023:051E		907 KAR 001:038E
	201 KAR 023:051		907 KAR 001:038
335.080	201 KAR 023:016E		907 KAR 001:044
	201 KAR 023:016		907 KAR 001:632E
335.090	201 KAR 023:016E		907 KAR 001:632
	201 KAR 023:016		907 KAR 003:010
335.100	201 KAR 023:016E	403.160	921 KAR 001:400
	201 KAR 023:016	403.210-403.240	921 KAR 001:400
	902 KAR 020:018	403.211	921 KAR 001:380
335.990	201 KAR 023:051E	403.707	201 KAR 020:411
	201 KAR 023:051	403.720	921 KAR 002:006
337	803 KAR 001:006		921 KAR 002:370
337.275	803 KAR 001:081	405.430	921 KAR 001:380
	922 KAR 002:160		921 KAR 001:400
337.285	803 KAR 001:081	405.440	921 KAR 001:400
337.355	201 KAR 002:450	405.450	921 KAR 001:400
337.365	201 KAR 002:450	405.467	921 KAR 001:380
339.230	815 KAR 035:060	405.520	921 KAR 001:380
341.350	787 KAR 001:090E	405.991	921 KAR 001:400
	787 KAR 001:090	406.021	921 KAR 001:380
341.360	787 KAR 001:090E		921 KAR 001:400
	787 KAR 001:090	406.025	921 KAR 001:380
341.370	787 KAR 001:090E		921 KAR 001:400
	787 KAR 001:090	407.5101-407.5903	921 KAR 001:380
341.380	787 KAR 001:090E	414	907 KAR 003:010
	787 KAR 001:090	415.110	907 KAR 003:010
	787 KAR 001:100E	415.152	907 KAR 001:026E
	787 KAR 001:100		907 KAR 001:026
342.0011	803 KAR 025:089		907 KAR 001:126E
	803 KAR 030:010	415.170	907 KAR 001:026E
342.019	803 KAR 025:089		907 KAR 001:026
342.020	803 KAR 025:089		907 KAR 001:126E
342.035	803 KAR 025:089	415.172	907 KAR 001:026E
342.122	803 KAR 030:010		907 KAR 001:026
342.1221	803 KAR 030:010		907 KAR 001:126E
342.1222	803 KAR 030:010	415.174	907 KAR 001:026E
342.1223	803 KAR 030:010		907 KAR 001:026
342.1231	803 KAR 030:010		907 KAR 001:126E
342.340	803 KAR 030:010	415.208	907 KAR 001:044
342.650	803 KAR 030:010	416.164	907 KAR 001:008
362	202 KAR 007:601	416.166	907 KAR 001:008
363.900-363.908	302 KAR 079:009	421.500-421.575	201 KAR 020:411
365	202 KAR 007:601	422.317	907 KAR 001:044
365.015	807 KAR 005:001E	424	922 KAR 001:300
367.93103	040 KAR 002:150	424.300	807 KAR 005:001E
367.93105	040 KAR 002:150	431.17	907 KAR 001:044
367.93115	040 KAR 002:150		907 KAR 001:632E
367.93117	040 KAR 002:150		907 KAR 001:632
367.97501	040 KAR 002:150	431.52	907 KAR 001:044
367.97504	040 KAR 002:150	431.213-431.270	501 KAR 016:310
367.97507	040 KAR 002:150	431.600	922 KAR 001:330
367.97511	040 KAR 002:150	431.600-431.660	201 KAR 020:411



KRS SECTION	REGULATION	KRS SECTION	REGULATION
434.840-434.860	907 KAR 001:044		922 KAR 001:300
435.530	907 KAR 020:010		922 KAR 001:330
435.531	907 KAR 020:010		922 KAR 001:350
435.540	907 KAR 020:010	605.120	922 KAR 002:160
435.541	907 KAR 020:010	605.130	922 KAR 001:330
435.603	911 KAR 001:090	610.010	922 KAR 001:330
435.906	907 KAR 020:010	610.110	922 KAR 001:300
435.914	907 KAR 020:010		922 KAR 001:350
435.916	907 KAR 020:010	610.170	921 KAR 001:380
435.926	907 KAR 020:010	615.010	922 KAR 001:300
438.2	907 KAR 001:026E	615.030	922 KAR 001:100
	907 KAR 001:026		922 KAR 001:300
	907 KAR 001:038E	615.040	922 KAR 001:300
	907 KAR 001:038	620.010-620.050	922 KAR 001:330
	907 KAR 001:126E	620.020	201 KAR 020:620
	907 KAR 001:632E		907 KAR 003:160E
	907 KAR 001:632		907 KAR 003:160
	907 KAR 003:010		922 KAR 001:300
439	501 KAR 006:040		922 KAR 002:160
	501 KAR 006:050		922 KAR 002:180
	501 KAR 006:080		922 KAR 002:245
	501 KAR 006:050	620.030	922 KAR 001:300
	501 KAR 006:150		922 KAR 001:350
440.40	907 KAR 001:632E		922 KAR 002:180
	907 KAR 001:632	620.050	907 KAR 003:160E
440.50	907 KAR 003:010		907 KAR 003:160
440.60	907 KAR 001:632E		922 KAR 001:100
	907 KAR 001:632		922 KAR 001:350
440.120	907 KAR 023:020	620.070	922 KAR 001:330
446.400	202 KAR 007:401	620.072	922 KAR 001:330
447	907 KAR 001:632E	620.090	922 KAR 001:300
	907 KAR 001:632	620.140	922 KAR 001:300
447.10	907 KAR 003:010		922 KAR 001:350
447.200-447.205	907 KAR 003:010	620.230	922 KAR 001:300
447.271	907 KAR 001:008	620.350	922 KAR 001:330
447.325	907 KAR 003:010	620.360	922 KAR 001:100
447.45	907 KAR 023:020		922 KAR 001:350
447.500-447.520	907 KAR 023:020	620.363	922 KAR 001:350
454.220	921 KAR 001:400	620.990	922 KAR 001:330
457.310	907 KAR 001:038E	625	922 KAR 001:350
	907 KAR 001:038	625.045	922 KAR 001:100
485.500-485.546	902 KAR 020:490	625.108	922 KAR 001:100
485.618	902 KAR 020:490	654.1-654.5	011 KAR 004:080
503.110	922 KAR 001:330	654.30-654.52	011 KAR 004:080
508.125	922 KAR 001:330	7 C.F.R.	302 KAR 040:010
527.100	922 KAR 001:350		902 KAR 008:160
527.110	922 KAR 001:350		922 KAR 002:160
529.010	922 KAR 001:330	14 C.F.R.	202 KAR 007:510
531.31-531.58	803 KAR 001:081	16 C.F.R.	302 KAR 079:009
532.045	922 KAR 001:330		603 KAR 005:350
600-645	505 KAR 001:010		922 KAR 001:350
	505 KAR 001:100	17 C.F.R.	808 KAR 010:450
	505 KAR 001:120	20 C.F.R.	922 KAR 002:160
	505 KAR 001:140	21 C.F.R.	902 KAR 020:480
	505 KAR 001:180		902 KAR 055:015E
	505 KAR 001:185		902 KAR 055:015
	505 KAR 001:200E		908 KAR 001:374
	505 KAR 001:200	26 C.F.R.	900 KAR 010:120
	505 KAR 001:210E	29 C.F.R.	202 KAR 007:555
	505 KAR 001:210		401 KAR 058:040
	505 KAR 001:220E		803 KAR 001:081
	505 KAR 001:220		815 KAR 035:060
	505 KAR 001:230		900 KAR 010:120
600.010	922 KAR 001:330	33 C.F.R.	301 KAR 006:001
600.020	921 KAR 002:500	34 C.F.R.	011 KAR 004:080
	922 KAR 001:100		016 KAR 009:080E
	922 KAR 001:300		016 KAR 009:080
	922 KAR 001:330		016 KAR 009:100E
	922 KAR 001:350		016 KAR 009:100
	922 KAR 001:360E		505 KAR 001:185
	922 KAR 001:360		707 KAR 001:002
	922 KAR 002:160		922 KAR 002:160
605.080	922 KAR 001:300	40 C.F.R.	302 KAR 026:020
605.090	922 KAR 001:100		302 KAR 026:150

KRS SECTION	REGULATION	KRS SECTION	REGULATION
42 C.F.R.	302 KAR 027:011	10 U.S.C. 15 U.S.C. 20 U.S.C.  21 U.S.C.  22 U.S.C. 25 U.S.C.  26 U.S.C.  29 U.S.C.   30 U.S.C. 31 U.S.C. 33 U.S.C. 38 U.S.C.	921 KAR 002:016
	302 KAR 028:011		922 KAR 001:350
	302 KAR 079:009		202 KAR 007:330
	401 KAR 058:040		808 KAR 010:450
	401 KAR 063:060		908 KAR 001:374
	806 KAR 017:570E		011 KAR 004:080
	900 KAR 010:120		701 KAR 008:010E
	902 KAR 020:018		701 KAR 008:010
	902 KAR 020:490E		703 KAR 005:270
	902 KAR 020:490		707 KAR 001:002
	902 KAR 055:110		807 KAR 005:001E
	907 KAR 001:008		921 KAR 002:016
	907 KAR 001:026E		922 KAR 001:300
	907 KAR 001:026		902 KAR 055:015E
	907 KAR 001:038E		902 KAR 055:015
	907 KAR 001:038		921 KAR 002:006
	907 KAR 001:044		921 KAR 002:006
	907 KAR 001:065		921 KAR 002:016
	907 KAR 001:126E		922 KAR 001:100
	907 KAR 001:632E		922 KAR 002:160
	907 KAR 001:632		105 KAR 001:365
	907 KAR 003:010		105 KAR 001:411
	907 KAR 004:020		900 KAR 010:120
	907 KAR 004:030		921 KAR 002:016
	907 KAR 020:010E		701 KAR 008:010E
	907 KAR 020:010		701 KAR 008:010
	907 KAR 020:020		806 KAR 017:570E
	907 KAR 020:045E		921 KAR 002:016
	907 KAR 020:045		922 KAR 002:160
	907 KAR 020:075E		900 KAR 012:005
	907 KAR 020:075		921 KAR 002:370
	907 KAR 023:020		922 KAR 002:160
	908 KAR 001:374		803 KAR 030:010
	911 KAR 001:090		045 KAR 001:050
	922 KAR 001:350		803 KAR 030:010
45 C.F.R.	806 KAR 017:570E		017 KAR 003:020
	807 KAR 005:001E		105 KAR 001:365
	900 KAR 010:120		105 KAR 001:415
	902 KAR 020:018		106 KAR 001:141
	902 KAR 020:480		106 KAR 001:171
	902 KAR 020:490E		106 KAR 001:181
	902 KAR 020:490		106 KAR 001:191
	907 KAR 001:026E		106 KAR 001:201
	907 KAR 001:026		106 KAR 001:221
	907 KAR 001:044		201 KAR 002:413E
	907 KAR 001:126E		900 KAR 010:120
	907 KAR 001:632E		900 KAR 012:005
	907 KAR 001:632		907 KAR 001:044
	921 KAR 001:380		907 KAR 001:065
	921 KAR 001:400		907 KAR 004:020
	921 KAR 002:006		907 KAR 004:030
	921 KAR 002:016		907 KAR 020:020
	921 KAR 002:017		907 KAR 020:045E
	921 KAR 002:035		907 KAR 020:045
	921 KAR 002:370		907 KAR 023:020
	921 KAR 002:500		921 KAR 001:380
	921 KAR 002:510		921 KAR 001:400
	921 KAR 002:520		921 KAR 002:006
	922 KAR 001:100		921 KAR 002:500
	922 KAR 001:350		921 KAR 002:016
	922 KAR 002:160		922 KAR 002:160
	922 KAR 002:180		921 KAR 002:510
	807 KAR 005:001E		921 KAR 002:520
47 C.F.R. 50 C.F.R.	301 KAR 002:075	42 U.S.C.	922 KAR 001:300
	301 KAR 003:120		922 KAR 001:350
	302 KAR 026:010		922 KAR 002:160
	302 KAR 026:020		105 KAR 001:411
7 U.S.C.	302 KAR 026:150		201 KAR 002:414E
	302 KAR 027:011		401 KAR 063:060
	302 KAR 028:011		701 KAR 008:010E
	302 KAR 029:011		701 KAR 008:010
8 U.S.C.	921 KAR 002:006		806 KAR 017:570E
	922 KAR 002:160		902 KAR 020:018
	921 KAR 002:006		902 KAR 020:480

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	902 KAR 020:490E		
	902 KAR 020:490		
	907 KAR 001:026E		
	907 KAR 001:026		
	907 KAR 001:038E		
	907 KAR 001:038		
	907 KAR 001:126E		
	907 KAR 001:632E		
	907 KAR 001:632		
	907 KAR 001:680		
	907 KAR 003:010		
	907 KAR 003:190		
	907 KAR 020:010E		
	907 KAR 020:010		
	907 KAR 020:045E		
	907 KAR 020:045		
	907 KAR 020:050		
	910 KAR 001:180		
	911 KAR 001:090		
	921 KAR 002:035		
	921 KAR 002:040		
	921 KAR 002:050		
	921 KAR 002:060		
	921 KAR 002:370		
	922 KAR 001:100		
	922 KAR 001:330		
	922 KAR 001:360E		
	922 KAR 001:360		
	922 KAR 002:165		
49 U.S.C.	302 KAR 029:011		
50 U.S.C.	106 KAR 001:141		
	106 KAR 001:171		
52 U.S.C.	921 KAR 002:035		

## CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

\* KRS 13A.010(6) - "Effective" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
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 009:250	04-13-2023	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

Regulation Number	Letter Filed Date	Action
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

## CERTIFICATION LETTER SUMMARIES

Regulation Number	Letter Filed Date	Action
		deadline 02-26-2024
804 KAR 004:015	09-13-2022	Remain in Effect without Amendment
804 KAR 010:031	09-13-2022	Remain in Effect without Amendment
806 KAR 002:097	05-09-2023	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 004:120	05-09-2023	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 100:030	05-09-2023	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 001:835	05-09-2023	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 008:005	05-09-2023	Remain in Effect without Amendment
907 KAR 008:045	05-09-2023	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

Regulation Number	Letter Filed Date	Action
907 KAR 012:010	05-09-2023	Remain in Effect without Amendment
907 KAR 012:020	05-09-2023	Remain in Effect without Amendment
907 KAR 015:085	8/10/2022	Remain in Effect without Amendment
908 KAR 002:065	04-21-2023	Remain in Effect without Amendment
910 KAR 001:170	06-09-2022	To be Amended, Filing deadline 12-09-2023
910 KAR 001:270	08-11-2022	To be amended, filing deadline 02-11-2024
921 KAR 002:006	10-03-2022	To be amended, filed 8-4-2022
921 KAR 002:016	10-03-2022	To be amended, filed 8-4-2022
921 KAR 002:017	10-03-2022	To be amended, filed 9-12-2022
921 KAR 002:046	10-03-2022	Remain in Effect without Amendment
921 KAR 002:050	10-03-2022	To be amended, filed 9-12-2022
921 KAR 002:060	10-03-2022	To be amended, filed 9-12-2022
921 KAR 002:370	10-03-2022	To be amended, filed 9-12-2022
921 KAR 002:500	10-03-2022	To be amended, filed 8-4-2022
921 KAR 002:510	10-03-2022	To be amended, filed 8-4-2022
921 KAR 002:520	10-03-2022	To be amended, filed 8-4-2023

## TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 49<sup>th</sup> year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
010 KAR 006:010	11-10-2022	803 KAR 002:170	11-10-2022
013 KAR 003:020	11-10-2022	803 KAR 002:181	11-10-2022
013 KAR 003:030	11-10-2022	803 KAR 002:300	11-10-2022
013 KAR 003:040	11-10-2022	803 KAR 002:301	11-10-2022
013 KAR 003:060	11-10-2022	803 KAR 002:303	11-10-2022
101 KAR 002:102	01-12-2023	803 KAR 002:304	11-10-2022
105 KAR 001:190	04-25-2023	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
702 KAR 005:030	11-18-2022	803 KAR 002:314	11-10-2022
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
725 KAR 001:020	11-10-2022	803 KAR 002:320	11-10-2022
725 KAR 001:025	11-10-2022	803 KAR 002:321	11-10-2022
725 KAR 001:030	11-10-2022	803 KAR 002:325	11-10-2022
725 KAR 001:030	11-10-2022	803 KAR 002:400	11-10-2022
725 KAR 001:040	11-10-2022	803 KAR 002:401	11-10-2022
780 KAR 002:010	11-10-2022	803 KAR 002:402	11-10-2022
780 KAR 003:030	11-10-2022	803 KAR 002:403	11-10-2022
780 KAR 003:035	11-10-2022	803 KAR 002:404	11-10-2022
780 KAR 003:100	11-10-2022	803 KAR 002:405	11-10-2022
780 KAR 003:120	11-10-2022	803 KAR 002:406	11-10-2022
780 KAR 003:130	11-10-2022	803 KAR 002:407	11-10-2022
780 KAR 006:010	11-10-2022	803 KAR 002:410	11-10-2022
780 KAR 006:020	11-10-2022	803 KAR 002:411	11-10-2022
780 KAR 006:030	11-10-2022	803 KAR 002:412	11-10-2022
781 KAR 001:010	11-10-2022	803 KAR 002:418	11-10-2022
782 KAR 001:010	11-10-2022	803 KAR 002:420	11-10-2022
787 KAR 001:030	11-10-2022	803 KAR 002:421	11-10-2022
787 KAR 001:040	11-10-2022	803 KAR 002:422	11-10-2022
787 KAR 001:070	11-10-2022	803 KAR 002:424	11-10-2022
787 KAR 001:090	11-10-2022	803 KAR 002:425	11-10-2022
787 KAR 001:110	11-10-2022	803 KAR 002:440	11-10-2022
787 KAR 001:140	11-10-2022	803 KAR 002:445	11-10-2022
787 KAR 001:160	11-10-2022	803 KAR 002:500	11-10-2022
787 KAR 001:170	11-10-2022	803 KAR 002:600	11-10-2022
787 KAR 001:180	11-10-2022	803 KAR 003:060	03-02-2023
787 KAR 001:210	11-10-2022	803 KAR 025:012	10-31-2022
787 KAR 001:220	11-10-2022	803 KAR 025:030	10-31-2022
787 KAR 001:230	11-10-2022	803 KAR 025:040	10-31-2022
787 KAR 001:240	11-10-2022	803 KAR 025:070	10-31-2022
787 KAR 001:250	11-10-2022	803 KAR 025:075	10-31-2022
787 KAR 001:290	11-10-2022	803 KAR 025:092	10-31-2022
787 KAR 001:310	11-10-2022	803 KAR 025:101	10-31-2022
787 KAR 001:360	12-06-2022	803 KAR 025:110	10-31-2022
787 KAR 002:010	11-10-2022	803 KAR 025:120	10-31-2022
787 KAR 002:030	11-10-2022	803 KAR 025:125	10-31-2022
787 KAR 002:040	11-10-2022	803 KAR 025:130	10-31-2022
787 KAR 003:010	11-10-2022	803 KAR 025:150	10-31-2022
787 KAR 003:020	11-10-2022	803 KAR 025:160	10-31-2022
803 KAR 001:035	11-10-2022	803 KAR 025:165	10-31-2022
803 KAR 001:061	11-10-2022	803 KAR 025:170	10-31-2022
803 KAR 001:091	11-10-2022	803 KAR 025:200	10-31-2022
803 KAR 002:010	11-10-2022	803 KAR 025:210	10-31-2022
803 KAR 002:019	11-10-2022	803 KAR 025:280	10-31-2022
803 KAR 002:060	11-10-2022	803 KAR 050:010	03-28-2023

## TECHNICAL AMENDMENT INDEX

805 KAR 001:050		04-24-2023
806 KAR 017:280	‡	05-30-2023
902 KAR 045:065		11-28-2022
907 KAR 001:450		11-28-2022
921 KAR 001:380		04-13-2023
921 KAR 002:046		03-22-2023
921 KAR 002:055		03-22-2023
922 KAR 001:315		03-22-2023

## SUBJECT INDEX

### AGING AND INDEPENDENT LIVING

#### Aging Services

Personal care attendant program and assistance services; 910 KAR 001:090

#### Brain Injury

Traumatic brain injury trust fund operations program; 910 KAR 003:030

### AGRICULTURE

#### Agricultural Pest Control

Repeal of 302 KAR 027:010, 302 KAR 027:020, 302 KAR 027:040, 302 KAR 027:050, and 302 KAR 027:060; 302 KAR 027:011

#### Motor Fuel, Regulation and Inspection

Repeal of 302 KAR 079:010; 302 KAR 079:009

#### Organic Agricultural Product Certification

Certification of organic production, processing, or handling operations; 302 KAR 040:010

#### Ornamental Turf Lawn and Interior Plantscape Pest Control

Repeal of 302 KAR 028:010, 302 KAR 028:020, 302 KAR 028:030, 302 KAR 028:040, 302 KAR 028:050, and 302 KAR 028:060; 302 KAR 028:011

#### Pesticides

Applicator, non-certified; training, supervision; 302 KAR 026:070

Certification and licensing; 302 KAR 026:020

Definitions; 302 KAR 026:010

Notice posting, lawn, turf, ornamental, interior plantscape; 302 KAR 026:080

Penalties; 302 KAR 026:150

Recordkeeping; 302 KAR 026:030

Schools, pest management in; 302 KAR 026:090

Service vehicles; identification of; 302 KAR 026:060

Storage and handling; 302 KAR 026:040

Structural Pest Control Settlement proceedings; 302 KAR 026:100

Trainee registration and supervision; 302 KAR 026:050

#### Structural Pest Control

Repeal of 302 KAR 029:010, 302 KAR 029:020, 302 KAR 029:040, 302 KAR 029:050, 302 KAR 029:060 and 302 KAR 029:070; 302 KAR 029:011

### ALCOHOLIC BEVERAGE CONTROL

#### Advertising Distilled Spirits and Wine

General advertising practices; 804 KAR 001:102

#### Malt Beverages and Wine

Brewing and winemaking for personal use; 804 KAR 014:011

#### Malt Beverage Equipment, Supplies and Service

Growlers; 804 KAR 011:041

### ARCHITECTS

Continuing education; 201 KAR 019:087

Examinations required; general provisions; 201 KAR 019:225

Qualifications for examination and licensure; 201 KAR 019:035

### AUDITOR OF PUBLIC ACCOUNTS

#### Audits

Audits of county fee officials; 045 KAR 001:040

Audits of fiscal courts; 045 KAR 001:050

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

### BOARDS AND COMMISSIONS

*See also Occupations and Professions*

*See listing below for other possible, specific subject headings:*

Accountancy, State Board of; 201 KAR Chapter 001

Alcohol and Drug Counselors; 201 KAR Chapter 022

Applied Behavior Analysis Licensing; 201 KAR Chapter 043

Architects, 201 KAR Chapter 019

Barbering; 201 KAR Chapter 014

Chiropractic Examiners; 201 KAR Chapter 021

Dentistry, 201 KAR Chapter 008

Durable Medical Equipment; 201 KAR Chapter 047

Embalmers and Funeral Directors, 201 KAR Chapter 015

Examiners of Psychology; 201 KAR Chapter 026

Licensure and Certification for Dietitians and Nutritionists; 201 KAR Chapter 033

Long-Term Care Administrators, 201 KAR Chapter 006

Massage Therapy; 201 KAR Chapter 042

Medical Imaging and Radiation Therapy; 201 KAR Chapter 046

Medical Licensure; 201 KAR Chapter 009

Nursing, 201 KAR Chapter 020

Optometric Examiners, 201 KAR Chapter 005

Pharmacy; 201 KAR Chapter 002

Physical Therapy; 201 KAR Chapter 022

Real Estate Commission; 201 KAR Chapter 011

Registration for Professional Geologists; 201 KAR Chapter 031

Speech-Language Pathology and Audiology; 201 KAR Chapter 017

Social Work; 201 KAR Chapter 023

State Board of Accountancy; 201 KAR Chapter 001

Veterinary Examiners, 201 KAR Chapter 016

### CERTIFICATE OF NEED

Nonsubstantive review; 900 KAR 006:075

### CHARITABLE GAMING

Administrative actions; 820 KAR 001:130

Charitable gaming licenses and exemptions; 820 KAR 001:005

Definitions; 820 KAR 001:001

Pulltabs; 820 KAR 001:032

Reports; 820 KAR 001:025

### CHILDCARE

#### Daycare

Employee Child Care Assistance Partnership; 922 KAR 002:165

Child Care Assistance Program; 922 KAR 002:160

Kentucky infant and toddler credential; 922 KAR 002:245

Kentucky school-aged youth development credential; 922 KAR 002:255

Requirements for registered relative child care providers in the Child Care Assistance Program; 922 KAR 002:180

### CHILD SUPPORT

Enforcement program, application and intergovernmental process; 921 KAR 1:380

Establishment, review, and modification of child support and medical support orders; 921 KAR 001:400

### CHILD WELFARE

Background checks for private child-caring or child-placing staff members; 922 KAR 001:290

Child protective services; 922 KAR 001:330

Facilities standards; 922 KAR 001:300

Private child care placement, levels of care, and payment; 922 KAR 001:360

Public agency adoptions; 922 KAR 001:100

Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers; 922 KAR 001:350

### CHIROPRACTIC EXAMINERS

Board; officers, duties, and compensation; 201 KAR 021:025

Licensing; standards, fees; 201 KAR 021:041

Licensure, registration, and standards of persons performing peer review; 201 KAR 021:095

Peer review committee procedures and fees; 201 KAR 021:075

Standards, applications and approval of continuing education; 201 KAR 021:042

Telehealth chiropractic services; 201 KAR 021:105

### COMMUNITY BASED SERVICES

Child Welfare (922 KAR Chapter 001)

Child Support (922 KAR Chapter 001)

Daycare (922 KAR Chapter 002)

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



## SUBJECT INDEX

(921 KAR Chapter 002)

Supplemental Nutrition Assistance Program (921 KAR Chapter 003)

### COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Fire Commission, 739 KAR Chapter 002

Certification and qualifications of fire and emergency services instructors; 739 KAR 002:060

Volunteer fire department loan fund; 739 KAR 002:070

### DAYCARE

See *Childcare*

### DENTISTRY

Anesthesia and sedation related to dentistry; 201 KAR 008:550

Licensure of dentists; 201 KAR 008:533

Licensure of dental hygienists; 201 KAR 008:563

Mobile dental facilities and portable dental units; 201 KAR 008:601

Registration of dental assistants; 201 KAR 008:571

Registration of dental laboratories; 201 KAR 008:016

### DISASTER AND EMERGENCY SERVICES

See *Emergency Services*; 106 KAR Chapter 001

### EDUCATION

See also: *Postsecondary Education (KAR Title 013)*

Academic Standards

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

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

Charter Schools

Charter school appeal process; 701 KAR 008:030

Charter school funding; 701 KAR 008:050

Charter school student application, lottery, and enrollment; 701 KAR 008:010

Conversion charter school petition, conversion, and operation; 701 KAR 008:040

Evaluation of charter school authorizers; 701 KAR 008:020

Exceptional and Handicapped Programs

Definitions; 707 KAR 001:002

General Administration

Student records; hearing procedures; 702 KAR 001:140

Instruction

High school, minimum requirements for graduation; 704 KAR 003:305

Office of Instruction

Required academic standards; 704 KAR 003:303

Office of Learning Programs Development

Full-time enrolled online, virtual, and remote learning programs; 704 KAR 003:335

Office of Special Instructional Services

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

School Terms, Attendance and Operation

Pupil attendance; 702 KAR 007:125

### EDUCATION PROFESSIONAL STANDARDS BOARD

Adult Education and Literacy

GED® eligibility requirements; 013 KAR 003:050

Alternative Routes to Certification

Alternative route to certification institute; 016 KAR 009:100

Expedited route to certification; 016 KAR 009:110

University-based alternative certification program; 016 KAR 009:080

Certification Procedures

Certificate renewals and teaching experience; 016 KAR 004:060

Education Assessment and Accountability

703 KAR 005:270; Kentucky's Accountability System.

### EMBALMERS AND FUNERAL DIRECTORS

Apprenticeship and supervision requirements; 201 KAR 015:050

Examination; 201 KAR 015:040

Fees; 201 KAR 015:030

Funeral establishment criteria; 201 KAR 015:110

Surface transportation permit; 201 KAR 015:125

### EMERGENCY MEDICAL SERVICES

Board of Emergency Medical Services

Advanced emergency medical technician; 202 KAR 007:330

Air ambulance services; 202 KAR 007:510

Emergency medical technician; 202 KAR 007:301

Emergency medical responders; 202 KAR 007:201

Ground agencies; 202 KAR 007:555

Ground vehicle staff; 202 KAR 007:560

License classifications; 202 KAR 007:545

Paramedics; 202 KAR 007:401

Scope of practice matters; 202 KAR 007:701

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

### EMERGENCY SERVICES

Fund allocation; rescue aid; 106 KAR 001:341

Funding; 106 KAR 001:141

Local

Director appointment process; 106 KAR 001:241

Exercise; 106 KAR 001:221

Ordinance requirement; 106 KAR 001:231

Plan; 106 KAR 001:201

Training; 106 KAR 001:211

Military Assistance Trust Funds

Family Trust Fund; 106 KAR 002:021

National Guard Adoption Benefit Program; 106 KAR 002:031

Project application; 106 KAR 001:181

Reimbursement

Eligibility list, supplementary state fund; 106 KAR 001:261

Project application; 106 KAR 001:191

Rescue aid fund

Allocation; 106 KAR 001:341

Expenditure documentation; 106 KAR 001:371

Specialized rescue squad alternative affiliation agreement process; 106 KAR 001:291

Quarterly report, local agency program; 106 KAR 001:171

Worker's compensation enrollment form; 106 KAR 001:251

### ENERGY AND ENVIRONMENT CABINET

Public Service Commission

Rules of procedure; 807 KAR 005:001E

### ENVIRONMENTAL PROTECTION

Asbestos

Requirements for asbestos abatement entities; 401 KAR 058:040

General Standards of Performance

List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list; 401 KAR 063:060

### EXAMINERS OF PSYCHOLOGY

Continuing education; 201 KAR 026:175E

Renewal and reinstatement; 201 KAR 026:225E

### FINANCE AND ADMINISTRATION CABINET

Commonwealth Office of Technology

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

Infrastructure Authority

Guidelines for Kentucky Infrastructure Authority drinking water and wastewater grant program; 200 KAR 017:111

Technology Office

Data breach notification forms; 200 KAR 001:016

### FINANCIAL INSTITUTIONS

General Provisions

Licensing and registration; 808 KAR 001:170

Student Education Loan Servicing

Licensing, registration, renewal and fees; 808 KAR 016:010

## SUBJECT INDEX

Recordkeeping requirements; unfair, deceptive, or predatory practices; 808 KAR 016:020

### FISH AND WILDLIFE RESOURCES

#### Administrative

Procurement of architectural and engineering services; 301 KAR 011:020

#### Fish

Definitions for 301 KAR Chapter 1; 301 KAR 001:001

Taking of fish by traditional fishing methods; 301 KAR 001:201

#### Game

Black bear seasons and requirements; 301 KAR 002:300

Deer hunting seasons, zones, and requirements; 301 KAR 002:172

Dove, wood duck, teal, and other migratory game bird hunting; 301 KAR 002:225

Elk hunting seasons, permits, zones, and requirements; 301 KAR 002:132

Fall wild turkey hunting; 301 KAR 002:144

Feeding of wildlife; 301 KAR 002:015

Hunter education; 301 KAR 002:185

Hunting and trapping seasons and limits for furbearers; 301 KAR 002:251

Means by which migratory game birds may be taken; 301 KAR 002:090

Migratory birds; means by which birds may be take; 301 KAR 002:090

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

Sandhill crane hunting requirements; 301 KAR 002:228

Taking of fish by nontraditional fishing methods; 301 KAR 001:410

Transportation and holding of live exotic wildlife; 301 KAR 002:082

Transportation and holding of live native wildlife; 301 KAR 002:081

Turkey Spring hunting of wild; 301 KAR 002:142

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

Waterfowl hunting requirements on public lands; 301 KAR 002:222

Waterfowl seasons and limits; 301 KAR 002:221

Wildlife; importation, possession, and transportation of; 301 KAR 002:095

Wildlife rehabilitation permit; 301 KAR 002:075

#### Hunting and Fishing

Commercial nuisance wildlife control; 301 KAR 003:120

#### Licensing

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

License agent applications and agreements; 301 KAR 005:010

License agent requirements and responsibilities; 301 KAR 005:020

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

#### Water Patrol

Boating safety equipment; 301 KAR 006:020

Definitions for 301 KAR Chapter 6; 301 KAR 006:001

#### Wildlife

Administration of drugs to wildlife; 301 KAR 004:110

### FOOD STAMPS

*See Supplemental Nutritional Assistance Program, 921 KAR Chapter 003*

### HEALTH AND FAMILY SERVICES

#### Administration

Background checks, Child and adult protection employees subject to; 900 KAR 001:050

Certificate of Need; 900 KAR Chapter 6

Child Support; 921 KAR Chapter 001

Developmental Health, Developmental and Intellectual Disabilities

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

Essential Personal Care Visitor Programs

Essential personal care visitor programs; visitation guidelines;

900 KAR 014:010

Health Benefit Exchange; 900 KAR Chapter 010

Medicaid Services; KAR Title 907

State Health Plan; 900 KAR Chapter 5

### HEALTH BENEFIT EXCHANGE

Eligibility and enrollment; 900 KAR 010:120

### HERITAGE COUNCIL

Historic rehabilitation tax credit certifications; 300 KAR 006:011

### HIGHWAYS

#### Traffic

Off-highway vehicles, safety, and routes; 603 KAR 005:350

Vegetation management; 603 KAR 005:155

### HORSE RACING COMMISSION

Flat and Steeplechase Racing

Horses; 810 KAR 004:010E

Owners; 810 KAR 004:090

#### General

Self-exclusion; 810 KAR 002:100

#### Hearings and Appeals

Hearings, reviews, and appeals; 810 KAR 009:010

#### Incentive and Development Funds

Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund; 810 KAR 007:060

Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund; 810 KAR 007:040

Kentucky Thoroughbred Development Fund; 810 KAR 007:030

#### Medication Guidelines

Drug, medication, and substance classification schedule; 810 KAR 008:020

Medication; testing procedures; prohibited practices; 810 KAR 008:010

### HOUSING, BUILDINGS AND CONSTRUCTION

#### Building Code

Kentucky Industrialized Building Systems; 815 KAR 007:130

#### Electrical

Licensing of electrical contractors, master electricians, and electricians; 815 KAR 035:060

#### Elevator Safety

Elevator licensing; 815 KAR 004:030

#### Heating, Ventilation, and Air Conditioning Licensing Requirements

Licensing requirements for master HVAC contractors and journeyman HVAC mechanics; 815 KAR 008:010

#### Kentucky Building Code

Kentucky Building Code; 815 KAR 007:120

#### Manufactured Homes and Recreational Vehicles

Recreational vehicles; 815 KAR 025:020

Licensing and certifications with manufactured homes and mobile homes; 815 KAR 025:060

#### Plumbing

Plumbing licenses; 815 KAR 020:030

#### Standards of Safety

Kentucky standards of safety; 815 KAR 010:060

Standards of Safety; 815 KAR 010:060

### INSURANCE

Agents, Consultants, Solicitors and Adjustors

Licensing process; 806 KAR 009:025

Limited lines self-service storage space insurance requirements; 806 KAR 009:380

Portable electronics retailer license; 806 KAR 009:390

#### Assets and Liabilities

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

#### Authorization of Insurers and General Requirements

Cybersecurity reporting procedures; 806 KAR 003:250

#### Health Insurance Contracts

Annual report mental health parity nonquantitative treatment limitation compliance; 806 KAR 017:585

Independent External Review Program; 806 KAR 017:290

## SUBJECT INDEX

Minimum standards for Medicare supplement insurance policies and certificates; 806 KAR 017:570E  
Registration, utilization review, and internal appeal; 806 KAR 017:280  
Repeal of 806 KAR 17:350; 806 KAR 017:531  
Insurance Holding Company Systems and Other Insurance Filings General; 806 KAR 037:010  
Motor Vehicle Repairs (No-fault)  
Kentucky no-fault rejection form; 806 KAR 039:030  
Surplus Lines  
Examples of dishonest or unethical practice for broker-dealers and agents; 806 KAR 010:440  
Examples of dishonest or unethical practice for investment advisers and investment adviser representatives; 806 KAR 010:450

### JUSTICE AND PUBLIC SAFETY CABINET

Capital Punishment  
Pre-execution medical actions; 501 KAR 016:310  
Department of Corrections  
Department of Corrections manuals; 501 KAR 006:080  
Eastern Kentucky Correctional Complex policies and procedures; 501 KAR 006:150  
Kentucky State Penitentiary policies and procedures; 501 KAR 006:040  
Luther Luckett Correctional Complex; 501 KAR 006:050  
Western Kentucky Correctional Complex; 501 KAR 006:130  
Department of Criminal Justice Training  
Online basic and in-service training; 503 KAR 003:130  
On-site review of school security risk assessments and written approval of local board of education's noncompliance with KRS 158.4414(2); 503 KAR 007:010  
Kentucky State Corrections Commission  
Administration and application procedure for community corrections grant program; 500 KAR 010:020  
Community Corrections Board and grant recipient requirements; 500 KAR 010:030  
Definitions for 500 KAR Chapter 010; 500 KAR 010:001  
Program review; 500 KAR 010:040  
Office of the Secretary  
Funds disbursement from the elder and vulnerable victims trust fund; 500 KAR 016:010  
Special Law Enforcement Officers  
Filing and processing SLEO commissions; 500 KAR 002:020  
Special Local Peace Officers  
Definitions; 500 KAR 003:010  
Filing and processing SLPO commissions; 500 KAR 003:020

### JUVENILE JUSTICE

Child Welfare  
Admissions; 505 KAR 001:100  
Cell entry teams, emergency response teams, and emergency response training; 505 KAR 001:200  
Day treatment admissions; 505 KAR 001:180  
Day treatment programs; 505 KAR 001:185  
Definitions; 505 KAR 001:010  
505 KAR 001:140. Department of Juvenile Justice Policies and Procedures Manual: Detention Services  
505 KAR 001:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services  
Facility, capacity, staffing, and population count; 505 KAR 001:230  
Restraints and control methods; 505 KAR 001:210  
Transportation of juveniles; 505 KAR 001:220

### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Kentucky Higher Education Assistance Authority  
Student aid applications; 011 KAR 004:080  
KHEAA Grant Programs  
CAP grant award determination procedure; 011 KAR 005:145  
CAP grant student eligibility; 011 KAR 005:037  
Definitions pertaining to 011 KAR Chapter 005; 011 KAR 005:001

### KENTUCKY RETIREMENT SYSTEMS

General Rules  
Definitions for 105 KAR Chapter 1. 105 KAR 001:001  
Hospital and medical insurance for retired members and Kentucky Retirement Systems Insurance Fund Trust; 105 KAR 001:411  
Hybrid cash balance plan; 105 KAR 001:365  
Periodic disability review; 105 KAR 001:220  
Repeal of 105 KAR 001:070; 105 KAR 001:071  
Repeal of 105 KAR 001:370; 105 KAR 001:371  
Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer; 105 KAR 001:415  
Kentucky Retirement Systems  
Quasi-governmental employer reports on independent contractors and leased employees; 105 KAR 001:451

### K-TAP, KENTUCKY WORKS, WELFARE TO WORK, STATE SUPPLEMENTATION

Delegation of power for oaths and affirmations; 921 KAR 002:060  
Family Assistance Short Term (FAST); 921 KAR 002:500  
Kentucky Works Program (KWP) supportive services; 921 KAR 002:017  
Procedures for determining initial and continuing eligibility; 921 KAR 002:040  
Relocation Assistance Program (RAP); 921 KAR 002:510  
Right to apply and reapply; 921 KAR 002:035  
Standards of need and amount for the Kentucky Transitional Assistance Program (KTAP); 921 KAR 002:016  
Technical requirements for the Kentucky Transitional Assistance Program (KTAP); 921 KAR 002:006  
Technical requirements for Kentucky Works Program (KWP); 921 KAR 002:370  
Time and manner of payments; 921 KAR 002:050  
Work Incentive (WIN); 921 KAR 002:520

### LABOR CABINET

Unemployment Insurance  
Appeals; 787 KAR 001:110  
Application for employer account; reports; 787 KAR 001:010  
Change of status; discontinuance of business; 787 KAR 001:020  
Claimant profiling; 787 KAR 001:310  
Contract construction rates; 787 KAR 001:290  
Employer contribution rates; 787 KAR 001:210  
Interstate claimants; 787 KAR 001:150  
Labor dispute or strike; notification; 787 KAR 001:080  
Overpayment waivers; 787 KAR 001:360  
Required reports and due dates; 787 KAR 001:220  
Separation for cause; reports; 787 KAR 001:060  
Successorship; 787 KAR 001:300  
Unemployed worker's reporting requirements; 787 KAR 001:090  
Unemployment insurance fund payments; 787 KAR 001:140  
Unemployed worker's reporting requirements; 787 KAR 001:090  
Voluntary election of coverage; 787 KAR 001:260  
Week of unemployment defined; 787 KAR 001:100

### LAW ENFORCEMENT COUNCIL

Department of Criminal Justice Training  
General Training Provision  
Online basic and in-service training Kentucky Law Enforcement Council; 503 KAR 003:130  
Peace officer, telecommunicator, and court security officer professional standards; 503 KAR 001:140

### LICENSURE FOR LONG-TERM CARE ADMINISTRATORS

Fees; 201 KAR 006:060

### LOCAL GOVERNMENT

County Attorney  
County Attorney Annual Settlement; 109 KAR 017:010

## SUBJECT INDEX

### MEDICAID SERVICES

- Kentucky Children's Health Insurance Program
  - Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act; 907 KAR 004:020
  - Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act; 907 KAR 004:030
- Medicaid Eligibility
  - Eligibility provisions and requirements regarding former foster care individuals, and individuals who were in out-of-state equivalents to foster care; 907 KAR 020:075
  - Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals; 907 KAR 020:020
  - Medicaid procedures for determining initial and continuing eligibility other than procedures related to a modified adjusted gross income eligibility standard or related to former foster care individuals; 907 KAR 020:010
  - Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards; 907 KAR 020:100
  - Presumptive eligibility; 907 KAR 020:050
  - Special income requirements for hospice and 1915(c) home and community based services; 907 KAR 020:045
- Medicaid Services
  - Advanced practice registered nurse (services); 907 KAR 001:104
  - Ambulatory surgical center; 907 KAR 001:008
  - Community mental health center behavioral health services
  - Coverage provisions and requirements regarding rural health clinic services; 907 KAR 001:082
  - Dental services' coverage provisions and requirements; 907 KAR 001:126
  - Hearing program coverage provisions and requirements; 907 KAR 001:038.
  - Payments for price-based nursing facility services; 907 KAR 001:065
  - Vaccines for children program; 907 KAR 001:680
  - Vision program coverage provisions and requirements; 907 KAR 001:632
- Payments and Services
  - Outpatient drugs, reimbursement; 907 KAR 023:020
  - Reimbursement for physicians' services; 907 KAR 003:010
  - Reimbursement for treatment related to clinical trials; 907 KAR 003:190
  - Specialized children's services clinics Outpatient Pharmacy Program; 907 KAR 003:160

### MEDICAL LICENSURE

- Continued licensure of athletic trainers; 201 KAR 009:305
- Standardized medical order for scope of treatment form; 201 KAR 009:470

### MILITARY AFFAIRS

- Disaster and Emergency Services, See Emergency Services*

### NURSING

- Applications for licensure; 201 KAR 020:370
- Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs; 201 KAR 020:360.
- Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement; 201 KAR 020:476
- Dialysis technician scope of practice, discipline, and miscellaneous requirements; 201 KAR 020:478
- Faculty for prelicensure registered nurse and practical nurse programs; 201 KAR 020:310
- Fees for applications and for services; 201 KAR 020:240
- Initial approval for dialysis technician training programs; 201 KAR 020:472
- Licensure by examination; 201 KAR 020:070
- Licensed certified professional midwives permitted medical tests and formulary; 201 KAR 020:650
- Licensed practical nurse infusion therapy scope of practice;

- 201 KAR 020:490
- Licensing requirements for licensed certified professional midwives; 201 KAR 020:620
- Medication aide training programs and credentialing of medication aides; 201 KAR 020:700
- Nursing Incentive Scholarship Fund; 201 KAR 020:390
- Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing; 201 KAR 020:260
- Sexual Assault Nurse Examiner Program standards and credential requirements; 201 KAR 020:411

### OFFICE FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS

- Appeals; 911 KAR 001:090
- Early Hearing Detection and Intervention Program; 911 KAR 001:085
- Homecare program for the elderly; 911 KAR 001:180
- Medical staff; 911 KAR 001:060

### OFFICE OF THE ATTORNEY GENERAL

- Department of Law
  - Cremation forms and inspections; 040 KAR 002:150
  - Protocol for operation of local multidisciplinary teams on child sex abuse; 040 KAR 003:020
- Kentucky Opioid Abatement Advisory Commission
  - General application procedure; 040 KAR 009:010.
  - Local government application procedure; 040 KAR 009:020

### OFFICE OF INSPECTOR GENERAL

- Controlled Substances
  - Monitoring system for prescription-controlled substances; 902 KAR 055:110
  - Schedules of controlled substances; 902 KAR 055:015
- Essential Personal Care Visitor Program
  - Essential personal care visitor programs; visitation guidelines; 900 KAR 014:010E
- Health Services and Facilities
  - Assisted living communities; 902 KAR 020:480
  - Kentucky abortion-including drug certification program and registration of qualified physicians; 902 KAR 020:365
  - Kentucky heart attack response and treatment recognition process; 902 KAR 020:470
  - Operation and services; End Stage Renal Disease (ESRD) facilities; 902 KAR 020:018
  - Rural emergency hospitals; 902 KAR 020:490
- Office of Inspector General
  - Health care services agencies; 906 KAR 001:210
- Telehealth
  - Telehealth terminology and requirements; 900 KAR 012:005

### OPTOMETRIC EXAMINERS

- Advertising; 201 KAR 005:038
- Board administration and optometric practice; 201 KAR 005:002
- Expungement; 201 KAR 005:105
- Telehealth; 201 KAR 005:055
- Unprofessional conduct; 201 KAR 005:045

### PERSONNEL

- Personnel Board
  - Probationary periods; 101 KAR 001:325
- Personnel Cabinet; Classified
  - Classified compensation administrative regulations; 101 KAR 002:034
  - Classified service general requirements; 101 KAR 002:095
  - Repeal of 101 KAR 002:180; 101 KAR 002:181
- Personnel Cabinet, Unclassified
  - 2023 plan year handbook for the public employee health insurance program; 101 KAR 002:21
  - Compensation plan and pay incentives for unclassified service; 101 KAR 003:045

### PHARMACY

## SUBJECT INDEX

Board authorized protocols; 201 KAR 002:380  
License transfer and non-resident pharmacist license; 201 KAR 002:030  
Opioid antagonist dispensing; 201 KAR 002:360  
Ordering and administering vaccinations; 201 KAR 002:414E  
Out of state pharmacy permits; 201 KAR 002:460  
Unprofessional conduct of a pharmacy permit holder; 201 KAR 002:450

### PHYSICAL THERAPY

Code of ethical standards and standards of practice for physical therapists and physical therapist assistants; 201 KAR 022:053  
Continued competency requirements and procedures; 201 KAR 022:045  
Physical Therapy Compact Commission; 201 KAR 022:170

### PROFESSIONAL GEOLOGISTS

Applications and examinations; 201 KAR 031:040  
Fees; 201 KAR 031:010  
Renewals; 201 KAR 031:050  
Repeal of 201 KAR 031:030; 201 KAR 031:031

### PUBLIC HEALTH

Communicable Diseases  
Reportable disease surveillance; 902 KAR 002:020  
Local Health Departments  
Disciplinary procedures applicable for local health department employees; 902 KAR 008:100  
Leave provisions applicable to employees of local health departments; 902 KAR 008:120  
Local health department operations requirements; 902 KAR 008:160  
Salary adjustments for local health departments; 902 KAR 008:060  
Maternal and Child Health  
Newborn screening program; 902 KAR 004:030  
Programs for the Underserved  
Community health worker certification; 902 KAR 021:040  
Vital Statistics  
Abortion reporting; 901 KAR 005:120  
Certificate of abortion; 901 KAR 005:130  
Permit to transport fetal remains; 901 KAR 005:140

### PUBLIC PROTECTION CABINET

Charitable Gaming; KAR Title 820

### REAL ESTATE COMMISSION

Standards of professional conduct; 201 KAR 011:121

### RETIREMENT

See *Kentucky Retirement Systems (KAR Title 105)*  
*Teachers' Retirement System (KAR Title 102)*

### REVENUE

See also *Selective Excise Tax*

### SECRETARY OF STATE

Filings  
Lieutenant Governor Designation form; 030 KAR 009:010

### SELECTIVE EXCISE TAX

Motor Fuel  
Prices and annual survey value; 103 KAR 043:340

### SOCIAL WORK

Renewal, expiration, termination, and reinstatement of license; 201 KAR 023:051  
Temporary permission to practice; 201 KAR 023:016

### STATE BOARD OF ACCOUNTANCY

Examination sections, applications, and procedures; 201 KAR 001:190  
License application; 201 KAR 001:050

### STATE BOARD OF ELECTIONS

#### Forms and Procedures

Chain of custody for records during an election contest; 031 KAR 004:201  
Consolidation of precincts and precinct election officers; 031 KAR 004:196  
Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically; 031 KAR 004:131  
Establishment of risk-limiting audit pilot program; 031 KAR 004:210  
Exceptions to prohibition on electioneering; 031 KAR 004:170  
Recanvas procedures; 031 KAR 004:071  
Submission of the federal postcard application via electronic mail; 031 KAR 004:141

#### Statewide Voter Registration

Voting precinct and address of overseas voter whose last place of residence is in the Commonwealth is no longer a recognized residential address; 031 KAR 003:031

#### Voting

Ballot standards and election security; 031 KAR 005:026  
Use of the federal writ-in absentee ballot; 031 KAR 005:011

#### Electronic Voting Systems

E-poll book product certification; 031 KAR 002:030

### STATE HEALTH PLAN

Facilities and services, 900 KAR 005:020

### TEACHER'S RETIREMENT SYSTEM

#### General Rules

Disability retirement for TRS 4 members with less than five years of service; 102 KAR 001:361

### TOURISM

Process for the distribution of tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021; 300 KAR 001:021

### TRANSPORTATION

*Highways; See 603 Chapter 005*

#### Motorcycle and Bicycle Safety

Motorcycle Safety Education Program; 601 KAR 014:050  
Office for Civil Rights and Small Business Development  
Certification of disadvantaged business enterprises; 600 KAR 004:010

### VETERANS AFFAIRS

#### State Veteran's Nursing Home

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

### VETERINARY EXAMINERS

Authorization for animal control agencies to apply for restricted controlled substances certificate from DEA; 201 KAR 016:550  
Certificate renewal for animal control agencies and animal euthanasia specialists; renewal notice; 201 KAR 016:572  
Certification as an animal euthanasia specialist; 201 KAR 016:560  
Duties and responsibilities of an animal euthanasia specialist; 201 KAR 016:562  
Procedures for grievances, investigations, and administrative charges; 201 KAR 016:610  
Responsibilities for certified animal control agencies; limitations on drugs; 201 KAR 016:552

### WORKERS' CLAIMS

#### Labor Standards; Wages and Hours

803 KAR 001:006. Employer-employee relationship.

#### Workers' Claims

Utilization review, appeal of utilization review decisions and medical bill audit; 803 KAR 025:195  
Workers' Compensation medical fee schedule for physicians;

## **SUBJECT INDEX**

803 KAR 025:089

Workers' Compensation Funding Commission

Special fund assessments; 803 KAR 030:010

### **WORKFORCE INVESTMENT**

Office of Employment and Training

Local workforce development area governance; 787 KAR  
002:040

### **WORKPLACE STANDARDS**

Labor Standards; Wages and Hours

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

Workers' Compensation Funding Commission

Special fund assessments; 803 KAR 030:010